

Legislative Brief

The Mines and Minerals (Development and Regulation) Bill, 2011

The Bill was introduced in the Lok Sabha on December 12, 2011.

The Bill was referred to the Standing Committee on Coal and Steel (Chairperson: Kalyan Banerjee) on January 5, 2012. The Committee was scheduled to submit its report in the last week of the Winter Session 2012.

Recent Briefs:

[The Higher Education and Research Bill, 2011](#)
December 28, 2012

[The Micro Finance Institutions \(Development and Regulation\) Bill, 2012](#)
December 28, 2012

Jhalak Kakkar
jhalak@prsindia.org

December 28, 2012

Highlights of the Bill

- ◆ The Bill requires every person to obtain a license or lease for carrying on mining or related activities.
- ◆ A new concession instrument called a High Technology Reconnaissance-cum-Exploration License has been introduced.
- ◆ The Bill provides for two methods of granting a mineral concession – competitive bidding where mineralisation is established and first-come-first-serve otherwise.
- ◆ A District Mineral Fund (DMF) will be established in each district where there are mining operations to make payments to affected persons.
- ◆ A mining leaseholder will pay an annual amount to the DMF for the benefit of affected persons. This will be equal to 26 per cent of profits in case of coal, and royalty paid during the year for other minerals.
- ◆ Mining leaseholders will be liable to provide annual compensation and at least one non-transferable share to persons affected by mining operations.

Key Issues and Analysis

- ◆ The Bill permits allocation of mineral concession in tribal areas to a non-tribal. There are two conflicting Supreme Court judgments on the legality of such a provision.
- ◆ Royalty rates are set to achieve an optimum balance between attracting investments while maximising revenues for the state. Mandating additional payments to the DMF could disturb this balance.
- ◆ The Bill mandates the issue of non transferable shares to affected persons. The Companies Act, 1956 does not permit the issuance of non-transferable shares.
- ◆ Any gap in the minimum compensation to be paid to affected families by the DMF is to be covered by the state government. This could put pressure on state government finances.
- ◆ The Bill does not clearly define some terms, such as 'High Technology Reconnaissance-cum-Exploration License'.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Mines and Minerals (Development and Regulation) Act, 1957 provides the legal framework for the regulation of mines and the grant of different permits and licences for exploration and exploitation of minerals (except petroleum and natural gas). The Parliament is empowered to regulate mining activities and the development of minerals to the extent that it is expedient in public interest.² State Legislatures have the power to regulate these activities subject to Parliament's regulations.²

In 1993, the central government issued a National Mineral Policy. In 2006, the Hoda Committee was set up to examine this policy. The Committee observed that mining projects are high risk investments as they have a long gestation period and require large investments in exploration and other development activities before commercial production can begin.³ Based on the Committee's recommendations, the policy was revised in 2008. This policy seeks to incentivise private sector investment in exploration and mining, ensure transparency in granting concessions and stresses on sustainable mining practices to safeguard the environment and local population. Subsequently, the Mines and Minerals (Development and Regulation) Bill, 2011 was introduced in order to harmonise legislation with the National Mineral Policy 2008. It will replace the 1957 Act.

Key Features

The Bill seeks to develop mining activities and regulate the impact of these operations. This is to be done by (i) prescribing the manner of allocation of mining concessions, (ii) compensating affected families through the District Mineral Fund, and (iii) setting up of various central and state authorities and tribunals.

Regulation of mining activities

- The Bill uses a combination of first-come-first-serve and competitive bidding to grant concessions. See Annexure for the method of granting mineral concessions. They include non-exclusive reconnaissance license, prospecting license, high technology reconnaissance-cum-exploration license (HTREL) and mining lease.
- A person needs to obtain a mineral concession in order to undertake any mining or related activities. They have to register themselves with the Indian Bureau of Mines, State Directorate or other authorised agencies. Certain government agencies will not need a license to conduct reconnaissance or prospecting.
- Applications for grant of all mineral concessions must be made to the state government. Concessions for coal, atomic minerals and beach sand minerals can only be granted after the approval of the central government.
- Specific timelines are provided for both the government to dispose applications for concessions and for the project developer to execute the mining concession.
- Areas can only be notified for grant of concession after consultation with the gram sabha or district council in the case of scheduled or tribal areas, and the district panchayat in the case of non-scheduled areas.
- Before notifying an area for competitive bidding, the state government must obtain all forest clearances, wildlife clearances and necessary permissions from land owners and occupants.
- Co-operative societies are eligible for mineral concessions for small deposits. For scheduled areas, state governments may give preference to a co-operative of Scheduled Tribes.

Table 1: Grant of Mineral Concessions

Concession	Area (sq kms)	Time (years)
Reconnaissance	Upto 10,000	1 - 3
High Technology	100 – 5000	3 - 6
Prospecting	1 – 500	2 – 3
Mining	0.1 – 100	20 – 30

Source: MMDR Bill, 2011; PRS

Royalties and Cess

- A mining leaseholder shall be required to pay royalty on minerals consumed or removed on *ad valorem* basis. The Bill specifies royalty rates for major minerals. State governments shall notify rates for minor minerals. Dead rent is to be paid if no minerals are produced, or if the dead rent is higher than the royalty.
- The central government may specify a cess as a customs duty and excise duty (up to 2.5 per cent) payable on major minerals. The state government may specify a cess on major and minor minerals at a rate that does not exceed 10 per cent of royalty.

Compensation

- The holder of a reconnaissance, prospecting license or HTREL is liable to pay a mutually agreed upon annual compensation to persons or families holding occupation or traditional rights over the surface of the land.
- The holder of a mining lease shall pay an annual amount to the District Mineral Foundation (DMF) for the benefit of persons affected by mining related operations. This amount is (i) 26 per cent of the profit (after tax) for coal and lignite, (ii) royalty paid during the financial year for other major minerals; and (iii) amount prescribed by the state government for minor minerals. Families will get compensation from the DMF at least equivalent to their entitlement under the MGNREGA, 2005. A leaseholder is liable to provide employment or other assistance as required under the rehabilitation and resettlement policy of a state government.
- When a company holds a mining lease, it shall allot at least one non-transferable share at par for consideration other than cash to each person affected by mining related operations.
- After a mineral concession is terminated, the state government will assess the damage to the land and determine the amount of compensation payable to the affected persons by the holder of the concession.

Establishment of New Authorities

- **National and State Mining Regulatory Authority:** The authorities shall oversee technical regulation and review rates of royalty. They may investigate or initiate prosecution for violation of the provisions of the Bill.
- **National Mining Tribunal:** The tribunal shall hear applications from affected persons regarding mining plans or orders passed by the central or state governments. States may establish State Mining Tribunals.
- **Special Courts:** State governments may constitute Special Courts to hear offences including exploration and mining without a license, disobeying directions of state governments, etc.
- **National, State and District Mineral Funds:** The Funds will make grants to the Mining Regulatory Authority and Mining Tribunal at the national and state level respectively. State governments may establish a DMF in each district where a mining lease has been granted or is in operation. The DMF shall make monthly or quarterly payments to affected persons.
- **National Drill Core Repository and National Geophysical Data Repository:** They will hold, authenticate and disseminate geophysical data supplied by the holder of the mineral concession.

Sustainable Mining

- The central government shall develop a National Sustainable Development Framework containing guidelines for the formulation of scientific, environmentally sustainable and socially sustainable mining practices. State governments may develop State Sustainable Development Frameworks. The Bill provides for the reservation of mineral bearing areas for the conservation of minerals.
- Firms must prepare a scientific mining plan and a sustainable Mine Closure Plan prepared in terms of a Sustainable Development Framework that includes details of closure, rehabilitation and restoration activities.

Transitional Provisions

- All applications for grant of mineral concessions, pending when the law comes into force, shall lapse; except where exploration has been completed or the execution of a lease or a licence is awaited.
- There is a moratorium period of two to three years for entertaining prospecting applications by the state government, after the law comes into force.

Penalties

- Some of the offences punished in the Bill are: (i) Exploration without a licence: imprisonment for two years or a fine of Rs 25,000 per hectare (maximum of Rs 15 lakh); (ii) Mining without a lease: imprisonment for three years or a fine which may extend to ten times the value of mineral mined; (iii) Non implementation of mine closure plan: penalty of Rs 1000 per day per hectare for period of default; and (iv) Contravention of any other provision of the law: imprisonment of one year or a fine of Rs 5000.

PART B: KEY ISSUES AND ANALYSIS

Comparison between 1957 Act and the proposed Bill

Some key differences between the 1957 Act and the 2011 Bill are highlighted in Table 2 below.

Table 2: Comparison between the provisions of the 1957 Act and 2011 Bill

Issue	1957 Act	2011 Bill
High Technology License	No provision	License introduced
Reconnaissance	Exclusive licence	Non exclusive licence
Manner of grant of a concession	First-come-first-serve; competitive bidding available for captive coal mines	Competitive bidding when mineralisation is known, and first-come-first-serve in other cases
Compensation for persons affected by mining operations	No provision (other than the Land Acquisition Act, 1894)	Mining lease holders to pay fixed amount (% of profit or equivalent of royalty); this is in addition to the provisions of the Land Acquisition Act, 1894
Renewal of licenses	Licenses or leases to be renewed	Licenses or leases to be extended
Eligibility of cooperatives	Ineligible to mine	Eligible for mining of small deposits in clusters
Transfer of concessions	Prior approval of state government required for transfer	For all concessions except a mining lease: Prior notice of 90 days to be given to state government, after which transfer can be made. Mining lease: Transferable subject to prior approval of state government
Regulatory Authority	No provision	National and State Mining Regulatory Authority set up to advise on royalty rates, set standards, etc.
Maximum area of concession	Prospecting licence: 25 km ² Mining lease: 10 km ²	Prospecting licence: 500 km ² Mining lease: 100 km ²

Sources: MMDR Act, 1957; MMDR Bill, 2011; Mineral Concession Rules, 1960; PRS.

Constitutionality of Concessions in Tribal and Scheduled Areas

Clause 6(6) and 6(7)

The Bill permits the allocation of mineral concessions in tribal and scheduled areas (as specified in the Fifth and Sixth Schedule to the Constitution) to companies. This may be in violation of a Supreme Court judgment in the case of *Samatha vs. The State of Andhra Pradesh*.⁴

In the 1997 *Samatha* judgment, a three-judge bench of the Supreme Court stated that there could be no transfer of tribal land to a non-tribal in a scheduled area. The Andhra Pradesh Scheduled Areas and Land Transfer Regulation, 1959 (AP Regulation) stated that any transfer of immovable property in a scheduled area shall be void unless it is made in favour of a Scheduled Tribe or a society composed of Scheduled Tribes. The court upheld the AP Regulation and prohibited the grant of mining leases in scheduled areas to non-tribals.

In 2001, a three judge bench of the Supreme Court examined a case in Madhya Pradesh (MP). They expressed reservations regarding the *Samatha* judgment stating that any interpretation of the Constitution can only be made by a five-judge bench. Moreover, they stated that the *Samatha* decision was not applicable in the MP case as the statutory provision in MP did not contain the prohibition mentioned in the AP Regulation.⁵

Payment of Compensation

Clause 43

Payment to District Mineral Foundation: The Bill provides for the holder of a mining lease to pay an annual amount to the DMF; besides the royalty to be paid to the government. The amount shall be equivalent to 26 per cent of profits for coal or lignite, and 100 per cent of royalty paid during the year for other major minerals. The Hoda Committee and the Study Group on Royalty Rates had recommended that royalty rates should be set at an optimum level – to maximise revenue for the state but not discourage investment.⁶ The imposition of additional costs through payments to the DMF could shift this balance, and make the sector unattractive for investment.

Composition of the DMF: The composition of the DMF could have implications when decisions are taken on disbursement of compensation. The DMF is managed by a Governing Council composed of various government officials, all holders of mining lease in the district and a minimum of three representatives of project affected families. The money paid to the DMF is to be used for the benefit of persons affected by mining related operations and to undertake activities for socio-economic purposes in areas affected by mining operations. The composition provided could result in more representatives from the government and mining companies and fewer

representatives of the project affected families. Additionally, it is unclear why representatives from mining companies are to be involved in deciding the disbursement of compensation.

Linkage to Profits: The linkage of the amount paid to the DMF to profits could put pressure on state finances. Under the Bill, the minimum compensation to project affected families by the DMF has to be equal to the amount a family is entitled to under NREGA and any gap has to be funded by the state government. During times of low profitability this implies that there will be a higher payout from the Consolidated Fund of the State concerned, hence putting pressure on the state government's finances.

Non-transferable shares: The Bill mandates the allotment of at least one non-transferable share at par for consideration other than cash, by the company to every person affected by mining related operations, regardless of the prohibition under the Companies Act.⁷ It requires the company to make appropriate amendments to its Articles of Association. However, the Registrar of Companies may not permit such amendments as the Companies Act does not allow for non-transferable shares. Additionally, the economic value of these shares could be low as companies may not declare dividends. Moreover, there cannot be capital gains as the shares are non-transferable. Furthermore, companies could limit the value of these shares by diluting their shareholding.

Definition of terms

The terms 'mineral' and 'ore' are not defined in the Bill.

The definition of the term 'High Technology Reconnaissance-cum-Exploration License' is unclear. This term is not in use by the industry, either in India or internationally. The Cabinet Note on the Bill states that this licence is to facilitate exploration of deep seated and concealed mineral deposits (other than bulk minerals like iron ore, bauxite, limestone, etc.) using high technology and venture capital.⁹

International Practice on Grant of Concessions

The Bill provides for two methods of grant of concessions: first-come-first-serve and competitive bidding (see Annexure below for details). Internationally, both methods are used. Certain countries like Canada, Australia, Chile and South Africa grant concessions through first-come-first-serve.⁸ Other countries such as Kyrgyzstan, Algeria and Turkey grant concessions through auction of mineral resources.^{3,8} In the United States, the owner of the land owns the minerals lying underneath, unlike in India where the state government owns the minerals.

Annexure: Method of Grant of Concessions under the Bill

Clause
11, 13
and 22

Under the Bill, the first-come-first-serve method for grant of concessions is applicable when mineralisation is not established and competitive bidding where mineralisation is known. Once the mineral concession is granted, the holder is given priority in obtaining the next stage of concession. This priority can enable persons who have discovered evidence of mineralisation through prospecting or exploration operations to have security of tenure in gaining mining leases and protect investments already made.⁹ In cases where mineralisation is known, competitive bidding would help augment state revenues and improve transparency of the allocation process. The Hoda Committee had also recommended competitive bidding for allocation of mines prospected by public agencies.

A summary of the methods for the grant of various concessions under the Bill is given below:

Grant of non-exclusive reconnaissance license: An application for a non-exclusive reconnaissance license is to be made to the state government. Multiple reconnaissance licences can be issued for a particular area. Over a period of time the license holder has to progressively relinquish the area granted under the license.

Grant of prospecting license and high technology license: There are three routes for obtaining a prospecting or high technology license (HTREL):

1. If reconnaissance has not been completed, and there is no evidence of mineralisation, the first application for either a prospecting license or an HTREL will receive the concession. However, the state government may call for bids within one month from receiving such an application for a prospecting license or HTREL. The first applicant prior to the call for bids has the right to match the best offer.
2. Reconnaissance holders get priority in the grant of prospecting licence within reconnaissance areas subject to certain conditions. If a person who applies for a prospecting license or HTREL has completed reconnaissance

over an area, he will have the first right for a prospecting license. The application must be made within six months of the completion of reconnaissance operations.

3. If there is no application (as in route 2 above) and if there is evidence of mineralisation in an area, the government can notify that area for the grant of a prospecting license or HTREL through competitive bidding. This notification cannot be issued if an application for HTREL is pending for the area (under the route 1 above). The license can be issued only six months after completing reconnaissance operations. If no application is received after notification, the government can either re-notify the area or notify it as being available for grant of mineral concession under the first-come-first-serve method.

Grant of mining lease: An applicant who has completed prospecting an area (under either a prospecting or HTREL license) shall be granted a mining lease, if he applies within six months of completion of exploration. If no such application for mining lease is received for an area where mineralisation is established, the state government can invite competitive bids.

Notes

1. The brief has been written on the basis of the Mines and Minerals (Development and Regulation) Bill, 2011 introduced in the Lok Sabha on December 12, 2011.
2. List I, Entry 54: Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. List II, Entry 23: Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
3. “National Mineral Policy: Report of the High Level Committee”, Planning Commission (Chairperson: Anwarul Hoda), December 22, 2006.
4. *Samatha vs. The State of AP*, AIR 1997 SC 3297.
5. *Balco Employees Union (Regd.) vs. Union of India*, AIR 2002 SC 350.
6. “Report of the Study Group to Review the Rates of Royalty and Dead Rent”, Ministry of Mines, September 28, 2007.
7. Section 111 A (2), Companies Act, 1956.
8. South Africa Mineral and Petroleum Resources Development Act, 2002; Kyrgyzstan Law on Subsoil, 1997; Turkey Mining Law, 1985; Algeria Mining Act, 2001.
9. “Note for the Cabinet: Mines and Minerals (Development and Regulation) Act, 1957”, Ministry of Mines, August 30, 2011.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgement of PRS Legislative Research (“PRS”). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.

