

# COMMON CAUSE

A REGISTERED SOCIETY

AN ORGANISATION FOR VENTILATING COMMON PROBLEMS OF THE PEOPLE

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December 10, 2014

Mr. Shersha,  
Director, Ministry of Mines,  
Room No 309, D Wing,  
Shastri Bhawan,  
Dr Rajendra Prasad Road,  
New Delhi -110 001

Sir,

Subject: **Comments/suggestions on MMDR (Amendment) Bill, 2014.**

Common Cause, a registered society dedicated to the pursuit of public causes, would like to offer the annexed comments and suggestions with reference to the Public Notice issued by the Ministry of Mines, inviting comments/suggestions from the stakeholders on the Draft Mines and Minerals (Development and Regulation) (Amendment) Bill, 2014.

With regards,

Yours faithfully,

Kamal Kant Jaswal,  
Director, Common Cause

## ANNEXURE

### I. General observations

The Explanatory Note annexed to the Bill is couched in generic terms and does not offer clause-by-clause justification for the specific amendments proposed. It is suggested that justification for each and every amendment proposed be included in the Explanatory Note to permit the correlation of the amendments to the stated objectives of the Bill.

### II. Detailed comments on the Bill

MMRD BILL, 2014	COMMENTS/SUGGESTIONS
<p><b>Section 2(ea):</b> “notified minerals” means iron ore, manganese ore, bauxite, limestone and any other mineral which the Central Government may, by notification in the official gazette, declare to be a notified mineral.”</p>	<p>Going by the value of annual output of the minerals, it would be appropriate, <i>ab initio</i>, to include zinc, copper and silver concentrates and gold among the metallic minerals, and phosphorite/rock phosphate among the non metallic minerals in this list.</p> <p>Later on, other minerals may be notified as and when they acquire sufficient importance in the national mineral output.</p>
<p><b>Section 6.</b> (1) No person shall acquire in respect of any mineral or prescribed group of associated minerals in a State</p> <p>(a) one or more prospecting licences covering a total area of more than five hundred square kilometres; or</p> <p>...</p> <p>(b) one or more mining leases covering a total area of more than one hundred square kilometres;</p> <p>Provided that if the Central Government is of opinion that in the interests of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded by it, in writing, permit any person to acquire one or more prospecting licences or mining leases covering an area in excess of the aforesaid total area</p>	<p>The increase proposed in the total area of prospecting license and mining leases is excessive and will result in the creation of oligopolies with their attendant ills. It will also eliminate smaller players from the field.</p>
<p><b>Section 9B.</b> (2) The composition and functioning of the District Mineral Foundation shall be regulated in such manner as may be prescribed by the State Government.</p>	<p>The template of the composition of the DMF should be laid down in the Bill. The Foundation should be headed by the President of the District Panchayat/Zilla Parishad and include MPs and MLAs from the district besides the District Collector and the senior-most functionaries of Forest, Mines and Tribal Welfare departments as well as</p>

MMRD BILL, 2014	COMMENTS/SUGGESTIONS
	<p>representative(s) of reputed civil society organization(s) working in the field of rehabilitation and environment protection in the district.</p> <p>There should be a prohibition on application of DMF funds for the following purposes:</p> <ul style="list-style-type: none"> <li>▪ Activities/projects outside the district ;</li> <li>▪ Funding infrastructure development and equipment of other government establishments.</li> </ul>
<p><b>Section 10A.</b> (1)(a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;</p>	<p>It is necessary to specify a minimum level of performance for the existing permit holders/licensee with reference to the approved work plan in order to qualify for grant of prospecting licence/mining lease. It is suggested that a performance shortfall in excess of 25% should result in cancellation of the permit/licence.</p>
<p><b>Section 10B.</b> (5) The Central Government shall prescribe the terms and conditions, and procedure, subject to which the auction will be conducted, including the bidding parameters for the selection, which could include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter, or any combination or modification of them.</p>	<p>The provision for production sharing based auctions is fraught with complications and leaves room for manipulation by vested interests. The experience of production sharing contracts in petroleum exploration needs to be borne in mind.</p> <p>An auction based on lump sum payment along with ad valorem royalty on the annual output offers an equitable arrangement of surplus sharing between the lessee and the State.</p>
<p><b>Section 11.</b> (5) The Central Government shall prescribe the terms and conditions, and procedure, subject to which the auction will be conducted, including the bidding parameters for the selection, which could include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter, or any combination or modification of them.</p>	<p>Same objections as above</p>
<p><b>Section 12A.</b> (1) A holder of a mining lease granted by means of the procedure referred to in Section 10B, or the holder of a prospecting licence-cum-mining lease granted by means of the procedure referred to in Section 11, may, with the prior approval of the State Government, transfer his mining lease or the prospecting licence-</p>	<p>With the exception of inheritance, there should not be any provision for transfer of mining lease/prospecting licence-cum-mining lease. This is necessary to minimize the scope for speculation and rent seeking behavior on the part of the lessees.</p> <p>The mineral wealth of the country vests in the State and the lessee has no inherent right to transfer the lease which</p>

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<p>cum-mining lease, as the case may be, in such manner as may be prescribed by the Central Government, to any person eligible to hold such mining lease or prospecting licence-cum-mining lease in accordance with the provisions of this Act and the rules made thereunder, after the expiry of a notice of not less than ninety days to the State Government concerned:</p> <p>Provided that no such transfer shall be allowed in the case of minerals specified in Part B of the First Schedule.</p> <p>Provided further that the holder of the original mining lease or the prospecting licence-cum-mining lease shall intimate to the State Government the consideration payable by the successor-in-interest for the transfer, including the consideration in respect of the prospecting operations already undertaken and the reports and data generated during the operations.</p> <p>(2) No such transfer of a mining lease, or a prospecting licence-cum-mining lease, referred to in sub-section (1), shall take place if the State Government, within the notice period, for reasons to be communicated in writing, disapproves the transfer on the grounds that the transferee is not eligible as per the provisions of the Act.</p> <p>Provided that no such transfer of a mining lease, or a prospecting licence-cum-mining lease shall be made in contravention of any condition subject to which the mining lease or the prospecting licence-cum-mining lease was granted.</p> <p>(3) The State Government shall not give its approval to transfer of a mining lease, or the prospecting licence-cum-mining lease unless the transferee has accepted all the conditions and liabilities under any law for the time being in force which the transferor was subject to in respect of such mining lease, or the prospecting licence-cum-mining lease, as the case may be.</p> <p>(4) The State Government may charge such fees for the transfer of the mining lease, or the prospecting licence-cum-mining lease as may be prescribed by the State Government.</p>	<p>is granted to him for exploitation under specified conditions. If the lessee is unwilling/incapable to work the mine, he should be required to surrender the lease to the state government.</p> <p>In the case of transfer by inheritance, the legal heir(s) must be eligible and willing to operate a mining lease.</p>

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<p><b>Section 17B.</b> (2) (ii) maintenance of internet-based databases including for development and operation of a mining tenement system;</p> <p>(iv) Such other matters as may be prescribed.</p>	<p>17B. (2)(ii): In the interest of transparency, the database should also include information on the compliance status of Forest and Environment clearances, as well as the observations of regulatory and oversight agencies, such as the Indian Bureau of Mines, the Central Empowered Committee and the Comptroller and Auditor General of India, in respect of the operation of the mines and the action taken thereon.</p> <p>(iv) The residual clause should be expanded to provide for an online portal for registration of complaints of illegal mining and monitoring of the action taken thereon.</p>
<p><b>Section 21.</b> (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.</p> <p>Provided that where the contravention of the provisions of sub-section (1) or sub-section (1A) of Section 4 is in relation to a notified mineral, punishment shall be imprisonment for a term which may extend to five years or with fine which may extend to five lakh rupees or with both.</p> <p>(2) Any rule made under any provision of the Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.</p>	<p>21(1): The quantum of maximum fine is grossly inadequate. It should be raised to Rs. 1 crore for notified minerals and Rs. 1 lakh for the others.</p> <p>21(2): The maximum penalties should be revised to allow for imposition of fines proportionate to the magnitude of the illicit gains derived by the miners.</p>
<p><b>30.</b> The Central Government may, of its own motion or on application made within the prescribed time by an aggrieved party:</p> <p>(i) Revise any order made by a State Government or other authority in exercise of the powers conferred on it by or under this Act with respect to any mineral other than a minor mineral, or</p>	<p>This provision confers unfettered discretionary powers on functionaries of the Ministry. The powers of revision of orders of the state governments should be vested in an independent, quasi-judicial, multi-member authority with domain knowledge in cognate fields.</p>

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<p>(ii) Where no such order has been made by the State Government or other authority in exercise of the powers conferred on it by or under this Act with respect to any mineral other than a minor mineral within the time prescribed therefor; pass such order that it may think fit and appropriate in the circumstances:</p> <p>Provided that in cases covered by clause (ii) above the Central Government shall, before passing any order under this clause, give an opportunity to the concerned State Government or other authority of being heard</p>	
<p><b>30B.</b> (1) The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1A) of Section 4, constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.</p> <p>(2) A Special Court shall be appointed by the State Government with the concurrence of the High Court.”</p>	<p>The constitution of Special Courts under this clause should be made mandatory.</p>