

Mines and Minerals (Development and Regulation) (MMDR) Bill 2012 tabled in Parliament

Key recommendations of the Parliamentary Standing Committee on Coal and Steel, and CSE's analysis

The Mines and Minerals (Development and Regulation) (MMDR) Bill 2012 was tabled in the Parliament on May 7, 2013. The Parliamentary Standing Committee on Coal and Steel headed by Kalyan Banerjee presented its report to both the houses of the Parliament.

We bring you here the key recommendations/suggestions of change put forward by the Committee, and CSE's opinions on these recommendations

- 1. Clause 43 (2):** Under this clause of the Bill, the holder of a mining lease is to pay annually to the District Mineral Foundation (DMF) an amount equivalent to 100 per cent royalty in case of major minerals, 26 per cent profit-after-tax in case of coal and lignite and a certain percentage of royalty to be decided by the state government in case of minor minerals.

Recommendation: For coal and lignite, the Parliamentary Standing Committee has recommended doing away with the 26 per cent profit sharing and replacing it with a 'certain percentage of royalty', which is in line with the proposal of the ministry of coal. The ministry of mines suggests an amount equal to royalty but it seems the final decision on percentage will be taken by the coal ministry.

Some stakeholders were of the opinion that the mining industry in India is already heavily taxed and the MMDR provisions will push this to 65 per cent. The ministry of mines has replied saying the National Mineral Regulatory Authority (NMRA) will look into the tax burden issue.

CSE's stand: *We support the Committee's decision to let the profit sharing provision remain. The change with respect to coal should follow the major minerals model of 100 per cent royalty percentage.*

- 2. Clause 43 (3):** This clause states that in case the mine lease holder is a company, it shall allot at least one share to each person of the family affected by mining-related operations of the company. It also states that these shares should be non-transferable.

Recommendation: Acting on a proposal from the ministry of panchayati raj, the Committee has suggested that the shares be made 'inheritable'. The Committee felt that one share per person in a family is an inequitable distribution in terms of land loss and needs to be changed. It has therefore suggested that the number of shares allotted to each person be linked with the quantum of land put to use for mining operations. It further states that non-transferable shares do not have any economic value and hence the ban on transferring the shares will not be in the interest of the people. The Committee recognises that there is a fear of the company buying back these shares but feels transfer of shares should be permitted – however, the ministry of mines does not agree with this. The ministry thinks if shares are made transferable, it will dilute the stakeholders' voice during AGMs. Also, the Department of Atomic Energy is concerned that since shareholders are entitled to know the details of the workings of a company, this may prove to be a problem since information on atomic projects is usually not for public consumption. Hence, the department has proposed that the rights of shareholders under this provision in atomic projects be restricted to only the financial benefits. The Committee has advised the ministry of mines to address the concerns of the Department of Atomic Energy.

CSE's stand: *We support the Committee's decision to make the shares inheritable. But there is a need for the Committee to fix the percentage of shares that will go to the local community. Then a formula can be developed based on which shares can be allocated to people depending on whether they will lose land or not.*

3. **Clause 43 (5):** This states the mine lease holder should provide to any person holding occupation or usufruct or traditional rights of the surface of land on which lease has been granted, employment or other assistance in line with R&R policy of the state.

Recommendation: The Committee recommends that a suitable mechanism to avoid duplicity or excess burden shall be worked out when the Land Acquisition and R&R Bill is in place.

CSE's stand: *We don't agree with the Committee's decision. This needs much more clarity -- otherwise it can lead to ambiguity and confusion as to what is 'duplicity' or what is 'excess burden'.*

4. **Definition of consultation:** The Committee has recommended that the term 'consultation' be read as 'effective consultation' -- so that the views of the gram sabha is not taken lightly or ignored without a 'strong valid reason'. The ministry of panchayati raj had proposed that consultation with gram sabha be defined as 'consent'.

CSE's stand: *We do not support the Committee's decision to define consultation as 'effective consultation'. We agree with the ministry of panchayati raj that consultation should indeed be consent. We believe that it is important for affected people to have a say in the decision making process. This will not only help the community to decide but also the companies to avoid unnecessary delays in setting up projects.*

5. **Clause 4 (2):** This states that no licence is needed for reconnaissance or prospecting operations undertaken by the Geological Survey of India, Atomic Minerals Directorate, Mineral Exploration Corporation Limited, Singareni Collieries, Neyveli Lignite and CMPDIL. These operations will only need to be notified by the state governments.

Recommendation: The Committee has suggested that since HCL, NALCO, SAIL and MOIL are also engaged in reconnaissance and prospecting, these companies should also be granted the above-mentioned exemption.

CSE's stand: *We do not support this particular recommendation. We feel this may introduce bias and favouritism in selection at the state level. We think a transparent system should be followed which should be applicable to all players across the board, except those organisations that are purely into exploration, discovery and promotion of minerals. We believe only the Geological Survey of India, Atomic Minerals Directorate, Mineral Exploration Corporation Limited and CMPDIL should be exempted.*

6. The Committee has asked for allowing tribals living in scheduled areas to transport and store minerals for personal use only. This has been recommended in line with the PESA Act.

CSE's stand: *We support the Committee's recommendation.*

7. **Clause 5 (1):** This defines eligibility for a person/company to get a mineral concession. It also states that a cooperative of scheduled tribes registered with the state government may be eligible to get mineral concession for small deposits not suitable for scientific mining in isolated patches.

Recommendation: The Committee has referred to the Samatha judgement which said mining lease can only be granted to cooperative societies comprising of local tribal gram sabha. The Committee has asked the ministry of mines to take a legal opinion keeping the Samatha judgement in mind and see if cooperative societies can also be allowed to obtain leases for larger deposits, especially in case of minor minerals. The Committee has also recommended that these cooperatives should operate without any direct/indirect transfer/sub lease to any private entity. It has also presented the need to define 'small deposits'.

CSE's stand: *We support Committee's recommendation to allow cooperative societies of scheduled tribes to acquire large leases in line with the Samatha judgement -- but only if they are capable of doing mining. These cooperatives should not be discouraged from applying for a mine lease but should be preferred for small deposits and minor mineral leases. Sub-leases should not be allowed as they will lead to confusion and entrenched interests.*

8. The Committee recognises that there should be a smooth supply of raw materials to integrated plants and hence has asked that proper weightage be given to end-user plants while evaluating competitive bids. The ministry of mines is of the view that allocation of captive mines to existing plants is not advisable, as it implies an anti-competitive market and hampers complete utilisation of run-of-mine.

CSE's stand: *We do not support the Committee's recommendation to promote captive mines. It has been CSE's experience that captive users of minerals, owing to their almost free raw material supply, tend to be inefficient. This indirectly implies a waste of the resource.*

9. **Clause 13 (5) (ii)** states that the state government should obtain all necessary permissions from the owners of the land and those with occupation rights.

Recommendation: The Committee is of the view that the government should ensure that rates arrived at the conclusion of the bidding process should be irrevocable to the extent possible. This is based on the reservation expressed by the Jharkhand government wherein it states that owners and people with occupation rights may artificially jack up land prices which may add to delays in granting mine leases.

CSE's stand: *There should be more clarity on how land prices will be decided. There are allegations that the government tends to categorise land wrong, so that it can pay the minimum compensation. A process should be introduced which would comprise of an independent inquiry to assess the land cost.*

10. **Clause 21 (1) (b):** The clause has put down the need for an exploration plan in case of an HTREL or PL by the licence holder. For coal and major minerals, this plan has to be prepared in association with the Geological Survey of India, the Indian Bureau of Mines, the state department for major minerals and the Central government; for minor minerals, the plan can rope in the state department. The plan has to contain baseline information of environmental conditions in the area, besides mitigation plan, expenditure details, etc.

Recommendation: The Committee finds this exploration plan to be of immense use and has suggested that the provision remain in the Bill. The Committee thinks this will help in assessing damage to the environment and in deciding appropriate mitigation and compensation measures.

CSE's stand: *We support the Committee's decision.*

11. **Clause 57:** This clause of the Bill gives the composition of the District Mineral Foundation (DMF).

Recommendation: The Committee feels the need to consider increasing the representation of the local community in the council of DMF. The Committee has also asked for including a local MP/MLA as permanent special invitee to the council.

CSE's stand: *CSE supports the Committee's recommendation of increasing local people's representation in the DMF council. This was one of the main recommendations of CSE's profit sharing report, released last year, where we asked for at least a 50 per cent representation from local community. But CSE opposes the nomination of a local MP/MLA to the council as that may lead to introduction of political interests in the utilisation of DMF funds.*

The Committee has also suggested changes/clarifications to minimum/maximum lease area under different category of minerals, definition of cooperative, period of mine lease, cancellation of a lease procedure, and rate of royalty on coal produced in different states.