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STANDING COMMITTEE ON  
COAL AND STEEL (2012-2013)  
FIFTEENTH LOK SABHA

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**MINISTRY OF MINES**

**"THE MINES AND MINERALS (DEVELOPMENT & REGULATION)  
BILL, 2011"**

**THIRTY-SIXTH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI  
MAY, 2013/VAISAKHA, 1935(Saka)**

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**Presented to Lok Sabha on 07.05.2013**

**Laid in Rajya Sabha on 07.05.2013**



**LOK SABHA SECRETARIAT  
NEW DELHI  
MAY, 2013/VAISAKHA 1935 (Saka)**

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## CONTENTS

	PAGE
COMPOSITION OF THE COMMITTEE(2011-12).....	(iii)
COMPOSITION OF THE COMMITTEE(2012-13).....	(iv)
INTRODUCTION.....	(vi)
CHAPTER-I    Introductory.....	1
CHAPTER-II    Preliminary.....	7
CHAPTER-III    General Restrictions on Mineral Concessions.....	14
CHAPTER-IV    Non Exclusive Reconnaissance Licence.....	69
CHAPTER-V    High Technology Reconnaissance-Cum-Exploration Licence.....	72
CHAPTER-VI    Mining Lease.....	78
CHAPTER-VII    Reservation.....	87
CHAPTER-VIII    Royalties, Compensation and Cess.....	90
CHAPTER-IX    Power to Issue Directions.....	112
CHAPTER-X    National, State Mineral Fund And District Mineral Foundation.....	117
CHAPTER-XI    National And State Mining Regulatory Authority.....	122
CHAPTER-XII    Coordination Committee & National Repositories.....	137
CHAPTER-XIII    Offences And Penalties.....	141
CHAPTER-XIV    Miscellaneous.....	145

## APPENDICES

I	List of Central Ministries/Organizations/Institutions/Individuals which appeared before the Committee for evidence and State Governments with whom the Committee had discussions	152
II	List of various stakeholders who submitted their views/suggestions on the Bill.	154
III	Minutes of the sitting held on 30.01.2012	157
IV	Minutes of the sitting held on 13.02.2012	159
V	Minutes of the sitting held on 15.03.2012	161
VI	Minutes of the sitting held on 20.03.2012	163
VII	Minutes of the sitting held on 27.03.2012	165

VIII	Minutes of the sitting held on 25.04.2012	166
IX	Minutes of the sitting held on 11.05.2012	168
X	Minutes of the sitting held on 01.06.2012	170
XI	Minutes of the sitting held on 25.06.2012	174
XII	Minutes of the sitting held on 02.07.2012	178
XIII	Minutes of the sitting held on 16.07.2012	181
XIV	Minutes of the sitting held on 23.07.2012	184
XV	Minutes of the sitting held on 03.08.2012	187
XVI	Minutes of the sitting held on 30.10.2012	190
XVII	Minutes of the sitting held on 16.11.2012	192
XVIII	Minutes of the sitting held on 06.05.2013	194
XIX	Copy of "The Mines and Minerals (Development & Regulation) Bill, 2011"	195

**COMPOSITION OF THE STANDING COMMITTEE ON COAL AND STEEL(2011-12)**

**Shri Kalyan Banerjee - Chairman**

**Name of the Member**

**Lok Sabha**

2. Shri Hansraj G. Ahir
3. Shri Jaywant Gangaram Awale
4. Shri Sanjay Bhoi
5. Shri Udyanraje Bhonsle
6. Shri Abu Hasem Khan Choudhury
7. Shri Bansa Gopal Choudhury
8. Smt. Jyoti Durve
9. Adv. Ganeshrao Nagorao Dudhgaonkar
10. Shri Ismail Hussain
11. Shri Vishwa Mohan Kumar
12. Sardar Sukhdev Singh Libra
13. Shri Govind Prasad Mishra
14. Shri Deoraj Singh Patel
15. Shri Kalyan Singh
16. Shri Pashupati Nath Singh
17. Smt. Rajesh Nandini Singh
18. Shri K. Sugumar
19. Shri Manohar Tirkey
20. Dr. G. Vivekanand
21. Shri Pakauri Lal@

**Rajya Sabha**

22. Shri Ali Anwar Ansari\$
23. Shri Jugul Kishore
24. Shri Kishore Kumar Mohanty^
25. Dr. Dasari Narayana Rao\$
26. Ms. Mabel Rebello\$
27. Shri Dhiraj Prasad Sahu
28. Shri Nand Kumar Sai
29. Shri Jai Prakash Narayan Singh
30. Shri R.C. Singh\$
31. Smt. Smriti Zubin Irani\*

# Ceased to be Member of the Committee w.e.f. 03.01.2012.

@ Nominated to the Committee w.e.f. 03.01.2012.

\$ Retired w.e.f. 02.04.2012.

^ Retired w.e.f. 03.04.2012.

\* Nominated to the Committee w.e.f. 17.09.2011.

**COMPOSITION OF THE STANDING COMMITTEE ON COAL AND STEEL(2012-13)**

**Shri Kalyan Banerjee - Chairman**

**Name of the Member**

**Lok Sabha**

2. Shri Hansraj Gangaram Ahir
3. Shri Sanjay Bhoi
4. Smt. Jyoti Dhurve
5. Shri Ganeshrao Nagorao Dudhgaonkar
6. Shri Sabbam Hari
7. Shri Vishwa Mohan Kumar
8. Shri Yashbant N.S. Laguri
9. Shri Pakauri Lal
10. Shri Babu Lal Marandi
11. Shri Govind Prasad Mishra
12. Shri Rajaram Pal
13. Kumari Saroj Pandey
14. Shri Gajendra Singh Rajukhedi
15. Shri K.R.G. Reddy
16. Shri K. Shivkumar *alias* J.K. Ritheesh
17. Shri Pashupati Nath Singh
18. Smt. Rajesh Nandini Singh
19. Shri Uday Pratap Singh
20. Shri O
21. Shri Bansa Gopal Choudhary\*

**Sabha**

22. Shri
- 23.
- 24.
- 25.
26. Shri
27. Shri
28. Shri
29. Shri
- 30.
- 31.

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\* Nominated w.e.f. 13.12.2012

**SECRETARIAT**

1. Shri S. Balsekhar
2. Shri Shiv Singh
3. Shri Arvind Sharma
4. Smt. Vandana Pathania Guleria

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(v)



## INTRODUCTION

I, the Chairman, Standing Committee on Coal and Steel having been authorized by the Committee to present the Report on their behalf, present this Thirty-Sixth Report (Fifteenth Lok Sabha) on "The Mines and Minerals (Development & Regulation) Bill, 2011" relating to the Ministry of Mines.

2. "The Mines and Minerals (Development & Regulation) Bill, 2011" as introduced in Lok Sabha on 12<sup>th</sup> December, 2011 was referred by the Hon'ble Speaker, Lok Sabha under Rule 331(E) (i) (b) of the Rules of Procedure and Conduct of Business in Lok Sabha on 5<sup>th</sup> January, 2012 to the Standing Committee on Coal and Steel for examination and report.

3. Considering the wide ramifications of the Bill, the Committee(2011-12) at their sitting held on 30<sup>th</sup> January, 2012, inter alia, decided to obtain suggestions from the general public, views of the State Governments/UTs, Central Ministries concerned and also to take evidence of various stakeholders, experts, selected State Governments and Central Ministries and the nodal Ministry i.e. Ministry of Mines on various provisions of the Bill.

4. In pursuance of the Committee's decision, besides seeking comments of State governments and selected Central Ministries, a press release was issued through print and electronic media on 23<sup>rd</sup> January, 2012 for soliciting the comments from general public, stakeholders and others by 7<sup>th</sup> February, 2012. Apart from individuals, organizations memoranda, the Committee received comments/suggestions from different State Governments/Union Territory Administrations and Central Ministries. Based on the response from various stakeholders, the Committee(2011-12) and (2012-13) took evidence of the selected stakeholders, State Governments, Central Ministries including the Nodal Ministry i.e. Ministry of Mines as indicated in Appendix-I.

5. The Committee also wish to express their sincere thanks to their predecessor Committee for the significant contribution made by them in the examination of the Bill. The Committee at their sitting held on 06.05.2013 considered and adopted the draft Report. The Committee were immensely benefitted by the suggestions/contribution made by the Members of the Committee for which I express my sincere thanks to them.

6. The Committee wish to express their thanks to the representatives of the Ministry of Mines who tendered their evidence before the Committee and attended all the sittings of the Committee when the representatives of Central Ministries, State Governments and other stakeholders appeared before the Committee and gave their considered views. The committee also wish to express their thanks to the representatives of various Central Ministries/State Governments and other organizations/individuals who furnished written information/views as well as those who appeared before the Committee and made available necessary information for consideration of the Committee, which was of great help to the Committee in arriving at conclusions.

7. The Committee would also like to place on record their deep sense of appreciation of the invaluable assistance rendered to them by the officials of Lok Sabha Secretariat attached to the Committee.

8. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

**NEW DELHI;  
06 May, 2013  
16 Vaisakha, 1935(Saka)**

**KALYAN BANERJEE  
Chairman  
Standing Committee on Coal and Steel**

# REPORT

## CHAPTER – I

### INTRODUCTORY

#### A. Background

India is endowed with large mineral resources, especially of iron ore, bauxite, limestone, base metals, noble metals and diamonds, but due to lack of adequate survey and exploration activities, full potential of these deposits are not known. Further some of the factors affecting the growth of mineral sector (non-fuel) in India could be attributed to the methodology of grant of concessions, since decision making process involved in the grant of concessions is perceived as non-transparent, inefficient and subject to huge delays at all levels, resulting in poor investments in the sector, discontent in host populations for mining projects and illegal mining which is causing loss of revenues to State Governments. In a mid-term appraisal of the Tenth Five-Year Plan, it was observed that the main factors responsible for lack of adequate investments into the mineral sector (non-fuel) were procedural delays in processing of applications for mineral concessions and absence of adequate infrastructure in the mining areas. The mid-term appraisal recommended constitution of a Committee to suggest way and means for stepping up of investment and other matters confronting mineral sector.

#### B. High Level Committee

1.2 A High Level Committee (**HLC**) was constituted by the Government of India, Planning Commission under the Chairmanship of Shri Anwarul Hoda, Member, Planning Commission with the following terms of reference:-

- (i) To review the National Mineral Policy, 1993 and the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 and suggest the changes needed for encouraging investment in public and private sector in exploration and exploitation of minerals;
- (ii) To review the existing procedures for granting Reconnaissance Permits (RPs), Prospecting Licences (PLs), and Mining Leases (MLs) and suggest ways for their streamlining and simplification;
- (iii) To review the procedures for according clearance to mineral exploration and mining projects under the Forest (Conservation) Act, 1980 and Environment (Protection) Act, 1986, and suggest ways for speeding them up;
- (iv) To prioritise the critical infrastructure needs of the Indian mining sector and make recommendations on ways to facilitate investment to meet these needs;
- (v) To examine the implications of the policy of mineral-rich states to make value addition within the state a condition for grant of mineral concession and make appropriate recommendations in this regard;

- (vi) To examine ways of augmenting state revenues from the mineral sector; and
- (vii) To examine any other issue relevant for stimulating investment flows and inducting state-of-the-art technology into the sector.

1.3 The Committee invited all stakeholders to submit representations and/or make presentations detailing their perceptions in respect of the various terms of reference of the Committee. The Committee held extensive consultations with various interest groups and stakeholders.. The Committee studied the various reports prepared and submitted by study groups and in-house committees set up by various ministries from time to time on the issues before the Committee.

1.4 The Committee submitted its report to the Government on the 20th July 2006 in which it observed that out of 1.82 million sq. km of hard rock area (excluding the Deccan Trap), geological mapping on a scale of 1:50,000 has been largely completed on estimated 347,040 sq. km, geophysical mapping of only 56,000 sq. km and geochemical mapping of only 73,000 sq. km has been completed. It further observed that in India, investment has been lacking in high-risk exploration ventures and the work done by Geological Survey of India (**GSI**) continued to be the main basis for investment in mining, and there was a felt need to attract high risk investment in the interest of discovering commercially exploitable deposits.

1.5 The Committee also submitted its recommendations which included suggestions for evolving a mining code adapted to the best international practices, streamlining and simplifying procedures for grant of mineral concessions to reduce delays, strengthening the infrastructure for mining activities and recommendations on other issues for improving the environment for investment in the mining sector. Based on the recommendations of the HLC, the Government has enunciated National Mineral Policy, 2008 (NMP). A copy of the Policy document was laid on the Table of Lok Sabha on 16.04.2008.

### **C. Approach to the New Mines And Minerals (Development and Regulation) Bill, 2011**

1.6 The National Mineral Policy (NMP), while ushering in greater liberalization and private sector involvement, has simultaneously sought to widen the scope of the regulatory framework of the Government in the mining sector by shifting the focus from conventional areas of managing the mineral concession systems to new areas of regulating the mineral sector holistically through addressing issues of simplification, transparency and sectoral best practices in order to attract capital and technology in the sector from new sources.

1.7 NMP has also deepened the scope of the developmental framework by mandating better management of resources and improving the Research and Development and Human Resources in the sector to ensure that the interests of host populations and other vulnerable sections are fully protected and stakeholder

interests are developed, and the benefit of the economic activity in the mining sector flows equitably to the stakeholders.

1.8 A large proportion of the mineral wealth is situated in areas under forest cover, inhabited by tribal or under-privileged communities, and of late, socio-economic issues of tribal and remote communities which inter-alia include perceptions about displacement, control of area by outsiders, economic isolation, environmental degradation and loss of livelihood and habitat, have come into focus, articulated through various means as constituting alienation and loss of identity. There is a felt need to incorporate provisions in the mining legislation enabling creation, activation and empowerment of institutional mechanisms for involvement of the local people, especially the tribal and under privileged communities, in the development of mineral resources through creation of stakeholder rights.

1.9 Considering that the existing law had already been amended several times, and further amendments may not clearly reflect the objects and reasons emanating from the new mineral policy and that a new legislation would be preferable in order to clarify the legislative intent, the Ministry of Mines framed a new Mines and Minerals (Development and Regulation) Bill, 2011, to replace the Mines and Minerals (Development and Regulation) Act, 1957.

1.10 As per the provisions of Article 246, the Seventh Schedule of the Constitution of India in Entry 54 of List I (Union List) provides for "Regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in the public interest". Similarly, Entry 23 of the List II (State List) provides for "Regulation of mines and mineral development subject to the provision of List-I w.r.t. regulation and development under the control of Union".

1.11 Though the Constitution provides that the State Governments, as the owners of the minerals regulate and grant the mineral concessions for exploration and mining of minerals. In exercise of the powers vested by the Constitution of India, the Parliament, after declaring it to be in expedient in the public interest, has enacted the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act). The MMDR Act enables all the States to exercise their powers within a uniform national framework, and the primary powers of the State Governments stand denuded to that extent so far as the Parliament has legislated on any such subject.

#### **D. Objective of New Bill**

1.12 Statement of Objects and Reasons is given below:-

1. The Mines and Minerals (Regulation and Development) Act, 1957 was enacted so as to provide for the regulation of mines and development of minerals under the control of the Union. The aforesaid Act was amended in the years 1958, 1972, 1986, 1987, 1994 and 1999.

2. The first National Mineral Policy was enunciated by the Central Government in 1993 for liberalization of the mining sector. With the passage of time and the economic development of the country, which requires a vibrant energy, metal and commodities sector to meet the infrastructure, manufacturing and other sectoral demands, the nature and requirements of the mineral sector has changed. Based on the recommendations of a High Level Committee set up in the Planning Commission, Government of India, in consultation with State Governments, had replaced the National Mineral Policy, 1993 with a National Mineral Policy on the 13th March, 2008. The new National Mineral Policy provides for a change in the role of the Central Government and the State Governments particularly in relation to incentivizing private sector investment in exploration and mining and ensuring level playing field and transparency in the grant of concessions and promotion of scientific mining within a sustainable development framework so as to protect the interest of local population in mining areas. This necessitated a new legislation for harmonization with the new National Mineral Policy.
  
3. The salient features of the Mines and Minerals (Development and Regulation) Bill, 2011, *inter alia*, are as follows :—
  - (a) it provides for a simple and transparent mechanism for grant of mining lease or prospecting licence through competitive bidding in areas of known mineralization, and on the basis of first-in-time in areas where mineralization is not known;
  - (b) it enables the mining holders to adopt the advanced and sophisticated technologies for exploration of deep-seated and concealed mineral deposits, especially of metals in short supply through a new mineral concession;
  - (c) it enables the Central Government to promote scientific mineral development, through Mining Plans and Mine Closure Plans enforced by a central technical agency namely the Indian Bureau of Mines, as well as the Regulatory Authorities and Tribunals;
  - (d) it empowers the State Governments to cancel the existing concessions or debar a person from obtaining concession in future for preventing the illegal and irregular mining;
  - (e) it empowers the Central Government and State Governments to levy and collect cess;
  - (f) establishment of the Mineral Funds at National and State level for funding the activities pertaining to capacity building of regulatory bodies like Indian Bureau of Mines and for research and development issues in the mining areas;
  - (g) it provides for reservation of an area for the purpose of conservation of minerals;
  - (h) it enables the registered co-operatives for obtaining mineral concessions on small deposits in order to encourage tribals and small miners to enter into mining activities;
  - (i) it empowers the Central Government to institutionalise a statutory mechanism for ensuring sustainable mining with adequate concerns for environment and socioeconomic issues in the mining areas, through a National Sustainable Development Framework;
  - (j) it provides for establishment of the National Mining Regulatory Authority which consists of a Chairperson and not more than nine members to advise the

Government on rates of royalty, dead rent, benefit sharing with District Mineral Foundation, quality standards, and also conduct investigation and launch prosecution in cases of large scale illegal mining;

(k) it provides for establishment of the State Mining Regulatory Authority consisting of such persons as may be prescribed by the State Government to exercise the powers and functions in respect of minor minerals;

(l) it provides for establishment of a National Mining Tribunal and State Mining Tribunals to exercise jurisdiction, powers and authority conferred on it under the proposed legislation;

(m) it empowers the State Governments to constitute Special Courts for the purpose of providing speedy trial of the offences relating to illegal mining;

(n) it empowers the Central Government to intervene in the cases of illegal mining where the concerned State Government fails to take action against illegal mining;

(o) it provides for stringent punishments for contravention of certain provisions of the proposed legislation; and

(p) to repeal the Mines and Minerals (Development and Regulation) Act, 1957.

4. A notable feature of the Bill is to provide a simple mechanism which ensures that revenues from mining are shared with local communities at individual as well as community level so as to empower them, provide them with choices, enable them to create and maintain local infrastructure and better utilise infrastructure and other services provided for their benefit.
5. The Notes on clauses explain in detail the various provisions of the proposed Bill.
6. The Bill seeks to achieve the above objects.

## **E. Consultations with the Stakeholders**

1.13 The new legislation has been extensively consulted with all the stakeholders. This included an intensive exercise of consultation with all the stakeholders including representatives of civil society concerned with environmental/societal impact. After obtaining the views of the stakeholders, the new draft legislation was circulated to the Ministries of Commerce, Finance, Environment and Forests, Steel, Shipping and Surface Transport and Rural Development, the Departments of Industrial Policy and Promotion, Legal Affairs, Atomic Energy and Tribal Affairs and Planning Commission, etc. The successive versions of the draft legislation was also circulated /uploaded on the website of the Ministry for the benefit of the stakeholders on 5.8.2009, 17.9.2009, 17.11.2009, 8.1.2010, 31.3.2010 and 3.6.2010.

## **F. Deliberations of the Group of Ministers**

1.14 The Government then set up a Group of Ministers (GoM) vide letter No 381/3/2/2010-Cab dated 14.6.2010 to look into the proposed new draft Mines and Minerals (Development and Regulation) Bill, 2011.

1.15 Some of the specific concerns of the stakeholders which were not in consonance with the perspective of the Ministry of Mines were placed before the GoM, and considered in detailed discussions held on 22nd July 2010, 30th July 2010, 17th September 2010, 3rd December 2010 and 7th July 2011. The Chairman

of GoM, as desired by the GoM, also held meetings with the Chief Ministers of the State Government of Chattisgarh and Orissa.

1.16 The Government also set up a Committee for allocation of Natural Resources vide Cabinet Secretariat's order No.483/1/1/2011-Cab dated 31st January 2011. The Committee submitted its Report on the 3rd June 2011 and made ten recommendations in respect of the mineral sector. These were duly examined and placed before the GoM in its meeting on the 7th July 2011, which approved changes in several provisions in the draft Act under consideration.

### **G. Cabinet approval**

1.17 The GoM recommended the draft MMDR Bill, 2011, to be placed before the Cabinet on 7th July 2011. After taking into account the recommendation of the GoM, the Cabinet approved the draft MMDR Bill, 2011, on 30.9.2011, subject to any further changes, if any, arising out of any comments received from the State Government of West Bengal within 15 days. The Ministry of Mines, in terms of the decision of the Cabinet, requested comments of the State Government of West Bengal, and after waiting for 15 days initiated the process to introduce the draft Bill in Lok Sabha. After obtaining recommendation of the Hon'ble President of India on 11th November 2011, the draft MMDR Bill, 2011 was introduced in the Lok Sabha on 12th December 2011.

**1.18 The Committee note that the Mines and Minerals (Development & Regulation) Act, 1957 was enacted for regulation and development of mineral under the control of Union government. The Act was subsequently amended in the years 1958, 1972, 1986, 1994 and 1999 to cater to the needs of the sector. Pursuant to the National Mineral Policy, 2008, the reformulated legislative proposal in the form of Mines and Minerals (Development & Regulation) Bill, 2011 was introduced in Lok Sabha on 11.12.2011 and referred to the Standing Committee on Coal and Steel on 05.01.2012 for examination and report under Rule 331E (1)(b) of the Rules of Procedure and Conduct of Business in Lok Sabha. The Committee held a series of meetings in connection with the examination of the Bill. The observations/recommendations of the Committee on various provisions/clauses of the Bill are given in the succeeding Chapters.**



## **(CLAUSE BY CLAUSE EXAMINATION)**

### **CHAPTER-II**

#### **PRELIMINARY**

##### **Clause 1 of the Bill reads as under:-**

1(1) This Act may be called the Mines and Minerals (Development and Regulation) Act, 2011.

1(2) It extends to the whole of India.

1(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

##### **Suggestions received by the Committee and Reply of the Ministry of Mines**

2.2 On being enquired to give their comments as to whether constitutional safeguards have been taken to ensure applicability of the bill to whole country including J&K, the Ministry of Mines informed the Committee in a written reply as under:-

Article 370 of the Constitution of India allows the Parliament to make laws for State of J&K in the matters in Union list and Concurrent list which are declared by the President to correspond to matters specified in the Instrument of Accession, or any other matter in the two referred lists as the President may specify.

2.3 In terms of the Appendix XI in the comments to the Constitution of Jammu and Kashmir, the Mines and Minerals (Development and Regulation) Act, 1957, is applicable in the State of Jammu and Kashmir. Similar to the MMDR Act of 1957, the draft MMDR Bill 2011 extends to the whole of India. No separate status has been accorded to the state of Jammu and Kashmir in the draft Bill. After the draft MMDR Bill is approved by the Parliament, the State Government of Jammu and Kashmir shall be requested to appropriately move an amendment Bill to this effect to replace the relevant entry in the Appendix XI in the comments to the Constitution of Jammu and Kashmir.

##### **Recommendation of the Committee**

**2.4 In view of the comments of the Ministry of Mines, the Committee expect that after approval of MMDR Bill, 2011 by the Parliament, the Government should ensure that the State Government of Jammu & Kashmir is requested to appropriately replace the entry in the**

**Appendix-11 to the Constitution of Jammu & Kashmir so that the Bill be made applicable to the whole country including Jammu & Kashmir.**

### **Definitions**

#### **(i) Atomic Mineral Directorate**

##### **2.5 Clause 3(b) of the Bill reads as under:-**

"Atomic Minerals Directorate" means the Atomic Minerals Directorate for Exploration and Research, Hyderabad, under the control of the Department of Atomic Energy, Central Government.

### **Suggestions received by the Committee and Reply of the Ministry of Mines**

2.6 On being enquired to make the definition of AMD more explicit and comprehensive, the Ministry of Mines have informed the Committee that AMD was set up in July 1949 as a Research and Development unit in the Department of Atomic Energy, Government of India. The task of survey of Atomic minerals is at present entrusted only to the AMD. The draft Bill provides for notifying any other Government agency for the purpose of promotional exploration [clause 4(2)]. For this reason, there may not be a requirement for change in the definition of AMD.

### **Recommendation of the Committee**

**2.7 The Committee find that the definition assigned to Atomic Mineral Directorate in the Bill is limiting and restrictive in nature and not broad based, ignoring eventualities that may arise in future. For instance, in the event of change in the nomenclature of the Directorate, shifting of office from Hyderabad, Department of Atomic Energy being converted into a Ministry, the definition would require to be revisited. In order to make definition more explicit and comprehensive, the Committee recommend that the definition of Atomic Mineral Directorate be as under:**

**"Atomic Mineral Directorates" means the Atomic Mineral Directorate for Exploration and Research, Hyderabad or any other Government agency notified by the Central Government**

#### **(ii) Coal Controller**

##### **2.8 Clause 3(e) of the Bill reads as under:-**

"Coal Controller" means the person appointed as such by the Central Government under the Coal Controller Organisation (Group 'A' Posts) Recruitment Rules, 1986 for the time being in force.

## Recommendation of the Committee

**2.9 In the event of change in the recruitment rules, or change in the nomenclature, the definition would need to be redefined. The Committee, therefore, recommend that the above sub-Clause be modified as under:-**

**"Coal Controller" means the person appointed as such by the Central Government under the Coal Controller Organisation (Group A posts) recruitment rules 1986 or any other Rules for the time being in force**

**(iii) Detail Exploration/General Exploration/Mineral Concession Prospecting**

**2.10 Clause 3(g) of the Bill reads as under:-**

"detailed exploration" means a detailed three-dimensional delineation of a known deposit achieved through close spaced sampling, pitting, trenching and drilling in a grid, and includes an analysis of outcrops, trenches, boreholes, shafts and tunnels, so that the size, shape, structure, grade of the deposit are established with high degree of accuracy, in order to conduct a feasibility study.

**2.11 Clause 3(j) of the Bill reads as under:-**

"general exploration" means the process of initial delineation of an identified deposit in an area using surface mapping, wide spaced sampling, trenching and drilling for preliminary evaluation of mineral quantity and quality, including mineralogical tests on laboratory scale, and any indirect method of mineral investigation, in order to conduct a pre-feasibility study and further detailed exploration.

**2.12 Clause 3(n) of the Bill reads as under:-**

"mineral concession" means a reconnaissance licence, a high technology reconnaissance-cum-exploration licence, a prospecting licence, or a mining lease in respect of major minerals and minor minerals and includes quarrying permits and any other mineral concessions permitting the mining of minor minerals in accordance with such rules as may be made by the State Government in this behalf.

**2.13 Clause 3(v) of the Bill reads as under:-**

"prospecting" means the systematic process of searching for a mineral deposit by narrowing down an area of promising enhanced mineral potential through outcrop identification, geological mapping, geophysical and geochemical studies, trenching, drilling, sampling, etc., in order to facilitate general and detailed exploration.

### **Recommendation of the Committee**

**2.14 In detail exploration, 3(g), general exploration (j) and Mineral Concession (n) and prospecting (v) various techniques used have been indicated as part of the definition. In the event of discovery of new and novel technique/technology in the process of detailed exploration / general exploration and prospecting, the Committee feel that definitions would undergo change. As the present definition is limited to the extent of present techniques / discoveries made in the mining process, the Committee recommend that the following words may be suitably added in the above sub-Clauses:-**

**"or any other proven scientific technique (s)/technology(s) as may be notified by the Central Government."**

**(iv) Major Minerals and Minor Minerals**

**2.15 Clause 3 (m) of the Bill reads as under:-**

Major minerals means the minerals specified in First Schedule.

**2.16 Clause 3 (p) of the Bill reads as under:-**

Minor minerals means the minerals other than major minerals specified in the First Schedule.

### **Suggestions received by the Committee**

**2.17 The Committee received the following suggestions from various stakeholders:-**

- (i) "The draft bill has missed out on certain important aspects i.e. addressing the need for re-classification of ornamental dimensional granite as a major mineral as well as long term mining lease etc., which are pertinent to granite industry. With the elapse of more than 50 years since the time of last classification, the ornamental granite industry has come a long way to emerge as one of the most important minerals of India in terms of economic and industrial value, employment, investment, mechanization, application of technology, skill sets, export revenues etc. The Committee have been further informed that the growth of granite industry is adversely affected by the neglect, discouragement as well as short term and policies of the State Governments, having jurisdictional control over the minor minerals. The

granite sector employs 2.0 million skilled personnel and generates about Rs. 6,000 crores of exports every year.

- (ii) In the event of ornamental granite is classified as major mineral allowing uniform, long term and transparent policies of regulation and taxation, the sector will witness a high growth in the coming years and decades resulting in much higher employment, investment, exports and other benefits to the economy. The employment will jump beyond 3.00 million jobs and will attract Rs. 50,000 crores in capital investment and exports will exceed Rs. 10,000 crores per annum."

2.18 The Committee have further been apprised of the case of Deepak Kumar, etc. vs. State of Haryana and others Hon'ble Supreme Court in their judgment dated 27.02.2012 have also recommended that the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.

#### **Reply of the Ministry of Mines**

2.19 Regarding reclassification of ornamental/industrial granite from minor mineral to major mineral, the Ministry of Mines have replied that as per Clause 3(m) the major minerals are the minerals specified in the first schedule which is to be done by the Central Government. Any reclassification will be done as per the recommendation of the National Mining Regulatory Authority.

2.20 The Secretary, Ministry of Mines further informed the Committee during evidence as under:-

"The situation is that the Supreme Court has asked the Ministry of Mines to frame model rules and give them to the States to adopt them. That is what is happening. That is the current thing....., The Supreme Court has asked the Centre to make model rules."

#### **Recommendation of the Committee**

**2.21 The Committee recommend that 'granite' should be brought under the schedule of Major Minerals.**

#### **(v) Consultation**

#### **Suggestions received by the Committee**

2.22 Ministry of Panchayati Raj has desired that definition of 'Consultation' should be defined to ensure that Gram Sabha is given full information and its views are respected in Schedule V areas where under Section 4(d) of the legislation extending

the Panchayats Act to Scheduled areas – the PESA Act, 1996, the Gram Sabha is made the competent authority to preserve its traditions, customary rights and community resources, consultation has to be defined as consent. Unless this is done, this legislation will create contradiction with PESA Act, 1996.

### **Reply of the Ministry of Mines**

2.23 In this regard, a representative of Ministry of Panchayati Raj informed the Committee during evidence as under:

"When the Constitution 73<sup>rd</sup> Amendment was passed, initially it was not applied to Scheduled 5 areas but subsequently PESA was enacted in 1996. Under PESA, extensive powers had been given not only to Gram Panchayat but also to Gram Sabha. One of the powers given to Gram Sabha is that prior recommendation of the Gram Sabha is mandatory when a prospecting licence or licence for mine and mineral as well as concession for mine and mineral are given. So, that is according to the provisions of PESA. Our Ministry's mandate is to ensure the implementation of PESA. All our comments are basically in tune with PESA and we would like that this MMDR Bill is in compliance with the provisions of PESA."

2.24 The witness further added that the Ministry of Panchayati Raj have put up a Cabinet Note for amending the PESA Act itself to make the recommendation of the Gram Sabha as a mandatory.

2.25 In this regard, the Ministry of Mines, have informed the Committee that consultation as may be defined in the PESA Act, 1996 would be acceptable to the Ministry.

### **Recommendation of the Committee**

**2.26 The Committee observe that the Ministry of Panchayati Raj have desired that the Gram Sabha be made the competent authority to preserve its traditions, customary rights and community resources and to ensure this, consultation has to be defined as 'consent'. While observing that under Panchayat (Extension to Schedule Areas (PESA), Act, 1996, one of the powers given to Gram Sabha is that prior recommendation of the Gram Sabha is required when a prospecting licence or licence for mine and mineral as well as concession for mine and mineral are given, the Committee have been given to understand that the Ministry of Panchayati Raj have put up a Cabinet Note for amending the PESA Act itself to make the recommendation of the Gram Sabha as mandatory. Although, the Ministry of Mines have admitted that 'consultation' as defined in the PESA,**

**Act, 1996 would be acceptable to them, the Committee desire that the term 'consultation' should be read as an effective consultation. The Committee desire that views of Gram Sabha should not be lightly ignored into. The Committee observe that strong valid reason should be given in case of ignoring the views of Gram Sabha and necessary amendment should be brought into the Act.**

## CHAPTER – III

### GENERAL RESTRICTIONS ON MINERAL CONCESSIONS

#### **License for Reconnaissance, Prospecting and Mining Operations (Clause 4)**

##### **Clause 4(2) of the Bill reads as under:-**

No licence shall be necessary in respect of reconnaissance or prospecting operations undertaken by the Geological Survey of India, the Atomic Minerals Directorate, the Mineral Exploration Corporation Limited, the Singareni Collieries Limited, the Neyveli Lignite Corporation Limited and the Central Mine Planning and Design Institute Limited being Government companies within the meaning of section 617 of the Companies Act, 1956 or the Directorate of Mining and Geology (by whatever name called) of any State Government and such other Government agencies as may be notified by the Central Government from time to time in respect of any land where rights on minerals vest in the State Government:

Provided that all such operations shall be notified by the State Government and may be undertaken for a period not exceeding three years in respect of reconnaissance and six years in respect of prospecting, as may be specified in such notification:

Provided further that no such reconnaissance or prospecting shall be undertaken in an area for which a licence or mining lease has been granted or for which application for a grant of licence or mining lease is pending."

#### **Suggestions received by the Committee**

3.2 The Committee have *inter-alia* received the following suggestions:-

- (i) As regards, notification by the State Government in first proviso clause 4(2), the Department of Atomic Energy has suggested that instead of a notification by the State Government on the exploration activities by Government agencies in Clause 4(2), mere intimation should be sufficient or a deemed notification should be provided in the draft Bill, [clause 4(2)].
- (ii) Regarding exploration and discovery of atomic minerals, the Committee were apprised by the Secretary, Department of Atomic Energy during evidence that "according to Section 9 of the Atomic Energy Act it is exclusively in the domain of Atomic Energy Department and the section imply that this power is to carry forward the discovery or exploration in any part of the country notwithstanding the status of the particular land.



The witness further added:

"In any case, atomic minerals will not be of interest to any other party who can be granted licence to carry forward the exploration in any part of the country. To this extent, section 9 of the Atomic Energy Act is very clear."

3.3 The Department of Atomic Energy has, therefore, suggested that the following be inserted in the second proviso of Clause 4:-

"except in areas where section 9 of Atomic Energy Act, 1952 is applicable".

3.4 The Committee had desired to know the justification for inclusion of certain agencies like GSI, Atomic Mineral Department etc. referred to in the definition and exclusion of NALCO, HCL, SAIL, MOIL, etc.

### **Reply of the Ministry of Mines**

3.5 The Ministry of Mines have not accepted the first suggestion of the Department of Atomic Energy and have informed the Committee that notification is necessary since it would allow clarity in the filling of applications and awareness on the areas under promotional exploration.

3.6 As regards the second issue raised by Department of Atomic Energy, the Secretary, Ministry of Mines drew attention of the Committee to the Clause 48(1) which is omnibus in nature and empowers the Central Government to authorize Geological Survey of India and Indian Bureau of Mines, Atomic Minerals Directorate etc., to investigate and report for purpose of conservation of strategic mineral resources or for the scientific management, exploration and exploitation of mineral resources it is expedient to conduct a technical or a scientific investigation with regard to any mineral or any land including lands in relation to which mineral concessions may have been granted.

3.7 The objective of clause 4(2) is to allow promotional exploration activities by Government agencies in the interest of mineral development, without the necessity to obtain a licence or lease under the draft MMDR Bill. NALCO, SAIL, MOIL, HCL etc. are into commercial exploration and mining. However, if any promotional exploration is mandated and budget is provided for by Government to these PSU's in future, clause 4(2) of the draft Bill allows these companies (which are within the meaning of Section 617 of the Companies Act, 1952) to operate.

3.8 The details of exploration carried out by various agencies during 2008-09 to 2010-11(reply to Lok Sabha USQ No. 3260, 31.08.2012) indicate that NALCO have carried out detailed exploration for 230 million tonnes minerable estimated results of bauxite and about 73.16 million tonnes of Fe resources were explored by SAIL in Chhattisgarh(Rajahara, Dalli, Jharandalli iron ore mines)

### Recommendation of the Committee

**3.9** The Committee do not concur with the views of the Department of Atomic Energy merely intimating would be as good as deemed notification while emphasizing the need for notification under first Proviso Clause 4(2) by the State Government to ensure that no agencies other than Atomic Minerals Directorate be allowed/allocated areas where deposits of Atomic minerals have been identified as such no change is warranted. The Committee are, however, not in agreement with the contention of the Ministry of Mines that clause 48(1) of the proposed Bill would ensure management and conservation of strategic minerals. The Committee, therefore, recommend that the Ministry of Mines should make necessary amendments in the Second Proviso to Clause 4(2) by inserting the words "except in areas where section 9 of Atomic Energy Act, 1952 is applicable" as suggested by Department of Atomic Energy.

**3.10** The Committee note that agencies/companies such as MECL, Neyveli Lignite Corporation, Singareni Collieries Limited, etc. are exempted for obtaining licence under Clause 4(2). Taking into consideration that HCL, NALCO, SAIL and MOIL are also engaged in reconnaissance and prospecting operation, the Committee are not convinced with the reply of the Government that whenever budget is provided for exploration works by these PSUs, the Government may notify them from time to time. The Committee, thus, feel that these organizations too be granted exemptions within the meaning of clause 4(2) of the Bill and mentioned therein.

**3.11** The Committee note that State Governments have been armed to notify the completion of reconnaissance and prospecting operations within a span of three and six years respectively by the agencies enumerated in clause 4(2). The Committee though in the agreement with the present dispensation, desire that some flexibility in the period for such operations ought to be given to the State Governments as they are the owners of minerals. The Committee, therefore, recommend that the State Government concerned may be empowered to alter, modify the periods for

**the reasons recorded in writing. Accordingly, clause 4(2) be suitably amended to the above extent.**

### **Second Proviso to Clause 4(2)**

#### **Suggestions received by the Committee**

3.12 As regards, the second proviso to clause 4 (2), the State Government of Chhattisgarh and Odisha have desired that instead of restricting promotional exploration on areas where application for a grant of license or mining lease is pending, such restriction should be limited only to such areas where application for grant of license or mining lease of a previous licence holder is pending.

3.13 In a note furnished to the Committee, the State Government of Jharkhand have desired that second proviso to sub clause 2 of clause 4 also requires re-drafting as the current draft bars/prohibits reconnaissance or prospecting in areas where licenses and mining leases have been granted or for which application/applications are pending. Had these provisions been for a group of associated minerals, it would have been reasonable. But the draft in its present form could prohibit reconnaissance or prospecting for even unassociated minerals. For instance, base metals and diamonds are unassociated group of minerals. But with the provisions in the current draft, reconnaissance or prospecting for one group of associated mineral is not possible if the license or leases for the other has been granted or pending.

3.14 During evidence, a representative of State Government of Jharkhand further elaborated as under: -

"If already lease has been granted then it is all right. Even if the application is pending then further reconnaissance or prospecting shall not be undertaken in an area. There may be several minerals available in the same area even unassociated minerals may be there which are different minerals. So, this will prohibit the exploration of the mineral potential of that area."

#### **Reply of the Ministry of Mines**

3.15 While responding to the suggestions of Government of Chhattisgarh and Odisha, the Ministry of Mines have commented that in the context of National Mineral Policy, 2008, the primary focus of the draft Bill is to fast-track exploration of resources in the country, which could be either through promotional State led exploration using public money or through entrepreneurial venture of private companies specialising in exploration at their own cost. The Mineral Policy allows both types of exploration to co-exist, but also lays down that in case private sector is interested in any area, then public funds should be prioritised in other areas. The draft Bill is therefore in line with the policy. However, sufficient protection is allowed to the State to block out an area for private investment under clause 37 in the interest of conservation of minerals.

3.16 As regards, the issue raised by the State Government of Jharkhand, the Secretary of Ministry of Mines submitted before the Committee during the evidence on 16.07.2012 in his oral submission that this point is worth consideration and the Ministry will consider it.

### **Recommendation of the Committee**

**3.17 Taking note of the suggestion of State Government of Jharkhand to amend Second Proviso to the Clause 4(2) of the Bill under which reconnaissance or prospecting for one group of associated mineral is not possible if the license or leases for other minerals has been granted or pending and its acceptance by Ministry of Mines, the Committee recommend the Government to make suitable changes in the bill to ensure that the Clause 4(2) should not prohibit reconnaissance or prospecting licence or mining lease for unassociated minerals where applications are pending and if such application is not disposed of within a period of 6 months from the date of coming into force of the Act.**

### **Level playing field for power companies- Clause 4(2) read with Clause 8(6)**

**3.18 Clause 8(6) regarding Grant and extension of mineral concession is as under:-**

A non-exclusive reconnaissance licence, high technology reconnaissance cum exploration licence, prospecting licence or mining lease for coal minerals shall be granted by the State Government to a company approved by the Central Government on such terms and conditions as may be prescribed by it and such licence or lease be granted through competitive bidding and auction in such manner as may be prescribed by it.

Provided that the provisions of this sub-section shall not be applicable for grant of mineral concession—

(a) to a Government company or corporation for mining or such other specified end use;

(b) to a company or corporation which has been awarded a power project (including Ultra Mega Power Project) on the basis of competitive bids for tariff.

### **Suggestions received by the Committee**

3.19 The Committee have received following suggestions in this regard:-

- (i) While observing provisions of clause 8(6) and 13(9) together one of the stakeholders has suggested that a proper mix of both financial and technical requirements for selection criteria will allow participation of serious and competent players who will be able to develop these blocks in time as intended by Government unlike the current situation where most of the allocated mines have not been operational mostly owing to poor financial and technical strength/capability of the allottees.

The framework and criteria should be spelt out as already given for other minerals in the act to facilitate timely start of production from underground mines and to ensure safe and environment friendly stowing, allocation of sand leases along with the coal block.

- (ii) While the Bill requires all private entities to obtain a license for Reconnaissance and Prospecting, Clause 4(2) exempts government Companies from obtaining such a license. Similarly, while private entities are required to participate in competitive bidding and auctioning for grant of mineral concessions, including mining lease, Clause 8(6) proviso (a) exempts Government Companies from the same. It may be noted that the exemption available to a power company from participating in competitive bidding and auctioning (Clause 8(6) proviso (b) applies only when such a company has already been awarded a power project on the basis of competitive bids for power tariff.

As per Electricity Act, 2003 and National Tariff Policy, electricity distribution companies (Discoms) can procure power only through competitive bidding route. From 5.1.2011, even the Government owned generation companies, such as NTPC, have to participate in competitive bidding process of the Discoms to sell their power to Discoms.

If Clause 4(2) and 8(6) proviso (a) are given effect to under the Act, government companies, such as NTPC, Neyveli Lignite will be able to procure mining leases at prices/rates which are below market rates discovered through competitive bidding process.

It has, therefore, been submitted before the Committee that any advantage given to government companies in grant of mineral concessions, particularly mining leases, will give unfair competitive advantage to such government companies in the Discom's tender process for procurement of power as their cost of coal will be less than the market price, while Independent Power Producers will only be able to offer at a higher tariff on account of procurement of coal through competitive bidding and auctions.

The stakeholder has thus claimed that this will jeopardize equal opportunity for all the Case-I competitive bidding as prescribed in Competitive Bidding Guidelines (CBG) framework notified by Government of India, Ministry of Power in 2006. Besides the above, allocating coal mines without following the auction route to government companies (other than academic, statistical, geological or geophysical, R&D government authorities) would defeat the basic intent of the Act as enumerated in the Statement of Objects and Reasons to

the Bill – "...incentivizing private sector investment in exploration and mining and ensuring level playing field and transparency in the grant of concessions and promotion of scientific mining within a sustainable development framework..."

It has, therefore, been suggested to the Committee that exemption provided to Government Companies from obtaining various mineral concessions without participating in the auction process as provided in these two clauses may be revised to exclude those Government Companies whose business objective under their Articles of Association is power generation. Even in case of other Government Companies the option to grant such license without following auction route may be provided by respective Central or State Government on exceptional basis."

- (iii) Reservation of areas for undertaking promotional exploration by Government organizations needs to be removed as it is against the intention of reforms introduced.[Clause 4(2)]

### **Reply of the Ministry of Mines**

3.20 The Ministry of Mines responded to the above suggestion as under:-

- (i) The suggestion is not acceptable to the Ministry. The fear is unfounded. The objective of this clause is to allow promotional exploration by the Government. After this promotional work, the Government would publish all the exploration data on public domain and notify for allocation of prospecting licence or Mining lease on competitive bidding. This provides sufficiently fair level of equal opportunities for serious players.
- (ii) Setting aside of the areas for promotional exploration for Government organizations will not affect the interest of private investors as the draft Bill provides sufficient protection that such promotional reconnaissance or prospecting shall not be undertaken by any government organizations in an area for which a license or mining lease has been granted or for which application for a grant of license or mining lease is pending.
- (iii) The exception has been suggested by Ministry of Coal, considering National interests, especially power sector requirements.

### **Recommendation of the Committee**

**3.21 The Committee observe that though licence is not required by the Government companies like GSI, Atomic Minerals Directorate, MECL, SCCL, NLC and CMPDIL, etc., under Clause 4(2) for carrying out reconnaissance or prospecting licence which are meant for promotional exploration, proviso to Clause 8(6) give advantage to government companies in grant of mineral concessions particularly mining leases giving unfair competitive**

**bidding advantage to these government companies in the Discom's tender process for procurement of power as their cost of coal will be less than the market price while independent power producers will only be able to offer at a high tariff on account of procurement of coal through competitive bidding and auction. Thus the Committee feel that the fear of the industry that granting of mining lease to Government organisation is against the intention of reforms introduced by the Government is not well founded. Although, the Ministry of Mines have informed that the exception granted to Government Companies/UMPPs has been suggested by the Ministry of Coal considering national interests, especially power sector requirement, the Committee observe that the proviso to Clause 8(6) applicable not only to government companies but also the private sector companies who have been awarded power projects including UMPPs on the basis of competitive bidding for tariff.**

### **3.22 Clause 4(4) of the Bill reads as under:-**

In respect of land on which prospecting operations are conducted in accordance with the provisions of sub-section (2), before the expiry of the period specified in the notification issued by the State Government, the Central Government in case of coal minerals, and the State Government in case of all other minerals, may by notification, invite competitive offers for grant of concession under section 13 or may set aside the entire land or any portion of the land for a period not exceeding three years for grant of mineral concession under section 13 and no application for grant of any mineral concession shall lie during this period or on the expiry thereof, except in accordance with a notification issued under sub-section (1) or sub-section (4) of section 13 of this Act, as the case may be.

### **Suggestions received by the Committee**

3.23 No restrictions on grant of Non-exclusive reconnaissance licence (NERL) /prospecting licence (PL) / mining lease (ML) in areas set aside for promotional exploration by State, if there is no conflict of interest. Government agencies to work only where private agencies do not have interests or for gathering broader geoscientific data.

### **Reply of the Ministry of Mines**

3.24 In clause 4(2) it is proposed that no reconnaissance or prospecting shall be undertaken by any government organizations in an area for which a license or mining lease has been granted or for which application for a grant of license or mining lease is pending. However, in order to identify areas for competitive bidding,

promotional exploration is necessary by the State. Government agencies are already working in area where private companies have not shown any interest, but it may not be in the national interest to state that promotional exploration should be carried out only in such areas, since there are several deposits where mineralization is known but detailed exploration is lacking.

### **Recommendation of the Committee**

**3.25 The Committee observe that for nation's interest reply of the Ministry of Mines is accepted and no change is required of Clause 4(4) of the Bill.**

### **Application for Grant of Prospecting Licenses and Mining Leases [Clause 4(5) and 4(6)].**

**3.26 Clause 4(5) and 4(6) of the Bill are reproduced below:-**

Clause 4(5): Subject to the provisions of sub-section (6), no mineral concession shall be granted except on an application made to the State Government after the commencement of this Act and in accordance with the provisions thereof along with the application fee and earnest money, in such form and manner as may be prescribed.

Explanation.— For the removal of doubts, it is hereby clarified that applicants who made the applications before the commencement of this Act shall be required to make fresh applications under this Act, and no right [except as otherwise provided under sub-section (6)] shall accrue to such applicants under this Act by virtue of having made an application before such commencement.

Clause 4(6): The provisions of sub-section (5) shall not be applicable in case of applications made in accordance with any law for the time being in force, before the commencement of this Act—

(a) for grant of prospecting licence or a mining lease after completing exploration under a reconnaissance permit or a prospecting licence, as the case may be; or

(b) for which prior approval of the Central Government for grant of mineral concessions, has been given; or

(c) where a letter of intent (by whatever name called) has been issued by the State Government to grant reconnaissance permit or prospecting licence or mining lease, as the case may be, and was pending grant of the concession under this Act for fulfillment of the conditions of the letter of intent, and the application for grant of the mineral concessions is pending with the State Government at the time of commencement of this Act.



### **Suggestions received by the Committee**

3.27 The Committee have received various suggestions from the Stakeholders proposing amendments to clause 4(5) and 4(6). Some of these are as under:-

- (i) According to State Government of Odisha and Chhattisgarh, Clause 4(5) should be amended to protect applications of Prospecting licence and Mining Lease for coal minerals filed by shortlisted coal block allottees under the MMDR, 1957, and are pending for disposal at various levels before the commencement of the draft Bill.
- (ii) Sub-clause (5) & (6) of clause 4 of draft Bill requiring pending applicants for mineral concession to apply afresh should be amended to allow State Governments to dispose off all pending applications within 180 days of commencement of draft Bill. It does not save those applications, which are recommended by the State Government and are pending approval or are sub-judice or are pending clarification or cases where exploration is not complete but investments have been made.
- (iii) Need to add a proviso to ensure that the applications pending in any Court of law or for any other reason are to be protected in the interest of mining entrepreneur.

### **Reply of the Ministry of Mines**

3.28 The Ministry of Mines replied as under:-

- (i) The Ministry of Mines have agreed to protect applications of prospecting licenses and mining lease in case of coal minerals only as suggested by State Governments of Odisha and Chhattisgarh.
- (ii) As regards allowing State Governments to dispose off all pending applications, the Ministry of Mines are of the view that the State Government should normally have disposed all pending applications in a timely manner. Since there are lot of applications for grant of mineral concessions pending in the State Governments, and considering the fact that the State would be required to allot concessions on competitive bidding, all pending applications, excepting those where Central Government has given its prior approval or where State Government has given Letter of Intent, or where application has been filed for next stage concession, have to be treated as null and void. Such a measure is necessary for undertaking the grant of concessions through the process of bidding, which otherwise will be defeated. The Ministry of Mines have further informed the Committee that this suggestion is not acceptable to the Ministry. Separate provisions not provided since in grant cases which are in litigation or adjudication in the Courts, the Government has to comply with orders of the Court. Further, under the new bill, provisions for treating the existing applications are made under section 4(6). The applications fulfilling the conditions of seamless transition will be entertained. This provision has been introduced for undertaking the grant of concessions through the process of bidding/auction which otherwise will be defeated.

- (iii) Separate provisions have not been provided in the draft Bill to protect such applications under litigation. Where a Court has given directions in mineral concession cases under litigation or adjudication, court directions are complied with by the Government. However, a saving clause to this effect could be added to the draft Bill in consultation with Ministry of Law and Justice.

3.29 According to the Ministry of Mines, there are total of 47933 applications for grant of Mineral Concessions pending with the State Governments. Details of 229 proposals pending with Ministry of Mines Government of India are given below:

- From 0-12 months – 94
- From 12-24 months – 64
- More than 24 months – 71

The Central Government have set up a Central Coordination-cum-Empowered Committee to facilitate Coordination between various departments for streamlining the clearance process. (USQ 1251 dated 30.11.12)

#### **Recommendation of the Committee**

**3.30 The Committee are not in agreement with the reply of the Ministry of Mines in regard to grant of prospecting licence and mining lease under Clause 4(5) and 4(6). Taking note of the fact that there are 47933 applications for grant of Mineral Concessions pending with the State Governments and 229 proposals pending with Ministry of Mines, the Committee find merits in the contention of the stakeholders that application pending for want of approvals or are seeking clarification or where exploration is not complete but sizeable investment has been made, may be accorded protection. The Committee, therefore, desire that a suitable provision be made in the Bill whereby the Government(s) are under an obligation to complete the process/activities, within a span of one year, from the date of commencement of the Act or outcome of litigation, as the case may be, to protect the interest of mining entrepreneurs. Accordingly, a saving clause to this be added in the draft Bill in consultation with Ministry of Law and Justice.**

## **Transport and Storing of Minor Minerals**

### **3.31 Clause 4(8) read as under:-**

No person shall transport or store, or cause to be transported or stored, any minerals otherwise than in accordance with the provisions of this Act and the rules made thereunder.

### **Suggestion received by the Committee**

3.32 Necessary proviso may be added in Section 4(8) to bring this in conformity with Section 4(m)(vii) of PESA Act and to ensure that people living in the schedule V areas are allowed to transport and store minor minerals, upto certain limit for personal use like construction of houses, ponds, panchayat building and boundaries etc. In this respect rules may be made by the State Government on recommendation of Gram Sabha.

3.33 During evidence, a representative of the Ministry of Panchayati Raj submitted that a proviso should be added to Clause 4(8) so that the people living in the scheduled area be allowed to transport and store mines and minerals, upto a limit, which can be prescribed for personal use like construction of houses, ponds, panchayat building, etc.

### **Reply of the Ministry of Mines**

3.34 The Ministry of Mines have stated that the State Governments would be advised at the time of framing of sub-legislation for minor minerals.

### **Recommendation of the Committee**

**3.35 The Committee desire that to protect the interest of tribals living in scheduled areas, be allowed to transport and store minerals for personal use but not for any commercial use as prescribed and notified, for the purpose, by the State Government. This clause may be amended suitably.**

### **Report on Reconnaissance**

### **3.36 Clause 4(10) of the Bill reads as under:-**

In any reconnaissance or prospecting operations undertaken by the Geological Survey of India, the Atomic Minerals Directorate, the Mineral Exploration Corporation Limited, the Singareni Collieries Limited, the Neyveli Lignite Corporation Limited, the Central Mine Planning and Design Institute Limited and such other Government agencies, in accordance with the provisions of sub-section (2), such agency conducting the reconnaissance or prospecting operations shall

publish, in such manner as may be prescribed by the Central Government, a report of the reconnaissance or prospecting operations and intimate the publication to the State Government in such manner as may be prescribed by the Central Government to enable the State Government to set aside the area under sub-section (4) or notify the area under section 13 for prospecting or mining, as the case may be:

Provided that where the State Government fails to take a decision to set aside the area or notify the area under section 13, it shall publish such data in its official website, that would be available to the general public in such manner as may be prescribed by the State Government.

### **Suggestions received by the Committee**

3.37 In order to disseminate the information widely, a provision has to be added so as to publish data in local/vernacular press for mass circulation.

### **Reply of the Ministry of Mines**

3.38 This is a matter of procedures, which shall be provided for in the sub-legislations, as provided under the Rule making powers in clause 131.

### **Recommendation of the Committee**

**3.39 The Committee also desire that the data for prospecting or mining need not be published in official website only. In order to disseminate the information widely, the Committee recommend that besides being publishing in official website, it may also be published in local / Vernacular Print Media of mass circulation.**

## **C. Eligibility for Grant of Mineral Concession**

**3.40 Clause 5(1) and 5(2) of the Bill read as under:**

Clause 5(1): No person shall be eligible for grant of a mineral concession unless such person is a citizen of India or a company as defined in sub-section (1) of section 3 of the Companies Act, 1956, or a firm registered under the Indian Partnership Act, 1932 and has registered himself with the Indian Bureau of Mines or the State Directorate or any other agency authorised by a notification issued by the Central Government, in such manner, as may be prescribed by the Central Government:

Provided that for the purposes of mineral concessions for small deposits in any area referred to in sub-section (6) of section 6, a co-operative society

registered with the State Government under the law made by it and registered in accordance with the provisions of sub-section (2) shall be eligible for grant of such mineral concession:

Provided further that in respect of any concession or an application for grant or renewal of a mineral concession pending with the State Governments at the commencement of this Act in terms of sub-section (6) of section 4, the applicant of such application shall be given a reasonable opportunity to register with the Indian Bureau of Mines or the State Directorate, as the case may be, within such time as may be notified and such application shall not be rejected solely on the ground of non-registration with the Indian Bureau of Mines or the State Directorate, as the case may be.

Explanation.— For the purposes of this sub-section, the firm or association or co-operative shall be eligible where all the members of such firm or association or cooperative are citizens of India.

Clause 5(2):Subject to any notification issued under sub-section (1), the registration process in respect of mineral concessions,—

- (a) for major minerals shall be administered by the Indian Bureau of Mines;
- (b) for minor minerals shall be administered by the State Directorate; and
- (c) for coal minerals shall be administered by the Central Government.

### **3.41 Clause 5(2) of the Bill reads as under:-**

No person shall be entitled to operate a mineral concession if he contravenes any of the provisions of this Act or the rules made thereunder, which renders him ineligible for grant of a mineral concession:

Provided that a person who is holding a mineral concession prior to the commencement of this Act shall not be deemed to be contravening the provisions of this Act and the rules made thereunder merely on account of the fact that the area of such concession is less than the mining area specified under section 6.

### **Suggestions received by the Committee**

3.42 The Committee have received the following suggestions:-

- (i) One of the stakeholders has stated that Limited Liability Partnership, a new form of business entity should be included in Clause 5 as eligible for grant of mineral concessions.
- (ii) "Limited liability partnership" with all the members being Indian citizens to be made eligible for grant of mineral concessions.

(iii) As regards, the registration of applications with IBM or State Directorates or any other agencies notified by the Central Government, the Committee have received following suggestions:

- a. This system existed in the Mines & Mineral (Development & Regulation) Act, 1948 when it was know as "Certificate of Approval." This system of pre-ascertainment of eligibility was subjected to this gross abuse. Therefore, such a provision was removed from the current version of the Mines & Mineral (Development & Regulation) Act, 1957. The current bill seeks to revive the same old system (State Government of Jharkhand).
- b. No useful purpose will be served by introducing the system of registration. It is in a way reverting to the earlier Concession of Certificate of Approval which has been dispensed with years ago.
- c. It is an unnecessary restriction on the freedom of trade and business and puts unwarranted restriction and brings to the fore inspector raj which the Government of India is trying to dismantle since 1991. It also violates Article 19 of the Constitution which allows the citizens the right to "practice any profession, or to carry on any occupation, trade or business. It may be pertinent to point out that before the MMDR Act, 1957 was amended on 22<sup>nd</sup> August, 1986; there were some such restrictions on the grant of prospection license and mining leases. Section 5(1) of pre-MMDR Act, 1986 amendment read as under:-

No prospecting licence or mining lease shall be granted by a State Government to any person unless he –

- (a) Holds a certificate of approval in the prescribed form from the State Government;
- (b) Produces from the Income-tax Officer concerned an income-tax clearance certificate in the prescribed form; and
- (c) Satisfies such other conditions as may be prescribed."
- (d) Since these provisions were coming in the way of development of mineral resources, these clauses were dropped after 1986 amendments. Going back to the same and more rigorous and laborious provision will make entrepreneurs shy to invest in mineral industry.

(iv) To the First Proviso of Clause 5(1), the Committee have received the following suggestion:-

Following the Samta Judgment Mining activities in Scheduled Areas should be in accordance with the scheme of Schedule V & VI of the constitution and Judgment of the Supreme Court in *Samta Vs State of Andhra Pradesh* [197 (8) SCC 191]. Mining leases especially in case of mining minerals can only be granted to cooperative societies comprising of local tribal gram sabhas who are directly or indirectly affected by the proposed mining operation. The said cooperative societies shall operate without any direct or indirect

transfer/subleasing to any private entity. The State Agencies shall act as a trustee and should assist these cooperatives through technical, human and financial support to the tribal cooperatives.

### **Reply of the Ministry of Mines**

3.43 The Ministry of Mines responded to the above suggestions as under:-

- (i) The above suggestion at (i) is not acceptable to the Ministry since a mineral concession can be granted only to a citizen of India while an Limited Liability Partnership allows non-citizen also to form a partnership with resident Indians, thus making Limited Liability Partnership ineligible. However, a Limited Liability Partnership may be allowed to obtain concessions, provided all its partners are Indian citizens.
- (ii) An LLP (Limited Liability Partnership) may be allowed to obtain concessions, provided all its partners are Indian citizens. However, legal opinion in the matter would be necessary from the Ministry of Law and Justice.
- (iii) The above suggestion at (iii) is not acceptable and registration is essential to identify the bonafide investors and as a deterrent to curb the illegal mining".
- (iv) To the suggestion at(iii) regarding grant of mining leases to cooperative societies, the Ministry of Mines in a written note have stated that First Proviso of clause 5(1) of the draft Bill provides that a cooperative may also obtain mineral concessions in area outside Fifth and Sixth Schedule for small areas.

### **Recommendations of the Committee**

**3.44 The Committee find that a person, company or firm registered under Indian Partnership Act, 1932 and registered with IBM or State Directorate been permitted for grant of mineral concession (Clause 5(1)). As per note submitted by the Ministry of Corporate Affairs, 'limited liability partnership' is another legal entity where under all or major partners may or may not be Indian citizens. The Committee desire that besides firm or company, 'limited liability partnership' with all the members being Indian citizens be made eligible after taking necessary legal opinion from the Ministry of Law and Justice for grant of mineral concession.**

**3.45 As regards to registration, the Committee are in agreement with the views of the Ministry that the registration is essential to identify the bonafide investors and as a deterrent to curb the illegal mining. The Committee, however, like the Ministry to simplify the procedure for**

**registration. The Ministry while making rules for implementation of the Act, should specifically prescribe minimum period when the registration of the potential applicants should be completed failing which such registration shall be deemed to have been taken place.**

**3.46 The Committee find that in accordance with Supreme Court ruling in Samta case, whereunder mining lease especially in case of mining minerals can only be granted to Cooperative Societies comprising of local tribal Gram Sabha, who are directly or indirectly affected by the proposed mining operation. The Committee would like the Ministry of Mines to take the legal opinion of the Department of Legal Affairs in view of constitutional provision involved in Samta Judgment and consider the same for tribal and displaced/affected persons in regards to enabling the cooperative society to obtain leases not only for small deposits but also for larger areas, especially in case of minor minerals. However, the Government should ensure that such cooperative societies ought to operate without any direct or indirect transfer/sub-leasing to any private entity. At the same time, State Government should be urged upon to assist such cooperatives through technical, human and financial support, so as to improve the viability of such cooperatives.**

#### **Maximum and Minimum Area of Mineral Concession**

**3.47 Clause 6(1),(2) and (3) of the Bill reads as under:-**

Clause 6(1): The maximum area which can be held under mineral concession at any time by a person in respect of any mineral or prescribed group of associated minerals in a State shall be,—

- (a) ten thousand square kilometres in respect of non-exclusive reconnaissance licences;
- (b) five thousand square kilometres in respect of high technology reconnaissance-cum-exploration licences;
- (c) five hundred square kilometres in respect of prospecting licences; and
- (d) one hundred square kilometres in respect of mining leases:



Provided that a high technology reconnaissance-cum-exploration licence shall be granted for such group of associated minerals (other than iron ore, bauxite, limestone, coal minerals or other bulk minerals) as may be prescribed by the Central Government, and subject to such general conditions regarding use of advanced technologies and methodologies as may be notified from time to time by the Central Government:

Provided further that in case of coal minerals, if the Central Government is of the opinion that in the interest of development of coal minerals, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire one or more prospecting licence or mining lease covering an area in excess of the maximum area specified in sub-section (1).

Clause 6(2): In respect of major minerals, the minimum area for grant of,—

- (a) A high-technology reconnaissance-cum-exploration licence shall be one hundred square kilometres;
- (b) a prospecting licence shall be one square kilometre; and
- (c) a mining lease shall be ten hectares.

Clause 6(3): In respect of minor minerals the minimum area for grant of,—

- (a) A non-exclusive reconnaissance or a prospecting licence shall be ten hectares; and
- (b) a mining lease shall be five hectares:

Provided that the State Government in consultation with the Ministry of Environment and Forest in the Central Government for reasons to be recorded in writing may, in respect of any area and any minor mineral, notify a minimum area other than the area specified in this sub-section.

Explanation.— For the purposes of sub-sections (1), (2) and (3), the area held by a person as a member of a co-operative society, company or other corporation and a Hindu undivided family and a partner of a firm or as an individual shall be jointly computed.

### **Suggestions received by the Committee**

3.48 In memoranda submitted by various organisations, the Committee have been urged to amend the provisions of allocating maximum and minimum area for grant of major and minor mineral concessions. The suggestions received by the Committee are as under:-

- (i) While the maximum area is 100 sq. kms in respect of Mining Leases, the minimum area shall be ten hectares [25.0 acres] The provision U/s 6 of the new MMDR Bill, stipulates that in respect of small deposits, not suitable for scientific mining in isolated patches, a mining lease may be granted for a

cluster of such deposits within a defined area not less than 10 hectares [25.0 acres].

It was requested that area restrictions of minimum 5 hectares for the grant of minor mineral concessions vide Section 6(3) of the draft Act be not incorporated and rather States be left at liberty to notify the area of the quarries because as a matter of fact the 40% of the quarries of State comprising an area of less than 5 hectares."

- (ii) The existing provision for a minimum area of 4 hectare for major mineral and 1 hectare for minor mineral may be continued as land is not available for mining purpose and this too is in the interest of mineral conservation.
- (iii) Today's growth is more due to the active & bold entrepreneurship of the Private sector with less intervention. Hence the Central Government should not treat the Beach Mineral sands deposits [Placers] on a par with other "Major Minerals" whose nature of formation [origin] & mining methods are entirely different.
- (iv) the minimum area for grant of major mineral under Clause 6(2), beach mineral is opposed as beach minerals are deposited at any particular place and will not be available in all the areas, that area will be less than one hectare, two hectares or three hectares. It has, therefore, been suggested that the minimum area be brought down to two hectares which is a viable proposition for extracting Beach Minerals as more than this area will become waste.

3.49 Further, the State Government of Rajasthan and Himachal Pradesh have given the following justifications for amending the Clause 6(1) (2) and (3) in view of the peculiar conditions of the availability of minerals in the State:-

### **Rajasthan**

- (i) Clause 6(1): There should be a limit on number of leases held by a single person/company and the maximum area for grant be decreased to discourage the practice of holding of large areas for a long time without actually working on them. Either the number of leases or maximum area whichever is higher may be made applicable.
- (ii) Clause 6(2): Minimum area proposed in amendment bill is very high. If minimum size is reduced more entrepreneurs will come forward and small patches of deposits will also be exploited. Few minerals like ball clay, china clay, fire clay, feldspar, quartz, jespars, silica sand, laterite, ochre, soapstone and talc, pyrophyllite are available in small patches and free hold land is also available in small patches. Hence, these minerals should be categorized separately and for these minerals minimum area of mining lease may be 4 hectares. For the remaining minerals minimum size may be 10 hectares as proposed in the Bill.

- (iii) Clause 6(3): In Rajasthan about 12100 leases of minor minerals are in working and most of them are of 1 hectare. If minimum size is kept to be 5 hectare then it will become very difficult to grant new leases due to unavailability of large areas. In the category of minor minerals in Rajasthan mostly the leases of masonry stone, sand stone, granite and marble are granted. For these minerals, area is available in small patches only and large number of people are dependent on mining of these minor minerals for their daily livelihood. Thus the minimum size of plot should be kept 1.00 hectare.

### **Himachal Pradesh**

- (i) It is recommended to reduce the minimum area for grant of mining lease for major minerals in hill states up to 4 hectares taking into considerations the topography, small size of land holding, cost of Net Present Value in forest land, employment factor to local people near and the issue of illegal mining. [Clause 6(2)(c)].
- (ii) A mining Lease for minor minerals shall be :
- a. In hill regions, for minor minerals like sand stone, building stone, slates, slabs etc (0.5 hectares)
  - b. In hilly regions, for minor minerals required for mineral based industry like stone crusher (1.0 hectares)
  - c. In river beds for free sale of minor minerals like sand, stone and bajri etc. (2.0 hectares)
  - d. In river beds for stone crusher and bajri. (5.0 hectares) [Clause 6(3)(b)]

### **Reply of the Ministry of Mines**

3.50 The Ministry of Mines have replied to the above concerns negatively and submitted as under:-

- (i) The minimum area of 10 hectares for major minerals has been proposed taking into account the environmental concerns of overburden and waste management in mining, and keeping in view the recommendations of the MoEF. However, in case of minor minerals, provisions allows for State Government to relax the minimum area limits in consultation with the Ministry of Environment and Forests (MoEF).
- (ii) In case of minor minerals, though the limit is 5 hectares, the State Governments can allow further relaxation only in consultation with Ministry of Environment and Forests. This is also in line with the recent Supreme court judgment dated 27.2.2012 [SLP(C) No 19628-19629 of 2009].

### Recommendation of the Committee

**3.51 The Committee observe that various stakeholders have suggested to amend provisions of Clause 6 regarding allocation of maximum and minimum area for grant of major and minor mineral concessions. As regards minimum area for grant of major mineral under Clause 6(2), the Committee have been given to understand that beach mineral gets deposited at any particular place and will not be available in all the areas. Similarly, few minerals like ball clay, china clay, fire clay, feldspar, quartz, jespars, silica sand, laterite, ochre, soapstone and talc, pyrophyllite are reported to be available in small patches. While considering the reply of the Ministry of Mines to the above suggestions that the minimum area of 10 hectares for major minerals has been proposed taking into account the environmental concerns of overburden and waste management in mining, and keeping in view the recommendations of the Ministry of Environment and Forests (MoEF), the Committee desire that the Government should notify some of the major minerals (including beach minerals) in 'B' category and maximum area for major mineral for grant of mineral concessions be accordingly decreased to 'B' category to 5 hectares.**

**3.52 As regards the minor minerals, the Committee have received suggestion that the minimum area of 5 hectares for grant of mining lease be done away with and it should be brought down to 1 hectare as sand stone and granite, marble etc. are available in small patches and the existing leases of these minor minerals granted in various States are of 1 hectare only. The Committee took note of difficulties of various stakeholders specially Rajasthan. In that view of the matter, the Committee recommend that in case of minor minerals excepting sand stone, granite, marble, etc. it should be 2 hectares and in case of sand stone and granite, marble etc. it should be 1 hectare. The Committee take note that large number of small stakeholders depends upon their livelihood on mineral material.**

## **Procedure for surrender area held for mineral concession [Clause 6(5) and 6(6)]**

### **3.53 The Clause 6 (5) and 6(6) of the proposed Bill are as under:-**

Clause 6(5): The holder of a non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence, and prospecting licence shall surrender area out of such licence annually, as may be specified in the licence, in the manner prescribed by the Central Government so that at the end of the last year after the commencement of operations of the non-exclusive reconnaissance licence, the area held does not exceed the maximum eligibility of the licence holder for a prospecting licence and at the end of the last year of the high technology reconnaissance-cum-exploration licence or prospecting licence, the area held does not exceed the maximum eligibility of the licence holder for a mining lease in accordance with the provisions of sub-section (1).

Clause 6(6): No mining lease shall be granted in respect of any area which is not compact and contiguous or otherwise not suitable to scientific development:

Provided that in respect of small deposits not suitable to scientific mining in isolated patches, a mining lease may be granted for a cluster of such deposits within a defined area of not less than the area specified in sub-section (2) or sub-section (3), as the case may be, in accordance with such procedure and subject to such conditions as may be prescribed by the Central Government.

### **Suggestion received by the Committee**

3.54 The Committee have *inter-alia* received following reservations from the different stakeholders for the procedure and manner in which the land allocated for mineral concession be surrendered:-

- (i) High technology reconnaissance cum exploration licence/Prospecting licence – 6(5) According to the draft MMDR Bill 2011, the licence holder is stipulated to surrender area of licence annually. It is not possible to surrender area in the first year due to initial mobilization time, first-pass reconnaissance/exploration of the entire licence area, time for getting analytical results and review of entire data for proper identification of area to be surrendered. Similarly, it will not be possible to surrender equal areas every year by virtue of the nature of the investigation. This also reduces the opportunity of the licensee to surrender the area, as detailed investigation need to be carried out at length. It should not be mandatory to surrender any area for reconnaissance licence and high-technology reconnaissance cum exploration licence for the first two years."
- (ii) The surrender shall start not before 2 years after the award of the licence of EL and PL and 18 month for Non-Exclusive RL wherever period is for at least 2

years. Initial mobilization etc takes a long time and it will be difficult to start surrendering area from first year.

3.55 During evidence, a representative of State Government of Odisha submitted that under Section 6(6), small deposits have been mentioned but there has to be little more clarity on the small deposits and on the definition of small deposits because actually it is not suitable for scientific exploration.

#### **Reply of the Ministry of Mines**

3.56 The Ministry of Mines have not accepted the above suggestions. Gradual relinquishment of area under any exploration licence is linked with the maximum tenure and the maximum area that can be held under such licence. The basic objective is that at the end of the exploration period the total area held by a person should be gradually reduced to the maximum permissible area allowed under the next concession.

#### **Recommendation of the Committee**

#### **3.57 The Committee accept the view of the Ministry of Mines.**

**3.58 The Committee note that in accordance with Clause 6(6), no mining lease shall be granted in respect of any area, which is not compact and contiguous or otherwise not suitable in scientific development. The Proviso further provides that in respect of small deposits, not suitable to scientific mining in isolated pockets, a mining lease may be granted for a cluster of such deposits with a defined area of not less than the area specified in Sub Clause (2) or (3). The Committee are of the view that words "small deposits" needs to be defined, so as to impart clarity, since it is not suitable for scientific exploration. The Committee desire that follow-up action be taken in the matter.**

#### **3.59 Clause 6(7) of the Bill reads as under:-**

6(7) In case of the Scheduled area specified in the Fifth Schedule to the Constitution and the tribal area specified in the Sixth Schedule to the Constitution, the State Government may, by notification, give preference as may be specified in the notification in grant of mineral concessions on an area referred to in sub-section (6) to a Co-operative of the Scheduled Tribes.

## **Suggestions received by the Committee and Reply of the Ministry of Mines**

3.60 When asked about barring Schedule tribe cooperatives with non-Scheduled Tribes be barred from obtaining mineral concessions, the Ministry of Mines have informed the Committee that the Co-operatives, seeking to obtain mineral concessions in an area defined in the Fifth or Sixth Schedule to the Constitution, should consist of purely ST persons.

### **Recommendation of the Committee**

**3.61 As regards the preference in grant of mineral concession on an area referred to in Clause 6(6) to a Cooperative of the Scheduled Tribes, the Committee desire that the provision of Clause 6(7) be suitably amended and the words, 'consisting of purely ST persons and no indirect control of non-schedule tribe persons be added in the end of the Clause after the words, 'Cooperative of the Scheduled Tribes'.**

### **D. Period of Grant and Extension of Licence and deposit of Security**

#### **3.62 Clause 7 of the Bill reads as under:-**

Clause 7(1) A non-exclusive reconnaissance licence shall be granted for a period of not less than one year and not more than three years.

Clause 7(2) A high technology reconnaissance-cum-exploration licence shall be granted for a period of not less than three years and not more than six years:

Provided that the period may be extended, on an application made by the licensee for a further period not exceeding two years in respect of such part of the area as may be specified in the licence.

Clause 7(3) A prospecting licence shall be granted for a period of not less than two years and not more than three years:

Provided that the period may be extended on an application made by the licensee for a further period not exceeding two years in respect of such part of area as may be specified in the licence.

### **Suggestions received by the Committee**

3.63 The Committee have received following suggestions on the above provisions of the Bill:-

- (i) As regards high technology reconnaissance –cum-exploration licence under Clause 7(2), the State Government of Rajasthan have suggested that the licence be granted for a period not less than 2 years and not more than 3 years and there should not be any further extension. In support of their argument, the Rajasthan Government have stressed that if time limit for this licence is reduced entrepreneurs will complete prospecting work in time, otherwise the area will be held for long time with no compulsion on the licensee to complete the prospecting work early.
- (ii) Similarly, for prospecting license under Clause 7(3) the State Government of Rajasthan have desired that no extension should be granted as if PL is held for as long as 5 years than the final grant for exploitation of mineral would get delayed.
- (iii) As regards extension of time for prospecting license, a representative of the State government of Rajasthan during evidence has submitted that failure on the part of licensee is only on two grounds, i.e. either the licensee has not worked seriously or is unable to get mineral deposits. Therefore, the State Government have suggested that in both the cases extension should not be allowed.

#### **Reply of the Ministry of Mines**

3.64 As regards the suggestion of State Government of Rajasthan, the Ministry of Mines have not accepted the same. According to the Ministry of Mines, HREL is a new license introduced which means a license granted under this bill for reconnaissance and prospecting, including general and detailed exploration. This license has been introduced to encourage investors to invest for exploration for non bulk minerals (scarce and deficient minerals) in surface and at greater depth using state of art exploration techniques. To the suggestion of State Government of Rajasthan on Clause 7(3), the Ministry of Mines have stated that prospecting license is granted either under Clause 13(1) through auction route or under Clause 22 for licensee after completion of reconnaissance license under secure tenure and seamless transition and is also granted on basis of first come first served basis. Thus for the completion of PL activities this provision has been kept.

#### **Recommendation of the Committee**

**3.65 The Committee accept the view of the Ministry of Mines.**



### **Period of Lease Minerals**

#### **3.66 Clause 7(5) is about the period of lease for minor minerals, it states as under:**

A mining lease for a minor mineral shall be granted for a period not less than five years and may be extended for such period as may be notified by the State Government:

Provided that different periods may be specified for different minerals having regard to the nature and manner of occurrence of mineral deposits:

Provided further that in respect of any minor mineral, where a minimum area is notified in accordance with the provisions of sub-section (3) or sub-section (6) of section 6, the State Government may notify a minimum period of less than five years in consultation with the Central Government.

#### **Suggestions received by the Committee**

3.67 The Committee have *inter-alia* received the following suggestions:-

- (i) Clause 7(5) of the proposed Act deals with the period of grant of lease. The minimum period of lease for minor minerals is 5 years whereas it is minimum 20 years for major minerals. A distinction may be made within the minor minerals for ornamental stones such as granite, marble and limestone for considering a minimum lease period of 20 years. The Government of India has provided for minimum lease period of 20 years for granite in GCDR 1999.
- (ii) It has been requested that the period of contract for the minor mineral quarries not less than 5 years be also not imposed vide Clause 7(5) of the new Bill and rather the States be allowed to notify the period of contract depending upon the availability of minor mineral in the quarries as many a times the process of replenishability happened to be slow due to scrawny rains.

#### **Reply of the Ministry of Mines**

3.68 The Ministry of Mines have clarified the position to remove the apprehension of State Government by submitting before the Committee that while the minimum tenure is provided as 5 years, proviso to clause 7(5) allows state Government to notify a lesser tenure for small size leases.

#### **Recommendation of the Committee**

**3.69 The Committee observe that natural ornamental stone varieties such as, Granite, Marble, Limestone need detailed mine planning, mine development, mechanization, use of technology, skilled manpower and**

**involves large capital investment. As submitted by the stakeholders, such investment will not be justified unless the minimum period of lease is 10 years for this category of minor minerals and thereafter may be extended for such period as may be notified by State Governments. Further, the suggestions regarding notification for less than 5 years for exploration of minor minerals, the State Governments have to consult the Central Government as required under second proviso to Clause 7(5), the Committee feel that the same may be dispensed with to allow State Governments to act freely for framing rules for minor minerals.**

### **Period of Grant & Extension of Concession**

#### **3.70 Clause 7(6) of the Bill reads as under:-**

A mining lease for a major mineral may be extended, on an application made by the lessee, in respect of such part of the area as may be specified and for such period not exceeding twenty years at a time, as may be required to ensure full exploitation of the run-of- the-mine in a scientific manner:

Provided that no such extension shall be granted, except after approval in the prescribed manner, of a fresh mining plan for the area for which the lease is sought to be extended.

### **Recommendation of the Committee**

**3.71 The Committee feel that a proviso may be added to ensure that the Government on a representation made to it may extend the period of grant and extension of concession as specified under sub-section (1) to (6) of clause 7, for the reasons recorded in writing.**

### **Special provisions in respect of Atomic Minerals**

#### **3.72 Clause 10 (2) & (4) of the Bill reads as under:-**

Clause 10(2): The licensee or lessee, as the case may be, referred to in sub-section (1) shall, within a period of sixty days from the date of discovery of atomic mineral, apply to the Secretary, Department of Atomic Energy, Mumbai, along with the recommendations of the State Government, for grant of a licence or lease to handle the said atomic minerals in accordance with the provisions of the Atomic Energy

(Radiation Protection) Rules, 2004 made under the Atomic Energy Act, 1962, and on grant of such licence or grant of lease to handle, the licensee or lessee, as the case may be, may apply for inclusion of such atomic minerals in his licence or lease, as the case may be: Provided that if in the opinion of the Department of Atomic Energy, the atomic mineral recovered incidental to such prospecting or mining operations is not of an economically exploitable grade or the quantity found is insignificant, the licensee or lessee need not apply for inclusion of such atomic mineral in his licence or lease, as the case may be.

Clause 10(4): For obtaining a separate licence or lease for atomic minerals, the licensee or lessee, as the case may be, shall, within a period of sixty days from the date of discovery of atomic mineral, apply to the Secretary, Department of Atomic Energy, Mumbai, along with the recommendations of the State Government, for grant of licence to handle the said atomic mineral in terms of the Atomic Energy (Radiation Protection) Rules, 2004 made under the Atomic Energy Act, 1962 and no licence or lease be granted except in accordance with the conditions of such licence granted under the provisions of the Atomic Energy (Radiation Protection) Rules, 2004.

### **Suggestions received by the Committee**

3.73 The Department of Atomic Energy has desired that the following amendments be made in line 5 & 20 of the Clause 10 (2) and (4):-

For "Atomic Energy( Radiation Protection Rule, 2004 made under the Atomic Energy Act, 1962)

Insert "Atomic Energy Act 1962 and the rules framed thereunder"

### **Reply of the Ministry of Mines**

3.74 The Ministry of Mines have accepted the above suggestion of the Department of Atomic Energy.

### **Recommendation of the Committee**

**3.75 The Committee recommend that the suggestion of the Department of Atomic Energy may suitably be incorporated in the Clauses referred to above.**

### **Mineral Concession to be void, if in contravention of Act**

**3.76 Clause 11 of the Bill reads as under:-**

11 (1) Any mineral concession granted, extended, held or acquired in contravention of the provisions of this Act or any rules or orders made thereunder, shall be void and of no effect, subject to the provisions of sub-section (2).

11(2) Where a person has acquired more than one non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence, prospecting licence or mining lease, as the case may be, and the aggregate area covered by such licences or leases in respect of a mineral in a State, as the case may be, exceeds the maximum area permissible under section 6, only that non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence, prospecting licence or mining lease the acquisition of which has resulted in such maximum area being exceeded, shall be deemed to be void.

11(3) In every case where a mineral concession is void under sub-section (1), the earnest money or security deposit as the case may be deposited in respect of that application shall stand forfeited, and the mineral concession shall be granted to the next eligible applicant or notified for grant of mineral concession, as the case may be, in accordance with the provisions of this Act.

### **Suggestions received by the Committee and Reply of the Ministry of Mines**

3.77 Asked about the justification/rationale behind grant of mineral concession to next eligible person when a concession was held void and earnest money/deposit forfeited, the Ministry of Mines have informed the Committee that this clause is applicable in all such cases where multiple applications have been received against an area, and the shortlisted applicant is unable to obtain the concession because of ineligibility for contravention of rules. In such cases, rather than undergoing the entire process of notification and calling for application, which may be time taking, the next best eligible applicant is proposed be considered for grant.

### **Recommendation of the Committee**

**3.78 The Committee do not agree with the contention of the Ministry of Mines that in the event where a mineral concession granted is held void and the earnest money of the applicant has been forfeited, the next eligible applicant may be granted the mineral concession as undergoing the entire process of notification and calling for application afresh may be time taking. The Committee feel that where a mineral concession granted, extended, held or acquired is declared void, after efflux of reasonable period of time, grant of such concession to next eligible applicant defies logic and is against the principle of natural justice. Changes in the terms of condition between the period when the numeral concession granted and those held void etc. cannot be ruled out. The Committee, therefore, desire that the whole exercise may be undertaken afresh in the interest of natural justice. This will also provide a fair and equitable opportunities to all the players. The Committee, therefore, recommend that the provision of Clause 11(3) may accordingly be amended.**

## **Cancellation of a mineral concession or disqualification**

### **3.79 Clause 12(1) and (1)(d) of the Bill read as under:-**

In respect of any land in which minerals vest in the Government:—

(a) where any person fails to conduct reconnaissance or high technology reconnaissance-cum-exploration or prospecting or mining operations in accordance with a reconnaissance, or exploration plan or a prospecting or mining plan, as the case may be, prepared in the manner provided in this section, the State Government may after issuing a notice to show cause and giving him an opportunity of being heard, by an order, forfeit all or any part of the security deposit and may suspend, curtail or revoke the licence or lease having regard to the circumstances of the case.

*Explanation.*— For the purposes of this sub-section the framework of mining operations in respect of minor minerals not requiring a mining plan shall be deemed to be the mining plan;

Clause 12(1)(d): Where at the expiry of a non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence or prospecting licence, the licensee fails to comply with the conditions of the licence, the State Government may, within a period of six months from the date of expiry of the licence, or the time given for fulfillment of the conditions, whichever is later, issue a notice asking him to show cause, and after giving him an opportunity of being heard, by an order, forfeit all or any part of the security deposit and may declare him to be ineligible for consideration for any mineral concession in accordance with the provisions of sub-section (3) of section 20 or sub-section (3) of section 22, as the case may be, for such period, as it may specify, not exceeding five years, having regard to the circumstances;

### **Suggestions received by the Committee**

3.80 The Committee have received the following suggestions from various stakeholders:-

- (i) The Bengal Chamber of Commerce has suggested that the extreme punishment of suspension, curtailment or revocation of licence should be considered only in rare cases when lessee's performance is highly disappointing. In case of minor deviation or lack of sufficient progress in project execution, a provision of penalty should be clearly defined.
- (ii) Revocation / Cancellation of License / Lease can be totally subjective and would lead to unnecessary litigation, so to be removed.
- (iii) The Bengal Chamber of Commerce has observed that making ineligible for five years for a concession for not adhering to conditions is too harsh a punishment and the same can also be misused.

### **Reply of the Ministry of Mines**

3.81 The Ministry of Mines did not agree with the objections and has submitted before the Committee that in order to encourage scientific exploration and mining as per the conditions of the licence and lease, suspension, forfeiture, declaring a person ineligible is necessary to ensure compliance. However, these actions are subject to review in the National Mining Tribunal.

### **Recommendation of the Committee**

**3.82 The Committee observe that a proviso to be inserted to the extent where minor deviation has been made, any other mode of punishment may be imposed keeping in mind the doctrine of proportionality.**

### **Notification of certain areas for grant of mineral concessions**

**3.83 Clause 13 of the Bill reads as under:-**

**13(1)** In respect of any land where the minerals vest in the Government, the State Government shall, by notification, invite applications in the form of competitive offers for any mineral except coal minerals for grant of a prospecting licence over any area where reconnaissance has been conducted and sufficient evidence of enhanced mineralisation of the specified minerals has been established:

Provided that no application for a high technology reconnaissance-cum-exploration licence is pending relating to such area:

Provided further that no such notification shall be issued, in respect of an area in which reconnaissance or exploration or prospecting operations were completed under a licence, till the lapse of the period of six months from the date of the expiry of the licence, unless the area has been relinquished:

Provided also that in case where no application is received on an area notified under this sub-section, the State Government shall within a period of three months from the date of the said notification either re-notify the area or notify it as being available for grant of mineral concession under section 22.

**13(2)** Where an application or applications for grant of prospecting licence has been filed on an area and the State Government has not issued any notification, the State Government may notify such area or areas within a period of one month from the date of receipt of the first application by amalgamating or expanding all or any of the applied areas, if required, in the interest of scientific mining, and the State Government may invite applications in the form of competitive offers for any mineral, except coal and atomic minerals for grant of a prospecting licence:

Provided that the area so notified shall not include any area for which there has been or is an application pending for more than one month prior on the date of the notification:

Provided further that where the State Government has notified an area, it shall provide an opportunity to an applicant who filed an application prior to such notification within a period of one month from the date of the provisional determination of the best offer for the purposes of sub-section (4) and to submit a competitive offer in terms of the said notification after being informed of the details of the best offer received by the State Government subsequent to the said notification of the area, and the State Government shall consider the applications in accordance with the provisions of sub-section (4) and grant the licence to the best overall offer:

Provided also that only those applicants who had applied *suo motu* without any notification of such area by the State Government shall be afforded an opportunity to submit a competitive offer under the second proviso, and any such offer shall be limited in respect of only the area notified irrespective of the areas for which such applicant had applied earlier:

Provided also that where the State Government fails to notify the area within the specified period under this sub-section, the applications for grant of prospecting licence shall be considered in accordance with the provisions of section 22.

**13(3)** A notification issued under sub-sections (1) and (2) may specify that any application received shall be considered with reference to such criteria including all or any one of the following as per weightages assigned, as may be specified in the notification, namely:—

- (a) specific knowledge and experience of prospecting possessed or accessed by the applicant;
- (b) nature and quality of technical resources proposed to be employed;
- (c) value addition such as mineral processing and beneficiation;
- (d) end use including industries based on the mineral;
- (e) provision of ore-linkage through long-term agreements with domestic industry;
- (f) in the case of prospecting for iron ore, bauxite and limestone, having finished products production capacity at the time of commencement of this Act and captive ore resources which are likely to be exhausted in the near future; and
- (g) a financial bid quoted either as a lump sum recoverable in installments at the time of mining or a percentage of royalty or a profit sharing of mineral production.

*Explanation.*—For the purposes of this sub-section,—

- (i) the financial bid shall offer the State Government to recover a value,—
  - (A) for its efforts in managing information relating to survey or regional exploration work including computer databases and samples for minerals; and
  - (B) for the mineral on the basis of market consideration to be based on a floor price set by the State Government on the available reconnaissance data;
- (ii) the weightage shall be numerical in character and enable a composite ranking based on numerical marks assigned for each of the criteria listed in the notification in order to determine the best offer.

**13(4)** The applications received in accordance with the conditions specified in the notification issued under sub-sections (1), (2) and (3) shall be considered in accordance with such criteria and weightage as specified in the notification, and the eligible applicant obtaining the best marks as per weightages, be granted the prospecting licence in accordance with the rules made under this Act:

Provided that the licence may include special conditions under which a mining lease shall be granted on an application made under sub-section (3) of section 25,

including restrictions arising from requirements of value-addition or ore-linkage or restrictions on sale of ore in the case of captive resources.

**13(5)** In such areas where prospecting has been conducted and sufficient evidence of enhanced mineralisation has been established through a prospecting report and feasibility study, and where no application for a mining lease is pending, the State Government shall by notification invite applications in the form of competitive bids for any minerals excepting coal minerals, for grant of mining lease, to the bidder who in accordance with the provisions of sub-section (6) quotes the best financial bid including the bid for the prospecting report and feasibility study for the area so notified:

Provided that no such notification shall be issued, in respect of an area in which prospecting operations were completed under a licence, until the lapse of the period of six months from the date of expiry of the licence unless the area has been relinquished:

Provided further that before issuing the notification under this sub-section in respect of any forest or wildlife area, the State Government shall obtain, —

- (i) all forest clearances under the Forest (Conservation) Act, 1980 and wildlife clearance under the Wild Life (Protection) Act, 1972, or any other law for the time being in force, so as to enable the commencement of operations; and
- (ii) all necessary permissions from the owners of the land and those having occupation rights.

*Explanation.*—For the purposes of this sub-section,—

- (i) the financial bid shall offer the State Government either as a lump sum, recoverable in instalments or a percentage of royalty or a profit sharing, as may be specified in the notification, and the purpose of the financial bid for the prospecting report and feasibility study is to allow the State Governments to recover a value,—
  - (A) for its efforts in acquiring and managing information through detailed survey, exploration, feasibility studies, including computer databases, and cores and samples, computer databases and samples for minerals; and
  - (B) for the mineral on the basis of market consideration to be based on a floor price set by the State Government on the available prospecting data;
- (ii) the expression “forest clearance” shall comprise conditional clearance on the basis of the recommendations of the committee constituted for the purpose.

**13(6)** A notification issued under sub-section (5) may specify that bids received shall be considered with reference to such criteria including all or any one or more of the following,

as per weightages assigned, as may be specified in such notification, namely:—

- (a) special knowledge and appropriate experience in scientific mining and mineral beneficiation;
- (b) bringing new and advanced technologies;
- (c) investments in value addition such as mineral processing and beneficiation;
- (d) having industrial capacity based on the mineral or having set up industry based on the mineral, and achieved financial closure for such project;
- (e) providing ore-linkage through long-term agreements with domestic industry;
- (f) constructing transportation networks (road and rail) and other infrastructure facilities in the mineral bearing area;
- (g) in the case of iron ore, bauxite and limestone, having finished products production capacity at the time of commencement of this Act and captive ore resources which are likely to be exhausted in the near future; and



(h) financial bid including the bid for the prospecting report and feasibility study for the area so notified.

*Explanation.*—For the purposes of determination of best bid, the weightage shall be numerical in character and enable a composite ranking based on bid price and numerical marks assigned for each of criteria specified in the notification.

**13(7)** The bids received under sub-section (5) shall be evaluated in the prescribed manner and the best eligible bid shall be issued the letter of intent for awarding the mining lease after obtaining all necessary statutory approvals and clearances, on such conditions as may be specified having regard to the criteria stated in the notification issued under sub-section (6) and the response thereto.

**13(8)** In respect of atomic minerals and beach sand minerals, notification inviting applications and grant of the mineral concession shall be made with the prior approval of the Central Government.

**13(9)** In respect of coal minerals, notification for inviting and grant of mineral concessions shall be made by the Central Government in such manner as may be prescribed by it.

**13(10)** Notwithstanding anything contained in this section, notification of an area for inviting applications in respect of public lands in areas covered by the Fifth Schedule or the Sixth Schedule to the Constitution, shall be issued after consultation with the Gram Sabhas or District Councils, as the case may be, and in respect of non-Scheduled areas, after consultation with the District Panchayat.

**13(11)** The State Government shall invite and entertain applications for grant of prospecting licence in an area relinquished by a holder of a high technology reconnaissance-cum-exploration licence or a prospecting licence only after such area is notified by the State Government for inviting applications for grant of prospecting licence under the provisions of sub-section (1) of section 13 or notified as being available for grant of concessions for the purpose of section 22:

Provided that if the State Government fails to notify such relinquished area within three months of such relinquishment, any person interested may apply to the State Government and in case it fails to notify the area within a further period of three months, the applicant may apply to the National Mining Tribunal in case of major minerals and State Mining Tribunal in case of minor minerals for notification of that area and the concerned Tribunal may direct the State Government to notify the area within such period as it may specify.

**13(12)** The procedure for notifying an area for inviting applications for major minerals and grant of mineral concessions shall be such as may be prescribed by the Central Government.

**13(13)** In respect of minor minerals, notwithstanding anything in this section, the procedure for notification and grant of mineral concessions shall be such as may be prescribed by the State Government:

Provided that before granting mineral concession for minor minerals in an area covered by the Fifth Schedule or the Sixth Schedule to the Constitution, the Gram Sabha or the District Council, as the case may be, shall be consulted.

### **Suggestions received by the Committee**

3.84 The Committee have received the following suggestions:-

A. Notification of Areas for Grant of Mineral Concession (Clause 13(1))

- (i) On the provision of Clause 13(1) and (2), the State Government of Chhattisgarh has observed as under :-

Although sub-clause(1) of the Clause 13 of the Bill empowers the state governments to notify an area for grant of prospecting licence through competitive bidding, its scope has been highly restricted in as much as:-

- (a) such notification can be issued only in respect of such areas where reconnaissance operations have been conducted and sufficient evidence of enhanced mineralization has been established. If the said provision is legislated in its present form, states will not be able to notify areas for competitive bidding where mineralization is known otherwise than by formal reconnaissance operations. It is worthwhile to mention that existence of bulk minerals like iron ore, dolomite, limestone, stones etc. that are found on the earth crust, is well known by local knowledge / random sampling also.
- (b) similarly, although sub-clause (2) of clause 13 of the Bill empowers the state governments to issue notification for inviting competitive offers for grant of prospecting licence, however, the time period permitted to do so is just one month and if the state fails to issue notification in one month's time period, then licence shall be granted only to the "first applicant" who can, thereafter, transfer it for a consideration as per the section 17.

Allowing only a month's time to the state government for issuance of notification for competitive bidding is grossly impractical and lacks objectivity and may lead to trading in mineral licence."

Chhattisgarh Government has accordingly suggested that the clauses of the Bill pertaining to grant of mineral concessions should be modified as follows:-

- (a) "In clause 13(1) of the Bill for the words "where reconnaissance has been conducted and sufficient evidence of mineralization of the specified mineral has been established" the words "where existence of specified minerals is known by reconnaissance operations or otherwise" should be substituted.
- (b) The first proviso to clause 13(1) should be omitted.
- (c) In clause 13(2) of the Bill for the words "prospecting licence", the words "prospecting licence or high technology reconnaissance – cum – exploration licence" should be substituted.
- (d) In clause 13(2) of the Bill for the words "one month", the words "four months" should be substituted.

- (ii) One of the observation made by various stakeholder before the Committee is that Clause 13 in the Bill for auctioning of mineral bearing lands already explored and relinquished by govt. survey organisations – GSI, MECL & DGMs etc under Section 4(2) and private agencies and PSUs under Sections 19 to 22. There was no need of introducing auctioning for grant of Prospecting Licence. The existing system of grant of PL is working very well except for the enormous delay in disposing the applications. No stake holder has complained against the present system of grant of PL save for the lengthy procedures. With the exception of a few captive mineral-based industries no other stake holder has favoured introduction of auctioning for grant of PLs.

B. Competitive Bidding for PL and HTREL (Clause 13(2))

- (i) The State Government of Chhattisgarh have also advised to delete first proviso to Clause 13(1) which restricts notification of an area for competitive bidding in case of an application for HTREL is filed.
- (ii) On the similar lines while observing Clause 13(2) - Government of Chhattisgarh has suggested the Committee that In clause 13(2) of the Bill for the words "prospecting licence", the words "prospecting licence or high technology reconnaissance - cum - exploration licence" should be substituted to allow the State Government to call for competitive bids on an area applied for PL and HTREL.

C. Weightage assigned for bidding criteria (Clause 13(3) & (6))

As regards provisions in Clause 13(3) & (6) which specifies the bidding criteria for which weightages may be assigned uses the phrase "all or any...", the Committee received the following suggestions:-

- (i) "This gives huge discretion to any government to use or drop any of these criteria as per their wish. This would also ensure that there would be no universality in approach in different parts of India and would deter transparency.

It was, therefore, suggested to the Committee for redrafting of the Clause as below:-

"shall be considered with reference to the following criteria as per weightages assigned, as may be specified in the notification namely..."

- (ii) Regarding issue(Criteria) it observed the criteria in 13(3)(d) includes "end use including industries based on the mineral"- this does not specify the magnitude of investment since that is critical to the nature of the end use. Also there is no criteria for financial viability and health of the bidder

Accordingly it suggested redrafting of the following Clauses as below:

"13(3)(d) end use (nature and extent of investment for it) including industries based on the mineral.

13(3)(h) financial capability including net worth"

- (iii) A proviso be added whereby no extra or any weightage assigned. In case the State in which the lease has been granted insist that he shall establish industry based on the minerals in the State itself.
- (iv) It is not possible to have competitive bidding for Prospecting Licence since the reserves are not known.

The Provision should not result in Competitive bidding weighing in favour of large corporate and corner vital mineral resources based on speculative scenarios.

Government may not be able to enforce the distribution of available resources to the domestic industries which are linked to the priority of the country's needs.

The criteria to be adopted by the State Governments while granting Prospecting License or Mining Lease should give higher weightage to specific expertise, value addition like beneficiation, palletisation, sintering, etc. apart from financial capabilities.

- (a) Comparative merits viz., Captive End Use plant, Availability of technical Manpower and Quantum of investment in the End use plants should be given higher weightage while determining the best offer.
- (b) To ensure fair and transparent allocation of Mineral Concessions, the weightage for each non financial criterion can be assigned in the MMDR Bill itself so that each State uses same criteria in determining the best offer.
- (v) Lack of level playing field – there is an exception carved out from competitive bidding in respect of coal for Government Companies.
- (vi) (a) Regarding competitive bidding for explored blocks: The competitive bidding may be exempted for captive users.
- (b) Regarding eligibility criteria for selecting the successful bidder – Weightages for individual criterion to be fixed in the Act itself so that it gives transparency and uniformity across all the states.

- (vii) The criteria to be adopted by the State Governments while Granting Prospecting License or Mining Lease should be given to integrated Manufacturing facilities which are already in existence as on date and have been deprived of captive mines, should be given preferential allotment of mineral resources to meet the captive requirement of the plant life.

It has also demanded that due weightage to be given to the size and the quantum of investment already made while considering allocation of a specific ore body. Also the process of preferential allotment of Mineral concession has to be completed mandatorily before allotment through tender/auction process.

It has also suggested that for all future investments in Integrated Manufacturing facilities tender/ auction process to be introduced with due weightage to value addition within the country.

- (viii) As regards reservation of mining areas for Government companies, the Ministry of Steel in a note have suggested the following:-

Reservation of mining areas for Government Companies:-

(a) Section 17A(1A) of the existing MMDR Act, 1957 provides for the reservation for government companies in the grant of mineral concessions for prospecting or mining operations. However, this provision has been done away with in the MMDR Bill, 2011. Section 37 of MMDR Bill, 2011 provides only for reservation for mineral conservation (and not for prospecting or mining operations by government companies).

(b) The PSUs of Government of India as well as of the State Government are playing an important role in the social and economic development of the country and therefore, there is a need for continued support to these PSUs, in order to help them in contributing to equitable growth of various areas of the country and also in larger public interest.

- (ix) The Ministry of Steel has argued a strong case for preference to end-use industry in allocation of mineral concessions and assured allocation of captive iron ore mines to the existing steel capacities. The Ministry has categorically submitted that "it should also be specified in the Act that there shall be preference for end-use industries while allocating mineral concessions and this preference will be 'irrespective of geographical boundary/location of end-use industry ' (i.e., irrespective of the state where end use industry is located).

- (x) The representatives of the Government of Odisha has during the course of evidence submitted before the Committee that minerals like Chromites, mineral sand and manganese ore may be added in Clause 13(6)(g).

#### D. Forest and Wildlife Clearances (Clause 13(5))

- (i). In a written memorandum furnished to the Committee, one of the stakeholders has stated that the provision mandates that in case of bidding, the Government will ensure that they get the forest clearances and wildlife clearances first. Considering that getting such clearances takes on an average 4-5 years, the moratorium which the government has proposed under the Act for prospecting licences (Section 137(5)) shall be effectively then be 7 years.
- (ii). On clause 13(5), it has been further suggested to the Committee that adequate time limit need to be given for extension / renewal case as prescribed for grant. If not done, it should be considered deemed clearance/extension. It has further been contended that the term "Reasonable" used in the section is unclear in its connotation and hence three months time is suggested. This will ensure accountability at all level.
- (iii). The second proviso to Clause 13(5) that warrants obtaining of all forest clearances under the F.A. Act, 1980 before issuing the notification is restrictive in nature. This may be deleted. In case the State has been able to obtain such a clearance this advantage will get factored into the offers that will be received automatically and the State would stand to benefit from higher bid compared to an area where no such clearance has been received. Hence, it is suggested that this restrictive provision may be deleted retaining only the other condition, namely, obtaining of all necessary permissions from the owners of the land and those having occupation rights.

#### **Reply of the Ministry of Mines**

3.85 Para-wise replies of the Ministry of Mines on the above suggestions are as under:-

#### A. Notification of Areas for Grant of Mineral Concession (Clause 13(1))

The Ministry of Mines did not subscribe to the above suggestion and in a written note submitted as below:

"Establishing sufficient evidence of mineralization through reconnaissance is a scientific process, and clause 4 (2) can always be invoked by the State Government to complete reconnaissance activities before notifying an area."

#### B. Competitive Bidding for PL and HTREL (Clause 13(2))

- (i) The Ministry of Mines however, did not agree with the suggestion and submitted that HTREL needs to be prioritised since it is for deep-seated non-bulk minerals [proviso to clause 6(1) restricts grant of HTREL for bulk

minerals]. Further, it is provided in the draft Bill that in case an HTREL holder finds a bulk mineral deposit in his licence area, the HTREL holder would have no mining claim on it [clause 21(1)(i)]. This restriction adequately addresses the concerns of the State Government.

- (ii) The Ministry of Mines have further submitted that HTREL cannot be granted through competitive bidding. HTREL is specifically designed for areas where mineralisation is not known to the Government and requires primary regional exploration. In such areas, calling for competitive bidding would be highly discretionary and administratively impossible since mineral occurrence, in case of metallic minerals is heterogeneous and not homogenous as in the case of fuel minerals. For this reason HTREL cannot be put out for competitive bidding.
- (iii) During evidence, one of the stakeholder has submitted before the committee that in case of mineral resources, bidder will always be apprehensive about the exact size of the deposit, the nature of the deposit, the grade of the minerals, the depth of the minerals, the size, chemical and physical composition and this may give rise to a lot of speculative bidding.

C. Weightage assigned for bidding criteria (Clause 13(3) & (6))

- (i) Clause 131(i) & (K) specifies the manner of evaluation of bids under sub section (6) section 13 for which the Central Government has to make rules. In the rules the complete manner for evaluation will be laid down; which eliminate any subjective discretion by the State Government.
- (ii) Ministry of Mines in a written submission to the Committee has not accepted the contention and submitted that, the competitive bidding criteria for grant of prospecting licence and for grant of mining lease allow flexibility to the State to give due weightage to expertise and value addition in grant of concession, as per their priority in a transparent manner through notification. Section 131(K) specifies the manner of evaluation of bids under sub section (6) section 13 for which the Central Government has to make rules. In these rules the complete manner for bid evaluation will be laid down; which will eliminate any subjective discretion to any Government. Section 13(3) and 13(6) clearly specifies the criteria which will be given due weightages during the course of bidding.
- (iii) Different State Governments have various priorities to address while granting mineral concessions. Rather than restrict grant of additional weightage by the State Governments, it could be provided that criteria/weightage assigned in the notifications for grant of concessions for short listing criteria should be approved by the Central Government in case a new criteria or a new weightage, other than those already provided in clause 13 is added by the State Government. Value-addition unit with-in the State is being insisted by

various State Governments on the ground of development of the State. However, India is a single economic space. Therefore, in national interest, the Committee's final recommendations in line with the concept of the nation as a single entity would be acceptable.

- (iv) The Ministry of Mines have not accepted the suggestion of Ministry of Steel and *inter-alia* submitted before the Committee as below:

".....The Ministry of Mines is of the opinion that categorizing iron ore as a strategic mineral in this context may not be appropriate, considering that the iron ore resources in the country stand at 28.5 billion tonnes and are likely to increase further in future due lowering of cut-off grade from 55% Fe grade to 45% Fe grade, and detailed explorations. However, the Ministry of Mines recognizes the need to ensure adequate raw material supplies to the existing steel plants in the country. However, at the same time the Ministry is of the opinion that grant of exclusive captive mines is not an optimum solution since captive mining generally leads to sub-optimal utilization of the entire grade of iron ore, especially iron ore fines, for which at present negligible domestic utilization capacities exist. .... There is a broad agreement between the Mines and Steel Ministries that since captive mining had inherent limitations which did not incentivize complete utilization of run-of-mine and the fact that assured quality ore linkage is critical for functioning of large steel projects, the Government should focus not only on encouraging ultra mega steel projects, but also to develop ultra mega mining projects in the country, similar to NMDC, which would ensure zero waste mining and complete utilization of ore produced. Ore linkage rather than captive mining should be the paradigm for ensuing raw material security. At the same time, there is an increasing trend in the State Government to insist on value addition as criteria for grant of mineral concession, even if it is not economical to set up an industry locally. .... If it is possible to get both industry and mine with in a State without sacrificing the economic viability of the latter there is no reason why the applicant should not be offered inter-se preference. Considering the above, the draft Bill allows the State Government to give weightage to such applicants for grant of mining lease for iron ore, bauxite and limestone, who are having finished products production capacity at the time of commencement of the Bill and have captive ore resources which are likely to be exhausted in the near future."

D. Forest and wildlife clearances

- (i) Ministry of Mines have clarified this apprehension by submitting that obtaining first stage clearances would enable smoother commencement of the mining operations, especially after bidding is complete. Further it would



also enable assessment of the cost of NPV for forest areas, for structuring into the bidding price. These First-stage clearances would remove the apprehensions of the investors in obtaining clearances for mining projects.

- (ii) The Ministry of Mines in their written submission to the Committee on these suggestions has informed that in order to facilitate streamlining of the process, while it has been made mandatory for the State Governments to obtain first stage clearance for forest or wildlife areas proposed to be notified for competitive bidding for grant of mining lease, the draft Bill also proposes to set up a Central Coordination-cum-Empowered Committee and State Coordination-cum-Empowered Committee for expediting clearances. The Ministry further stated that the suggestion of adequate time limit for extension / renewal case as prescribed for grant can be considered at the time of framing the rules. Regarding the use of the term 'Reasonable', that period is to be specified by the National Mining Tribunal.

### **Recommendations of the Committee**

**3.86 While considering Chhattisgarh Government's suggestion that if the said provision is legislated in its present form, states will not be able to notify areas for competitive bidding where mineralization is known otherwise than by formal reconnaissance operations, the Committee are of the view that the possibility of getting knowledge about availability of minerals should not be restricted to only formal reconnaissance as existence of bulk minerals like iron ore, dolomite, limestone, stones etc. found on the earth crust, may be well known by local knowledge / random sampling also. The Committee, therefore, would like the Ministry to consider the suggestion made by State Government of Chhattisgarh and suitably amend the Clause 13(1).**

**3.87 The Committee have considered the suggestion of the Chhattisgarh Government that one month time period provided in the Bill to the State Government for issuance of notification under Clause 13(2) for competitive bidding is grossly inadequate and non-adherence to the said time limit may lead to trading in mineral licenses. The Committee note that in the event of non-adherence to the one month time schedule as prescribed, the licence shall be granted only to the 'first applicant' eligible under the Act and other applicants be deemed to have been refused to this extent of the**

area granted to the first applicant under Clause 22(4). The Committee feel that the concern of the Chhattisgarh Government is genuine as the licence to the 'first applicant' will be automatically granted in case of failure of the State Government to issue notification within one month period and will defeat the very purpose of competitive bidding. The Committee would like the Ministry to consider this suggestion and amend Clause 13(2) accordingly.

3.88 The Committee are of the view that supply of raw minerals to the integrated plants must be smooth so as to ensure that the concerned industry flourish to boost overall economy of the country. But, according to the Ministry of Mines, the allocation of captive mines to existing plants, is however not advisable as it would amount to an anti-competitive market practice and has inherent limitations which do not incentivize complete utilization of run-of-mine. The Committee, however, recommend that the Government should make necessary amendments in the Clause to make it mandatory that proper and sufficient weightage be given to the end-user plants while evaluating competitive bids. The Committee would also like the Ministry to consider the issue of existing captive mines being allotted to some integrated plants. Though, the running tenure of the licence should be allowed to complete being contractual obligation of State, but to ensure fair competition in the market, the Committee recommend the Government to make a mandatory provision that on completion of running licence-period, the existing captive mines must be put to open auction, however, specific investments by existing licensee may be given suitable weightage.

3.89 The Committee has taken note of flexibility granted to States, in assigning weightage to different parameters for grant of mineral concessions [Clause 13(3)]. The Committee feel that to overcome regional disparities and promote development per se across regions/States in setting up of mineral based industries, a proviso be added whereby no extra or any weightage is assigned by the concerned States for setting up of industries in that State only.

**3.90 Taking note of the suggestions that list of minerals in Clause 13(3)(f) and 13(6)(g) should be expanded and chromites, mineral sand, manganese ore be included, the Committee recommend the Government to consider the same.**

**3.91 The Committee observe that competitive bidding process, undertaken in accordance with Clause 13(5) may at times leads to speculation. The Committee, therefore, desire that adequate preventive action may be taken to prevent speculative bidding.**

**3.92 Under second proviso to Clause 13(5), the Committee find that before issuing the notification in respect of any forest or wild life area, the State Government should obtain all forest clearances under the Forest Conservation Act, 1980 and Wild Life Act (Protection) Act, 1972 or any other Act for the time being in force so as to enable the commencement of operation. Some State Government, particularly the Government of Odisha have reservation on this issue and wanted to delete this proviso. The Committee strongly believe that in view of the State Governments virtually sitting over the lease applications without taking any time bound action, it is absolutely necessary that forest clearance is obtained by them before the notifications and issue for mining operation. The Committee, therefore, favour this Clause to be part of the bill. The Committee, however, would suggest specific time frame for the State Governments for obtaining forest clearance.**

**3.93 The Committee note that a duty has been cast on the State Government to obtain all necessary permission from the owners of land and those having occupancy rights(Clause13(5)(ii). A representative of Government of Jharkhand brought to the notice of the Committee that in the event of conclusion of competitive bidding process, the owners and those having occupational rights may tend to artificially jack up the price of land which may derail the process of grant of mining lease. The Committee desire that the Government should ensure that rates arrived at**

**the conclusion of bidding process should be irrevocable to the extent possible.**

### **Time limit for disposal of applications for grant of mineral concessions**

#### **3.94 Clause 14 of the Bill reads as under:-**

**14(1)** In respect of any lands where the minerals vest in the Government, the State Government shall dispose off the applications for grant of non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence or prospecting licence within the following period reckoned from the date of receipt of applications, namely:—

(a) within a period of three months in respect of non-exclusive reconnaissance licence;

(b) within a period of four months in respect of high technology reconnaissance exploration licence and prospecting licence.

*Explanation.*—For the purposes of this clause, where applications for prospecting licence are received in response to a notification under sub-section (1) or sub-section (2) or sub-section (4) of section 13, the time period for disposal shall be reckoned from the last date notified for receipt of applications.

**14(2)** The State Government shall dispose of the applications for grant of mining lease in the following manner and within the time limit specified hereunder, namely:—

(a) a letter of intent or recommendation to the Central Government for giving prior approval if required, shall be issued within a period of four months,—

(i) from the opening of bids in respect of applications received under section 13; or

(ii) from the date of application in respect of application received under section 25; and

(b) the mining lease shall be executed within three months of intimation by means of a written communication by the applicant holding the letter of intent of his having obtained all clearances and approvals specified in the letter of intent.

**14(3)** In any matter requiring the prior approval of the Central Government, the matter shall be disposed off by the Central Government, within a period of three months from the date of receipt of proposal from the State Government, and the State Government shall issue a letter of intent within a period of one month from the date of such approval by the Central Government.

**14(4)** Where any application or written communication is deficient in information or documentation, the State Government shall, by notice issued within sixty days of receipt thereof, require the applicant to supply the omission within such period as may be specified having regard to the nature of the document or information, but not being a period of less than fifteen days and not more than sixty days, and such period is excluded from the time limits specified in sub-sections (1) and (2).

**14(5)** Where an applicant for mineral concession fails to furnish documents and information as required under sub-section (4) for processing the application or written communication, the State Government after issuing a notice to show cause and giving him an opportunity of being heard, may by order forfeit the earnest money and reject his application for grant of mineral concession.

**14(6)** Where an application is not disposed off within the limit specified in sub-section (1), (2) or (3) subject to the provisions of sub-section (4), the applicant may apply to the National Mining Tribunal in the case of major minerals and the State Mining Tribunal in case of minor minerals, for a direction to the Central Government or State Government, as the case may be, to dispose of the application within such reasonable period as may be specified by the National Mining Tribunal or the State Mining Tribunal, as the case may be.

### **Suggestions received by the Committee**

3.95 The Committee have received following suggestions on this clause of the Bill:-

- (i) Regarding time limit for Disposal of Concession applications- The time limits for disposing mineral concession applications have been defined in the Draft MMDR Act 2011. In case of non-adherence to the timelines, Revision Authority/Central Govt. may be empowered to dispose the applications on merit within a grace period of 30 days from the end of the time period. Revision cases to be made more time bound, say within 90 days.
- (ii) Adequate time limit need to be given for extension/renewal case as prescribed for grant. If not done, it should be considered deemed clearance/extension. Reasonable is an unclear term and hence three months time is suggested. This will ensure accountability at all level.

### **Reply of the Ministry of Mines**

3.96 The Ministry of Mines have responded to the above suggestions as under:-

- (i) The Ministry of Mines has not accepted this suggestion and submitted to the Committee that no timelines can be fixed for the National or State Mining Tribunals as they are quasi judicial. However, six months time is provided in the draft Bill for disposal of case.
- (ii) On this suggestion, the Ministry of Mines have informed the Committee that the suggestions of adequate time limit for extension/renewal case as prescribed for grant can be considered at the time of framing the rules. Wherever 'Reasonable' period is to be specified by the National Mining Tribunal.

### **Recommendation of the Committee**

**3.97 Clause 14 clearly specifies the time frame within which the Central and State Governments are required to dispose of applications for grant of mineral concessions. However, where an application is not disposed of within the time frame, the aggrieved applicant can move National Mining Tribunal in the case of major minerals and the State Mining Tribunal in case of minor minerals under Clause 14(6) seeking directions to the Central Government or the State Government, as the case may be to dispose of applications with such reasonable period as may be specified by the respective tribunals. Since such tribunal will specify the time for disposal, no other words are required to be added.**

### **Rights of a holder of non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence or prospecting licence or mining lease**

#### **3.98 Clause 15 of the Bill reads as under:-**

"On issue of a non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence, prospecting licence or mining lease under this Act, it shall be lawful for the holder of such licence or lease, his agents or his servants or workmen to enter the lands over which such licence or lease had been granted at all times during its currency and carry out all such reconnaissance, prospecting or mining operations as permitted:

Provided that no person shall enter into any building or upon an enclosed court or garden attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so."

### **Suggestions received by the Committee**

3.99 The committee have received following suggestions regarding clause 15:-

- (i) Right of entry has been given to the licensee after giving seven days notice to the occupier. There should be provisions to ensure law and order. The holder of the licence or lease shall have the right to request for and receive the assistance of the State Government, its agencies or the police for ensuring that law and order is maintained during the exercise of such rights.
- (ii) Clause 15 should be reworded to say that a licensee can enter upon any private land only with the consent of the land owner and that in the case of

mining lease, commencement of mining shall be undertaken with the consent of the owner or by paying to the owner full compensation determined under the Land Acquisition Act.

### **Reply of the Ministry of Mines**

3.100 Para-wise replies of the Ministry of Mines are as under:-

- (i)&(ii). The Ministry of Mines has clarified these objections by submitting that clause 15 is to be read with section 13(5)(ii) wherein it is stated that 'all necessary permissions from the owners of the land and those having occupation rights' are to be obtained by the state government before issue of any notification. Thus the entry rights will be obtained in advance by the concerned state government.
- (iii). Compensation for acquisition of land shall be governed by the State R&R Policy or the Land Acquisition, Resettlement and Rehabilitation Bill, 2011, as and when the Bill is approved by the Parliament. However, where no acquisition of land is involved, as per the draft Bill in case of grant of a direct mining lease through competitive bidding the concerned State Government shall be required to obtain consent from the owners of the land and those having occupation rights, as defined under clause 13(5)(ii). In case of a person progressing from the exploration stage to the mining stage, the compensation required to be paid is given in clause 43 of the draft Bill, and under the National Sustainable Development Framework, engagement with local population including the land rights owner would be mandatory.

### **Recommendations of the Committee**

**3.101 The Committee concur with the stand of the Ministry of Mines that compensation for acquisition of land will be governed by the State or National R&R Policy or any other Act in force including the Land Acquisition, Resettlement and Rehabilitation Bill, 2011 as and when the Bill is approved by the Parliament. At the same time, the Committee caution that where no acquisition of land is involved for grant of a direct mining lease through competitive bidding, the concerned State Government ought to require consent from the owners of the land and those having**

occupation rights, as defined under clause 13(5)(ii). The Committee are also of the view that compensation rights of the land owner are well protected in clause 43 of the draft Bill, and under the National Sustainable Development Framework, engagement of local population including the land rights owner be made mandatory. The Committee, however, desire that Clause 15 should be reworded, "that a licensee can enter upon any private land only with the consent of the land owner and that in the case of mining lease, commencement of mining shall be undertaken with the consent of the owner or by paying to the owner full compensation determined under the Land Acquisition Act."

**Transfer of non-exclusive reconnaissance licence, high technology reconnaissance- cum- exploration licence and prospecting licence.**

**3.102 Clause 17 of the Bill stipulated as under:-**

**17(1)** A holder of a non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence or prospecting licence may, except in the case of coal minerals, atomic minerals and beach sand minerals, after the expiry of a notice of not less than ninety days to the State Government concerned, transfer his licence to any person eligible to hold such licence in accordance with the provisions of this Act and the rules made thereunder:

Provided that the holder of a prospecting licence, granted prior to the commencement of this Act and valid under the provisions of this Act, may after giving a notice of not less than ninety days to the State Government concerned, transfer his prospecting licence only to a person holding a prospecting licence or mining lease in the adjoining area, and any transfer in contravention of this proviso shall be void:

Provided further that the original licensee shall intimate to the State Government the consideration payable or paid by the successor-in-interest for the transfer, including the consideration in respect of the reconnaissance or prospecting operations already undertaken and the reports and data generated during the operations:

Provided also that no such transfer shall take place if the State Government, within the period specified in the notice for reasons to be communicated in writing, disapproves the transfer on the grounds that the transferee is not eligible as per the provisions of the Act.

**17(2)** A non-exclusive reconnaissance licence or high technology reconnaissance-cum-exploration licence or prospecting licence in respect of coal minerals, atomic minerals and beach sand minerals shall be transferred only with the prior approval of the Central Government.



**17(3)** On transfer of the licence, all rights and liabilities of, and under, the licence shall be transferred to the successor-in-interest.

**17(4)** Subject to the provisions of sub-section (1), the holder of a licence may transfer his rights and liabilities within a period of six months after the expiry of the mineral concession period to a person eligible under this Act to hold a licence.

**17(5)** On transfer of rights and liabilities, the successor-in-interest shall be entitled to consideration in terms of section 22 or section 25, as the case may be, as if he was the original holder of the mineral concession.

**17(6)** The State Government may charge such fees for transfer of the mineral concession as may be prescribed by the Central Government.

**17(7)** Nothing contained in this section shall be deemed to enable a holder of a nonexclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence or a prospecting licence, in respect of land where the minerals vest in a private person, to transfer such licence other than in accordance with the terms and conditions of the mineral concession agreement.

### **Suggestions received by the Committee**

3.103 The Committee have received the following suggestions regarding clause 17:-

- (i) If a person is eligible to hold such a licence under the Act, the transfer can be made. This opens up huge possibilities for unregulated transfers and therefore cartelization and anti-competitive practices. Also acquisition of licences through these transfer provisions than a primary grant. Addition of provisions which require approval of the Government for transfer after ascertaining "whether such transfer is bona fide, not anti-competitive and that the transfer would not be detrimental to mineral development in any manner".
- (ii) Clause 17(1) and 18 refers to the transferability of PL/ML However, Clause 17(1), first proviso states that the transfer of a PL only to a person holding PL or ML in the adjoining area. Even though this is done with a good intention of consolidation of mining area, but this might lead to unhealthy practices. Therefore, the transfer should be allowed to all eligible transferees. (Government of Karnataka).
- (iii) Sub-clause (4) of clause 22 of the Bill provides that state government shall grant high technology reconnaissance-cum-exploration licence only to first applicant and to none else. Section 17 of the Bill provides that a licence can be transferred for consideration.

The aforesaid provision is undesirable as the same:-

- a. Prefers "licence to the first in line" principle over the "competition bidding" route;

- b. geological data in the country not being in public domain completely, the provision may be misused by those having access to the geological data in the technical officers of the central and the state government; and
- c. shall result into "trading in mineral licences".

### **Reply of the Ministry of Mines**

3.104 The Ministry of Mines have responded to the above suggestions as under:-

- (i) The Ministry of Mines has responded that the philosophy of 'Transfer of Concessions' has been framed in light of the recommendations of Hoda Committee. The basic objective is to enable specialists in exploration to undertake risky explorations and then pass on the mining rights to those interested in mining.
- (ii)&(iii).The Ministry of Mines did not find favour with these suggestions/objections and informed the Committee that HTREL is specifically designed for areas where mineralisation is not known to the Government. In such areas, calling for competitive bidding would be administratively impossible since mineral occurrence, in case of metallic minerals is heterogeneous and not homogenous as in case of fuel minerals. Further HTREL is designed to attract high technology and high investments in exploration for deep-seated deposits, which is severely lacking in the country. In all such cases where the investor has discovered the minerals through his efforts, the Ministry is of the opinion that he should be allowed the benefit from his entrepreneurial activities either by obtaining a mining lease or through transferring to another eligible mining company. However, the HTREL holder would be tightly regulated through stringent data reporting requirements, which would eventually lead to addition to the geoscience data bank of the country.

### **Recommendations of the Committee**

**3.105 The Committee find the apprehensions of industry that the proposed provision of 17(1) that a holder of a non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence or prospecting licence may, except in the case of coal minerals, atomic minerals and beach sand minerals, after the expiry of a notice of not less than ninety days to the State Government concerned, transfer his licence to any person eligible to hold such licence in accordance with the**

provisions of this Act and the rules made thereunder are well founded as it may open up possibilities for unregulated transfers and therefore cartelization and anti-competitive practices. At the same time, the Committee find the Clause as 'noble' in view of Ministry of Mines' reply the philosophy of `Transfer of Concessions' has been framed with the basic objective of enabling specialists in exploration to undertake risky explorations and then pass on the mining rights to those interested in mining as recommended by Hoda Committee.

**3.106** As regards the objections regarding transferability of HTREL, the Ministry of Mines have submitted that HTREL is designed to attract high technology and high investments in exploration for deep-seated deposits, which is severely lacking in the country. In all such cases where the investor has discovered the minerals through his efforts, the Ministry is reported to be of the opinion that he should be allowed the benefit from his entrepreneurial activities either by obtaining a mining lease or through transferring to another eligible mining company are well founded. The Committee while taking note of recent cases of corruption involving similar circumstances of re-sale of licences, recommend that due amendments/safeguards including approval of transfer of licences by Government agencies like IBM, etc. be incorporated in Clause 17 so as to ensure technical expertise and adequate monitoring mechanism is put in place.

#### **Transfer of a mining lease(Clause 18)**

**3.107** Clause 18 of the Bill reads as under:-

**18(1)** The holder of a mining lease shall not, without the previous approval in writing of the State Government, and in the case of coal minerals, atomic minerals and beach sand minerals, the previous approval in writing of the Central Government,—

(a) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein; or (b) enter into or make any arrangement, contract, or understanding whereby the lessee may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings may be substantially controlled by any person or body of persons other than the lessee:

Provided that where the mortgagee is an institution or a bank or a corporation notified for the purpose by the Central Government under this Act, it shall not be necessary for the lessee to obtain any such approval of the State Government.

**18(2)** Where a holder of a mining lease has filed an application to the State Government for approval of transfer of a mining lease and the State Government, having regard to the prospecting report if any, and approved Mining Plan and mining schemes and other related documents filed by the mining lease holder, is of the opinion that the amount of consideration between the transferor and the transferee is not adequate, it may issue a notification in such manner as may be prescribed by the State Government, inviting competitive financial bids, within one month of filing of the application for transfer, giving a last date, which shall not be more than thirty days from the date of notification, from the interested persons eligible under this Act, to submit their financial bids for the mining lease sought to be transferred.

**18(3)** In all cases where the notification has been issued by the State Government under sub-section (2), it shall complete the evaluation of bids within a period of one month from the last date specified in the notification and,—

(a) permit the holder of mining lease to transfer the lease to the transferee at the amount of consideration stated in the application if the bid amount of the highest eligible bidder is not greater by twenty per cent. than the amount of such consideration stated in application; or

(b) direct the holder of mining lease to transfer the lease to the highest eligible bidder if the bid is higher than the consideration by more than twenty per cent., and the highest eligible bidder shall pay to such holder of mining lease, a sum equal to the amount of consideration stated in the application for transfer along with an additional amount equal to twenty per cent. thereof, and the remaining amount of bid shall be paid to the State Government in such manner as may be prescribed by the Central Government:

Provided that in all cases of applications for transfer of a mining lease granted by the State Government prior to the commencement of this Act under the provisions of sub-section (5) of section 11 of the Mines and Minerals (Development and Regulation) Act, 1957, as it stood before its repeal, the State Government may collect an additional fee, as may be prescribed by the Central Government, for such transfer:

Provided further that in case the State Government fails to complete the process of inviting competitive offers referred to in sub-section (2) within the period specified therein without any sufficient and adequate reasons for such failure, the holder of the mining lease may apply to the National Mining Tribunal for appropriate directions in this regard.

*Explanation.*—For the purposes of this sub-section, the highest eligible bidder shall be a person who gave the highest bid and is eligible to be granted the mining lease on the day of the determination of the bids.

**18(4)** The State Government or the Central Government, as the case may be, shall not give its approval to transfer of a mining lease unless the transferee has accepted all the conditions and liabilities under any law for the time being in force to which the transferor was subject to in respect of such mining lease.

**18(5)** No transfer of a mining lease shall be made to a person not eligible under this Act to hold the lease and no transfer be made by a person in contravention of the condition of, and subject to which the lease was granted.

**18(6)** An application for transfer of mining lease shall,—

- (a) state the reason for the transfer;
- (b) state the consideration for the transfer;
- (c) have attached to it, an agreement between the holder of mining lease who has applied for transfer of mining lease and the transferee setting out the terms and conditions of the offer and acceptance, with a validity period of at least a period of six months from the date of application;
- (d) state whether the mining lease had been granted prior to the commencement of this Act under the provisions of sub-section (5) of section 11 of the Mines and Minerals (Development and Regulation) Act, 1957, as it stood before its repeal; and
- (e) give such other particulars as may prescribed by the Central Government.

**18(7)** No transfer of a mining lease shall be permitted, if,—

- (a) it leads to fragmentation or unscientific mining;
- (b) it is not in the interest of mineral development; and
- (c) it is against the national interest.

**18(8)** Where the mining lease is in respect of land where the minerals vest in a private person, no transfer shall be permitted except in accordance with the terms and conditions of the mineral concession agreement in regard to the consent of such person.

**18(9)** The State Government may charge fees for the transfer of the mining lease in case

of a major mineral as may be prescribed by the Central Government and in case of minor minerals, as may be prescribed by the State Government.

**18(10)** The Central Government and the State Government shall take into account the consideration payable by the transferee to the transferor while prescribing the fee under sub-section (9).

### **Suggestions received by the Committee**

3.108 The committee have received the stakeholder's view on clause 18 as below:-

- (i) Regarding transfer of mining lease clause 18(1) allows notified banks to be mortgagees without approval. This open up opportunities for misuse, since persons would attempt to purchase leases as NPAs through such banks.
- (ii) The provisions of the clause 18(1)(b) read with clause 18(3)(b) does not address cases when transfer is within subsidiaries of the same company. As an example, one company of the same group may have financial resources and another company within the group may have the lease and want to transfer the same within the group. in such cases, provision for transfer to be effected within the same group without bidding may be incorporated.

### **Reply of the Ministry of Mines**

3.109 The reply of the Ministry of Mines are as under:-

- (i) The Ministry are not in agreement with such apprehension and clarified that such transfers are change in ownership of the leases and need previous approvals by the State Governments under clause 18.
- (ii) The Ministry have accepted the suggestion in its written submission as well as during the sittings of the Committee held on June 25, 2012.

### **Recommendations of the Committee**

**3.110 The Committee concur with the opinion of Ministry of Mines on the issue of bank mortgages. Although the Ministry of Mines have clarified the transfer of mining lease under Clause 18(1) by stating that such transfers are change in ownership of the leases and need previous approvals by the State Governments under clause 18, the Committee are not satisfied with the reply of the Ministry as the proviso to 18(1) clearly state that where the mortgagee is an institution or a bank or a corporation notified for the purpose by the Central Government under this Act, it shall not be necessary for the lessee to obtain any such approval of the State Government. The Committee, therefore recommend that Ministry of Mines should re-look at the suggestions regarding transfer of mining lease under Clause 18(1) which allow notified institutions or a bank or a corporation to transfer lease mortgaged with them without obtaining approval of the State Government.**

**3.111 As the Ministry of Mines have accepted the suggestion of transfers within subsidiary companies, the Committee expect that Ministry of Mines will carry out suitable amendment in Clause 18.**

## CHAPTER-IV

### NON EXCLUSIVE RECONNAISSANCE LICENCE

#### Conditions of a non-exclusive reconnaissance licence

##### **Clause 19 of the Bill reads as under:-**

**19(1)** In respect of every non- exclusive reconnaissance licence granted for major and minor minerals under this Act and the rules made thereunder, the licence holder shall,—

(a) progressively relinquish the area granted under the licence as shall be specified in accordance with the provisions of this Act and the rules made thereunder;

(b) file a reconnaissance plan in case of major minerals other than coal minerals with the Geological Survey of India, the Indian Bureau of Mines, and the State Directorate, and in case of coal minerals with the Central Government, and in case of minor minerals with the State Directorate concerned in such manner as may be prescribed by the Central Government, which shall include,—

(i) the particulars of the area such as aerial extent, in terms of latitude and longitude;

(ii) the scale of the plan and the area of geological mapping;

(iii) the particulars of the machines and instruments to be used, and the nature of the data proposed to be collected;

(iv) a quarterly plan of operations; and

(v) the quarterly detailed projection of expenditure on the operations:

Provided that in respect of minerals other than coal minerals, atomic minerals and beach sand minerals, with the prior approval of the State Directorate and in case of coal minerals, atomic minerals, beach sand minerals with the prior approval of the Central Government, the licence holder may modify the plan of operations or the State Directorate or the Central Government, as the case may be, may direct the licensee to modify his plan of operations, if it appears that ground operations proposed may be in conflict with the ground operations of another licensee who has already filed his plan.

*Explanation.*— For the purposes of this clause, the quarterly plan of operations shall be prepared so as to exclude overlapping of ground operation of the non-exclusive reconnaissance licence holders who have already filed the plan of operations for the area;

(c) make available all data including all the aerial, photo-geological, geophysical, geochemical and such other data collected by him to the Geological Survey of India, the State Directorate and in case of coal minerals, atomic minerals, beach sand minerals to the Central Government, in such manner and within such intervals as may be prescribed by the Central Government;

(d) in case radiometric instruments are used, make available all radiometric data available to the Atomic Minerals Directorate;

(e) maintain detailed and accurate accounts of all the expenses incurred by him on the non-exclusive reconnaissance operations;

(f) submit reports to the Geological Survey of India, the Indian Bureau of Mines, the State Directorate and in case of coal minerals, atomic minerals, beach sand minerals to the Central Government, in such manner and within such intervals as

may be prescribed by it and while submitting reports, the licence holder may specify that the whole or any part of the report or data submitted by him shall be kept confidential; and the Geological Survey of India, the Indian Bureau of Mines, the State Directorate, and in case of coal minerals, the Central Government, thereupon shall, keep the specified portions as confidential for a period of six months from the expiry of the licence, or abandonment of operations or termination of the licence, whichever is earlier; (g) allow every officer authorised by the Central Government or the State Government as the case may be, in case of major minerals and the State Governments in case of minor minerals, to examine the accounts maintained;

(h) furnish to the Geological Survey of India, the Indian Bureau of Mines, and the State Directorate in case of major minerals, in case of coal minerals, atomic minerals, beach sand minerals to the Central Government, and in case of minor minerals to the State Directorate concerned, such information and returns as may be required in relation to the reconnaissance operations;

(i) allow any officer authorised by the Geological Survey of India or the State Directorate in case of major minerals and the officers of State Directorate in the case of minor minerals to inspect any reconnaissance operations carried on by the licence holder;

(j) pay to the State Government in respect of land in which minerals vest in the Government, and to the person in whom the minerals vests in other cases, a licence fee as may be notified by the Central Government, being an amount of not less than fifty rupees per square kilometre per year and not more than five hundred rupees per square kilometre per year or part thereof:

Provided that the Central Government may, by a notification, specify different rates for each successive years;

(k) obtain clearance from the Ministry of Defence in the Central Government, in case any Defence establishments lies in the area proposed for exploration;

(l) comply with such other conditions as may be prescribed by the Central Government.

**19(2)** The non-exclusive reconnaissance licence may contain such other general conditions as may be prescribed in the interest of public safety or national security by the Central Government which, *inter alia*, may include the condition that a representative of the Directorate General, the Civil Aviation or the Ministry of Defence shall be present during the aerial surveys.

**19(3)** The Central Government, in case of coal minerals, and the Indian Bureau of Mines in case of other major minerals, may issue direction to a non-exclusive reconnaissance licence holder to ensure compliance with the conditions of the licence and the licence holder shall be bound to comply with such directions.

**19(4)** The licence holder shall before starting operations, deposit as security an amount equal to the licence fee levied for the first year and in case of breach of any condition imposed on a holder of a non-exclusive reconnaissance licence by or under this Act, the State Government may by order in writing, suspend, curtail or revoke the licence, and may forfeit in whole or in part, the amount deposited by the licence holder as security:

Provided that no such order shall be made without issuing a notice to the licence holder to show cause and giving him a reasonable opportunity of being heard:



Provided also that in case of land in which the minerals vest in a person other than the Government, the State Government shall give such person an opportunity of being heard and may issue directions to him to suspend, curtail or revoke the mineral concession or forfeit the security in accordance with the terms and conditions of the mineral concession agreement.

**19(5)** In every case where a part or all of the security deposit has been forfeited, the licensee, shall furnish security deposit to make up the deficiency before recommencing operations under the licence.

**19(6)** Any amount deposited as security deposit in accordance with the provisions of sub-section (3) shall unless forfeited, be returned to the licensee at the end of the six month period following the expiry or termination of the licence:

Provided that in case the return of the security or such part thereof as may be payable takes place more than thirty days after the expiry of the six months period, a simple interest at the rate of six per cent.. per annum shall be payable for the period beyond thirty days.

### **Suggestions received by the Committee**

4.2 In this regard Department of Atomic Energy have suggested that the name of Atomic Minerals Directorate to be included after Indian Bureau of Mines in clause 19(1)(b).

### **Reply of the Ministry of Mines**

4.3 The Ministry of Mines has given acceptance to this suggestion.

### **Recommendation of the Committee**

**4.4 The Committee accordingly recommend that suitable amendment be incorporated in the Clause 19(1)(b) as suggested by Department of Atomic Energy.**

## CHAPTER – V

### HIGH TECHNOLOGY RECONNAISSANCE-CUM-EXPLORATION LICENCE

#### Conditions of a high technology reconnaissance-cum-exploration licence and prospecting licence

##### **Clause 21 of the Bill reads as under:-**

**21(1)(b)** the licence holder shall,..... (b) prepare and file an exploration plan in respect of a high technology reconnaissance-cum-exploration licence or a prospecting plan in case of a prospecting licence with the Geological Survey of India, the Indian Bureau of Mines and the State Directorate in respect of major minerals (other than coal minerals) and in case of coal minerals with the Central Government, and the State Directorate in the case of minor minerals including such particulars and, in such manner as may be prescribed by the Central Government, which shall include,—

- (i) the particulars of the area being prospected;
- (ii) the scale of the plan and the area of geological mapping;
- (iii) a six monthly plan of operations including—
  - (a) the number of pits, trenches, and bore holes which he proposes to put in the area;
  - (b) the number of samples proposed to be drawn and analysed;
  - (c) the particulars of the machines to be used;
  - (d) the details of exploratory mining if any, proposed to be undertaken;
  - (e) the beneficiation studies proposed to be undertaken.
- (iv) appropriate baseline information of prevailing environmental conditions before the beginning of reconnaissance or prospecting operations;
- (v) steps proposed to be taken for protection of environment which shall include prevention and control of air and water pollution, progressive reclamation and rehabilitation of the land disturbed by the prospecting operations, a scheme for the plantation of trees, restoration of local flora and water regimes and such other measures, as may be directed from time to time by the Indian Bureau of Mines or the State Directorate as the case may be for minimizing the adverse effect of prospecting operations on the environment;
- (vi) the details of the six monthly expenditure to be incurred on the operations;
- (vii) any other matter relevant for scientific prospecting, as directed by the Indian Bureau of Mines or the State Directorate, as the case may be, from time to time by a general or specific order:

Provided that the exploration plan shall be filed with the Geological Survey of India in respect of high technology reconnaissance cum exploration licence, in such manner as may be notified by the Geological Survey of India from time to time;

### **Suggestions received by the Committee**

5.2 One of the stakeholders has observed that the Environment Protection Act covers requirements for various mining projects and this subject should therefore be guided by the Environment Protection Act and should not be in the scope of this draft MMDR Bill, 2011.

### **Reply of the Ministry of Mines**

5.3 The Ministry of Mines has not accepted this demand and have explained that Clause 21(1)(b) requires preparation and filing of an Exploration plan in respect of HTREL or a Prospecting plan in case of a Prospecting Licence, which includes the appropriate baseline information of prevailing environmental conditions before the beginning of reconnaissance or prospecting operations. The provision is kept to access the damage (if any) done to the environment due to prospecting operations. This will also help in deciding suitable mitigation and compensation measures. In any case, the present bill focuses more on the lease area, whereas the environment act covers a wider area outside the lease area also".

### **Recommendation of the Committee**

**5.4 The Committee find the exploration plan as envisaged in Clause 21(1)(b) very useful as it includes the appropriate baseline information of prevailing environmental conditions before the beginning of reconnaissance or prospecting operations. The Committee, therefore, desire that the provision should remain in the bill to access the damage (if any) done to the environment due to prospecting operations and to help in deciding suitable mitigation and compensation measures.**

### **Condition of High Technology Reconnaissance cum Exploration / Prospecting Licence**

**5.5 Clause 21(6) of the Bill reads as under:-**

Any amount deposited as security, in accordance with the provisions of subsection (4), shall unless forfeited, be returned to the licensee at the end of six months after the expiry or termination of the licence, as the case may be:

Provided that in case the return of the security or such part thereof as may be payable takes place more than thirty days after the expiry of the said period of six months, a simple interest at the rate of six per cent. per annum shall be payable by the State Government for the period beyond thirty days.

### **Suggestion received by the Committee and Reply of the Ministry of Mines**

5.6 When asked about the justification for paying a simple interest of 6% per annum after expiry or termination of the licence by the State Government on the amount deposited as security, which should not be the prevailing bank rate, the Ministry of Mines have informed the Committee that the amount deposited as security has to be returned back to the licensee after the exploration activity is completed. The interest component is applicable only when the State Government delays in returning the security amount to the licensee. This will act as a deterrent for any State Government to delay in finalising the return of Security deposits. The interest rate was commonly agreed at 6% per annum in consultation with the State Governments. However, the Ministry does not have any objection to accepting the prevailing bank rates.

### **Recommendation of the Committee**

**5.7 As regards the interests rate on the return of security payable to the licensee unless forfeited takes place more than 30 days after the expiry or termination of the licences as the case may be, a provision has been made where a simple interest at the rate of 6% per annum shall be payable by the State Governments for the period beyond 30 days. Although, the Ministry of Mines have stated that the interest rate was commonly agreed at 6% per annum in consultation with the State Governments, the Committee recommend that the words "six per cent" may be replaced by "prevailing bank rate" to ensure financial propriety.**

### **Procedure for grant of high technology reconnaissance-cum-exploration licence and prospecting licence**

**5.8 Clause 22(4) of the Bill reads as under:-**

**22(4)** Except in the case of applications for prospecting licences received in response to a notification under sub-section (1) of section 13 of this Act, the State Government shall grant the high technology reconnaissance-cum-exploration licence or prospecting licence in respect of the land to the first applicant eligible under this Act and the rules made thereunder and all other applicants be deemed to have been refused to the extent of the area granted to the first applicant: Provided that in case of prospecting licence, such applications shall also be subject to the provisions of sub-Clause (7).

### **Suggestions received by the Committee**

5.9 The Committee have received following suggestions on this clause:-

- (i) In respect of areas where State Government does not issue notification for inviting competitive offers is not under section 13(1),LAPL/PL should be granted to-
  - (a) In single application cases to the single applicant; and
  - (b) In multiple application cases, to an applicant who is judged the best in terms of well laid down objective criteria based on parameters such as size of investment in mineral based industry, profit/production sharing. To ensure transparency and objectivity, weightages to be assigned to different parameters for evaluation of offers may be prescribed in the Rules/Policy notification itself. for this purpose, sub-section (4) of section 22 should be modified as per the above. (Government of Odisha).
- (ii) Sub clause (4) of clause 22 of the Bill provides that state government shall grant high technology reconnaissance - cum - exploration licence "only to first applicant and to non else". Further, clause 17 of the Bill provides that a licence can be transferred for a consideration.

The aforesaid provision is undesirable because : -

- (a) it prefers "licence to the first in line" principle over the "competition bidding" route;
  - (b) the provision shall result into "trading in mineral licences"; and
  - (c) geological data available in the country is not completely in public domain and, therefore, the provision may be misused by those having access to the geological data in the technical offices of the central and the state governments.
- (iii) Whereas clause 13 seems to favour the auctioning system for mineral concessions, the provisions of clause 22 indicate a preference for a first come first serve system. There is not enough clarity on the situations under which a notification and auctioning system would be used versus a first come first served system. There is a lack of clarity about the nature of a high technology reconnaissance- cum-exploration license. It is not evident under what situations the high technology reconnaissance-cum-exploration license would be used versus a prospecting license.

### **Reply of the Ministry of Mines**

5.10 The Ministry of Mines do not subscribe to these apprehensions/objections and submitted the following explanations before the Committee:-

"Concern is not correct. HTREL is specifically designed for areas where mineralisation is not known to the Government. In such areas, calling for competitive bidding would be administratively impossible since mineral occurrence, in case of metallic minerals is heterogeneous and not homogenous as in case of fuel minerals. Further HTREL is designed to attract high technology and high investments in exploration for deep-seated deposits, which is severely lacking in the country. In all such cases where the investor has discovered the minerals through his efforts, the Ministry is of the opinion that he should be allowed the benefit from his entrepreneurial activities either by obtaining a mining lease or through transferring to another eligible mining company. However, the HTREL holder would be tightly regulated through stringent data reporting requirements, which would eventually lead to addition to the geoscience data bank of the country".

### **Recommendation of the Committee**

**5.11 It has been suggested to the Committee that Competitive bidding should also be favoured for grant of HTREL, even if HTREL needs to be prioritized since it is for deep seated non bulk minerals and is specifically designed for areas where mineralization is not known to the Government. Although, the Government have claimed that these deep seated minerals requires primary regional exploration, even then the Committee feel that bidding should be invited to gain maximum value for the minerals. The Committee are of the firm view that Government of Chhattisgarh has put forward a genuine suggestion and that should be considered by the Ministry i.e. to add maximum revenue to the State Exchequer. Further more there should not be any scope of nepotism and favouritism. The Committee are of the view that in no case under whatever circumstances the 'first in line principle' should be preferred over 'competitive bidding' and scope of generating more and more revenue for exchequer cannot be restricted for want of a certain way of discovery of minerals. The Committee, therefore, recommend that competitive bidding should be applicable to HTREL and first proviso to Clause 13(1) and Clause 22(4) be suitably amended.**

**Issue of notification where prospecting operations are to be undertaken by the Geological Survey of India, etc.**

**5.12 The relevant provision of Clause 23 of the Bill reads as under:-**

**23(2)** The agency undertaking prospecting operation shall make a report for every six months of its progress of reconnaissance or prospecting in such manner as may be prescribed by the Central Government, and submit the reconnaissance or prospecting report and the geological study, pre-feasibility study or feasibility study, as the case may be, to the State Government at the end of the reconnaissance or prospecting operations in such manner and such terms and conditions as may be prescribed by the Central Government.

**Suggestions received by the Committee**

5.13 Department of Atomic Energy has suggested that "Prospecting data of Atomic Minerals Directorate should be submitted internally to the Department of Atomic Energy, and not disclosed in the public domain. Also that Mining Plan for beach sand minerals shall be approved by the IBM only after obtaining a NOC from the Atomic Minerals Directorate.

**Reply of the Ministry of Mines**

5.14 The Ministry of Mines have agreed to this suggestion and informed the Committee that this would be provided for in the sub-legislation on Mining Plan.

**Recommendation of the Committee**

**5.15 As Ministry of Mines have agreed to the suggestion of Department of Atomic Energy regarding submission of Prospecting data of Atomic Minerals Directorate internally to the Department of Atomic Energy, and not disclosed in the public domain and Mining Plan for beach sand minerals shall be approved by the IBM only after obtaining a NOC from the Atomic Minerals Directorate, the Committee expect that the Government will take care of the same at sub-legislation stage.**

## CHAPTER-VI

### MINING LEASE

#### Conditions of a mining lease

#### **Clause 24 of the Bill reads as under:-**

**24(1)** Every mining lease for a major mineral or a minor mineral shall be subject to the fulfillment of the following conditions, namely:—

(a) all mining operations shall be in accordance with a mining plan prepared in accordance with the provisions of this Act or the rules made thereunder;

(b) the lessee shall report to the State Government, the discovery of any mineral in the leased area not specified in the lease for which rights vest in the Government, within a period of sixty days of such discovery;

(c) if any mineral not specified in the lease is discovered in the leased area, the lessee shall not mine and dispose of such mineral unless such mineral is included in the lease or a separate lease is obtained therefor;

(d) the lessee shall pay to the State Government in case of land in which minerals vest in the State Government and to the person in whom the minerals vest in other cases, for every year or part thereof, except the first year of the lease, yearly dead rent at the rate specified in the Third Schedule of the Act subject to the provisions of section 42 of this Act:

Provided that if the lease relates to the working of more than one mineral in the same area, the State Government or the person in whom the minerals vest in other cases, as the case may be, shall not charge separate dead rent in respect of each mineral :

Provided further that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever is higher in amount but not both;

(e) the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent and water rate at such rate, as may be prescribed by the State Government;

(f) the lessee shall furnish the following in such manner and in such period as may be prescribed by the Central Government, namely:—

(i) all geological, geochemical and geophysical and hydrological data relating to the leased area collected by him during the course of operations to the Indian Bureau of Mines and the State Directorate and in case of coal minerals to the Central Government;

(ii) all information pertaining to investigations of atomic minerals collected by him during the course of mining operations to the Atomic Minerals Directorate;

*Explanation.*—For the purpose of this clause, mining operations shall include the erection of machinery, laying of a tramway or construction of a road in connection with the working of the mine.



### **Suggestions received by the Committee**

6.2 The Committee have received various suggestions on clause 24. Some of these are as below:-

- (i) A cap should be provided on the Surface Rent. it should be similar to earlier Surface rent rules, which was governed by Clause 27(1)(d) of Mineral Concession Rules, 1960 which read as under, the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent and water rate, not exceeding the land revenue, water and cases assessable on the land, as may be specified by the State Government in the lease.
- (ii) The security deposit of rupee one lakh per hectare is very exorbitant and not affordable by the lessee. It is suggested that it should be rupee 15000 per hectare for broken up area i.e. area under mining activities and that too deposited with the lifetime of the mining lease. This should be made rational in terms of the classification of minerals as shown in third schedule of the proposed act as the low value minerals deserve financial concessions matters. Further, as laid down in the proviso Small Deposits should be clarified specifically in this act just to avoid any further ambiguity.
- (iii) The deposit to be paid in case of minor minerals and the same has to be fixed by the State Government. It was suggested that the ornamental natural stones may be exempted from payment of such deposit.
- (iv) Draft Act Provision on Surface rent, without a cap, may lead to fixing of surface rent at abnormal rates thereby significantly increasing mining cost. Therefore, a cap should be provided on the Surface Rent.
- (v) Clause 24(1)(f)(i) to be amended as "All geological, geochemical and geophysical and hydrological data which inter alia include depth, yield and quality of ground water based on drinking water sources in the core and buffer zone, related to the leased area collected by him during the course of operations to the Indian Bureau of Mines and the State Directorate and in case of coal minerals to the Central Government."
- (vi) In clause 24 relating to conditions of a mining lease, a condition may be incorporated that the lease deed will be executed after the environment clearance, forestry clearance and wildlife clearance as applicable have been obtained by the prospective lessee after grant of letter intent.

### **Reply of the Ministry of Mines**

6.3 In response, the Ministry of Mines have submitted the following:-

- (i) On the above suggestions, the Ministry have informed the committee that the hydrological data collected will be made available with the concerned authorities. However, it is difficult to measure the yield and quality of

ground water as the IBM and State Directorate of Mining will not be in a position to assess the same.

- (ii) As regards suggestion of the Ministry of Environment and Forest The Ministry of Mines in their submission to the Committee informed that while a mining activity is subject to compliance of all statutory provisions of the country, even if not stated specifically in the draft MMDR Bill, 2011, the proposal may be acceptable to the Ministry if it affords, clarity. This is an existing practice as per the present MMDR Act, 1957 also.

### **Recommendation of the Committee**

**6.4 The Committee do not accept suggestions of the stakeholders for putting a cap on surface rent in view of low rates of land revenue which is altogether impractical for the purpose of affixing surface rent.**

**6.5 The suggestion received by the Committee for having affordable security deposit for mining activities in small deposits are worth considering and would like the Ministry to prescribe separate security deposit for small mining leases. At the same time, for the sake of clarity small deposits be clarified.**

**6.6 The Committee suggest the Ministry of Mines to find out ways to implement the suggestion of Ministry of Drinking Water and Sanitation in view of the importance of water data for welfare activities and life-support of local populace.**

**6.7 The words "construction of road" appearing in 'Explanation' be substituted by "infrastructure development including construction of road".**

### **Mining operations to be in accordance with mining plan**

**6.8 Clause 26(6) of the Bill reads as under:-**

**26 (6)** The mining plan for major minerals shall, except in case of coal minerals and atomic minerals, be approved by officers of the Indian Bureau of Mines, authorised by general orders in this behalf by the Controller General, and for minor minerals the plan shall be approved by officers of the State Directorate authorised in this behalf, by the general order of the State Government:

Provided that the Central Government may, on being satisfied that the State Directorate possesses the necessary technical and management capability as may be prescribed, empower the State Directorate to grant approvals for such major minerals and in such circumstances as may be specified in the notification:

Provided further that in case the Central Government, at any time, is of the opinion that the State Directorate does not possess the requisite technical and management capability, it may suspend or revoke the power granted and may direct it to be exercised by officers of the Indian Bureau of Mines in accordance with the provisions of this sub-section.

### **Suggestions received by the Committee**

6.9 The Department of Atomic Energy has suggested the Committee that "Prospecting data of Atomic Minerals Directorate should be submitted internally to the Department of Atomic Energy, and not disclosed in the public domain". The Department further suggested that "Mining Plan for beach sand minerals shall be approved by the IBM only after obtaining a NOC from the Atomic Minerals Directorate".

### **Reply of the Ministry of Mines**

6.10 The Ministry of Mines have accepted the above suggestion of the Department of Atomic Energy and informed the Committee that this provision would be provided for in the sub-legislation on Mining Plan.

### **Recommendation of the Committee**

**6.11 The Committee would like the Ministry of Mines to incorporate the suggestion of Department of Atomic Energy as agreed to by them.**

### **Premature termination of lease**

**6.12 Clause 31 of the Bill reads as under:-**

**31(1)** Where the State Government is of the opinion that it is in the public interest or in the interest of public safety to do so, it may for reasons to be recorded in writing make an order of premature termination of the mining lease in case the minerals vest in the Government, and issue a direction to this effect to the person in whom the minerals vest in other cases:

Provided that no premature termination of a mining lease shall be made without giving the lessee a reasonable opportunity of being heard.

(2) In every case of premature termination of a lease, made under sub-section (1), the State Government shall, having regard to the nature of the loss caused to the lessee, compensate the lessee in such manner as may be prescribed by the Central Government.

(3) A person aggrieved by an order under sub-section (1) or sub-section (2) may apply to the National Mining Tribunal in case of major minerals and the State Mining

Tribunal in case of minor minerals, for revision, modification or cancellation of such order, and the National Mining Tribunal or the State Mining Tribunal, as the case may be, may pass such order as may be appropriate.

### **Suggestion received by the Committee**

6.13 The Committee have received the following suggestions:-

- (i) Clause 31(1) - Considering that a mining lease for coal mineral is approved and granted by the Central Government, it is suggested that any premature termination of the mining lease should also be with the prior approval of the Central Government and not solely based on the opinion of the State Government.
- (ii) Clause 31(2) - It is suggested that apart from providing compensation to the lease holder for such early termination, the government should consider such lease holder for alternate mining leases available with the government and endeavor to provide requisite support or assistance to the lease holder to ensure that an alternate mining lease is granted to the lease holder. Also, a mechanism should be incorporated in the Bill which sets out the minimum compensation that should be payable to the lease holder for such early termination of the mining lease. For example, a compensation which should be equivalent to the cost incurred by the lease holder for mining operations and initial construction of the power plant.

### **Reply of the Ministry of Mines**

6.14 The Ministry of Mines have responded to these objections with the following explanations:-

- (i) Clause 31(1) - These are provisions for exercise in rarest of rare situations in public interest and public safety. Such a decision can be challenged in the National Mining Tribunal or any such Tribunal set up by Central Government for coal minerals for relief. In all such cases compensation for such premature termination safeguards loss of opportunity to the lease holder.
- (ii) Clause 31(2) - These are provisions for exercise in rarest of rare situations in public interest and public safety, and compensation would be sufficient.

### **Recommendation of the Committee**

**6.15 Since the mining lease for coal mineral is approved and granted by the Central Government, the Committee observe that the premature termination of lease should also be made with the approval of the Central Government,. The Committee would like the Government to amend the Clause 31 accordingly.**

**6.16 The Committee feel that the suggestion of some of the stakeholders that apart from providing compensation to the lease holder for early termination in public interest and public safety, the lease holder should be given alternative mining lease is not acceptable because without participating in any bidding process they will get another mines. No one has any vested right to get coal mine.**

### **Mine Closure Plan**

**6.17 Clause 32(5) of the Bill reads as under:-**

The Indian Bureau of Mines or the Coal Controller or the Atomic Mineral Directorate, or the State Directorate as the case may be shall, after consulting the concerned Panchayats convey its approval or disapproval to the Progressive Mine Closure Plan within a period of ninety days from its receipt:

Provided that in case the approval or disapproval is not communicated within the said period, the Progressive Mine Closure Plan shall be deemed to have been approved on a provisional basis till such approval or disapproval is conveyed.

### **Suggestion received by the Committee**

6.18 The Committee have received the following suggestions:-

- (i) It is appropriate if Mine Closure Plan and Final Mine Closure Plan form part of the Mining Plan. How do the Panchayat be a part of process for deciding closure of mines as such institutions are not expected to possess the required expertise?
- (ii) The Ministry of Coal has suggested in this regard that in case of coal minerals the Mine Closer Plan/Progressive Mine Closure Plan is approved by the Central Government and not Coal Controller as mentioned in Sub-Clause 4&5. Accordingly the words "Coal Controller" may be replaced with "Central Government.

### **Reply of the Ministry of Mines**

6.19 The Ministry of Mines responded to the above suggestions as under:-

- (i) The objective behind consultation with Panchayat is better local area development as these bodies also plan development and duplicity may be avoided and transparency is to be maintained.
- (ii) The Ministry of Mines accepting the above contention have submitted before the Committee that the words "Coal Controller" in the said Clause of the Draft Bill may be considered for amendment to read as "Central Government or any authority notified by Central Government".

### **Recommendation of the Committee**

**6.20 The Committee agree with the objective stated by the Ministry of Mines for consultation with panchayat to ensure developments of the local area and to maintain transparency in the work carried out in the area.**

**6.21 The Committee considering the suggestions and its acceptance by Ministry of Mines recommend that the words "Coal Controller" in line 3 and line 14 in page 33 of draft Bill may be considered for amendment by the Government and it should be read as 'Central Government or any Authority notified by Central Government.'**

### **Final Mine Closure Plan**

**6.22 Clause 32 (8) and 32(10) of the Bill read as under:-**

Clause 32(8): Without prejudice to the generality of this section, the Final Mine Closure Plan shall be based on the land use planned for the lease area after its closure, and shall include measures to reduce hazards, improve productivity and ensure that it supports the needs of the host population:

Provided that the land use planned for the mining lease area after the closure of mine shall be decided in consultation with the Panchayats having jurisdiction, in such manner as may be prescribed by the Central Government.

Clause 32(10): The Final Mine Closure Plan for the last five years period of the lease shall be approved with such modification as may be specified by the authority approving the Progressive Mine Closure Plan after consultation with the Panchayat concerned, within a period of one year:

Provided that in the case where the lease is extended under the provisions of subsection (1) of section 8 of the Act, the lessee shall submit a Progressive Mine Closure Plan for the next five years in accordance with the provisions of this Act along with a Final Mine Closure Plan in accordance with the provisions of this section and the last five years shall be reckoned with reference to the extended period.

### **Suggestions received by the Committee**

6.23 The Ministry of Environment and Forest have suggested the Committee that public hearing in the penultimate year of the mine should be included as part of the final mine closure process in order to ensure that all loose ends are tied up. This may be suitably included in clause 32 of the draft Bill.

### **Reply of the Ministry of Mines**

6.24 The Ministry of Mines informed Committee that "This will be done as per Final Mine Closure Plan which would be available in public domain in prominent places like Panchayat. Further, the sub-legislation would provide for third party audit also which would adequately address this issue".

### **Recommendation of the Committee**

**6.25 The Committee are satisfied with the clarification given by the Ministry of Mines that final mine closure plan would be available in public domain in prominent places like Panchayat and the sub-legislation would provide for third party audit also which would adequately address this issue and expect that the issue raised by the Ministry of Environment and Forest for public hearing in the penultimate year will be well addressed by the Ministry of Mines.**

**6.26 The Panchayats Extensions to Scheduled Areas Act 1996 (PESA) envisages consultation with Gram Sabhas in schedule 5 areas so as to protect the interest of tribals. The Committee desire that due note of provisions of PESA be taken during Final Mine Closure Plan.**

**6.27 A new proviso may be added to ensure that the leasee shall cause to publish the progressive mine closure and final mine closure in the vernacular / local print media of mass circulation in the leased area of operation and also displayed in the website of the Govt. so as to ensure wider dissemination of information to all concerned.**

### **Mineral concessions to be in form of a registered deed.**

#### **6.28 Clause 35 of Bill reads as under:-**

A mineral concession granted in accordance with the provisions of section 34 shall be in the form of a registered deed executed by the parties on such terms and conditions as may be agreed, not inconsistent with the provisions of this Act or the rules made thereunder, and an authenticated copy of the deed shall be deposited by the person granted the mineral concession with the State Government and the Indian Bureau of Mines before commencing operations:

Provided that notwithstanding anything contained in such deed to the contrary, it shall be lawful for the State Government to issue any direction to the leaseholder or to the person in whom the minerals vest, in accordance with the provisions of this Act.

### **Suggestions received by the Committee**

6.29 During evidence on 23.07.2012, as regards consent of pattedars and owners under Clause 34, a representative of State Government of Andhra Pradesh suggested that because small pattedars are not conversant with the norms of agreement or the registered deed, a better system be evolved whereby interest in the mining activity should be sustained on a long term basis and not for a consideration.

### **Recommendation of the Committee**

**6.30 A representative from the Government of Andhra Pradesh brought to the notice of the Committee that the applicants for mineral concessions tend to approach "Pattedar" offering some money and obtain their consents, taking advantage of their lack of understanding and thereafter deed registered. It has been suggested that a developer like concept needs to be evolved so as to sustain interest of person in mining. on long term basis. The Committee see merit in this and suggest format of agreement or registered deed ought to specify such details so as to sustain long term interest rather than one time consideration. The Committee desire that the relevant clause be amended suitably.**



## CHAPTER-VII

### RESERVATION

#### Reservation of areas for conservation of mineral resources

##### **Clause 37 of the Bill reads as under:-**

**37 (1)** The State Government with the prior approval of the Central Government, or the Central Government after consultation with the State Government, may reserve for purposes of mineral conservation any area not already held under a high technology reconnaissance-cum-exploration license, a prospecting licence or mining lease, and shall notify the reservation specifying the reasons and the period of reservation shall be for a period of not less than ten years:

Provided that the period may be extended from time to time in the public interest, for such period as may be notified in the same manner in which it was reserved.

**37 (2)** No application for mineral concession shall be entertained in respect of an area reserved under sub-section (1) and any such application is deemed to have never been made.

**37 (3)** An area reserved for purposes of mineral conservation shall not be used for such purposes during the period of the reservation that is contrary to the object of such reservation.

#### Suggestions received by the Committee

7.2 The Committee have received the following suggestions on the provisions of the above Clause:-

(i) The Ministry of Steel has raised the issue of reservation of mining areas for Government Companies to be continued as is in practice vide Section 17A(1A) of existing MMDR Act, 1957.

(ii) Department of Atomic Energy has urged the Committee that after clause 37, the following clause may be added :

Provision of reservation of area for mining by PSUs may be prescribed in accordance with Section 17A, 17A(1A) and 17A(2) of MMDR Act, 1957.

(iii) To a query regarding the participation in the auction by PSUs, the Committee have been informed by a representative of the Ministry of Steel during evidence as under:-

"No doubt we can participate in the auction. If you see the Hoda Committee Report which had gone into it in great detail, they have also recommended in Recommendation No.7.2.5 wherein it is stated: "That the steel making capacity already in existence on July 1, 2006, which do not have captive mines may be given assured allocation of adequate Iron ore reserves".

(iv) The witness further added:

"The point is if one State is insisting that the capacity should be in my State and if a company, like RINL is located in some other State, from where it will get the entire raw material? Basically it may slow down the Government owned RINL expansion plans, if Orissa Government ask the steel maker to alter its application from mining, leases and prospective licensing with some value addition plans for the State. If you give power to the States, States will demand that you set up the capacity in the State. India is one country we really cannot have this break up because whether we like it or not, the plant is there. Plant has been set up in Andhra Pradesh. It is an existing plant.

### **Reply of the Ministry of Mines**

7.3 The Ministry of Mines responded to the above suggestions as under:-

- (i) The Ministry of Mines have declined the demand and informed the Committee that the reservation provisions in the present MMDR Act, were considered in detail by the Hoda Committee, and held that these provisions run counter to the spirit of level playing field, which is essential if private investment, especially FDI, is to be attracted to country's mining sector.
- (ii) The Ministry of Mines has negated the suggestion citing various reasons including HODA Committee Report and the LPG Principle of "Perform or Go" and level playing field between public and private sectors. The Ministry of Mines have further clarified that though reservation provisions run counter to policies of level playing field and adequate provision has been provided in the mechanism for giving techno-economic weightage to the PSUs in the selection process in sub-clause(3) and sub-clause(6) of clause 13 of the draft Bill. Continuation of reservation of areas under the MMDR Act, 1957, for 10 years is envisaged in clause 38.

### **Recommendation of the Committee**

**7.4 The Committee note that Clause 17A(1A) of the existing MMDR Act, 1957, provide for the reservation for Government companies in the grant of mineral concessions for prospecting or mining operations. The Committee, further, note that Clause 8(6) of MMDR Bill, 2011 provides a Government dispensation route without following the procedure of competitive bidding for allocatees of coal blocks to Government companies or corporations for mining lease for coal minerals. Clause 37 and 38 of MMDR Bill also provide reservation of areas for the purpose of mineral**

**conservation. The Ministry of Steel have forcefully submitted before the Committee that the reservation in the grant of mineral concessions for prospecting and mining operations for Central Government as well as State Government PSUs should be continued, specially in case of strategic minerals like iron ore. Keeping in view the pivotal role being played by Central as well as State PSUs in the socio-economic development of the country, the Committee are of the view that the reservation for Government companies in the grant of mineral concessions for prospecting or mining operations as provided in the existing MMDR Act, 1957 should continue and would like the Ministry of Mines to bring suitable amendment in the proposed bill to this effect.**

## CHAPTER VIII

### ROYALTIES, COMPENSATION AND CESS

#### **Royalty payable in respect of minerals. (Clause 41)**

##### **Clause 41 of the Bill reads as under:-**

**41(1)** The holder of a mining lease, whether granted before or after the commencement of this Act shall, notwithstanding anything in the instrument of lease or in any other law for the time being in force, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee or contractor from the leased area.

**41(2)** The rate of royalty in respect of major minerals shall be such as specified in the Second Schedule to this Act:

Provided that concessional rates of royalty may be specified for such cases where the lessee beneficiates the mineral at the ore stage.

#### **Suggestion received by the Committee**

8.2 State of West Bengal has strongly opposed the differential treatment meted out to the State in matters of royalty etc. The State of West Bengal has made following representation before the Committee:-

"The provisions relating to royalty, compensation and cess have been dealt with in Chapter VIII of the draft bill. The rates of royalty on major minerals have been specified in the Second Schedule to the draft bill. In the Draft bill rates of royalty proposed for different grades of coal produced in West Bengal is different from other States. While the rates of royalty for West Bengal are specific, the rates of other states are a combination of specific and ad valorem rates of royalty and much higher than the rates proposed for West Bengal. The State of West Bengal has been treated differently from other States since the year 1991 in the matter of rate of royalty to be charged on coal because the State of West Bengal imposes cess on coal. We have been, over the years, repeatedly urging the Government of India that this differential treatment in the matter of fixation of rates of royalty vis-à-vis those States, who do not impose cess, is unjustified, as the State Government is empowered under the Constitution to impose cess on coal. It may be mentioned here that royalty on coal and cess on coal bearing land are levied and collected on the basis of powers assigned to the States under two different entries, namely, Entry no. 49 – Taxes on lands and buildings and Entry No. 50 – Taxes on mineral rights, subject to any limitations imposed by Parliament by law relating to mineral development. The Parliament has not imposed any limitation on the taxing power on the mineral rights which the State can impose under entry No. 50 of the State

List. It needs to be mentioned that the issue of propriety of imposition of cess on coal bearing land by the Government of West Bengal has been settled by the Hon'ble Supreme Court in favour of the State in Civil Appeal Nos. 1532-33/93 in the matter of State of West Bengal-versus-Kesoram Industries and Others in January, 2004. While passing order, the Hon'ble Supreme Court observed that "The impugned cess is a tax on coal bearing and mineral bearing land. It can at the most be construed to be a tax on mineral rights. In earlier case, the impugned cess is covered by the Entries 49 and 50 of List II of the Constitution of India. The West Bengal Taxation Laws (Amendment) Act, 1992 must be and is held to be intravires the Constitution." Thus, in terms of the judgment of the Apex Court denying a particular State of royalty on coal at the revised rate of royalty which is different from other states on the grounds that the state is charging cess is a challenge to our constitutional authority to levy cess or tax on coal bearing lands.

Hence, we may strongly oppose this differential treatment in the matter of fixation of rate of royalty on coal for West Bengal vis-à-vis other coal producing States.

### **Reply of the Ministry of Mines**

8.3 The Ministry of Mines have not commented on this, saying that this issue pertains to the Ministry of Coal. However, according to the Ministry of Mines, the rates of royalty in respect of major minerals (excluding coal, lignite and sand for stowing) were last revised vide gazette notification number G.S.R. 574(E) dated 13.8.2009. The rates of royalty in respect of Coal including Lignite were revised vide notification number G.S.R. 349 (E), dated the 10th May, 2012 by the Ministry of Coal are as under:-

Royalty for Coal (including Lignite)

A. Coal produced in all the States and Union territories except the State of West Bengal.

(1) Royalty on Coal:

The rate of royalty on coal shall be @ 14% (Fourteen percent) ad-valorem on price of coal, as reflected in the invoice, excluding taxes, levies and other charges.

(2) Royalty on Lignite

The rate of royalty on lignite shall be @ 6% (Six percent) ad-valorem on transfer price of lignite, as ratified by the Central Electricity Regulatory Commission (CERC) and for lignite sold to other consumers, the royalty shall be @ 6% (Six percent) ad valorem on the price of lignite as reflected in the invoice, excluding taxes, levies and other charges.

(3) Royalty on coal and lignite produced from captive mines:

For calculating royalty on coal and lignite produced from captive mines, the price of coal and lignite shall mean the basic pithead price of Run of Mine (ROM) coal and lignite, as notified by the Coal India Ltd./Singareni Collieries Company Ltd./ Neyveli Lignite Corporation, for similar Gross Calorific Value (GCV) of coal or lignite for the mines, nearest to that captive mine;

Provided that for the coal and lignite produced from the coal and lignite blocks, allocated under the Government dispensation route for commercial use, the respective ad-valorem royalty shall be applicable on the price notified by the respective State Governments.

(4) Adjustment of royalty against levying of cess:

For the States other than West Bengal, for the levy of cess or other taxes specific to coal bearing lands, the royalty allowed shall be adjusted for the local cesses or such taxes, so as to limit the overall revenue yield.

B. Coal produced in the State of West Bengal:

Group	Quality of Coal	Royalty on coal in Rs. per tonne
I	Steel Gr-I	7.00
	Steel Gr.-II	
	Washery-I	
	Direct Feed	
II	Washery-II	6.50
	Washery-III	
	Semi Coking Gr.-I	
	Semi Coking Gr.-II	
	Non-Coking Coal having GCV(Kcal/kg) range of 6701 and above	
	Non-Coking Coal having GCV(Kcal/kg) range of 6401-6700	
	Non-Coking Coal having GCV(Kcal/kg) range of 6101-6400	
III	Washery-IV	5.50
	Non-Coking Coal having GCV(Kcal/kg) range of 5801-6100	
	Non-Coking Coal having GCV(Kcal/kg) range of 5501-5800	
	Non-Coking Coal having GCV(Kcal/kg) range of 5201-5500	
IV	Non-Coking Coal having GCV(Kcal/kg) range of 4901-5200	4.30
	Non-Coking Coal having GCV(Kcal/kg) range of 4601-4900	
	Non-Coking Coal having GCV(Kcal/kg) range of 4301-4600	
V	Non-Coking Coal having GCV(Kcal/kg) range of 4001-4300	2.50
	Non-Coking Coal having GCV(Kcal/kg) range of 3701-4000	
	Non-Coking Coal having GCV(Kcal/kg) range of 3401-3700	
	Non-Coking Coal having GCV(Kcal/kg) range of 3101-3400	
	Non-Coking Coal having GCV=<3100	

**Recommendation of the Committee**

**8.4 The Committee find that the rate of royalty proposed for different Grades of coal produced in West Bengal is different from other States. The Committee recommend that the royalty for different grades of**

**coal be same in all States including State of West Bengal in all fairness. The Committee recommend that the government should amend schedule-II of the proposed Bill by fixing rate of royalty same to all States.**

**Royalty payable in respect of minerals (Clause 41(3) & (4))**

**8.5 Clause 41(3) of the Bill reads as under:-**

41(3) The Central Government may, after taking into consideration the report and recommendations of the National Mining Regulatory Authority, by notification, amend the Second Schedule to enhance or reduce the rate specified therein with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any major mineral more than once during any period of three years.

**Suggestions received by the Committee**

8.6 The Ministry of Coal have suggested that for coal minerals a separate formulation as indicated below may be provided:

"In case of coal minerals, the Central Government may by notification amend the Second Schedule to enhance or reduce the rate specified therein with effect from such date as specified in the notification".

**Reply of the Ministry of Mines**

8.7 The Ministry of Mines have accepted the contention and submitted the following amendments in Clause 41:

- (i) In line 3 and 4 on page 36 the words "after taking into consideration the report and recommendations of the National Mining Regulatory Authority, may be deleted: and
- (ii) Provided further that in case of minerals other than coal, lignite and sand for stowing, the Central Government shall take into consideration the report and recommendations of the National Mining Regulatory Authority."

**Recommendation of the Committee**

**8.8 The Committee endorses the suggestion received by them and in view of the acceptance of the same by the Ministry of Mines recommend that suitable amendment be made in Clause 41(3).**

### **8.9 Clause 41(4) of the Bill reads as under:-**

41 (4) The State Government may, by notification from time to time, declare the rate at which royalty shall be payable in respect of minor minerals:  
Provided that the State Government shall not enhance the rate of royalty in respect of a minor mineral more than once during any period of three years.

#### **Suggestion received by the Committee**

8.10 One of the stakeholders has observed as under :-

The Section 41(4) of the proposed Act deals with payment of royalty which is to be fixed by the State Government.

The ornamental natural stone is an industrial raw material which has gained large economic importance over the years as the industry is export oriented. The current system of imposition of royalty is based on volume which has proved to be controversial and problematic.

Accordingly, they suggested that this may be dispensed with and ad valorem based royalty shall be adopted for the ornamental natural stone with uniformity throughout the country. We further suggest that the phrase "enhancement of royalty" may be replacement by "revision of royalty" once in three years.

#### **Reply of the Ministry of Mines**

8.11 The Ministry of Mines have termed this suggestion as unacceptable though without assigning any reasons.

#### **Recommendation of the Committee**

**8.12 The Committee, in view of the experience gained by the Industry in case of Mica and fluctuating prices of precious stones/metals and petrominerals recommend that government should consider the above proposal and ad valorem based royalty shall be adopted for the ornamental natural stone with uniformity throughout the country. The Committee further agree that the phrase "enhancement of royalty" may be replacement by "revision of royalty" once in three years.**



## **Dead rent (Clause 42(2) & (3))**

### **8.13 Clause 42(2) of the Bill reads as under:-**

**42(2)** Where the holder of such mining lease becomes liable under section 41 to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee or contractor from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is higher.

### **Suggestions received by the Committee**

8.14 Some of the stakeholders have raised the issue of use of word 'contractor' in following words:-

The sub section uses the phrases `agent, manager, employee or contractor' in context of removal of minerals from the leased area. The use of the word `contractor' seems to suggest that a lessee can transfer responsibility to contractors. This would open a Pandora's Box of issues if so allowed.

### **Reply of the Ministry of Mines**

8.15 The Ministry of Mines have informed the Committee that as per law, a lease holder can engage a contractor to undertake mining activities in his lease area, as provided in clause 18(1)(b) which provides that a lessee can `enter into or make any arrangement, contract, or understanding only after taking `previous' approval' of the State Government and in case of coal minerals, the previous approval in writing of the Central Government. The draft Bill provides that even if mineral is extracted by a contractor, royalty is required to be paid to the State Government.

### **Recommendation of the Committee**

**8.16 The Committee do not consider any amendment in the Clause relating to payment of dead rent in view of the response of the Ministry of Mines.**

### **8.17 Clause 42(3) of the Bill reads as under:-**

**42(3)** The dead rent in respect of mining leases for major minerals shall be as specified in the Third Schedule and the Central Government may, after taking into consideration the recommendations of the National Mining Regulatory Authority, by notification , amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining

lease and such enhancement or reduction take effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of three years.

### **Suggestions received by the Committee**

8.18 State Government of Rajasthan has observed as under:-

It is proposed to increase the rates of Dead Rent in the schedule attached with the draft Bill. The following structure of rates of dead rent for low value minerals is proposed:

- a. From second year of lease – Rs. 5000/-
- b. Third year and fourth year – Rs. 8000/-
- c. Fifth year onwards – Rs. 12000/-

### **Reply of the Ministry of Mines**

8.19 The rates of dead rent would be reviewed from time to time by the National Mining Regulatory Authority.

### **Recommendation of the Committee**

**8.20 The Committee note that rate of dead rent applicable to leases granted for low value minerals are Rs. 200/- from second year of lease, Rs. 500/- for third and fourth year and Rs. 1000/- for fifth year onwards. Also for medium value minerals, the rate is two times the rate specified above in case of lease granted, for high value minerals the rate is three times specified above in case of lease granted and in case of precious metal and stones the rate is four times the rate specified above in case of lease granted. The Committee do not consider any amendment in the Clause relating to payment of dead rent in view of the response of the Ministry of Mines as the rates of dead rent would be reviewed from time to time by the National Mining Regulatory Authority.**

**Payment of compensation to owner of surface, usufruct and traditional rights, damages, etc. (Clause 43(1) &(2)**

**8.21 Clause 43(1) of the Bill reads as under:-**

**43 (1)** In respect of land in which minerals vest in the Government, the holder of a non-exclusive reconnaissance licence, high technology reconnaissance cum-exploration licence or prospecting licence shall be liable to pay, to every person or family holding occupation or usufruct or traditional rights of the surface of the land over which the licence has been granted, such reasonable annual compensation as may be mutually agreed between the holder of such licence and such persons or in the absence of such agreement, which may be determined by an officer appointed, by notification, by the State Government in this behalf in such manner as may be prescribed by the State Government:

Provided that such amount shall be determined before commencement of operations and paid in advance each year, in such manner as may be prescribed by the State Government.

**Suggestions received by the Committee**

8.22 The Committee have received the following suggestions on the above Clause:-

(i) This provision mandates that annual compensation will be payable to persons having rights of occupation, usufruct or traditional rights, as may be agreed failing which by notification. There are some issues regarding this – the owner and users of the land will get compensation already under the Land Acquisition Act and this seems to be i. addition; compensation to those having usufruct or traditional rights is opening the gate too wide for a proponent to satisfy; having an annual mechanism of compensation is too burdensome and tedious to manage for the life of the license; this is in addition to 100% of royalty being paid for R&R to the DMF

(ii) One of the stakeholders has suggested as below :-

- Major mineral are being imposed with dual levy. It is already obligatory for National Mineral Fund and now being imposed for the State Mineral Fund as well.
- In addition to above funds, the compensation to the affected persons is also addressing the same objective.
- The cess proposed by Central Government need to be in line with the specific rate mentioned for State Mineral Fund.
- The National Mineral Fund needs to have a ceiling.
- There should not be several levies aiming for the same objective.

(iii) Ministry of Tribal Affairs while making observation on Section 43(1) & 43(7) has objected as :-

Reasonable annual compensation in respect of land over which the reconnaissance/prospecting licence has been granted and payment on account of damages, if any, to the land owner.

No provision has been made about the rehabilitation/compensation on account of mining lease. It appears, that this has been left to the rehabilitation and resettlement policy of the concerned State.

Rehabilitation and resettlement of displaced families/individuals due to mining projects was suggested to be a part of the MMDR Bill, keeping in view the nature of these projects which is purely commercial activity compared to the hydro/irrigation projects in public interest and benefitting the displaced families/individuals also, though, MoTA is not in favour of projects involving displacements of tribals. However, if the displacement becomes unavoidable and is effected after necessary procedural formalities, it should be the minimal.

No acquisition proceedings or displacement should be affected in Forested Areas unless and until the provisions of FRA is fully complied with. In the Scheduled Areas, all provisions of the PESA Act must be scrupulously followed and the consent of every habitation should be obtained before the acquisition or relocation of any tribal populace or forest dweller is undertaken.

In the event of displacement the tribals may not be dislocated before the rehabilitation arrangements are in place. They may have a definite say in deciding the value of the rehabilitation package. The package should be given preferably in the name of the lady of the house or jointly in the names of both spouses in the case of married couples.

This has not been provided for in the MMDR Bill (excepting payment to women head/eldest women in the house) and need to be incorporated suitably.

### **Replies of the Ministry of Mines**

8.23 Para-wise replies of the above suggestions are as under:-

- (i) The Ministry of Mines have informed the Committee that suitable mechanism to avoid duplicity of excess burden shall be worked out when the LARR Bill is in place.

- (ii) The Ministry of Mines did not accept the suggestions that major minerals are being imposed with dual duty and submitted before the Committee that both National Mineral Fund and State Mineral Funds have defined objectives to serve as described separately under clause 50(3) and 53(4). The National Mineral Fund is used mainly for promoting scientific management of mining, sustainable mining, investigations for conservation and scientific management of mineral resources. The state mineral fund is used to develop capacity of the state directorates to achieve the objective of this act. Thus they cannot be mixed together.
- (iii) Clause 43(1) is applicable only for exploration activities and in case of mining clause 43(2) has specific provisions for sharing of mining benefits. The provision in clause 43(7) provides for compensation in case of damages, due to exploration and mining activities.

### **Recommendation of the Committee**

**8.24 The Committee note that words 'reasonable compensation' which can be at mutually agreed terms, or in the absence of agreement by officer appointed by State Government(Clause 43(1)) lacks clarity and opens plethora of interpretations. Further, the title holder of land, not getting adequate compensation at prevailing market rates on account of his/her position, cannot be ruled out. The Committee, therefore, desire that an in-built formula, wherein parameters like market rate of land put to use, damage/loss to land/crop etc., factored in, in determining the mechanism of compensation, be worked out, for the benefit of holders of the land.**

**8.25 The Committee find the explanation of the Ministry of Mines that suitable mechanism to avoid duplicity of excess burden shall be worked out when the LARR Bill is in place as satisfactory and therefore recommend no change.**

**8.26 Clause 43(2) of the Bill reads as under:-**

43(2) The holder of a mining lease shall pay annually to the District Mineral Foundation, as referred to in section 56,—

(a) in case of major minerals (except coal and lignite) an amount equivalent to the royalty paid during the financial year;

(b) in case of coal and lignite, an amount equal to twenty-six per cent. of the profit to be called as profit sharing percentage (after deduction of tax paid) of the

immediately preceding financial year from mining related operations in respect of the lease; and

(c) in case of minor minerals, such amount as may be prescribed by the State Government with the concurrence of the National Mining Regulatory Authority referred to in section 58, within such time and in such manner as may be prescribed by the State Government for the benefit of persons or families affected by mining related operations:

Provided that in respect of coal minerals the Central Government may, after taking into consideration the report and recommendations of the National Mining Regulatory Authority, by notification, revise the profit sharing percentage, or specify such other method as may be prescribed for calculation of amount to be paid to the District Mineral Foundation:

Provided further that in case where the holder of a mining lease for major minerals has commenced mining related operations but has not commenced production, the holder of a mining lease shall pay into the District Mineral Foundation, an amount equal to the royalty payable on the production estimated in the first twelve months of the year as per the approved mining plan:

Provided also that in case the holder of a mining lease for major minerals,—

(a) was not in production for a part of a particular year, he shall be liable to pay the amount in the second proviso on pro-rata basis for the period during which he had not commenced any such operations;

(b) discontinues production for a part of a particular year, he shall be liable to pay the amount equal to the royalty on actual production of the corresponding period of the previous financial year.

### **Suggestions received by the Committee**

8.27 The Committee have received the following suggestions on clause 43(2):-

A. i) allot free shares equal to twenty-six per cent through the promoter's quota in case the holder of lease is a company, or , an annuity equal to twenty-six per cent of the profit(after deduction of tax paid) in case holder of lease is a person, on account of annual compensation; and

ii) provide employment and or other assistance in accordance with the Rehabilitation and Resettlement Policy of the State Government concerned;

iii) This provisions talks about sharing of 26 per cent of profit by coal and lignite, and 100 per cent royalty payment by all other minerals. It is too high. It will hit the industry very hard. By this, the taxation in the mining sector in the country goes up to about 69 per cent or 70 per cent. This is highest in the world whereas, it is 32 per cent; Russia, it is 35 per cent; Australia, it is about 39 per cent; and Brazil, it is 35 per cent. It should be same for both because otherwise the calculation of the profit will be a big problem. The people may doubt about the profit and loss account. This is very simple. Whatever is the percentage of royalty, whatever material goes out of the

mine, royalty is paid. So, what we are requesting is that it should be same for coal and non coal minerals.

- B. i) The section 43(2) of the proposed Act deals with the payment of compensation payable annually to the District Mineral Foundation.
- ii) It maybe kindly noted that the ornamental natural stone sector is heavily burdened with current rate of royalty and in some case the mines are closing as they are unable to bear the burden of royalty. In view of this any additional burden such as compensation to the District Mineral Foundation will bring the ornamental natural stone mining activity to a standstill and destroy the industry in the long run. Hence, this proposal may be dropped for the ornamental natural stones such as granite and marble.
- C. One of the stakeholders has proposed has urged the Committee that since the tax burden is maximum in India, following suggestions are made for contribution to the District Mineral Fund.
- a. one time up front payment – one time payment of 26 per cent of market value of the land at the time of ML
- b. Royalty based approach
- D. One of the stakeholders has suggested to reduce extraordinary burden of the taxes proposed in the draft MMDR Act which could be as high as 65% of the mining cost.
- E. One of the stakeholders has suggested to bring coal industries also on the same platform for payment of 100% royalty to the DMF.
- F. The Ministry of Coal has suggested the following amendments in Clause 43(2)(b) –  
"In case of coal and lignite, an amount equivalent to certain percentage of royalty paid during the financial year, as prescribed by the Central Government.  
Provided that the percentage shall not be increased more than once during any period of three years".

### **Reply of the Ministry of Mines**

8.28 Para-wise replies of the Ministry of Mines are as under:-

- A. The Government had considered the option of provisioning for allocation of 26% shares to the affected persons. However, the same was not found to be

administratively not feasible due to complexities involved in distribution of shares amongst the affected persons, and in calculation of profits considering the fact that Indian book-keeping still needs better transparent practices. Instead in order to facilitate a clear and easy method of transfer of mining benefits to the affected persons, the Government has proposed payment of annual amount by each lease holder to the District Mineral Foundation on the basis of royalty paid to the State Government, offering more transparency in monitoring the payments. With regard to developing a sense belongingness in the mining company. The draft Bill still provides that at least one share shall be allotted to every person affected by mining operations.

- B. Ministry of Mines have not accepted the observation/suggestion and submitted before the Committee that the purpose of a separate payment for every lease holder to pay an amount equivalent to royalty annually to the District Mineral Foundation is to ensure that mining benefits equally accrue to the local population as a stakeholder.
- C. The Ministry of Mines have informed the Committee in this regard that the Ministry of Coal have proposed to the Committee for allowing payment to District Mineral Foundation on basis of royalty.
- D. The Ministry of Mines informed the Committee that any issue of excess revenue burden on the minors shall be looked into by the NMRA.
- E. To which Ministry of Mines nodded its acceptance during Committee meeting with stakeholders.
- F. The Ministry of Mines have addressed to this suggestion with slight modification and urged the Committee that the following amendments in Clause 43(2)(b) may be considered:-  
"in case of coal and lignite an amount equivalent to royalty paid during the financial year".

### **Recommendation of the Committee**

**8.29 The Committee after considering the claims of the stakeholders and comments of Ministry of Mines thereon, do not find it suitable to do away with the District Mineral Foundation contributions and thus recommend no change. The Committee, however, recommend that in case of coal and lignite, the mechanism for payment to District Mineral Foundation on the**



**basis of royalty paid during the financial year may be worked out instead of an amount equal to 26% of the profit and amendment be made in the relevant Clause as proposed by the Ministry of Coal.**

**Allotment of non-transferable share (Clause 43 (3) & (5))**

**8.30 Clause 43(3) of the Bill reads as under:-**

Notwithstanding anything in sub-section (2), and the Companies Act, 1956, or any other law for the time being in force, where the holder of mining lease is a company, it shall also allot at least one share at par for consideration other than cash to each person of the family affected by mining related operations of the company and such shares shall be non transferable.

**Suggestions received by the Committee**

8.31 The Committee have received the following suggestions as under:-

- (i) It relates to paying of compensation by way of non-transferrable shares in case licensee is a company. The Ministry of Panchayati Raj have proposed that the word 'but inheritable' should be added before the term 'non-transferrable'.
- (ii) During evidence, the representative of Department of Atomic Energy had suggested that in case of atomic minerals the share holders should be restricted to only get financial benefits and not be entitled to know all the details of the working of the company.
- (iii) One of the stakeholders has submitted before the Committee that as non-transferable share to each family does not have economic value at all, it should be made transferable.
- (iv) Another stakeholder has suggested that instead of giving one share per person if their holdings are larger than number of shares should increased for such families and benefits be given preferably to woman member of the family either it is the compensation or the employment.
- (v) A formula whereby shares will be allotted to each person of the affected family on proportionate basis can be worked out. Shares should be transferable after efflux on a reasonable time.

**Reply of the Ministry of Mines**

8.32 The Ministry of Mines responded to the above suggestions as under:-

- (i) The Ministry of Mines have accepted the suggestion at (i) above and informed the Committee that the same would be suggested to the legislative department of the Ministry.
- (ii) During evidence, the Ministry of Mines had agreed to the suggestion at (ii) above.
- (iii) The Ministry would accept any such recommendations. The objective of issue of these shares is to allow affected persons a stake in the mining companies operations, including in AGM. Allowing transfer of shares would only dilute an important stakeholder's voice in mining operations.

### **Recommendation of the Committee**

**8.33 In view of the acceptance of the suggestions of Ministry of Panchayati Raj for adding the words `but inheritable' before the term non-transferrable by Ministry of Mines , the Committee recommend suitable changes to be made in Clause 43(3).**

**8.34 The Committee observe that allocation of at least one share at par to each person of a family is not based on principle of equity and desire that persons loosing more land ought to be compensated adequately more as compared to those loosing less land. The number of shares allotted to each person ought to be linked with the quantum of land put to use for mining operation. The Committee, therefore, recommend that a formula whereby shares will be allotted to each person of the affected family on proportionate basis may be worked out**

**8.35 Further as non-transferable shares does not carry any economic value, the holder of such shares ought to be at a disadvantage condition economically. The Committee apprehend that dilution of shares by mining companies in the aftermath of allotment process cannot be ruled out. The Committee feel that shares should be transferable and blanket ban to transfer share may not be in the interest of land holder / oustees and their financial interests need to be protected. The Committee, therefore, recommend that as such a proviso may be added whereby the Government**

**may by notification permit transfer of share allotted to person of family affected by mining operation from the period as notified.**

**8.36 As regards the suggestion of the Department of Atomic Energy, the Committee note that at least one share at par for consideration other than cash will be allotted to each person of the family affected by mining related operation as provided in Clause 43(3). The representative of the Department of Atomic Energy during the course of evidence has informed the Committee that stakeholders are entitled to know the details of the working of the company as per the provisions of the Company Act. The Department of Atomic Energy have, therefore, suggested that the affected persons of mining operation who have been allotted share should be restricted to only financial benefits since the details have never been published by the Department. The Committee would like the Ministry of Mines to suitably address the concern of the Department of Atomic Energy by amending the relevant clause.**

**8.37 Clause 43(5) of the Bill reads as under:-**

Notwithstanding anything in sub-section (2) and sub-section (3), the holder of a mining lease shall, in respect of any person or family holding occupation or usufruct or traditional rights of the surface of the land over which the lease has been granted, be liable to provide employment or other assistance in accordance with the rehabilitation and resettlement policy of the State Government concerned

#### **Suggestions received by the Committee**

8.38 The Committee have been suggested that clause 43(5) mandates that after termination of lease, the mine holder shall determine damages and compensation and pay the same to rights holders. This creates yet another open ended possibility of paying uncertain amounts. It would be better to have a situation where you can pay in advance all amounts.

#### **Reply of the Ministry of Mines**

8.39 The Ministry of Mines have explained the Committee that R&R policy of State Governments are still applicable on mining projects where land is acquired. However, suitable mechanism to avoid duplicity or excess burden shall be worked out when the LARR Bill is in place.

### **Recommendation of the Committee**

**8.40 Taking note of the fact that R&R policy of State Governments are still applicable on mining projects where land is acquired, the Committee expect that suitable mechanism to avoid duplicity or excess burden shall be worked out when the LARR Bill is in place.**

### **Compensation payment by the Licencee**

**8.41 Clause 43(7) of the Bill regarding compensation is as under:-**

43(7) After the termination of a non-exclusive reconnaissance licence, high technology reconnaissance-cum-exploration licence, prospecting licence or a mining lease, the State Government shall after giving the person or family holding occupation or usufruct or traditional rights of the surface of the land an opportunity of being heard, assess the damage, if any, done to the land by the reconnaissance or prospecting or mining related operations and determine the amount of compensation payable by the licensee or the lessee, as the case may be, to the person or family holding occupation or usufruct or traditional rights of the surface of the land in such manner as may be prescribed by the State Government: Provided that in case the licensee or lessee and the person or family holding occupation or usufruct or traditional rights mutually agree on the compensation, and communicate the same to an officer appointed by the State Government in this behalf, the State Government may, accordingly, determine the compensation.

### **Suggestions received by the Committee**

8.42 In their written submission before the Committee, one of the stakeholders has raised doubts over the compensation and damages provision as under:-

"This provision mandates that after termination of lease, the mine holder shall determine damages and compensation and pay the same to rights holders. This creates yet another open ended possibility of paying uncertain amounts. It would be better to have a situation where you can pay in advance all amounts."

### **Reply of the Ministry of Mines**

8.43 The Ministry of Mines have furnished their comments to the Committee as below:-

"Clause 43(7) should be read with section 32 wherein the various conditions and obligations for implementation of final Mine Closure Plan is stipulated. The expert comments / damage are generally based on mutually agreed."

### **Recommendation of the Committee**

**8.44 The Committee while partially agreeing with the stand of Ministry of Mines recommend that a `fair agreement' for compensation by way of essentially involving some State official of suitable rank, peoples representative and mass-meetings for disposal of such mutual agreements as envisaged in Clause 43(7) to eradicate any chance of coercion**

#### **Payment of compensation**

**8.45 Clause 43(10)(b),(c) and 43(11) of the Bill read as under:-**

Clause 43(10)(b) : The amount of monetary benefit may be determined by the State Government for each district where mining operations are being undertaken having regard to the nature and extent to which such person or family is affected by mining related operations and for improving the quality of life of the affected person or family, but shall be equal to an amount not less than the amount a family may be entitled under the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. The proviso to the said sub-clause provides that till the amount of monetary benefit shall be equal to an amount that such as a family may be entitled under the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

43(10)(c) : The State Government shall ensure that monetary benefits are distributed to the persons or families holding occupational or usufruct or traditional rights in areas affected by mining related operations through a mechanism prescribed by the State Government. The proviso to the said item provides that in case of a family which is not headed by a woman, the State Government shall ensure that half the amount of monetary benefits distributed to families in areas affected by mining operations shall accrue to the eldest woman member of the family.

Monetary benefits are provided under the Bill order to improve the quality of life of affected persons, whereas MNREGA provides a safety net for people in rural areas. It is unclear why the quantum of entitlements under MNREGA is being used as a benchmark for monetary benefits for people affected by mining operations.

Clause 43(11): "Sub-clause (11) of this clause provides that in case of mining leases already granted on the date of commencement of this Act, the cut-off date for identification of persons or families affected by mining related operations shall be taken as first January nineteen hundred and ninety-seven. The explanation to the said sub-clause provides that (a) a "family" shall comprise of mother, father and their children, including any person wholly dependent on the head of the family, including any lineal ascendant or descendant of the head of the family or the spouse; and (b) a "family" may also be single member family."

### **Suggestions received by the Committee**

8.46 The Committee have received following suggestions:

(i) Clarity in wording of proviso to clause 43(10© to ensure that half the amount of monetary benefits distributable to any family as part of compensation should accrue to the eldest woman member of such family while the remainder will be distributed equally among the other members of such family.

(ii) One of the stakeholders has suggested that it is not desirable to provide retrospective effect to such payments and provision. Hence, the provision may be deleted.

### **Reply of the Ministry of Mines**

8.47 The Ministry of Mines responded to the above suggestions as under:-

(i) The Ministry of Mines have agreed to suggestion (i) above.

(ii) In this regard, in a written reply, the Ministry of Mines submitted the following:

"The cut-off date of 1.1.1996 is merely for identification of project affected families, and not for calculation of compensation due, and the compensation payments will be prospective from the date the draft Bill is brought into force".

### **Recommendation of the Committee**

**8.48 The Committee desire that for the sake of clarity, the Government should ensure that half the amount of monetary benefits distributable to any family as part of compensation should accrue to the eldest woman member of such family while the remaining be distributed equally among other members of such family.**

**8.49 The Committee are satisfied with the Ministry of Mines submission that the cut-off date of 1.1.1996 is merely for identification of project affected families, and not for calculation of compensation due, and the compensation payments will be prospective from the date the draft Bill is brought into force.**

## **Levy and collection of cess by Central Government**

### **8.50 Clause 44 of the Bill reads as under:-**

44 (1) The Central Government may, by notification, specify, that there shall be levied and collected a cess on major minerals for the purposes of this Act,—

(a) as a duty of customs, where the ore is exported;

(b) as a duty of excise, where the ore is sold or otherwise disposed to an enduser or to any other person who in turn sells it to an end-user, or is used by the owner of the mine in any end-use by himself, at such rate not exceeding two and one-half per cent. of the duty as may be specified in the notification by the Central Government:

Provided that the rate shall not be increased more than once during any period of five years.

44(2) Every cess leviable under sub-section (1) on major minerals shall be payable by the person by whom such major minerals are produced, and in the case of export, the cess shall be payable by the exporter.

44(3) The cess leviable under sub-section (1) on the major mineral shall be in addition to any cess or duty leviable on those items under any other law for the time being in force.

44(4) The provisions of the Central Excise Act, 1944 and the rules made thereunder and the provisions of the Customs Act, 1962 and the rules made thereunder, as the case may be, including those relating to refunds and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of cess leviable under this section and for this purpose, the provisions of the Central Excise Act, 1944 and of the Customs Act, 1962, as the case may be, shall have effect as if the aforesaid Acts provided for the levy of cess on major minerals.

44(5) Every person or company or firm or association of persons using or trading in or exporting or stocking major minerals shall register himself or itself with the Indian Bureau of Mines in such manner as may be prescribed by the Central Government:

Provided that in case of coal minerals, the administration of registration shall be done by the Central Government.

### **Suggestions received by the Committee**

8.51 The Committee have received the following suggestions from the various stakeholder:-

- (i) Clause 44(1): Customs and Excise - The provision entitles the Government to levy cess as a duty of excise if one is sold or disposed off to an end user. Since there is no manufacture involved, why should there be an imposition of excise.
- (ii) Clause 44(1) read with clause 45(1):- Imposing both Central and State Cess will put a needless burden on the mining industry. It would be appropriate to have a system of one singular levy i.e. Royalty on the mining industry.

### **Reply of the Ministry of Mines**

8.52 The Ministry of Mines have responded to these submissions in their written memoranda submitted to the Committee as below:-

- (i) The purpose of the cess to be levied by central Government as a duty of customs/excise, is for the National Mineral Fund, which in turn will carry out the activities as furnished under section 50(3). The final responsibility lies with the State Government. Engagement of specialized agency is simply a mechanism for the purpose of implementation of SDF. Enough flexibility is provided for the State Governments to choose suitable agencies for implementation. District Mineral Foundation (DMF) covers an entire district. While a lease may be spread over two different districts, a common DMF cannot be set up since the objective is to address district level development for local people. However, accounting of minerals raised in each district boundary, proportionate to the size of lease in each boundary, established by means of proper surveying, would be detailed in the sub-legislation.
- (ii) The basic objective of Central Cess and State Cess are clearly defined under section 50(3) and 53(4). Each of these funds appropriately incentivizes and regulates activities to support sustainable mining.

### **Recommendation of the Committee**

**8.53 The Committee appreciate the view of the Ministry of Mines and endorse the objective of the said Clause in view of the federal principles in the fiscal regime under the Constitution of India. The Committee thus recommend no change.**

#### **Levy and collection of cess by State Government.**

**8.54 Clause 45 of the Bill reads as under:-**

**45(1):**The State Government may, by notification specify, that there shall be levied and collected a cess on major minerals and minor minerals extracted at a rate not exceeding ten per cent. of the royalty in such manner as may be prescribed by the State Government:

Provided that the rate shall not be increased more than once during any period of five years.

**45(2):** The cess shall be paid by the person holding the mining lease for major minerals or minor minerals, as the case may be:

Provided that where the minerals vest in a person other than the Government, and the holder of the mining lease fails to pay the cess, the



person in whom the minerals vest shall, on demand, pay the amount of the cess."

### **Suggestions received by the Committee**

8.55 The suggestions received by the Committee are as under:-

In the draft Mines and Minerals (Development and Regulation) Bill, 2011, clause 45 provides for levy and collection of cess by the State Government. Under the said clause, the State Government may, by notification specify that there shall be levied and collected a cess on major minerals and minor minerals extracted at a rate not exceeding 10% of the royalty in such manner as may be prescribed by the State Government on the condition that the rate shall not be increased more than once during any period of five years. We may not have any objection to the provision. However, this power of the State Government to impose cess under the proposed Act should be in addition to the power of the State government to impose cess under Entries 49 and 50 of List II of the Seventh Schedule to the Constitution and should not in substation thereof.

Clause 45(1) of the present bill states "The State Government may, by notification specify, that there shall be levied and collected a cess on major minerals and minor minerals extracted at a rate not exceeding ten percent of the royalty..." Thus in the bill "major mineral" has been added. Imposition of such a ceiling infringes upon the constitutional right of the State Government."

### **Reply of the Ministry of Mines**

8.56 Under section 45(1) it is clearly stated the cess will be levied on the 'mineral extracted at a rate not exceeding ten per cent of the royalty. Levy of cess on land and building lies exclusively within the ambit of Entry 49 of List II of Seventh Schedule of Constitution of India, and this power is not being affected by the present legislation.

### **Recommendation of the Committee**

**8.57 The Committee feel that the proposed Bill is interfering with the right of imposing Cess by the State Government. Excepting coal mines and lignite, State Government is the owner of the mines. Therefore, free hands should be given to the State Government for imposing Cess. The Committee recommend that the State government may by notification specify the rate of Cess to be levied in case of major minerals and minor minerals excepting coal and lignite and minor mineral according to the State Governments wisdom and in case of coal and lignite at a rate not exceeding fifty percent by introducing appropriate legislation in States.**

## CHAPTER IX

### POWER TO ISSUE DIRECTIONS

#### **Power of Central Government to Issue Direction**

##### **Clause 46(3) of the Bill reads as under:-**

The State Government may with the previous approval of the Central Government frame a State Sustainable Development Framework not inconsistent with the National Sustainable Development Framework.

#### **Recommendation of the Committee**

**9.2 The words “the State Government with the previous approval of the Central Government” may be replaced by “the Central Government in consultation with the State Government” so as to maintain harmonious relations between State Government and Central Government.**

#### **Power of Central Government to issue directions in the interest of scientific mineral exploration and mining and sustainable development**

##### **9.3 Clause 46(5) of the Bill reads as under:-**

46(5) The Central Government may, from time to time specify the guidelines for scientific mining and mineral conservation within a Sustainable Development Framework and the State Directorate shall be responsible for implementation of the Sustainable Development Framework in the State:

Provided that the State Government may, with the previous approval of the Central Government, confer all or any of the functions of the State Directorate on any other specialised agency for the purpose of better implementing the Sustainable Development Framework.

#### **Suggestions received by the Committee**

9.4 Some of the stakeholders have sought the attention of the Committee on the fact that the provision entitles the Government to levy cess as a duty of excise if one is sold or disposed off to an end user. And questioned that since there is no manufacture involved, why should there be an imposition of excise?

### **Reply of the Ministry of Mines**

9.5 The Ministry of Mines have explained to the Committee that the final responsibility lies with the State Government. Engagement of specialized agency is simply a mechanism for the purpose of implementation of SDF. Enough flexibility is provided for the State Governments to choose suitable agencies for implementation.

### **Recommendation of the Committee**

**9.6 The Committee are satisfied with the explanation of the Ministry of Mines and suggest no change.**

### **Representation against directives**

**9.7 Clause 46(6) of the Bill reads as under:-**

The Central Government may issue general directions as may be required, consistent with the provisions of the Act to the State Governments or the National Authority referred to in section 58 or to any authority under the Central Government or the State Government, as the case may be, for the conservation of strategic mineral resources or any policy matter in the national interest and for the scientific and sustainable development and exploration of mineral resources and recycling of such resources to the extent practicable, and detection, prevention and prosecution of cases of illegal mining, and to frame rules for the purpose and all such directions shall be complied with to the extent possible.

### **Suggestion received by the Committee and Reply of the Ministry of Mines**

9.8 When asked about a new proviso may be added whereby in the event of a State Government finding difficulty to comply with the directions of the Central Government may apply for modification or rescinding of such direction and the Central Government may either modify or rescinding the directions to the extent possible, the Ministry of Mines have informed the Committee that The basic rationale of this clause is to ensure that there is no dilution in overriding matters of 'national interest', especially involving strategic interests.

### **Recommendation of the Committee**

**9.9 A new proviso may be added whereby in the event of a State Govt. finding difficulty in complying with the directions of the Central Government, the State Government may apply for modification or**

**rescinding of such direction and the Central Government may either modify or rescind the direction to the extent possible.**

**Power to authorize Geological Survey of India and Indian Bureau of Mines, Atomic Minerals Directorate, etc., to investigate and report.**

**9.10 Clause 48 of the Bill reads as under:-**

48(1) Where the Central Government is of the opinion that for the purpose of conservation of strategic mineral resources or for the scientific management, exploration and exploitation of mineral resources it is expedient to conduct a technical or scientific investigation with regard to any mineral or any land including lands in relation to which mineral concessions may have been granted, the Central Government may authorise the Geological Survey of India or the Indian Bureau of Mines or the Atomic Minerals Directorate or such other authority as it may specify in this behalf, to carry out such technical or scientific investigation as may be necessary, and to submit a report within such period as may be specified:  
Provided that no such authorisation shall be made in the case of any land in which mineral concession has been granted, except after consultation with the State Government where minerals vest in the State Government and with the person in whom the mineral vests in other cases.

**Suggestions received by the Committee**

9.11 In this regard, during evidence on 16th July, 2012, a representative of State Government of Jharkhand submitted before the Committee as under:-

"The Central Government has been given the power to undertake technical and scientific investigation for the purpose of conservation of strategic mineral resources. Our Government feels that similar provision should be there for the State Government also. It says that for the purpose of conservation of strategic mineral resources, it is expedient to conduct a technical or scientific investigation etc. The Central Government authorize the Geological Survey or other bodies to carry out such technical or scientific investigation. This power has been given only to the Central Government. The State Government may be given similar power to undertake technical and scientific investigation at its discretion. We feel that both the Central Government and the State Government should have the power to do that. It should not be with the Central Government only."

**Recommendation of the Committee**

**9.12 The Committee note that by virtue of Clause 48, the Central Government may authorize the Geological Survey of India or the Indian**

**Bureau of Mines or the Atomic Mineral Directorate or such other authorities, it may specify to carry out technical or scientific investigation so as to conserve strategic mineral resources. A representative from the State Government of Jharkhand during his deposition before the Committee desired that State Government Mineral Directorate too be authorized to undertake such works. The Committee find merit in their argument since State Governments are actively associated with the grant of mineral concessions on the land owned by them. The Committee, therefore, desire that State Directorates also be authorized to undertake such works. The clause may, therefore, appropriately**

**Power of Indian Bureau of Mines, Coal Controller, Atomic Minerals Directorate and State Directorate to issue certain directions and to seek information.**

### **9.13 Clause 49 of the Bill reads as under:-**

**49(1)** The Indian Bureau of Mines, the Coal Controller, the Atomic Minerals Directorate or the State Directorates or any officer authorised by the Central Government or the State Government, as the case may be, may enter and inspect a mine, and examine or direct the examination of any mineral deposit in any area under prospecting licence or mining lease and take samples therefrom at any time for the purposes of this Act.

**49(2)** If any mine or part thereof, which in the opinion of the Indian Bureau of Mines, the Coal Controller, the Atomic Minerals Directorate or the State Directorate, poses a grave and immediate threat to the conservation of mineral resources or to the environment, it may, by an order in writing to the owner, agent, mining engineer or manager, require him to take such measures as may be specified in the order and may prohibit, until the requirements as specified in the order are complied with to its satisfaction, the deployment of any person other than those required for compliance with the requirement of the order.

**49(3)** The Indian Bureau of Mines, the Coal Controller, the Atomic Minerals Directorate or the State Directorate, as the case may be, may by a general or specific order require the cores or specimens of rocks and minerals obtained from specified boreholes or shafts during prospecting or mining operation conducted under this Act, to be preserved for any specific period.

**49(4)** Every holder of a prospecting licence or a mining lease shall provide all reasonable facilities to persons authorised by the Indian Bureau of Mines, the Coal Controller, the Atomic Minerals Directorate and the State Directorate for the purpose of undertaking research or training in matters relating to mining or geology.

**49(5)** The holder of a non-exclusive reconnaissance licence, high technology exclusive cum reconnaissance exploration licence, prospecting license or mining lease, or his agent shall furnish such information regarding his reconnaissance or exploration or prospecting or mining operations or regarding the mine or any matter connected therewith as the Indian Bureau of Mines, the Coal Controller, the Atomic Minerals Directorate or the authorized officer of the Central Government or the State Government, as the case may be, may require by an order in writing and the information shall be furnished within such time and such period as may be specified in the aforesaid order.

### **Suggestions received by the Committee**

9.14 One of the stakeholders has made a submission regarding National Mineral Fund u/s 49(3) and submitted that if the state will spend only from the State Mineral Fund for minor minerals and larger funds like National Mineral Fund will go to activities having no link over local area, the condition of the areas having major minerals will deteriorate further. The CII further suggested that in line with the State Mineral Fund, the National Mineral Fund can also contribute to the development of the mineralized zones of major minerals and may be used for development projects as well.

### **Reply of the Ministry of Mines**

9.15 The Ministry of Mines are not inclined to accept the suggestions and explained to the Committee that both National Mineral Fund and State Mineral Funds have defined objectives to serve as described separately under clause 50(3) and 53(4). The National Mineral fund is used mainly for promoting scientific management of mining, sustainable mining, investigations for conservation and scientific management of mineral resources. The state mineral fund is used to develop capacity of the state directorates to achieve the objective of this act. Thus they cannot be mixed together.

### **Recommendation of the Committee**

**9.16 The Committee are satisfied with the explanation of the Ministry of Mines regarding utilization of National Mineral Fund and State Mineral Fund and suggest no change.**

## CHAPTER X

### NATIONAL, STATE MINERAL FUND AND DISTRICT MINERAL FOUNDATION

#### Audit of National Mineral Fund

##### **Clause 52 of the Bill reads as under:-**

52 (1) The Central Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the profit and loss account and the balance-sheet in respect of the National Mineral Fund in such form, as may be prescribed in consultation with the Comptroller and Auditor-General of India.

52(2) The accounts of the National Mineral Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

#### Questions raised by the Committee and Reply of the Ministry of Mines

10.2 Asked if the Government or the State Government, as the case may be shall cause to lay the copies of audited account of National Mineral Fund in both the Houses of Parliament/State legislation within a period of three months, the Ministry of Mines have informed that the National Mineral Fund shall be operated directly by the Central Government. Therefore, while the funds shall not lapse at end of the year, the revenue and expenditure shall be a part of budgetary proposal of the Ministry.

#### Recommendation of the Committee

**10.3 The Committee find that although the accounts of National Mineral Fund is to be audited by C&AG, no provision exist to lay reports of C&AG in the Parliament. To ensure accountability, the revenue and expenditure of fund shall be part of budgetary proposal of the Ministry. The Committee feel that in order to exercise Parliament's scrutiny over proceed of the fund, a new provision may be added whereunder the Central Government shall cause to lay the copies of audited account of National Mineral Fund in both the Houses of Parliament within a period of three months. Similarly,**

**provision may be made for State legislatures with respect of State Mineral Funds.**

### **Establishment of District Mineral Foundation**

#### **10.4 Clause 56(1) of the Bill reads as under:-**

The State Government shall, by notification, establish a trust to be called the District Mineral Foundation, a non-profit body, in each district in the State where a mining lease has been granted or is in operation, in the manner as may be prescribed by the State Government.

#### **Suggestions received by the Committee**

105. Some of the stakeholders have raised a number of issues in connection with the DMF, including that it will take care of R&R in a district while mining leases are not district specific but are spread over larger areas. Specific nature of DMF will not ensure that help reaches persons who are beyond the boundary. There has to be a mechanism to ensure coordination and apportionment between two adjoining DMFs. They further submitted that DMF may be unable to take on implementation of large R&R projects and will in all probability depend upon the lessee to execute – which has been the experience in the past (like in Periphery Development Fund utilization in Orissa). They have suggested that therefore provision should be introduced to take this into account and also that the DMF constitution should include at least 3 representatives of the affected community and there should be prescribed a maximum cap also.

#### **Reply of the Ministry of Mines**

10.6 The Ministry of mines have explained to the Committee that District Mineral Foundation (DMF) covers an entire district. While a lease may be spread over two different districts, a common DMF cannot be set up since the objective is to address district level development for local people. However, accounting of minerals raised in each district boundary, proportionate to the size of lease in each boundary, established by means of proper surveying, would be detailed in the sub-legislation.

#### **Recommendation of the Committee**

**10.7 While accepting the Ministry of Mines view that while a lease may be spread over two different districts, a common DMF cannot be set up since the objective is to address district level development for local people, the**



**Committee recommend that additional provisions like audit by C&AG and involvement of peoples' representatives in the expenditure and utilization of District Mineral Fund be suitably incorporated.**

**10.8 Clause 56(2) of the Bill reads as under:-**

The object of the District Mineral Foundation shall be to work for the interest and benefit of persons or families affected by mining related operations in the district.

**Suggestions received by the Committee**

10.9 (i) State Government of Karnataka has suggested that the Act or subsequent rules have to define Section 56(2) which concerns with compensation to be paid to the person or families affected by the mining related operations. People are not only affected in the areas surrounding the mines but also all along the road in which the minerals are being transported. Therefore a fair definition is required in order to clear the confusion that might arise in future.

(ii) As the surrounding areas/ adjacent districts are also affected by mining areas, clause 56(2) should also ensure that District Mineral Foundation shall look after development of affected areas of adjoining districts as well.

**Reply of the Ministry of Mines**

10.10 (i) The Ministry of Mines have informed the Committee that affected persons would be identified through the local panchayats by the State Governments as per sub-legislation.

(ii) Any such amendment will create administrative difficulties in maintaining and regulating the functions of DMF. Such an arrangement should be ideally be provided from the State Mineral Fund, if required.

**Recommendation of the Committee**

**10.11 The Committee are satisfied with the submission of the Ministry of Mines and expect that the sub-legislation will take due care of the affected persons who would be identified through local panchayats by the State Governments. At the same time, the Committee feel that suitable**

**arrangements be made from State Mineral Fund for development of the surrounding areas / adjacent districts which are also affected by mining.**

**Governing Council of District Mineral Foundation**

**10.12 Clause 57 of the Bill reads as under:-**

**57(1)** The District Mineral Foundation shall be managed by a Governing Council which consists of,—

(a) District Magistrate — Chairperson;

(b) Chairperson of the District Panchayat or District Council, as the case may be— Member;

(c) all holders of mining lease in the district—Members;

(d) head of local offices of Departments concerned of the State Government— Members;

(e) at least three representatives nominated by the District Magistrate in consultation with the Chairperson of the District Panchayat or District Council, as the case may be, from amongst the affected persons or families in the areas affected by mining operations, in the manner as may be prescribed by the State Government— Members;

(f) representative of the Indian Bureau of Mines— Member;

(g) District Mining Officer— Secretary:

Provided that in the areas specified in the Fifth Schedule of the Constitution, where there is no District Panchayat, the Chairperson of each of the Panchayats at intermediate level, and where there is no Panchayat at intermediate level, the Chairperson of the Village Panchayats within whose jurisdiction the mining operations are undertaken shall be included as a member.

**Suggestion received by the Committee**

10.13 (i) The Committee have been suggested that control on administration of DMF is skewed towards Government and mining companies and provision should be suitably modified to allow the affected community greater say in deciding where the DMF money should be spent. Local community should thus have the maximum representation in the DMF council.

(ii) The opinion of the Ministry for making local MP/MLA as permanent Special Invitee to the Governing Council of District Mineral Foundation.

**Reply of the Ministry of Mines**

10.14 The Ministry of Mines have agreed to both the suggestions (i) and (ii) above.

### **Recommendation of the Committee**

**10.15 The Committee find that the Governing Council proposed to manage District Mineral Foundation (DMF) will consist of District Magistrate, Chairperson of District Panchayat or District Council, all holders of mining lease in the district, head of local offices of Department concerned of state Governments, at least three representatives nominated from amongst the affected persons or families, representative of IBM and District Mining Officer. The Committee feel that there is a need to consider increasing the representation of the local community in the council of DMF. The Committee, therefore, recommend the Government that the provision of Clause 57(1) be suitably modified to increase more representation of the local communities and include local MP/MLA as Permanent Special Invitee to the Governing Council for District Mineral Foundation.**

## CHAPTER-XI

### NATIONAL AND STATE MINING REGULATORY AUTHORITY

#### **Clause 59(1) of the Bill reads as under:-**

59 (1) The National Authority shall consist of a Chairperson and not more than nine whole time Members to be appointed by the Central Government.

#### **Query raised by the Committee and Reply of the Ministry of Mines**

11.2 Asked about the rationale behind National Authority have 10 Members, the Ministry of Mines have informed the Committee that considering that the proposed Authority would look into wide ranging issues relating to non-fuel mining sector covering nearly 72 minerals, including illegal mining, the number of proposed members is necessary.

#### **Recommendation of the Committee**

**11.3 The Committee feel that the composition of the National Mining Regulatory Authority is too unwieldy since 10 members including chairpersons are to be appointed whereas on the other hand the composition of Telecom Regulatory Authority of India (TRAI) including chairperson is 5, Telecom Dispute Settlement and Appellate Tribunal (TDSAT) (3), Petroleum and Natural Gas Regulatory Board (5), Central Electricity Regulation Commission (CERC) (4) etc. The Committee do not subscribe the contention of the Government that as nearly 72 minerals, including illegal mining is likely to be under the ambit of National Authority, the composition thereof is a reasonable one. The Committee is of the view that mining is restricted to some of the States/Union Territories in the country. On the other hand telecom and electricity have much more reach as compared to mining. Inclusion of so many members in National Mining Regulatory Authority, thus defies logic. The Committee, therefore, recommend that the Government should revise the strength of National Mining Regulatory Authority and reduce it to the barest minimum level.**

## **Qualification for appointment as Chairperson or Member of National Authority.**

### **11.4 Clause 60 of the Bill reads as under:-**

60 (1) A person shall not be qualified for appointment as the Chairperson of the National Authority, unless he,—

(a) is of not less than fifty-eight years of age;

(b) (i) has a post-graduate degree in mining, engineering, technology, science, commerce, humanities or law from a university recognised by the University Grants Commission or a university or institute established by law for the time being in force and special knowledge and experience of not less than three years in matters relating to policy, regulation and operations in extractive industry; or

(ii) has held the post of Secretary or Additional Secretary to the Government of India or any equivalent post in the Central Government or the State Government, as the case may be, having experience of not less than three years in policy or law relating to mines and mineral concessions.

(2) A person shall not be qualified for appointment as a Member, unless he,—

(a) is of not less than fifty-eight years of age;

(b) (i) has a post-graduate degree in mining, engineering, technology, science, commerce, humanities or law from a university recognised by the University Grants Commission or a university or institute established by law for the time being in force and special knowledge and experience of not less than three years in matters relating to policy, regulation and operations in extractive industry or has experience of not less than three years in the field of mining sector at the national level; or

(ii) has held the post of Joint Secretary to the Government of India or any equivalent post in the Central Government or the State Government, as the case may be, having experience of not less than one year in policy or law relating to mines and mineral concessions.

(3) The Chairperson and the Members of the National Authority shall be appointed on the recommendations of the Selection Committee constituted under sub-section (1) of section 61.

(4) The Chairperson or the Members of the National Authority shall not hold any other office during the period of holding his office as such.

(5) The Central Government shall, within a period of one month from the date of occurrence of any vacancy in the office of the Chairperson or Member, by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or completion of the term of office of the Chairperson or any Member, make a reference to the Selection Committee constituted under section 61 for filling up of such vacancy.

### **Query raised by the Committee**

11.5 The Committee have desired to know the following:-

- (i) As regards the qualifications for appointment as Chairman and Member of National Authority, included only post graduate degree in mining/ mineral/ mining machinery/ surface mining/ rock mechanic engineering or geo-technical engineering or environmental engineering or geology etc so as to ensure technical competence.

- (ii) The rationale behind keeping the post of Secretary or Additional Secretary to the Government of India /State Government as criteria for filling up post of chairpersons/ members of the national authorities.

### **Reply of the Ministry of Mines**

11.6 The requisite qualification has been kept in light of the fact that the National Authority would be required to advise the Government on wide ranging issues pertaining to the mineral sector. These matters relate to bidding criteria, royalty fixation, strategies for attracting long-term investment in the mining sector, understanding the needs of the Project affected persons and for formulating policies for the sector.

These posts have been included taking into account the knowledge, experience and understanding of various administrative and policy matters, acquired by the officers over the years, which could be essential for advisory roles. However suggestions of the Committee keeping in view the composition in other regulatory bodies would be acceptable.

### **Recommendation of the Committee**

**11.7 The Committee observe that powers and functions assigned to National Mining Regulatory Authorities (clause 68) are too technical in nature since they are required to lay down the standard of quality of technical regulation to be followed by State Govt. / IBM, lay down the standard of quality of report, mediate on the issues of jurisdiction in the matter of inspection of mines, advice mineral wise strategy etc. Furthermore, the proceedings of national authorities are deemed to be judicial proceedings / civil court. [68 (5)]. The Committee, therefore, feel that the qualifications prescribed for chairpersons / members i.e. post graduate in mining engineering technology , science commerce and humanity are not commensurate with the job profile expected of these functionaries. The Committee are of the firm opinion that the qualifications ought to be prescribed for them needs to include post graduate degree in mining / mineral / mining machinery / surface mining / rock mechanic engineering or geo-technical engineering or environmental engineering or geology etc. so as to ensure technical competence.**

**11.8 In view of the fact that proceedings of national authorities ought to be judicial proceedings / civil court, the Committee feel that post of**

**Secretary or Addl. Secretary to Government of India / State Government need not be criteria for filling up post of chairpersons / members of national authorities. The Committee do not concur with the views of the Government that knowledge, experience and understanding of various administrative and policy matters acquired by the officers in the rank of Secretary/Additional Secretary over the years could be essential for advisory roles. On the other hand there are strong apprehensions of vested interests being developed over the years if serving officer, who do not possess technical competence and expertise are allowed to be on board of such authorities. This is also pre-requisite to stem clash of interest. The Committee, therefore, recommend that members from judicial background needs to head such authorities and High Court judges may be appointed as Chairman of such authorities and members having technical expertise as referred to above including MBA in finance or law be appointed as members. The Committee desire that similar analogous provision may be made for State Regulatory Authorities.**

**11.9 As a corollary, similar qualifications be made applicable for members to be appointed as Chairperson and members of National Mining Tribunal (Clause 77) and judges of High Court may be drawn and made Chairperson and members of these tribunals and the appeal arising from National Tribunal may vest with Supreme Court instead of High Court as envisaged in the Bill (clause 88)**

**Powers and functions of the National Mineral Regulatory Authority, Search, seizure, Investigation and Punishment for violation of directions of National Authority (Clause 68, 69 and 121)**

**11.10 Clause 68 of the Bill reads as under:-**

**68(1)** Subject to the provisions of this Act, the National Authority shall discharge and exercise the following functions and powers in respect of major minerals, namely:— (a) lay down the standards of quality of technical regulation to be followed by the State Governments and the Indian Bureau of Mines; (b) lay down the standards of quality of reports and information provided in the public domain by the State Governments, Indian Bureau of Mines and Geological Survey of India to

the investors in the 135 mining sector; (c) mediate on the issue of jurisdiction in matters of inspection of mining areas amongst the State Governments and the Indian Bureau of Mines; (d) advise on mineral-wise conservation strategies keeping in view of the national interest; (e) advise on matters relating to framework for sustainable development of the mining sector, including implementation and monitoring thereof. The proviso to the said sub-clause provides that notwithstanding anything contained in this Act, the National Authority may, on the request of the Central Government or any State Government, render advice on sustainable development framework for minor minerals; (f) advise the Central Government and any State Government, on a reference from them, on issues pertaining to measures to increase transparency in the grant of mineral concessions and efficiency in models for competitive bidding of minerals; (g) review of the existing rates of royalty on minerals (other than coal, lignite and sand for stowing) specified in the Second Schedule for major minerals in terms of sub-clause (2) of clause 41 and the profit sharing percentage payable under sub-clause (2) of clause 43 and recommend revision of rates of royalty and profit sharing percentage to be paid by the mining lease holder from time to time; (h) review of the existing rates of dead rent on minerals (other than coal, lignite and sand for stowing) specified in the Third Schedule for major minerals in terms of sub-clause (3) of clause 42 and recommend revision of rates of royalty from time to time; (i) recommend suitable mechanisms to moderate royalty to support investment in remote areas or for induction of special technology or for promoting mineral beneficiation or to produce downstream products of strategic value or to create infrastructure.

Provided that the recommendations of the National Authority under this sub-clause shall be made in consultation with the State Governments and the mining industry and shall be in the form of a report submitted to the Central Government.

Provided further that the National Authority shall not recommend increase in royalty rates or profit sharing percentage for any mineral or fees or other charges more than once in three years.

(j) recommend strategies and institutional mechanisms to the Central Government for attracting long-term investments in the mining sector; (k) recommend mechanisms to protect the interests of the end-use industries in the country for assured long-term supply of minerals.

**68(4)** The National Authority or any of its officers authorised by it may call for records, material evidence, or persons accused of contravening any of the provisions or committing any of the offences under this Act.

**68(5)** All proceedings before the National Authority in discharge of its functions shall be deemed to be judicial proceedings within the meaning of sections 193, 219, 228 and for the purposes of section 196 of the Indian Penal Code and the National Authority shall be deemed to be a civil court for the purposes of section 195 and chapter XXVI of the Code of Criminal Procedure, 1973'.



**68(8)** National Authority shall include in its annual report all the cases where its recommendation or advice has not been accepted by the Central Government along with reasons therefor.

**11.11 Clause 69 of the Bill reads as under:-**

**69 (1)** Without prejudice to the provisions of this Act or any other law for the time being in force, the National Authority may, on the basis of written complaint alleging contravention of the provisions of this Act or alleging commission of any offence punishable under this Act or the rules made thereunder in respect of major minerals where such contraventions or commission of offences have been committed on large scale or on organised basis or takes place inter-state, investigate or cause to be investigated any such complaint or institute the prosecution against any person.

**69(2)** Without prejudice to the generality of the provisions of 69(1), the National Authority may investigate or cause to be investigated or institute the prosecution against any person where contraventions or commission of offences have been committed on large scale or on organised basis or have taken place inter-state, in respect of major minerals in the following cases, namely:— (i) exploration and mining for any mineral without licence or lease; (ii) undertaking of mining or exploration activity outside the area granted under licence or lease; (iii) transactions relating to or possession of mineral stock of unknown origin, or such mineral which cannot be satisfactorily accounted for; (iv) transportation, storage, trade or export of illegally raised mineral without lawful authority.

**69(3)** The National Authority may, if it finds that the contravention of any of the provisions of this Act or commission of any offence thereunder in respect of major minerals is of a small scale or isolated nature, refer any complaint referred to in sub-clause (1) or sub-clause (2) to the State Government concerned for such action as it deems fit.

**69(4)** The Central Government or the State Government or the National Authority may, by notification in the Official Gazette, appoint such persons as it thinks fit, possessing such qualifications as may be prescribed, or such authority fulfilling such criteria or appoint an Investigation Officer or Investigation Authority or appoint legal practitioner for initiating prosecution or defending its case before any court or Tribunal for such area as may be specified in the notification, to investigate or initiate prosecution in contravention of any of the provisions of this Act or commission of any offence thereunder in respect of major minerals [including cases falling under clauses (i) to (iv) of sub-clause (2)].

*Explanation* for the purpose of this sub-section, "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

**69 (5)** The Investigation Officer or the Investigating Authority referred to in **sub-clause (4)**, if so authorised by the Central Government, shall have power — (a) to enter and search, at all reasonable times and with such assistance, if any, as he considers necessary, any premises in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about

to be committed; or for the purpose of satisfying himself that the provisions of this Act or the rules made thereunder are being complied with; (b) to require the production of, and to inspect, examine and make copies of, or take extracts from registers, records or any other documents kept by a holder of a mining lease or licence, as the case may be, in pursuance of the provisions of this Act or the rules made thereunder and seize the same, if he has reason to believe that all or any of them, may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder; (c) to make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or the rules made thereunder are being complied with; (d) to exercise such other powers as may be necessary for carrying out the purposes of this Act or the rules made thereunder.

**69(6)** The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

**69(7)** Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to the process of investigation and initiation of prosecution of the offences in respect of major minerals under the provisions of this Act, as they apply to the investigation or initiation of prosecution made under the provisions of the said Code.

**69(8)** The Investigating Officer or Investigating Authority, as the case may be, shall complete the process of investigation within a period of three months from the date of authorisation for conducting such investigation and submit the report of such investigation to the National Authority.

**69(9)** The Investigation Officer or the Investigating Authority may take the assistance of police if so becomes necessary for discharge of its functions under this Act.

**69(10)** The National Authority either on its own motion (on the basis of material in its possession) or on the basis of report referred to in sub-clause (8) or an Investigation Officer or Investigating Authority or any of its officer, if so authorised by the National Authority may file a complaint before a competent court for the contravention of the provisions of this Act or commission of any offence thereunder in respect of major minerals.

#### **11.12 Clause 121 of the Bill reads as under:-**

**Clause 121** :Whoever violates the directions of the National Authority issued under sub-clause (4) of clause 68, shall be punishable with a fine which may extend to five thousand rupees and in case of second or subsequent offence with a fine which may extend to ten thousand rupees and in the case of continuing contravention with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

### **Suggestions received by the Committee**

#### 11.13 Clause 68(1)/41(3)(4): Review of Royalty rates

- (i) This prescribes that the National Authority shall not recommend revised royalty and the profit share rates more than once in every three years and the same restriction applies to Central and State Governments. This brings inconsistency since the iron ore prices are revised every quarter and there may be artificial gaps created between royalty and revenue.
- (ii) Annual Reports of the National Mineral Regulatory Authority should be published in the website of the Ministry of Mines.
- (iii) The National Authority is empowered to investigate - Instead of increasing the multiplicity of agencies this power could be given to the State Directorates or IBM.
- (iv) In a written memorandum submitted to the Committee, State Government of Chhattisgarh have stated that Clauses 68(4)&(5), clause 69 and clause 121 of the Bill be altogether omitted from the Bill. The powers of investigation and prosecution for violations of mining law should continue to rest with the states only, as at present. This is necessary to avoid multiplicity of investigation agencies also.
- (v) The National Authority is empowered to investigate. However, this power could be given to the State Directorates or IBM.[Clause 69(10)]
- (vi) Regulatory agency must be provided with the requisite authority to intervene suo-moto on complaints on offences of mining companies by the affected communities.[Clause 69(2)]
- (vii) One of the stakeholders suggested that as Clause 69 covers offences that have been committed on large scale or organized basis to be investigated by National Mining Authority, this provision needs suitable amendment.

### **Reply of the Ministry of Mines**

#### 11.14 As regards the above suggestions, para-wise replies of the Ministry of Mines are as under:

- (i) Royalty is calculated on ad-valorem basis on monthly prices as published by the Indian Bureau of Mines for most of the minerals. This mechanism automatically captures price fluctuations. Royalty rate regime stability is necessary for attracting investors.
- (ii) The Ministry of Mines have accepted the suggestion regarding publishing Annual Reports of the National Mineral Regulatory Authority in the website of the Ministry of Mines.

- (iii) The National Authority will be an independent and neutral agency for investigating any mining related complaints, and allow arms length regulation and fairness in investigation.
- (iv) Considering that the State governance machineries still need strengthening in many of the backward mining areas, and there has been a felt need for an independent body to look into complaints of illegal mining, the National Mining Regulatory Authority has been given powers to investigate and launch prosecution. This is also in terms of the recommendation of the Standing Committee on Coal and Steel's recommendation in its Ninth Report on Demand for Grants (2009-10), where it has recommended that new legislation should provide for a quasi-judicial body to adjudicate any complaint in respect of illegal mining and issue necessary directions.
- (v) The National Authority will be an independent and neutral agency for investigating any mining related complaints, and allow arms length regulation and fairness in investigation.
- (vi) The draft Bill provides adequate powers to the National Mining Regulatory Authority in clause 69 for launching investigations and prosecutions on complaints of illegal mining or offences under the Act.

### **Recommendations of the Committee**

**11.15 The Committee note that the Ministry of Mines have aptly resolved the fear in the mind of the stakeholders regarding inconsistency in rates of royalty of iron ore by clarifying that royalty is calculated on advalorem basis on monthly prices published by IBM which automatically takes care of price fluctuations. Further, as the royalty rate regime stability is necessary for attracting investors, the Committee feel that due care has been taken to avoid artificial gap between royalty and revenue as is apprehended by stakeholders.**

**11.16 Regarding suggestion of the State Government of Chhattisgarh that the powers of investigation and prosecution for violations of mining law should continue to rest with the states only and Clauses 68(4)&(5), 69 and 121 of the Bill be altogether omitted, the Committee do not agree with the same and are of the view that the State Government mechanism still need to be strengthened particularly in the prevention of illegal mining. The Committee, therefore, fully endorse for the creation of an independent**

**agency at the Central level namely National Mineral Regulatory Authority with power to investigate and launch proper action as proposed in the Bill. The Committee agree with the view of the Ministry of Mines and Steel that instead of the State Directorates, the National Authority would be the appropriate authority for investigating mining related complaints.**

**11.17 As regards the suggestion to publish Annual Reports of the National Mineral Regulatory Authority on the website of the Ministry of Mines which has also been accepted by them, the Committee feel that it would lead to transparency in the functioning of National Mineral Regulatory Authority.**

**11.18 The Committee note that by virtue of Clause 69, a National Authority is empowered to investigate or cause to investigate, cases of alleged acts of omissions or commissions, committed on a large scale or on organized basis in respect of major minerals. The Committee find that National Authority can exercise powers only after the alleged act, contravening the provisions of the Act and the rules framed thereunder have been committed and not otherwise. However, there is no mechanism to pre-empt such offences and violations. The Committee, therefore, desires that the National Authority should not only investigate acts of omissions and commissions committed, but also intervene where there are apprehension of violations of such acts of omissions and commissions. Further, the restrictive nature of investigation i.e. investigation of large scale and on organized basis, limits the power and the role of the National Authority. The Committee, therefore, desire that broad based powers, ought to be assigned for the purpose of investigations to the national Authority and it may be permitted to investigate violation of cases which are unlikely to be not on large scale and or organized basis. Further, for the sake of clarity, the expression 'not on large scale' and 'on organized basis' be defined. The relevant Clause, be amended, accordingly.**

## **Establishment of State Mining Regulatory Authority**

### **11.19 Clause 70 of the Bill reads as under:-**

**70(1)** The State Government may, by notification, establish with effect from such date as may be specified therein, a State Authority to be known as the State Mining Regulatory Authority, to exercise the powers and functions, *mutatis mutandis*, in respect of minor minerals, as is exercisable under clauses 68 and 69 by the National Authority."

**70(2)** Without prejudice to the provisions of sub clause (1), the State Government may confer on the State Authority the functions relating to monitoring and regulating the operation of the Sustainable Development Framework in respect of minor minerals and for major minerals after approval of the Central Government.

## **Composition and Procedures of the State Authority**

### **11.20 Clause 71 of the Bill reads as under:-**

**71** The composition and procedure of the State Authority referred to in section 70 shall be such as may be prescribed by the State Government:

Provided that in respect of functions relating to the Sustainable Development Framework the procedure shall be in accordance with the provisions of section 46.

## **Suggestions received by the Committee**

11.21 In a written memorandum submitted to the Committee, one of the stakeholders inter-alia has stated as under:-

"The State Mining Regulatory Authority be headed by independent judicial and technical representatives but not the former employees of State Government. This request is based on the experience of the industry with various State Governments".

## **Reply of the Ministry of Mines**

11.22 Composition of State Mining Regulatory Board has been proposed in consultation with the State Governments. State Mining Regulatory Authority would look into the issues of minor minerals.

## **Recommendation of the Committee**

**11.23 The Committee find that though the State Mining Regulatory Authority shall be constituted and the composition and procedure of the**

**State Authority shall be as prescribed by the State Governments, the proposed Bill may suggest that the composition shall be on the pattern of Central Authority as prescribed in Clause 60 to ensure judicial and technical representation.**

### **Powers and procedures of the National Mining Tribunals**

#### **11.24 Clause 85 of the Bill reads as under:-**

**85(1)** Subject to the provisions of this Act, the National Mining Tribunal shall have the powers with respect to major minerals— (a) to adjudicate on applications seeking directions to the Central Government or the State Governments or an Authority of the State Government to dispose of an application made to it, including an application for grant or transfer of mineral concession under the Act, with respect to any major mineral within such time as the National Mining Tribunal may stipulate, in such cases where the Central Government or State Government, as the case may be, has failed to dispose off the application within the time specified under this Act; (b) to hear applications from any affected person in relation to orders and directions issued under this Act relating to preparation, approval and implementation of Mining Plans and Mine Closure Plans and Sustainable Development Framework; (c) to hear applications made to it in the nature of revisions from the affected persons and confirm or set aside any order passed by the Central Government or the State Government or an Authority of the State Government, as the case may be, under this Act or the rules made thereunder as it may deem just and proper.

Sub-Clause (6) of this clause provides that on the conclusion of proceedings, the National Mining Tribunal, shall pass such orders as it deems fit and provide such relief as may be desirable, including the award of such punitive damages, as it deems fit, to the affected party at issue.

### **Powers and procedures of the State Mining Tribunals**

#### **11.25 Clause 99 of the Bill reads as under:-**

**99(1)** Subject to the provisions of this Act, the State Mining Tribunal shall have the powers with respect to minor minerals —(a) to adjudicate on applications seeking direction to the State Government or an Authority of the State Government, as the case may be, to dispose of an application made to it, including an application for grant of mineral concession under this Act, with respect to any minor mineral within such time as the State Mining Tribunal may stipulate, in such cases where the State Government has failed to dispose of the application within the time specified in the Act; (b) to hear applications from any affected person in relation to orders or directions issued under this Act relating to preparation, approval and implementation of Mining Plans, mining frameworks and Mine Closure Plans and Sustainable Development Framework; (c) to hear applications made to it in the

nature of revisions from the affected persons and confirm or set aside any order passed by the State Government or the State Government or an Authority of the State Government, as the case may be, under this Act or the rules made thereunder as it may deem just and proper.

### **Suggestions received by the Committee**

11.26 The Committee have received the suggestions as under:-

- (i) With the existence of National Mining Regulatory Authority (NMRA), National Mining Tribunal can play an appellate body role rather than hearing application from the affected party in relation to preparation, approval and implementation of mining plans and mine closure plans. It could be vested with a role on the lines of Appellate Tribunal for Electricity (APTEL).
- (ii) National Mining Tribunal has the jurisdiction to hear application against any approval of mining Plan. However as per Clause 26, any person aggrieved by the approval or refusal of mining plan has the right to approach the Controller General for major minerals, Indian Bureau of Mines for minor minerals, the State Directorate and the Central Government for coal & atomic mineral. There appears to be a contradiction between two provisions of the Bill in relation to the jurisdiction to hear application against the approval granted for mining plan.

11.27 The State Government of Chhattisgarh in their written memorandum submitted to the Committee has raised the objections on clauses 85(1)(c) and 85(6) as below:-

"Conferral of powers on the Tribunals to pass such orders as are deemed fit under the revisionary jurisdiction in the matter of grant of mineral concessions are undesirable because minerals being public property, the power to grant concessions need to rest with the government only. Tribunals should not be given the powers to grant mineral concessions under the revisionary powers".

And therefore, suggested amendments as under:-

"Therefore, clauses 85(1)(c) and 85(6) should be appropriately reworded so as to say that while exercising the revisionary powers, the national / state mining tribunal shall have only the following powers –

- (a) to confirm the order passed by the government; or
- (b) to set aside the order of the government and remand the case back to the state government for passing fresh orders keeping in view any irregularity or illegality that may be pointed out by the tribunal in the order passed by the government".



### **Replies of the Ministry of Mines**

11.28 The Ministry of Mines responded to the above suggestions as under:-

- (i) "The powers and procedure of NMRA are well defined in clause 85(1) of MMDR Bill".
- (ii) The first stage appeal under Clause 26(7) is to be made to the Controller General. The second stage of appeal can be made to the National mining Tribunal under Clause 86(1).
- (iii) The Ministry of Mines have not accepted this recommendation and justified the provision of revisionary power of the tribunal by submitting that in the existing MMDR Act, 1957, the revisionary powers are exercised by the Central Government, and include powers to 'confirm, set aside or modify the order or pass such other order in relation thereto'. In order to bring in greater transparency, the National Mining Tribunal has been proposed in the draft Bill to function as a quasi-judicial body for grievance redressal against State or Central Government actions or delays, on an ***arms length*** principle. These provisions are necessary in larger interest of mineral development and conservation and act as a proper check against misuse of any discretion in the regulation of the mineral sector.

### **Recommendation of the Committee**

**11.29 The Committee find that the powers of NMRA are well defined in clause 85(1) of MMDR Bill and with the first stage appeal under Clause 26(7) to be made to the Controller General and second stage of appeal can be made to the National mining Tribunal under Clause 86(1) for major mineral there is no ambiguity in the provision of the Bill as claimed by the stakeholder.**

**11.30 The Committee do not accept the contention of the Ministry of Mines that since under the existing Act the revisionary powers including *powers to 'confirm, set aside or modify the order or pass such other order in relation thereto'* are vested with Central Government, the same magnitude of revisionary power should now be vested with the proposed tribunal. Taking note of the suggestion of Government of Chhattisgarh that in the garb of revisionary power, the tribunal, a quasi-judicial body has been given the powers to grant mineral concessions, the Committee feel that grant of mineral concessions is essentially an executive function and**

**should not be assigned to the tribunal. Accordingly, the Committee recommend that the Clause 85(1)(c) and 99(1)(c) for major and minor minerals be reworded as under:-**

**"To confirm the order passed by the government; or to set aside the order of the government and remand the case back to the state government for passing fresh orders keeping in view any irregularity or illegality that may be pointed out by the tribunal in the order passed by the government".**

## CHAPTER-XII

### COORDINATION COMMITTEE & NATIONAL REPOSITORIES

#### Constitution of Central Coordination-cum-Empowered Committee

##### **Clause 102 of the Bill reads as under:-**

**102** (1) The Central Government shall, by notification, constitute a Central Coordination-cum-Empowered Committee consisting of representatives of the Central Government and the State Governments to achieve the objects of the Act.

(2) The functions of the Central Coordination-cum-Empowered Committee shall be such as may be notified.

(3) Without prejudice to the provisions of the foregoing, the Central Coordination-cum-Empowered Committee may consider and make recommendations regarding any of the following, namely:—

- (a) improvement in procedure for grant of mineral concessions;
- (b) coordination among agencies entrusted with according statutory clearances;
- (c) maintenance of internet-based databases including a mining tenement registry;
- (d) development, implementation and evaluation of sustainable development frameworks; and
- (e) prevention and detection of illegal mining.

#### Constitution of State Coordination cum Empowered Committee

##### **12.2 Clause 103 of the Bill reads as under:-**

**103.** (1) The State Government shall by notification constitute a State Coordination-cum-Empowered Committee with representatives of the concerned Departments of State Government and local representative of Central organisations such as Railways, Highways, Ports and Customs, headed by Chief Secretary or Additional Chief Secretary of the State Government;

(2) The function of the State Coordination-cum-Empowered Committee shall be,—

(i) to oversee clearance by various Departments of the State Government necessary to ensure timely grant of mineral concessions;

(ii) review of activities in and around leased areas pursuant to the Corporate Social Responsibility document;

(iii) to monitor implementation of Sustainable Development Framework and Final Mine Closure Plans;

(iv) coordination of operations for prevention, detection and prosecution of cases of illegal mining; and

(v) any other functions as may be prescribed by the State Government.

(3) The State Coordination-cum-Empowered Committee shall meet at least once in two months.

### **Suggestions received by the Committee**

12.3 The following suggestions have been received by the Committee in memoranda submitted by the stakeholders:-

- This creates yet another agency which has recommendatory powers. Either the powers should be restricted to ironing out procedural issues and clogging, coordination between various agencies.
- The power of Coordination Committees and National Repositories should be extended to include the operations of the District Mineral Fund and the Rehabilitation and Resettlement policies of the State. When the operations of the District Mineral Fund and the resettlement policies are not adequately addressing the issues-there should be an opportunity for the coordination committee under this chapter to look into these issues and make recommendations – the logic that the committee would only look at the Sustainable Development Framework is inadequate.

### **Replies of the Ministry of Mines**

12.4 Para-wise replies of the Ministry of Mines on the above suggestions are as under:-

- These statutory Committees are necessary to coordinate and streamline any administrative delays in grant of mineral concessions, delays in getting Environment clearances, or addressing issues on coordination on matters pertaining to Sustainable development and illegal mining. These Committees are set in terms of the recommendations of the Hoda Committee, which while accepting that single-window clearance is not possible in the country due to multiplicity of laws and agencies, has recommended setting up of such Committees for better coordination".
- This suggestion is not acceptable to the Ministry. Coordination-cum-Empowered Committees have a mandate to review the regulatory aspects of grant of concessions.

### **Recommendation of the Committee**

**12.5 In the absence of any established mechanism of single window clearance for mining projects and due to multiplicity of law and order agencies, the Committee feel that these proposed Statutory Committees will help to coordinate and streamline any administrative delays in grant of mineral concessions, delays in getting Environment clearances, or addressing issues on coordination on matters pertaining to Sustainable**

**development and illegal mining. However, the composition of such Committees has not been clearly spelled out in the Act. The Ministry should explicitly provide the composition of such Committees in the Act itself rather leaving it to the executive discretion. The Committee desire that the recommendations of these bodies should have binding effect on the decision making process.**

### **National Repositories**

#### **12.6 Clause 104 of the Bill reads as under:-**

**104 (1)** The Central Government may, by notification, establish a National Drill Core Repository for preservation and archiving of drill cores generated during mineral exploration and a National Geophysical Data Repository for holding, authenticating and disseminating geophysical data for the purposes of this Act.

**104 (2)** The Repositories shall be managed or maintained in such manner as may be prescribed by the Central Government.

**104 (3)** The holder of any mineral concession shall, at his own expense, cause to be deposited,— (a) a representative portion of cores selected with the National Drill Core Repository; and (b) all geophysical data collected by him during or part of his reconnaissance, exploration and prospecting operation, with the National Drill Core Repository and National Geophysical Data Repository respectively, in such manner as may be prescribed by the Central Government.

**104 (4)** The Central Government shall prescribe the procedure for making available data from the Repositories to interested persons on such charges as may be prescribed by it. The proviso to the said sub-clause provides that the Repositories, referred to in sub-clause (3) shall not disclose information with respect to any drill core or any geophysical data received by it under this clause till after lapse of six months from the date of termination of the mineral concession, or relinquishment of the area from which the drill core has been drawn or geophysical data has been generated.

### **Suggestions received by the Committee**

12.7 In a written memorandum submitted to the Committee, one of the stakeholders has suggested as follows:-

"This provision mandates that a sample portion of the core shall be deposited with the Repository. This is a new concept and creates another agency to engage with. It would be better if the IBM deals with this aspect too rather than creating a new mechanism. Also guidelines ought to be framed as to in what manner are these to be stored and to what extent shall be required.

Half of the sample is sent for analysis and half is preserved. Not clear as to what is meant by "representative sample".

### **Reply of the Ministry of Mines**

12.8 The Ministry of Mines have informed that Geological Survey of India is the nodal agency which is primarily responsible for country's regional exploration and for survey of new deposits. Suitable guidelines on definition of representative sample of drill core, maintenance of such sample shall be detailed by the GSI.

### **Recommendation of the Committee**

**12.9 The Committee observe that Geological Survey of India is the nodal agency which is primarily responsible for country's regional exploration and for survey of new deposits. According to the Ministry of Mines, suitable guidelines on definition of representative sample of drill core, maintenance of such sample shall be detailed by the GSI. The Committee expect that these guidelines framed under the Clause will take care of the apprehension of the stakeholder.**

## CHAPTER-XIII

### OFFENCES AND PENALTIES

#### **Punishment for reconnaissance, prospecting and mining operations without licence or lease**

##### **Clause 110 of the Bill reads as under:-**

Whoever contravenes any of the provisions of clause 4, shall be punished with imprisonment for a term which may extend to,—(i) in cases of exploration without licence, two years, or with fine which may extend to twenty-five thousand rupees per hectare or part thereof subject to a maximum of fifteen lakh rupees in case of prospecting, or with both; (ii) in cases of mining without a lease, three years, or with fine which may extend to ten times the value of the mineral mined, or with both.

#### **Suggestions received by the Committee**

13.2 One of the stakeholders in a written memorandum to the Committee on Clause 110 has requested for deletion of penalty provisions from the draft MMDR Bill, 2011 and keep the penalties for offences as per existing MMDR Act, 1957.

#### **Replies of the Ministry of Mines**

13.3 The Ministry of Mines in their reply on the above suggestion stated that these provisions will act as deterrents and discourage illegal mining.

#### **Recommendation of the Committee**

**13.4 The Committee agree with the views expressed by the Ministry of Mines and feel that the proposed penalty provisions are required to discourage illegal mining and to act as deterrents to unscrupulous elements. However, the provisions of this Clause ought to be implemented judiciously.**

#### **Penalty for non implementation of final mine closure plan**

##### **13.5 Clause 111 of the Bill reads as under:-**

A lessee, who fails to implement a Final Mine Closure Plan in accordance with the provisions of this Act, or, abandons the mine or any portion of the mining lease area, which is likely to be a danger to the health and safety of the inhabitants of the area, shall be liable to a penalty which may extend to one thousand rupees per day per hectare for the period of such default.

## **Penalty for disobeying direction of the State Government, etc.**

### **13.6 Clause 112 of the Bill reads as under:-**

**112(1):** Whoever disobeys any direction given by the State Government or the Indian Bureau of Mines or any other authority empowered in this behalf under this Act or any other law for the time being in force shall be liable to a penalty which may extend to ten thousand rupees per day for the period of such disobedience.

**112(2):** Any person, who fails to comply with the directions of the State Government under sub-clause (4) of clause 30, shall be liable to be punished with imprisonment for a term not less than three years.

### **Suggestions received by the Committee**

13.7 The Committee have inter-alia received the following suggestions on the provisions of above Clause:-

- (i) Instead of Rs 1000/- per hectare per day for the period of default for non implementation of Final Mine Closure Plan confiscation of financial assurance is adequate punishment.
- (ii) Under Clause 112 of new Draft Act, offence and penalties which are extremely harsh and not practically justified. Penalty to the tune of Rs. 10,000 per day per hectare is unbelievable. It is requested to reduce them to not more than Rs. 1,000 per day for large mines and to Rs. 50 per day for B Class Mines.
- (iii) The provision provides for penalties in the event of anyone disobeying orders of the State Government or IBM "or any other authority empowered in this behalf under this Act". This phrase is vague and includes any authority whatsoever. Also there should not be penalization without an opportunity to rectify.
- (iv) Another stakeholder in a written memorandum submitted to the Committee have suggested that Penalty for disobeying directions of State Government / IBM is not required as there are enough safeguards in the existing law.

### **Replies of the Ministry of Mines**

13.8 The Ministry of Mines responded to the above suggestions as under:-

- (i)&(ii) The Ministry of Mines in their reply on the above suggestions have stated that these provisions will act as deterrents and discourage illegal mining. The Ministry have further stated that such classification is not available in the existing MMDR Act 1957 also. Regulation for such manually operated mines are similar in all matters, including grant of concessions, need for plan of operations, and reporting and compliance with law.
- (iii) The phrase "*or any other authority*" means any Authority which is authorized under the draft Bill in future for performing some specialized regulatory role. However, redressal against such authorities lies with the National Mining Tribunal".



- (iv) The Ministry of Mines in their reply on the above suggestion have stated that these provisions will act as deterrents and discourage illegal mining.

### **Recommendations of the Committee**

**13.9 The Committee concur with the view of the Ministry of Mines and feel that there should be heavy penalty imposed on the lessee who fails to implement a Final Mine Closure Plan in accordance with the provisions of this Act, or, abandons the mine or any portion of the mining lease area, which is likely to be a danger to the health and safety of the inhabitants of the surrounding areas. At the same time, the Committee feel that the argument put forward for formation of separate category of 'B Class Mines' (where minerals occur in small patches/areas) may also be considered by the Government not only for grant of concession, plan of operation, etc. but also for imposing penalty for not complying with the provisions made separately.**

**13.10 The Committee find that the term 'any other authority' has been inserted to include authority authorized under the draft Bill in future for performing some specialized regulatory role. Thus, the clarification given by the Ministry of Mines on the apprehension raised by the stakeholder that the phrase 'or any other authority' is sufficient. While observing that redressal against such authorities lies with the National Mining Tribunal, the Committee are of the opinion that the provision for punishment for persons who fail to comply with the direction of State Government will act as deterrent and discourage illegal mining. The Committee are, however, of the view that the principle of natural justice should be followed while imposing such punishment/penalty.**

### **Offences by companies**

**13.11 Clause 115 of the Bill reads as under:-**

**115(1):** If the person committing an offence under this Act or any rules made thereunder is a company, every person who at the time the offence was committed was directly in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of offence and be liable to be proceeded against and punished accordingly. The

proviso to the said sub-clause provides that nothing contained in this sub-clause shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

**115(2):** Notwithstanding anything contained in sub-clause (1), where an offence under this Act has been committed by the company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and be liable to be proceeded against and punished accordingly.

The explanation to the sub-clause provides that (a) "company" means any body corporate and includes a firm or cooperative or other association of individuals; and (b) "director" in relation to a firm means a partner in the firm.

### **Suggestions received by the Committee**

13.12 One of the stakeholders in the written memorandum to the Committee has submitted as under:-

"Holding the director, secretary or even manager responsible for all the offences by companies will dilute the requirement of a professionally managed statutory organization.

Implementing of this section will certainly create an environment, where the senior executives of the company will be frequently harassed and this provision can be misused on flimsy grounds or for minor violations and hence needs to be modified accordingly"

### **Reply of the Ministry of Mines**

13.13 The basic philosophy behind this clause is that senior management is equally accountable for any contraventions during mining operations. However, suitable provisions have been given under clause 115(1) that if the person proves that he exercise all due diligence to prevent the commission of such offence than the person will not be liable to any punishment.

### **Recommendation of the Committee**

**13.14 While not accepting the suggestion of one of the stakeholder that holding the director, secretary or even manager responsible for all the offences by companies will dilute the requirement of a professionally managed statutory organization, the Committee feel that making the senior management accountable would act as a deterrent and will percolate a strong message down to the junior level. However, adequate protection needs to be ensured against the misuse of power by the implementing agencies.**

## **CHAPTER-XIV**

### **MISCELLANEOUS**

#### **Power of entry and inspections**

##### **Clause 123 of the Bill reads as under:-**

**123(1)** For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose connected with this Act or the rules made thereunder, any person authorised by the Indian Bureau of Mines or the State Directorate in this behalf by general order, may,— (a) enter and inspect any mine; (b) survey and take measurements in any such mine; (c) weigh, measure or take measurements of the stocks of minerals lying at any mine; (d) examine any document, book, register, or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon, and take extracts from or make copies of such document, book, register or record; (e) order the production of any such document, book, register, record, referred to in clause (d); and (f) examine any person having the control of, or connected with, any mine.

#### **Suggestions received by the Committee**

14.2 Department of Atomic Energy in a written memorandum submitted to the Committee has suggested as under:-

"that after the word IBM in Clause 123(1), the following shall be included:  
any person authorized by Atomic Minerals Directorate (AMD), Department of Atomic Energy".

14.3 Department of Atomic Energy has justified their suggestion by adding that AMD has been authorized for approval of mining plan in respect of atomic minerals. For beach sand minerals, based on the NOC given by AMD, the concerned State Governments grant lease to the applicants. Therefore, incorporation of the name of AMD is the prime importance".

#### **Reply of the Ministry of Mines**

14.4 In a written reply submitted to the Committee, the Ministry of Mines have agreed to the above suggestion of Department of Atomic Energy.

#### **Recommendation of the Committee**

**14.5 Taking note of the suggestion made by the Department of Atomic Energy and its acceptance by the Ministry of Mines, the Committee recommend that the Clause 123(1) be suitably amended by incorporating the words "any person authorized by Atomic Minerals Directorate (AMD), Department of Atomic Energy" after the words IBM.**

## **Special provisions to deal with certain contingencies**

### **14.6 Clause 127 of the Bill reads as under:-**

**127 (1)** It shall be the duty of the Indian Bureau of Mines or any authority of the Central Government as may be designated in respect of coal and atomic minerals, to render such assistances as may be required by the State Government to ensure that mining activities are regulated in accordance with the provisions of this Act.

**127 (2)** Where the Indian Bureau of Mines or authority designated under sub-clause (1), on the basis of information available to it is of the opinion that the provisions of this Act and the rules made thereunder are not being complied with and that illegal or unscientific mining is going on in any State, the Indian Bureau of Mines or such authority shall make a report to this effect to the Central Government, and the Central Government may issue such direction as it may consider necessary to the State Government, relating to all or any of the following matters, namely:— (a) investigation and prosecution of offences; (b) revocation of mineral concessions; and (c) any measures to strengthen the administrative machinery for better regulation of mining in accordance with the provisions of Act.

**127 (3)** Where it appears to the Central Government that the directions referred to in sub-clause (2) have not been complied with or where it appears that despite the purported compliance of the directions further steps are necessary, the Central Government may direct the authority referred to in sub-clause (2), for:— (a) making written complaints under clause 61 for the investigation and prosecution of offences; (b) revocation of mineral concessions in accordance with the provisions of the Act; and (c) any other measures as may be deemed fit in the circumstances.

### **Suggestions received by the Committee**

14.7 State Government of Chhattisgarh in their written memorandum to the Committee have stated as follows:-

"Clause 127 of the Bill authorizes the central government to issue directions to state governments and it further provides that if such directions are not complied with, central government can direct the Indian Bureau of Mines or the designated authority to carry out the directions.

Articles 256 and 257 of the constitution have provisions and context under which it may become necessary for the Union to issue directions to state governments. In the proposed bill, conferral of powers on the Union to issue directions to States appear to have been amplified many fold. Powers in regard to issuance of directions to the state governments by the central government in the field of exploitation of minerals, which are owned by the states, is to an extent an encroachment into the domain of the states".

### **Reply of the Ministry of Mines**

14.8 Clause 127 is flowing out of policy directions in para 2.6 of the National Mineral Policy, 2008 wherein it is enunciated that the "States will be assisted to overcome the problem of illegal mining through operational and financial linkages

with the Indian Bureau of Mines." While State Governments are primary on-field authorities for controlling illegal and unscientific mining outside the lease areas, rather than have a passive role for IBM in such matters, clause 127(1) provides that the IBM or any authority of the Central Government may render **assistance** to the State Governments, and the Central Government may intervene in such cases on a Report on illegal mining or unscientific mining outside lease area, and direct State Government in **specific** cases to investigate and prosecute, revoke mineral concessions (in case a concession holder is involved in illegal mining), and take measures to improve administrative machinery. Such proactive action is a necessity, considering that State governance machineries still need strengthening in many of the backward mining areas."

### **Recommendation of the Committee**

**14.9 As regards the complaints of some of the State Governments that the proposed Clause 127 of the Bill empowers the Central Government to issue directions to the States amounts to interference by the Central Government or encroachment into the domain of the States may not be valid one. The Committee find that clause 127(1) provides that the IBM or any authority of the Central Government may render assistance to the State Governments, and the Central Government may intervene in such cases on a Report on illegal mining or unscientific mining outside lease area, and direct State Government in specific cases to investigate and prosecute, revoke mineral concessions (in case a concession holder is involved in illegal mining), and take measures to improve administrative machinery. The Committee strongly feel that these provisions are necessary to facilitate the State Governments in preventing illegal mining in view of the failure of some State Governments to stop illegal mining in the recent past. While concurring with the views of the Ministry of Mines, the Committee also feel that there is no need to dilute or amend the provision of the said Clause and to overcome the problem of illegal mining the states should not treat it as an intervention of the Central Government but as an assistance being rendered to them.**

## **Transitory provisions**

### **14.10 Clause 137 of the Bill reads as under:-**

**137(1)** All applications received under the Mines and Minerals (Development and Regulation) Act, 1957:— (i) for grant of prospecting licence or a mining lease after completing exploration under a reconnaissance permit or a prospecting licence, as the case may be, or, (ii) for which prior approval of the Central Government for grant of mineral concessions, has been given or, (iii) where a letter of intent (by whatever name it is called) has been issued by the State Government to grant reconnaissance permit or prospecting licence or mining lease, as the case may be, and was pending grant of the concession under this Act for fulfillment of the conditions of the letter of intent, and the application for grant of the mineral concessions is pending with the State Government at the time of commencement of this Act, shall be processed in accordance with the provisions of this Act for grant of concession. The proviso to the said sub-clause provides that the State Government may impose special conditions relating to payment of application fees , licence fee, security, at the time of grant of mineral concessions to holder of application considered in terms of this sub-clause to comply with the provisions of this Act.

The explanation to the said sub-clause clarifies that in case of an application for reconnaissance permit considered under this Act, in terms of this sub-clause, the State Government shall grant a non-exclusive reconnaissance licence:

**137 (2)** In case of such area where applications for grant of prospecting licence or mining lease received before the commencement of this Act have become ineligible in terms of the provisions of the Act, the area applied for under such applications shall be notified by the State Government for inviting applications in accordance with the provisions of clause 13 for prospecting or for mining, as may be appropriate, having regard to the available evidence of mineralisation. The proviso to the said sub-clause provides that notwithstanding anything contained in clause 13, the State Government may amalgamate areas or expand areas covered by such applications in the interest of scientific mining and may invite applications within a period of twelve months from the commencement of this Act.

The proviso to the said sub-clause further provides that in case no notification is issued within the period specified in the first proviso, the area shall be made available, subject to the provisions of sub-clause (5) for grant of prospecting licence under the provisions of clause 22.

**137 (3)** Applications for renewal of mineral concessions made under the Mines and Minerals (Development and Regulation) Act, 1957 and pending on the date of commencement of this Act shall be disposed off as applications for extension in accordance with the provisions of this Act.

**137 (4)** A person who holds a reconnaissance permit prior to the commencement of this Act shall be entitled to continue to hold the permit to the exclusion of all others for a period of two years or till the validity of the permit whichever is earlier, and during such period no other reconnaissance or high-technology reconnaissance cum exploration licence applications shall be entertained for the area covered by the reconnaissance permit, and the permit holder shall be deemed to be the holder of a non-exclusive reconnaissance licence for the purpose of sub-clause (6) of clause 22.

**137 (5)** No application for prospecting licence shall be entertained by the State Government for a period of two years from the date of commencement of this Act in respect of major minerals (except coal minerals and atomic minerals), other than such applications made in accordance with the provisions of sub clause (7) of clause 22, unless the State Government, by notification, invites applications for grant of prospecting licences.

Provided that the State Government may invite applications in different Districts of the State on different dates.

Provided further that the Central Government may extend the period specified in this sub-clause for a period not exceeding one year by notification for reasons of scientific mining or proper regulation of mineral development on a request from the State Government.

### **Suggestions received by the Committee**

14.11 The Committee have received the following suggestions as under:-

- There are no provisions to secure priority rights for licence holders who have yet to file an application but have been doing reconnaissance and prospecting under licences granted in the existing regime.
- All pending applications as per existing Act should be considered valid under the provisions of New Act.
- Entrepreneurs have put in their hand-work and money to locate the industrial minerals and thereafter have applied for grant of PL/ML and have also invested in the survey and in establishing the mineral reserves beneath the land and thereafter applied for PL/ML. With one stroke as per above section all these applications will be cancelled and will thereafter be auctioned as per the new Act. All applications lying pending with the State Governments or with the Government of India should not be cancelled, but should be sympathetically considered and disposed-off expeditiously within a time frame and schedule as per existing Act.
- Regarding 137(5) it has been suggested that this will result in chaos and stoppage of economic and exploration activities in the country. Applications should be allowed at all points of time.
- Regarding 137(5), another stakeholder has stated that this proposal will result in to slow down in the exploration activities; therefore, the work of compilation of data should be completed as fast as possible and suggested that reducing the moratorium period from two years to maximum one year for applying fresh applications for Prospecting License, as mentioned in Clause 137(5) of proposed bill.
- One of the stakeholders submitted before the Committee that the transitory provisions of this Bill do not tackle all situations. It leaves out many situations where the mining companies have applied for mining concessions and have

spent on operations but their applications are still pending. In such situations if the mining companies are asked to begin afresh.

### **Reply of the Ministry of Mines**

14.12 Responding to the above suggestions, the Ministry of Mines have submitted as under:-

- The mineral concessions granted under the existing regime are saved by the proviso to clause 4(1). These concessions automatically enjoy same facilities of transition to next stage, and the applications filed for this purpose are protected under clause 4(6)(a).
- Regarding suggestion of stakeholders on clause 137(2), the Ministry of Mines have stated that under the new bill, provisions for treating the existing applications are made under section 4(6). The applications fulfilling the conditions of seamless transition will be entertained. This provision has been introduced for undertaking the grant of concessions through the process of bidding/auction which otherwise will be defeated".
- The Ministry is of the view that the State Government should normally have disposed all pending applications in a timely manner. Since there are lot of applications for grant of mineral concessions pending in the State Governments, and considering the fact that the State would be required to allot concessions on competitive bidding, all pending applications, excepting those where Central Government has given its prior approval or where State Government has given Letter of Intent, or where application has been filed for next stage concession, have to be treated as null and void. Such a measure is necessary for undertaking the grant of concessions through the process of bidding, which otherwise will be defeated".
- Under the draft Bill, provisions for treating the existing applications are made under section 4(6). The applications fulfilling the conditions of seamless transition will be entertained. This provision has been introduced for undertaking the grant of concessions through the process of bidding/auction which otherwise will be defeated.
- The moratorium period of two years has been kept with an objective to enable the states to notify the areas for inviting applications for grant of PL through competitive bidding.

### **Recommendation of the Committee**

**14.13 The Committee note that the mineral concessions granted under the existing regime are saved by the proviso to clause 4(1) whereby nothing in this sub-clause shall affect any reconnaissance, prospecting, general exploration, detailed exploration or mining operation undertaken in any**



area in accordance with the terms and conditions of a reconnaissance permit, prospecting licence or mining lease granted before the commencement of this Act. The Committee also observe that under the new bill, provisions for treating the existing applications are made under section 4(6). The Committee thus feel that the transitory provision as envisaged in Clause 137 are satisfactory as any amendment suggested by various stakeholders will defeat the very purpose of grant of concession through the process of bidding/auction.

**NEW DELHI;**  
**06 May, 2013**  
**16 Vaisakha, 1935 (Saka)**

**KALYAN BANERJEE**  
**Chairman,**  
**Standing Committee on Coal and Steel**

**Appendix-I****List of Central Ministries/Organizations/Institutions/Individuals which appeared before the Committee for evidence and State Governments with whom the Committee had discussions**

Sl. No.	Date of Sitting	Subject
1	30.01.2012	Briefing by the Ministry of Mines
2	13.02.2012	Briefing by the Ministry of Mines
3	15.03.2012	Oral Evidence of the Ministries of Coal, Mines and Steel
4	25.04.2012	Oral Evidence of the Ministries of Coal, Mines and Steel
5	11.05.2012	Oral Evidence of the Ministries of Coal, Mines and Steel
6	01.06.2012	To hear the views of the representatives of Tata Steel Ltd., New Delhi, Law Office, Dr. Harsh Pathak & Associates, Delhi; Indian Chamber of Commerce, Kolkata; Institute for Studies in Industrial Development (ISID), New Delhi; The Coastal Environment and Ecological Conservation Committee (CEECC), Thisaiyanvilai, Tirunelveli District, T.N; Bengal Chamber of Commerce & Industry (BCCI), Kolkata; Asian Centre for Human Rights (ACHR), New Delhi; Mines, Minerals & People, New Delhi; Federation of Mining Associations of Rajasthan; Udaipur Chamber of Commerce & Industry; JSW Steel Ltd., New Delhi; and VISA Steel Ltd., New Delhi
7	25.01.2012	To hear the views of the representatives of Federation of Indian Chambers of Commerce and Industry (FICCI), New Delhi; Geomysore Exploration Services (India) Pvt. Ltd., Bangalore; PRS Legislative Research, New Delhi; Federation of India Mineral Industries (FIMI), New Delhi; Beach Mineral Producers Association, Tirunelveli District, T.N.; All India Granites and Stone Association, Bangalore ; Confederation of Indian Industry (CII), New Delhi; Infrastructure Development Finance Company Ltd. (IDFC), New Delhi; Cement Manufacturers' Association, New Delhi; Coal Producers Association, Delhi; Essar Group; and Balipara Tract & Frontier Foundation, Sonitpur, Assam.
8	02.07.2012	To hear the views of representatives of Ministry of Ministry of Corporate Affairs; Ministry of Environment & Forests; Ministry of Tribal Affairs; Ministry of Panchayati Raj; Department of Atomic Energy; and

		Ministry of Rural Development.
9	16.07.2012	To hear the views of representatives of State Governments of Rajasthan; West Bengal; Madhya Pradesh; and Jharkhand
10	23.07.2012	To hear the views of representatives of State Governments of Andhra Pradesh; Chhattisgarh; Gujarat; and Karnataka
11	03.08.2012	To hear the views of representatives of State Governments of Odisha; Maharashtra; and Tamil Nadu
12	30.10.2012	Oral Evidence of the Ministry of Mines
13	16.11.2012	Oral Evidence of the Ministry of Mines

**MINUTES OF THE SITTING OF THE STANDING COMMITTEE ON COAL AND STEEL HELD ON 06 MAY, 2013 IN COMMITTEE ROOM 'E', PARLIAMENT HOUSE ANNEXE, NEW DELHI.**

The Committee sat from 1500 hrs. to 1530 hrs.

**PRESENT**

**Shri Kalyan Banerjee - Chairman**

**LOK SABHA**

2. Shri Ganeshrao Nagorao Dudhgaonkar
3. Shri Vishwa Mohan Kumar
4. Shri Pakauri Lal
5. Shri Govind Prasad Mishra
6. Shri Rajaram Pal
7. Kumari Saroj pandey

**RAJYA SABHA**

8. Shri Ali Anwar Ansari
9. Dr. Pradeep Kumar Balmuchu
10. Shri Nand Kumar Sai

**SECRETARIAT**

1. Shri S. Bal Shekar - Additional Secretary
2. Shri Shiv Singh - Director

3. Shri Arvind Sharma - Deputy Secretary

2. At the outset, Chairman welcomed the Members to the sitting of the Committee.

3. The Committee thereafter took up for consideration the following Draft Reports:-

(i) Report on "The Mines and Minerals (Development & Regulation) Bill, 2011" relating the Ministry of Mines; and

(ii) \*\* \*\* \*\* \*\*

4. The Committee adopted the Reports without any changes/modifications. The Committee then authorized the Chairman to finalise the Reports on the basis of factual verification from the concerned Ministry and present the same to both the Houses of Parliament.

***The Committee then adjourned.***

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**\*\*Do not pertain to this Report**