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ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
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JUDICIAL APPROACH WITH PROBLEMS RELATED TO MINING IN INDIA - HAS THE INDIAN JUDICIARY TAKEN PROLIFIC STEPS TO STOP ILLEGAL MINING

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ABSTRACT

This research paper will provide a critical analysis of India's judicial approach to illegal mining. And, with relation to the judicial approach, to what degree have the state and central governments of India obeyed the judicial ruling regarding illegal mining? Has the Indian court taken effective measures to prohibit illegal mining and mafias involved in different sorts of mining, including sand mafia and others? First, it must include a concise summary of the legal and judicial approach. Second, it establishing that the set of new amendments to the law in the recent period (between 2015 and 2021), in focusing on improving stopping sand, stone, bajri, and other ores of illegal mining, and trying to put strict restrictions on those who are engaging in this type of illegal activity, Third, it shall explain the concepts of mineral tenure security and the "social licence to operate," which should be granted by the state government, and the terms for keeping that leased and mining. Fourthly, it will describe the problems and hazards related to the prevention of illegal mining and the enhancement of its capacity to guarantee the sustainability of illegal mining. In spite of India's extensive mining laws, a number of policy changes are needed to address the shortcomings that impede the efficient and effective administration of the mineral industry. Last but not least, it will submit its results and recommendations for halting illegal mining.

The keywords are; illegal mining, sand mining, judicial approach, licence to operate, and illegal mining mafias.

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Chapter:1 INTRODUCTION

1. Introduction

The largest challenge that accompanies illegal mining is environmental deterioration. Consequently, the area animals and humans are in great danger. The repetitive mining of minerals degrades the soil. Land degradation causes environmental issues that may have long-lasting ecological repercussions on the environment, with some potentially having the potential to destroy the whole ecosystem. Continuous illegal mega mining will diminish shrub cover to a degree that threatens biodiversity. Mining is really a naturally increasing activity that may negatively impact the environment over a much broader region than the actual mining site. Another environmental result of all these illegal mining operations is water contamination.

One of the most important concerns that the government should address is the degree of mercury exposure & poisoning that happens throughout the stages of illegal mining¹. This research paper will provide a critical analysis of India's judicial approach to illegal mining. And, in terms of the judicial approach, to what degree have the state and judicial governments of India adhered to the court's illegal mining ruling? Has the Indian court taken effective measures to halt illegal mining and mafias involved in different sorts of mining, including sand mafia and others? The research paper must begin with a concise overview of the legal and juridical approach. Second, the researcher will discuss the collection of statutory amendments enacted in the most recent era (between 2015 and 2021), with a focus on stopping illegal mining of sand, stone, bajri, and other ores, and imposing strict restrictions on those who engage in this illegal activity. The remaining concepts will be explained in the third chapter.

Fourthly, the researcher must describe the obstacles and concerns associated with the prevention of illegal mining and the enhancement of its capacity to guarantee the sustainability of illegal mining. In spite of India's extensive mining laws, a number of policy changes are necessary to address the shortcomings that impede the efficient and effective administration of the mineral industry. It will then offer its observations and recommendations for preventing illegal mining. In recent years, however, the state

¹ Ana Bezerra, Jose Neto, Nathalie Monteiro, and Elaine Silva, 'Mining Law in Search of Sustainable Mining' (2021) 13 Sustainability 867.

government has issued several reports on illegal mining in various U.S. states and territories. In several of these instances, many law enforcement agents were murdered in the line of duty while attempting to halt illegal mining. Illegal and uncontrolled mining leads to financial losses and environmental harm for the state.² Therefore, if the state and federal governments feel it necessary, they might prematurely cancel any potential licence or mining lease connected to illegal mining, mafias, or minor minerals in the territory or any part thereof covered by such illegal mining leases.

2. Research Problem

The issue of illegal Mining has become one of the major issues in the modern world. We can see that over the last five years, illegal mining has been in the news due to many reasons, such as illegal exploitation by the mafias, Therefore, illegal mining has caused great harm to our environment and has been contributing to the continuous degradation of natural resources. Furthermore, to protect that nature, the Indian judiciary has taken prolific steps to stop illegal mining. What are the new legal reforms, and what are the challenges that people face as a result of illegal mining in India, as well as the natural causes caused by continuous illegal mining, and how should the state government treat those mafias and syndicates, and take strict action against those mafias or whoever is doing this illegal mining?

3. Research question

- 1) Whether the judicial approach has to be strict in the implementation of laws to stop illegal mining in the states?
- 2) whether there is a need to stop illegal mining where there is severe environmental and ecological degradation as a result of large-scale illegal, unlicensed, mafia, and syndicate mining activities?

4. Hypothesis

The Indian judiciary and state or central governments have not taken sufficient steps or taken strict action against mafias to regulate illegal mining and the laws governing illegal mining.

² Planning Commission Government of India, Sustainable Development Emerging Issues in India's Illegal Mineral Sector, May 2012, page 56; http://planningcommission.nic.in/reports/sereport/ser/isid_mining_report1206.pdf,

5. Scope

The scope of this paper is focused on the evidence of illegal mining operations carried out that are also entangled in politics. Corruption, political influence, and organized mafia or syndicates are also prevalent in this illegal mining. The relevant laws applicable in this research are the Mines and Minerals (Development and Regulation) Act, 1957; the Wildlife Protection Act, 1972 and the Forest Conservation Act, 1980.

6. Objective

1. To analyse the modification under the Mines and Minerals (Development and Regulation) Bill, 2011.
2. To scrutinize the judicial approach in determining the conflict arose in illegal mining.
3. To prevent illegal lifting/theft of minor minerals from unscrupulous mineral mafias.
4. To determine rules for the prevention of illegal mining, transportation, and storage of minerals.
5. To suggest the remedies needed to overcome the problems of illegal mining in India.

7. Methodology

The research method used in this project is the Doctrinal research method. Doctrinal research is that method of study in which the researcher seeks the answer based upon a secondary source to answer one or two political propositions, doctrines, or questions. The sources referred to for this research project are from various websites and journals.

8. Literature Review

1. Hemant K. Batra, *Understanding the Mines and Minerals (Development and Regulation) Amendment Act, 2021* Publication at Financial Express, 09 April 2021. <https://www.financialexpress.com/industry/understanding-the-mines-and-minerals-development-and-regulation-amendment-act-2021/2230056/>

In this article, the researcher finds that the committee is also tasked with determining whether the authorities have taken any action against illegal mining in these areas, including mining in excess of the permitted quantity, and what safeguards are in place to prevent such illegal activities.

2. Kuntala Lahiri-DuttI, “*Illegal Coal Mining in Eastern India: Rethinking Legitimacy and Limits of Justice*”, Published at News Paper, economic and Political Weekly <https://www.epw.in/journal/2007/49/special-articles/illegal-coal-mining-eastern-India-rethinking-legitimacy-and-limits>

In this article, the researcher finds that excessive sand extraction in or near riverbeds will have a direct impact on ecological equilibrium and have a negative effect on instream biota and riparian habitats. According to the judges, without a lease agreement, mineral analysis, mining plan, or environmental clearance, in violation of the applicable legal provisions.

3. Niharika Mukherjee, ‘*Indian Mining Law: A Critical Review*’ Published at: *The Contemporary Law Forum*, 19 August 2022, <https://tclf.in/2022/08/19/indian-mining-law-a-critical-review-part-i/>.

This article talks about mining investment, the legal system that applies to mining, the different mining laws, mineral ownership in India, the different types of mining tenements, the rights of miners to access land versus the rights of landowners, how royalties and other taxes are collected by the different levels of government, and the rules and restrictions that govern foreign investment in India.

4. Raza, Aqa & Dwivedi, Mukesh, “*Regulatory Framework of Minerals and Mining Industry in India in Relation to Environmental Concerns: A Critical Analysis*” (April 2017, 2019). Published at: Bhatner Socio-Legal Journal, ISSN 1350-0603, Volume 5, 2019, pp. 128-143., Available at SSRN: <https://ssrn.com/abstract=3415706>

In this article, the researcher examines the Indian legal framework governing mining. First, a summary of the industry and its regulatory framework will be provided. Secondly, it shall establish that the compilation of statutory amendments enacted during the most recent time period is complete (between 2015 and 2021).

5. Government of India Ministry of Mines, *Amendments in the Mines and Minerals (Development and Regulation) Act 1957 (2015- 2021)* Published at: Govt. website. <https://mines.gov.in/writereaddata/Content/EngMineralLawsMines24721.pdf>

In this article, the researcher examines the Indian legal framework governing mining. First, a summary of the industry and its regulatory framework will be provided. Secondly, it shall

establish that the compilation of statutory amendments enacted during the most recent time period is complete (between 2015 and 2021).

6. Nitika Kashyap, "*The Mines and Minerals (Development and Regulation), (Amendment Act, 2021)*" Published at (IJPIEL, 18 August 2021) <https://ijpiel.com/index.php/2021/08/18/the-mines-and-minerals-development-and-regulation-2021-amendment-act-examined/>

This article talks about mining investments, the legal system that applies to mining, the different mining laws, mineral ownership in India, the different types of mining tenements, the rights of miners to access land vs. the rights of landowners, the different levels of government that charge royalties and other taxes, and the rules and restrictions that govern foreign investment in India.

CHAPTER:2 HISTORY OF MINING IN INDIA

Mining conditions in independent India

In the decades before India's independence, the country's mining sector was modest and mostly undeveloped. Demand for mining and processing minerals increased throughout the Industrial Revolution, which started in the 18th century and changed Europe and the Americas from agricultural and rural to industrial and urban.

As a consequence of the ambitious Five-Year Plans for the coal, metalliferous, and oil sectors, a rise in mineral production, economic reforms enacted in 1991, and the National Mining Policy (NMP) enacted in 1993, the mining industry modernised and developed at a substantially faster rate following independence. Following the government's fiscal, industrial, and trade reforms, the NMP "recognised the need to encourage private sector investment, particularly Foreign Direct Investment (FDI), and to attract cutting-edge technology in the mining industry."

The Indian coal mining industry, which has been the subject of considerable criticism, has traditionally followed the demand for fuel from the nation's utilities and transportation networks. Many corporations negotiated mining leases with previous zamindars and monarchs for lengths ranging from indefinitely long to 999 years. After independence, coking

coal resources in the Jharia Coalfield, Jharkhand, were reportedly pushed for "systematic exploitation" in order to meet the growing needs of the steel industry. To maximise profits, however, several private coal mine owners have resorted to hazardous and brutal working conditions for their employees and insufficient support for infrastructure upgrades. In response, starting in 1971, the government introduced a series of laws, including the Coal Mines (Nationalisation) Act of 1973, to nationalise privately held coal mines³.

Due to its closeness to rapidly growing Asian markets and the excellent quality of the minerals it produces, India is an important export destination for mineral exports. There are around 3,000 mines in the country. The production and conversion costs of the steel and alumina sectors are decreased, which is beneficial for both industries. India ranks third in coal output, fourth in steel production, and fifth in iron ore production worldwide.

Chapter:3 JUDICIAL APPROACH ON ILLEGAL MINING IN INDIA

People may say that the judiciary is the most vigilant defender of democracy. It is one of the three pillars on which the rest of the Constitution is built. You wouldn't be wrong to call it the guiding and balancing pillar of democracy⁴. Justice A.R. Lakshman, a judge on the Supreme Court of India, said, "A successful judicial system is a sign of any developed civilization." Ronald Dworkin said, to show how important the judiciary is, that the law is not just a set of rules, but also includes principles and policies made by the courts. It means that laws can't be used by themselves. Instead, the courts use them by interpreting them.

If we looked at the number of environmental laws in India, we would see that there are a lot of them. Law is more than just the rules made by the legislature. The purpose of the law is to be fair. The courts not only change the laws, but they also come up with rules and policies to do justice when the letter of the law doesn't do enough⁵. The Supreme Court and several High Courts have made the following decisions about mining activities, with a focus on the idea of Sustainable Development.

³ Lahiri-Dutt, K. (2007). Illegal Coal Mining in Eastern India: Rethinking Legitimacy and Limits of Justice. *Economic and Political Weekly*, 42(49), 57–66. <http://www.jstor.org/stable/40277024>

⁴ V.K.S. Chaudhary, 'A Pillar of the Constitution' in the Ivory Tower-51 years of the Supreme Court of India, Ed. 2002, Universal Law Publishing Co. Pvt. Ltd., p.1.

⁵ V.S. Deshpande (Former Chief Justice of Delhi High Court) 'Law and Public Interest' in Environment, Administration Law and Judicial Attitude (edited book), published by Deep and Deep Publications, p. 129.

Rural Litigation and Entitlement Kendra (RLEK), Dehradun and Others v. State of UP and Others⁶ was one of the first cases that brought the issue of mining (development) and the environment into sharp focus. It brings up the conflict between development and conservation and shows how important it is for the country as a whole to find a way to balance the two.

In summary, the facts of the case arose from the illegal and extremely environmentally damaging mining of limestone in Doon Valley. These destructive practises continued until RLEK, a non-governmental organisation, sent a letter to the Supreme Court in the form of a writ petition⁷ complaining about the environmental degradation, which led to more than 100 mines joining the action. The court established a number of committees to assess the environmental effects of the various mines and make recommendations.

From 1983 onwards, the Court issued recommendations to prohibit blasting and close the most hazardous mines, and in 1987, based on the Banopadhyay Committee's recommendations, it was decided to close all mines due to ecological concerns and violations of the 1980 Forest (Conservation) Act. In addition, it mandated the reforestation of the valley and emphasised the importance of forest preservation for the preservation of the environment and ecology. During the course of the case, the court examined the meaning of sustainable mining. *"Although the exploitation of mineral resources in the interest of the country's industrial growth is necessary," it stated, "such mines should be operated in such a way as not to disturb the ecology and not to adversely affect the livelihood and living conditions of a very large number of people."*

In the interest of economic development and public health, the Supreme Court ruled that a high level of scrutiny is necessary when deciding whether mining in a particular area should be permitted. The court ordered the closure of mining operations for the sake of public health, bearing in mind the aforementioned viewpoint. The highest court also said that this would be hard for them, but it was a price that had to be paid to protect and safeguard the right of the people to live in a healthy environment with minimal disruption of ecological balance and no avoidable risks to them, their livestock, homes, and agricultural land, as well as no undue effects on air, water, and the environment.

⁶ AIR 1985 SC 652.

⁷ Article 32 of the Constitution of India.

In the case **Kinkri Devi v. State of Himachal Pradesh**⁸, the Division Bench of the Himachal Pradesh High Court said that the courts have to step in when mines are being run without any care and are hurting the environment and natural resources. When this step is taken, it will be possible to order the end of mining operations. Also, the Court told the State Government to decide whether to grant the mining lease based on the recommendations of the Committee, which was led by the Chief Secretary.

In the case of **Tarun Bharat Sangh, Alwar v. Union of India**⁹, the ideas of development (mining) and the environment came to the fore. The case was about a lot of illegal mining in a National Park and a Tiger Reserve that had been reported. It looks like the area that is now called “Sarika Tiger Park” was a private hunting forest for the rulers of the Quondam, Alwar State. Under the Rajasthan Wild Animals and Birds Protection Act of 1951, the area is now called a “Game Reserve.”

The area was also put on notice on January 1, 1975, according to Sections 29 and 30 of the Act. It is said that the direct effect of these is to make it harder to mine in protected areas in a way that would hurt the environment or wildlife.

So, the court ruled that no kind of mining can happen in the protected area. In the relevant part of the court's decision, it says, “At the outset, we might be allowed to explain something.” We are not being asked to stop a legal activity in the name of ecology and the environment¹⁰.

KM Chinnappa v. Union of India¹¹ was another case in which the topic of environmental protection and sustainable development was discussed. In this case, the Supreme Court had to deal with Kudremukh Iron Ore Company Limited (a government-owned company's) illegal mining in a national park. The national park¹² is part of the Western Ghats, and the forest region is one of the world's eighteen hotspots for biodiversity. According to the petitioner, the orders issued by the states of Karnataka and Uttar Pradesh on December 12, 1996 and December 14, 2000 were in violation of the Wild Life (Protection) Act of 1972.

⁸ AIR 1988 H.P. 4 (as Cited in S.C. Tripathi, ‘Environmental Law’, Fourth Edition 2010, Published by Central Law Publications, p. 35.

⁹ AIR 1992 SC 514

¹⁰ The Supreme Court thought that even a legal mining operation that followed all permissions could be stopped if it was good for the environment.

¹¹ AIR 2003 SC 724.

¹² Kudremukh National Park was declared to be National Park in 1987 within the terms of Section 35(1) of the Wildlife Protection Act, 1972.

The company asserted that it had an effective environmental policy and had spent a substantial amount of money on environmental protection. In addition, it had orders from foreign customers that, if not honoured, would result in a loss of foreign earnings and the loss of employment for a large number of employees.

Justice Arijit Pasayat concluded, after examining the aforementioned facts, that the real victims are the flora and fauna in and around Kudremukh National Park. Accordingly, the Court ruled that certain proceedings have been initiated against the Company for alleged violations of multiple statutes¹³. The Court acknowledged that corporate noncompliance with regulatory controls may result in criminal liability, administrative sanctions, clean-up expenses, civil liability, and negative publicity. In accordance with the recommendations of the forest advisory committee, it was mandated that all mining must cease within five years and the land must be reforested using an eco-forestation fund. In addition, compensation should be provided to enhance the protection of the park and other protected areas in Karnataka¹⁴.

In the case of **M.C. Mehta v. Union of India**¹⁵, the Supreme Court had to decide if mining in an area up to 5 km from the Delhi-Haryana border on the Haryana side and also in the Aravalli Hills hurts the environment and what the court should do about it. According to the mine operator, any pollution caused by mining activities could only travel 1 km and that the stoppage was completely unjustified. Keeping in mind the idea of sustainable development, the Apex Court allowed mining to take place in the Aravalli Hills range. Court said that: considering how badly the environment in the Aravalli hill range has been damaged, the court made it clear that mining can only happen if there is sustainable development and strict rules are followed. The Aravalli range of hills must be kept safe at all costs.

If, despite strict rules, mining in the Aravalli Hill Range area has a negative and irreversible effect on the environment, it may be necessary to stop all mining in the area at some point in the future. For the same reasons, this might also need to be thought about for mining in the Faridabad District.

Further, the court held that development and environmental protection are not antagonistic. If it is possible to carry out development activity in accordance with the principles of sustainable development without degrading the environment and/or

¹³ See Judgment Para 59.

¹⁴ Combat Law, 'Mining and Law' Volume 7, Issue 5, September, 2008 at 29

¹⁵ AIR 2004 SC 4016.

minimising adverse effects thereon by employing stringent safeguards, then development must proceed because it is impossible to ignore the need for the development of industries, irrigation resources, power projects, etc., as well as the need to increase employment opportunities and generate revenue. A balance must be reached.¹⁶

In the case of **Pyari Devi v. State of U.P.**¹⁷, the Allahabad High Court ruled that permission to mine in a protected forest area requires the prior approval of the Central Government. Furthermore, the court ruled that the petitioner was not in violation of the law when she was ordered to cease her mining operations. In the absence of permission from the Central Government, the petitioner is not permitted to begin mining operations on forest land that is being used for non-forest purposes. Even the construction/repair of the road for the transportation of minerals could not occur without the prior approval of the Central Government.

In addition, the Supreme Court's ruling in **T.N. Godavarman Thirumulpad v. Union of India and Others**¹⁸ reaffirmed its commitment to the Principles of Sustainable Development. In this instance, a company proposed constructing an alumina refinery in the Kalahandi District tehsil of Lanligarh. On top of the Niyamgiri Hills, bauxite deposits must be extracted. Niyamgiri Hills, which is the only vital wildlife habitat, a portion of which is an elephant corridor, and also on the basis that the proposed project, including the mining area, would obstruct the proposed wildlife sanctuary and the home of certain tribes.

According to the CEC, the Niyamgiri Hills would be severely impacted if mining were permitted in the aforementioned region, as it is a vital water source for two rivers. Additionally, the project would result in the destruction of the region's flora and fauna and soil erosion. On the other hand, there is a picture of the extreme poverty in which the local people (including tribal people) are living in the region in question. No suitable housing is available. People live in poor conditions, as there are no hospitals or schools.

The Supreme Court adopted the Sustainable development approach after analysing both aspects. The court is not opposed to the project, but it could not take the risk of entrusting an essential national asset to the applicant company. It

¹⁶ Martin. Z. Wilderer, 'Economic Growth, Environment and Development- the Significance of Eco-Industrial Park concept in India and Indonesia', Published by Manak Publications Pvt. Ltd., p.21.

¹⁷ AIR 2004 All. at 70 as cited in Annual Survey of India, Volume XL, 2004 at 613-14.

¹⁸ (2008) 2 SCC 222.

is only through protection that we are able to preserve nature and facilitate progress.

In the recent case of **T.N. Godavarman Thirumulpad v. Union of India and Others**¹⁹, the court halted all mining activities in the Aravalli Hill range. According to the State of Haryana, a total ban on mining minerals in the region would result in a severe shortage of construction materials, which would have a negative impact on the construction of roads and buildings, as well as other development projects. The court ruled that any mining activity on 600 hectares of identified and designated land in Faridabad must comply with the directives of the CEC and the State of Haryana. The Supreme Court allowed 600 hectares of land to be mined for minerals, but only after the Haryana government implemented a comprehensive rehabilitation and eco-restoration scheme²⁰.

The Hon'ble Supreme Court in the case of **Vellore Citizens Welfare Forum Vs. Union of India & Ors**²¹ (1996) held that the precautionary principle is part of the Environmental Law in India. It further stated that onus of proof is on the actor of the developer/industrialize to show that its actions are environmentally benign."

The Hon'ble NGT in the case²² held in "Para 20. In Original Application No. 481/2016, The allegation is that the District Administration is in way connected with the miners and that mining is taking place in violation of the terms of the Environmental Clearance. According to the applicant, it is necessary to develop an effective mechanism to prevent illegal mining."

The Hon'ble NGT in the case²³ held that in "Para 6. After disposal of the above matters, a disturbing event widely reported in media which took place on 07th September 2018 has been brought to our notice. **A Deputy Ranger who tried to stop illegal mining was killed by mining mafia at Morena in the State of M.P.**

"Para 7. The above disturbing event may also be kept in mind by the MoEF, while considering the issuance of revised guidelines in light of the judgment dated 05th September 2018 (Supra)."

The Hon'ble NGT in its order in O.A. 360/2015 in the matter of National Green

¹⁹ (2010) 1 SCC 500

²⁰ Reported in English Daily 'Times of India', dt. 10-10-2009 (as cited in S.C. Tripathi, 'Environment Law', 2010, p. 40).

²¹ *Vellore Citizens Welfare Forum Vs. Union of India & Ors. (1996)*

²² *Mushtakeem V. MoEF & CC & Ors. O.A. No. 44 2016*

²³ *Jai Singh & Anr. V. Union of India Ors. O.A. No. 304(2015)*

Tribunal Bar Association & Anr. Vs. Union of India & Ors²⁴. inter-alia observed the following:

“The 2016 Guidelines need revision in the light of the report of High Powered Committee in September 2016, failure of Monitoring mechanism followed by State Boards, SEIAs, DEIAs and MSS system developed by Ministry of Mines & IBM with the assistance of BISAG and MAITY and other observations quoted in paras 12 to 15.

As noted earlier in paras 17, 23, 27, 31 and 35, States of West Bengal, Odisha, Gujarat, Karnataka, Maharashtra, Punjab, Haryana and Uttar Pradesh are required to follow SSMG, 2016 as may be revised by MoEF&CC and even other States where illegal sand mining is taking place.

The States may review the monitoring mechanism in terms of several directions of the Tribunal and guidelines of MoEF&CC.

“Since the current monitoring mechanism followed by the State Boards, SEIAs, and DEIAs is completely ineffective, it must be revised and a dedicated monitoring mechanism must be established in order to ensure effective monitoring of sand and gravel mining.” The international conservation concern regarding natural wealth is a universal demand. Article 51(a) subsection (G) of the constitution requires every citizen of India to protect and improve the natural environment including forest, lakes, rivers, wildlife and to have compassion for the living creature²⁵.

Chapter:4 AMENDMENTS IN MMDR ACT, 1957 AND LEGISLATIVE PROVISIONS IN INDIA TO CONTROL ILLEGAL MINING

In the public interest, the Mines and Minerals (Regulation and Development) Act, 1957 (MMRD Act) was enacted by Parliament to “provide for the regulation of mines and the development of minerals under the control of the Union.” These laws were enacted to prevent the mismanagement of natural resources and the depletion of these resources. Illegal iron ore mining in Karnataka and Madhya Pradesh, Bauxite, Chromite, and coal mining in Orissa, and gold mining in Ghana are some of the most well-known mining scams in the world. The

²⁴ Supreme Court of India, Judgement dated April 18, 2013, in the matter of *Samaj Parivartana Samudaya and Ors. v State of Karnataka and Ors., Writ Petition (Civil) No. 562 of 2009*

²⁵ The Constitution of India, Seventh Schedule (Article 51 A & 246).

government, specifically the state government, holds mineral rights. Consequently, it becomes the owner of such mineral wealth wherever it may be found. In accordance with the Mines and Minerals (Regulation and Development) Act of 1957,²⁶ it is therefore permitted to assign such extraction rights to anyone. Those who illegally extract minerals are subject to legal penalties. Listed below are the possible government actions:

1. Action to impose a fine up to three times the market value of material extracted illegally as per Section 48 (7) of the Maharashtra Land Revenue Code, 1966 can be taken by the Collector, S.D.O., Tahsildar and District Mining Officer along with recovery of royalty of mineral.
2. The mineral extracted illegally can be seized/confiscated by the Collector, S.D.O., Tahsildar, under Section 48 (8) of M.L.R. Code 1966.
3. Under Section 22 of Mines and Miner (Regulation and Development) Act, 1957 complaint can be lodged before appropriate Court of the District Magistrate by Director of Geology and Mining, Joint
4. Under Section 21 of Mines and Mineral (Regulation and Development) Act, 1957 following action can be taken by the competent authorities mentioned below:
 - a) Under Section 21 (3) order of eviction from the area can be served on the person doing illegal mining.
 - b) Under Section 21 (4), the machinery tool equipment, vehicle or any other thing brought on the land for carrying out illegal mining can be seized by the District Magistrate, Officers of Director Geology and Mining and District Mining Officers.
 - c) Under Section 21 (5), the mineral illegally extracted can be recovered from such person where such mineral has already been disposed of the price thereof and rent, royalty or taxes can also be recovered from such person by the State Government or District Mining Officer for the period such area has been occupied by him.
 - d) A person doing illegal mining can be punished with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both.

²⁶ Mines and Minerals (Development and Regulation), 1957, §15(1).

Under Section 23C of the Mines and Mineral (Development and Regulation) Act, 1957 (MMDR Act, 1957) the government is empowered to make rules for prevention of illegal mining, transportation and storage of minerals.

In the case of *Rural Litigation and Entitlement Kendra & Ors v. State of U. P. & Ors*²⁷ The Supreme Court had received a writ petition from Rural Litigation and Entitlement Kendra regarding the unauthorised and illegal operation of lime-stone quarries in the Mussoorie Hill range, India. It was argued that the quarries caused a hazard to healthy environment and affected the perennial water springs. It was necessary to strike a proper balance. Appropriate authorities at the time of granting leases should take all these facts into consideration and also provide for adequate safeguards.

In particular, the amendments made to the Indian mining law from 2015 to 2021 (illustrated in the following paragraphs) reflect a clear prioritisation of this objective, despite the existence of multiple, and complex, issues plaguing the mining sector, such as sustainability, rights of local communities, working conditions, and the proliferation of illegal mining²⁸.

These amendments were enacted by the central government in response to the industry's production decline in the preceding period. A 2015 amendment to the MMDR Act mandated auctions for the allocation of mineral concessions to increase the process's transparency. To facilitate 'legitimate business transactions' involving these leases, a change was made in 2016 to permit the transfer of captive mining leases acquired through means other than auction. In 2020, the Act was amended to permit the "seamless transfer" of all "valid rights, approvals, and clearances" pertaining to a mining lease from the previous lessee to the new lessee for a two-year period.

Therefore, the three main significant 2021 changes: *first, that no mine would be reserved for a specific end use; second, that captive mines may sell up to 50 percent of their annual mineral output after satisfying their own needs; and third, that the statutory clearances transferred to new lessees under the aforementioned 2020 amendment would be valid not for 2 years, but for the entire lease period of the new lessee.*

²⁷ *Rural Litigation and Entitlement Kendra & Ors v. State of U. P. & Ors* 1985 AIR 65 1985 SCR (3) 169

²⁸ Examples include the Statement of Objects and Reasons in The Mines and Minerals (Development and Regulation) Amendment Bill 2021, Ministry of Mines, *Amendments in the MMDR Act* (n 26) 3 and Ministry of Mines, *Annual Report 2021-22* (n 1) 6.

As stated by the Government across policy documents, the objective of this set of amendments was to facilitate the ease of doing business, along with the related objectives of increasing employment and investment in the sector, maintaining continuity in mining operations following a change of lessee, and accelerating the pace of exploration and auction of mineral resources²⁹.

The privileging of a judicial approach, however, renders these amendments insufficient to address other concerns in the mining industry. Sustainability concerns are a prominent area in which they fall short in at least two ways: first, they make no mention of sustainability concerns raised in judicial decisions and government reports prior to their enactment³⁰. Moreover, it has been argued that their emphasis on the seamless transfer of clearances and the expansion of investment and production is directly antithetical to sustainability concerns. For instance, it has been argued that the automatic transfer of clearances to new lessees after the expiration of a lease, while promoting continuity in mining operations, can be detrimental to the environment if done without examining the environmental impacts after one mining cycle.

It has been shown that mining can cause a lot of damage to the land, cause a loss of biodiversity, and force people to move away from their homes and jobs. One way to deal with this is to make sure that mines are closed in a way that meets the needs of sustainability.³¹ To this end, the National Mineral Policy 2019 acknowledges the need for “scientific mine closure” that is “efficient and effective” and will restore ecology and biodiversity. Importantly, too, it has been found that scientific mine closure that fits with the social and economic needs of the local community is also a big part of the “social licence to operate³².”

Further, it is argued that under the Seventh Schedule of the Constitution of India, the State does not have the authority to regulate minerals coming from other states, as they fall outside the scope of Entries 66 and 23 of the State List. In the case of minerals, only the Central Government has the authority to regulate them under the MMDR Act, 1957 and Entry 54 of List 1 of the VII Schedule of the Indian Constitution. In the case of *Shri Sai Keshava*

²⁹ McKinsey and Company, *Putting India on the Growth Path* (n 6) 13, which notes ‘long lease time for mining lease procedures’ as one of the impediments in the growth of the Indian mining sector.

³⁰ *Deepak Kumar and Others v State of Haryana & Others* (2012) 4 SCC 629

³¹ Laura Sonter, Chris Moran, Damian Barrett and Britaldo, ‘Processes of Land Use Change in Mining Regions’ (2014) 84 *Journal of Cleaner Production* 1.

³² Government of India, *National Mineral Policy 2019*

*Enterprises and others v. State of Karnataka*³³ (2021) SCC Online KAR 10, the High Court of Karnataka reached a comparable conclusion.

Therefore, it can be concluded that although there are illegal coal mining taking place in the region of Dihing Patkai National Park, much of the activities are being carried out legally and with the permission of the central and the state government authority. However, it cannot be denied that the legal activities cover only a fraction of the overall mining activities taking place in the region. It is only the Coal India Ltd. which is the entity having the license to engage in such mining activities. As the report have stated, other illegal coal mining activities also operate in the said region. There is no doubt that there have been significant environmental impacts on this region as stated under the various research reports.

So, while the legality of the coal activities forms only one point of the argument, the greater environmental impacts as discussed in the previous chapters could not be downgraded as well. The authorities entrusted with the granting of such approval or license should, therefore, employ systemic mechanism, scientific research and studies before granting of such approval. The state needs to uphold the principles of public trust doctrine and principles of Constitution of India. As stated by the Supreme Court in Tarun Bharat Sangh, Alwar vs Union of India, 1992 Supp (2) SCC750, “*The issues of environment must and shall receive the highest attention from this Court*”.

Chapter:5 ISSUES AND CHALLENGES FOR PREVENTION OF ILLEGAL MINING

Consequently, posing a severe threat to the local wildlife and inhabitants. Frequently, mineral extraction causes degradation of the land. *Land Degradation generates environmental problems that can have long-term ecological effects, some of which are even capable of destroying the environment entirely. Illegal mining can also lead to the destruction of flora and fauna. Due to the heavy concentration of mining activities in various regions, agricultural lands have not only been degraded but have also lost their production capacity, i.e., less agricultural product production due to mineral deficiency in the soil and land deficiency. Continuous large-scale mining operations will deplete the vegetation to a level that threatens biological diversity. Various formalities, legal clearances, and compliance with*

³³ *Shri Sai Keshava Enterprises and others v. State of Karnataka, (2021) SCC Online KAR 10*

a number of legal obligations are necessary to continue operations efficiently, which renders mining activities unfeasible and unprofitable.

In instances where mining has been conducted without a valid environment clearance (EC), the activity is illegal and must be penalised for inefficient use of funds. The problem is exacerbated by the ambiguous political approaches of the federal government and the states to the auction and regulation of mines. *Huge illegal mining activity has led to the spread of mafiaism. To combat this revenue, officers along with police personnel conduct enforcement activities to control illegal lifting by mafias. Lack of transparency and inadequate governance infrastructure* Illegal mining reduces income for legal miners because illegal miners compete with legal mining operations.

It is a requirement that miners adhere to the laws that govern the operation of the lease, which include not only the mining plan but also environmental laws. *“If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful,” the judgement states. Any mineral extracted via an illegal or unlawful mining operation would be deemed illegally or unlawfully extracted.”* The Supreme Court has categorically denied the argument that leaseholders are also accountable for environmental regulations’ implementation³⁴.

Therefore, the Justice M.B. Shah Commission’s stated that, on Illegal Mining in Goa and the apex court stopped all mining in the state for three years, the environmental NGO’s provided that extensive documentary evidence of numerous flagrant violations of mining laws, such as mining without license, amalgamation of mining area leases without permission, forgery of paper records, etc. In addition, environmental laws have been broken by overloaded trucks which is using in illegal mining, air pollution, siltation of river and streams, dehydration of water and uses so many sources, and the destruction of agricultural resources. Consequently, it states that, the Supreme Court has determined that violation of mining laws, and make the extraction of mineral ores illegally.

Therefore, third significant aspect of *the Supreme Court’s ruling is its decision that all cases of illegal mining are punishable under MMDR Sections 21(1) and 21(5) state that, in*

³⁴ Niharika Mukherjee, "Indian Mining Law: A Critical Review," published at *The Contemporary Law Forum*, August 19, 2022, <https://tclf.in/2022/08/19/indian-mining-law-a-critical-review-part-i/>.

addition to fines and imprisonment, you may be compensated with the return of the mineral or its value. The Supreme Court is considering the formation of an expert committee to identify mining laws and violation across the nation and recommend preventative measures. In addition, the Supreme Court of India has ordered a review of the 2008 National Mineral Policy, focusing on conservation and mineral development.

In India, it is difficult to evaluate the damage caused by illegal mining by mafias. Therefore, according to the report presented by the Union Environment Ministry to the Rajya Sabha in January 2018, and stated that, there were 4.16 lakh cases of illegal mining (including sand and other materials) between to 2013-2017. *The majority of cases were reported in Maharashtra, Uttar Pradesh, Madhya Pradesh, and Karnataka. Overthrowing the sand mafia, which maintains its empire through bribes, threats, and the promise of employment, is a daunting task.* Even strict regulations, such as the NGT order prohibiting sand mining without environmental clearance, and the Supreme Court's ban on sand (bajri) mining in Rajasthan, have failed to prevent sand smuggling.

Why does the government not act or take strict action against illegal mining if it is unlawful? Because, politicians are involved due to the involvement of the government it will backfire on govt. only, at each and every level and everywhere in the system we cannot change the system permanently. Everyone is a bureaucrat. You wouldn't believe it but there is a corrupt government and system up there, and based on that, they are doing illegal mining. It is not mining, but theft. There is widespread corruption involved in obtaining these mining approvals. The state government and the central government both place blame on each other. The future of mining in India, Mining in India has a long history of success, but its future is uncertain due to poor regulatory legislation, excessive resource consumption, and a central government that prioritises rapid development.

5.1 MAJOR HAZARDS TO INDIA'S CHILDREN CURRENTLY FACED BY THE MINING INDUSTRY

The prevalence of unlawful mining has been publicly recognised by the majority of governments. Sometimes, in order to save money, businesses use children as labourers and expose them to hazardous and toxic extraction procedures, as well as the chemicals and

radiation that result from them. Due to the lack of shelter or accommodation and the long hours demanded of miners, children often work and reside near mine sites. They are frequently mistreated and sexually exploited, and they suffer daily from pollution, contaminated water, unclean living conditions, a lack of basic food and water, and a lack of other basic utilities. Because their moms are compelled to bring them to the mines, infants are crawling about in mine pits and absorbing hazardous chemicals from the filthy dust and water.

Therefore, Constant risk in the mines leads to many injuries, illnesses, and fatalities, leaving workers unable to perform even the most basic functions, such as breathing and eating. Families of miners who have been killed or injured rarely receive compensation because the majority of miners are not technically employed and it is difficult to link illnesses to mining activities, even when workers can demonstrate a link through medical records. Children of silicosis victims at mining sites and mines throughout the world are a perfect example of a group compelled to enter the labour field in order to ensure the survival of their family. Furthermore, there is no documentation of the deaths of children in illegal mining.

However, the Justice M.B.Shah Committee, which was constituted to study the magnitude of illegal mining and the role of regulatory and monitoring bodies in India, has seen only lukewarm compliance with its findings and orders for action. Strict legal action and monitoring of mine clearance processes, the diversion of forest lands for non-forest activities, and punitive action may be used to halt illegal mining. The necessity for rigorous labour standards and conformity with the law is urgent. If mining worker families do not get major changes in working conditions, wages, and standards, they would be forced to send their children, especially their daughters, into the workforce, where they will be exposed to hazardous and illegal working conditions. Girls will drop out of school to care for their families if the Mines Act is not implemented at all mining sites, including the provision of sufficient living and working facilities, creches, and housing.

The official sector avoids accountability for the exploitation of women and children, mostly in mines, by subcontracting the great bulk of extraction, processing, and trade operations. Due to the fact that the informal sector is not distinct from the formal economy, there is an urgent need to formalise the informal economy. In reality, the formal sector is responsible for the informalization of the majority of mining operations in order to avoid accountability and,

as a result, enjoy the massively subsidised costs it incurs in relation to environmental clean-up, employment guarantees and safeguards, social security, and international and national human rights laws.

Weak governance and monitoring mechanisms and regulatory mechanisms permit mining companies and contractors to openly employ child labour and refuse to provide any work safety equipment, standards of work, or formal entitlements to workers as specified in the numerous labour laws such as the Mines Act, the Unorganised Sector Workers' Act, the Interstate Migrant Workers' Act, the Mines and Minerals (Development and Regulation) Amendment Act, the Land Acquisition and Development Act, and the Land Acquisition and Development Act. Despite the fact that both adult and child mine workers have a very short life expectancy due to the hazardous nature of their occupation, they continue to live and work in inhumane conditions since neither medical help nor labour laws are enforced. There must be a substantial increase in money for monitoring and regulation; for example, the Ministry of Labor has only a tiny number of inspectors who visit mine sites to implement laws against child labour and mine safety standards.

In Scheduled Areas, where indigenous people or Adivasis live, large-scale mining is done, which takes away their food source. Before acquiring property, it has been proposed to amend the Land Acquisition Act to eliminate the clause mandating a social impact analysis and the option for impacted populations to express feedback. Such legal safeguards pose an even greater threat to the constitutional and human rights of people living in areas where children's development is a low priority. In addition, mine closure without accountability is a widespread form of withdrawal that leads to the damage of agricultural land, water supplies, and forests, as well as the formation of vast mine pits. As a consequence of this degradation, it becomes more difficult for people to forage for food or produce their crops, which has an immediate impact on the health and nutrition of children. In the majority of instances, mining-affected communities are consigned to landless migrant labour since the compensation, if any, is inadequate to restore their livelihoods or employment.

Monetary prizes and reparations have not been effective in improving the economic health of affected communities. Large-scale mining operations that prioritise the mining economy at the expense of others have negative effects on children. According to the Samatha

Judgment³⁵ regarding Scheduled Areas, therefore, mining should be the absolute last resort for economic development, and only then should any relocation or rehabilitative services be implemented with the utmost care for the safety, education, health, and development of children. Gram Sabhas and village councils must be consulted under the Panchayats (Extension to Scheduled Areas) Act, which adheres to the same principles as the United Nations Declaration on the Rights of Indigenous Peoples.

5.2 SILENT FEATURE OF MMDR

AMENDMENT ACT

The granting of combined mining and exploration licences

The law establishes a new kind of licence known as a “prospecting license-combined mining lease.” This new licence would cover both prospecting and mining, unlike the old system which needed two separate licences for each activity.

Restrictions on Coal's Final Use Will Be Lifted

Firms can now decide whether to keep the extracted mineral for themselves or put it on the open market.

Modifications to qualifying standards

Companies without coal mining experience in India, but with mining experience in other minerals or other countries, are now able to bid for coal and lignite blocks in India's auctions.

Elimination of abandoned mines and redistribution of mining rights

The federal government may re-allocate closed mines by auction or allocation. A designated custodian may be appointed to manage the mines until a new owner is identified.

Eliminating the necessity for prior authorization

Certain kinds of mineral exploration permits, prospecting licences, and mining leases do not need central government approval. The government of the United States has issued an appropriation. A reservation of land notification was issued by the federal or state government.

³⁵ Samatha vs. The State of Andhra Pradesh & Others, 1997 8 SCC 191

Pre-sale conditions for auctions

Mining lease auctions may be organised by state governments well in advance of the lease's expiration date. There was a time constraint on when the new bidding would commence, which corresponds to the end of the lease period.

Distribution of necessary authorizations to possible new purchasers

Before mining can commence, the new lessee must now obtain all required permissions. The successful bidder will get all permits, licences, and clearances given to the departing lessee throughout their two-year tenure. Prior to the beginning of the lease term, the new lessee must obtain all required licences.

5.3 COMMON DIFFICULTIES AFFECTING THE MINING LAWS

Energy Availability

As the resources of some regions become depleted, enterprises are driven to seek unexplored locations. It may be more expensive than standard mining techniques, making certain enterprises reliant on a temporary power supply.

In order to access the remaining resources, mines are being swiftly established in off-grid locations; but, as mine lifespans get shorter, it becomes less economically viable to build permanent electrical infrastructure to sustain the mine. Instead, remote miners are choosing microgrids because they are flexible, efficient, and can be expanded to meet business goals.

Concerns Regarding Health and Safety

Working in mines carries a significant risk of injury or death. Coal dust inhalation, hearing loss from mine noise, and chemical hazards are still significant threats for miners, but as the business has evolved, new issues have emerged.

As underground mining activities develop, the risk of a mine collapse is greater than ever before. The necessity of keeping a steady temperature inside a mine has increased as the need to manage it has increased in line with the rise in temperature and the rising unpredictability of the environment.

In addition, contemporary mining practises have reemphasized the need of dependable ventilation systems to safeguard workers from dangerous gases.

Obtaining Funding

One of the most serious problems in the mining industry, especially for smaller mining companies, is how hard it is to get access to and use enough money.

Exploration and production expenditures have increased in recent years, eroding profit margins and causing investors to be leery of undertaking new ventures, especially with smaller enterprises. Junior miners don't have the money that big mining companies do, so it can be hard for them to get the money they need to pay for modern mining techniques and expensive industrial-grade equipment.

Due to the increasing use of flexible financing, junior mining firms may now continue to push the boundaries of exploration. Numerous high-profile projects have been abandoned, postponed, or redesigned owing to investors' worries and the difficulties of securing the required funds.

The imbalance in commodity prices

Fluctuations in commodity prices pose substantial issues for company planning and forecasting. Due to the recent shift in commodity prices, a number of companies have been compelled to either discontinue operations totally or make substantial staff adjustments. Therefore, mining companies are more committed than ever to maximising output while minimising expenses.

The effect on the environment

Even though mining has historically been a carbon-intensive industry, it is now more concerned than ever with minimising its environmental impact.

This may be accomplished mostly by analysing how much energy they use. Due to isolated locations and limited availability of local grid infrastructure, the mining industry has a high need for diesel-generated electricity. As a result of recent breakthroughs in renewable energy, hybrid power solutions for mine operations are on the rise. By combining renewable energy

sources with thermal generation and battery storage, modern mining operations may maximise their efficiency while reducing their environmental impact and expenditures.

SUGGESTIONS AND CONCLUSION

Identifying the mining and non-mining zones is followed by defining the sensitive area by determining the distance between the mining area and protected areas such as, forests, bridges, important structures, habitation, etc. Unless local safety conditions exist, it is preferable to avoid mining in sensitive areas. Such a variance must be temporary and not permanent. *The States may evaluate the monitoring mechanism in accordance with a number of directives from the Tribunal and guidelines from the Ministry of Environment, Forestry, and Climate Change (MoEF&CC).*

A physical survey of the field or lease mining area should be regulated by a special authority or by using traditional methods to track the mining area, such as drone and other satellite images of the mining area, the use of CCTV cameras under the stackyard and at the mining site, transportation monitoring using GPS equipment, and that GPS device should be installed on all carrying vehicles for tracking purposes. The identification of vulnerable impacts observed at the mining sites and noncompliance with the terms of environmental clearance and permission to operate should be subjected to a rigorous examination. The district administration shall provide detailed information about mining in its district for public use on its website, with the aim of extending all information into the public domain or government websites so that citizens are aware of mining activities and can report any deviations(moving activity) to the district administration. Before giving the permit or receipt to the mining leaseholder via the District Collector, the State Mining Department should print and scan the security features on the transport permit or receipt.

Using all available legal options simultaneously, the action should be taken. *After identifying the case of illegal mining, who is doing excavation, storage, or transportation of minor minerals (including sand), a fine should be imposed in accordance with the state's land revenue laws and codes. In addition, a FIR must be filed at the jurisdictional police station under applicable sections of the law, including Section 379 of the IPC.* There are 'N' number of reports describing the various ways in which illegal mining persists. There has not been a systematic effort to close the loopholes. The objective must be to create a control

system that cannot be manipulated by either miners or government officials. The protection of mineral reserves and their sustainable exploitation for development purposes are concerns taken up by the state government. As land and its mineral reserves are the most valuable capital assets, protecting such an asset is a valid plan activity. Consequently, the state government has been endowed with the duty to implement a workable plan of action to fight against illegal mining and lifting, which have resulted in enormous revenue losses for the state treasury.

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