

**Project**  
**On**  
**Prevention of theft**  
**and illegal lifting of**  
**Minor Minerals**

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## Introduction

Minerals are classified into two groups, namely (i) Major minerals and (ii) Minor minerals. Amongst these two groups minor mineral have been defined under section 3 (e) of Mines and Minerals (Regulation and development) Act, 1957. They include building stones, gravel, ordinary clay, ordinary sand, limestone used for lime burning, boulders, kankar, murum, brick earth, bentonite, road metal, slate, marble, stones used for making household utensils etc. Therefore, all other minerals not defined as minor minerals in the said Act are treated as major minerals. They include coal, manganese ore, iron ore, bauxite, limestone, kyanite, sillimanite, barites, chromite, silica sand, fluorite, quartz, sand used for stowing purposes in coal mines and many other minerals used for industrial purposes. Entry 54 of union list – I & Entry 23 of state list – II of seventh schedule of the constitution of India empowers the Union & State Governments respectively for management of minerals. Grant of mineral concession for major minerals are governed by the Rules and Regulations formulated by Central Government and are therefore same throughout the country. Rules for grant of concessions of minor minerals are framed by the State Government as per powers delegated under section 15 of Mines and Minerals (Regulation and Development ) Act, 1957.

### REGULATING SMALL-SCALE MINING—BACKGROUND

Before going into what the recent initiatives mean for controlling rampant mining, or how much they will be effective in ensuring better mining practices and sustainability, it is pertinent to recount the course of events that led to this action. The issue of granting EC for small-scale mining of minor minerals has been under deliberation for the past few years. Earlier, the EIA Notification, 2006 and its subsequent amendments did not require ECs for such projects. This allowed mining under small leases without any environmental assessment. The EIA Notification, 2006 broadly divides projects into two categories—Category A (mining area equal to or greater than 50 ha) and Category B (mining area between five and 50 ha)—based on potential impacts over an area and on human health and natural and man-made resources. According to the notification, all Category A projects (with potentially significant impact) are required to carry out an EIA and undertake a public hearing before an EC is granted by the Union environment ministry.

Category B projects (with potentially less significant impact) are evaluated and given a clearance by state level authorities, state environment impact assessment authority (SEIAA) and state expert appraisal committee (SEAC). Moreover, projects under Category B1 also require an EIA and public consultation, but those under B2 are exempted from requirements of both EIA and public consultation.

Started being reported with respect to minor mineral mining, particularly sand, a need for introducing EC requirements for these projects started to be felt strongly. A report of the then Ministry of Environment and Forests (MoEF, now MoEF&CC) in 2010 specifically described such activity as “haphazard and unscientific”.<sup>2</sup> Following these events, both the Supreme Court (SC) and the National Green Tribunal (NGT) issued orders and directives making ECs compulsory for projects less than five hectares. The However, as irregularities Union environment ministry also took a number of measures to bring the matter under regulatory purview.

### **What Is Illegal Mining**

Mineral rights vest in State Government and State Government is the owner of mineral wealth wherever found. Being the owner of mineral wealth, State Government can assign the right of extraction of minerals to anybody under the provisions of Mines and Minerals (Regulation and Development) Act, 1957 and rules made there under. Anybody extracting or removing any mineral without obtaining permission from any lawful authority amounts to illegal mining and is liable to be punished under the provisions of the rules.

As per the First report of Shah Commission Illegal Mining of Mineral Includes

- (a) mining without a licence;
- (b) mining outside the lease area;
- (c) undertaking mining in a lease area without taking approval of the concerned State Government for transfer of concession;
- (d) raising of minerals without lawful authority;

- e) raising of minerals without paying royalty in accordance with the quantities and grade;
- (f) mining in contravention of a mining plan;
- (g) transportation of raised mineral without lawful authority;
- (h) mining and transportation of raised mineral in contravention of applicable Central and State Acts and rules thereunder;
- (i) conducting of multiple trade transactions to obfuscate the origin and source of minerals in order to facilitate their disposal;
- (j) tampering with land records and obliteration of inter–State boundaries with a view to conceal mining outside lease areas;
- (k) forging or misusing valid transportation permits and using forged transport permits and other documents to raise, transport, trade and export minerals;

#### **Status Report on Sairat Sources :**

<b>Total No. Of Sairat Sources</b>	<b>4464</b>
<b>Sairat Sources already granted EC approval By CEIAA &amp; DEIAA</b>	<b>1690</b>
<b>Total No Of Bidders</b>	<b>1587</b>
<b>Operationalised Sairat Sources</b>	<b>1486</b>
<b>Royalty Collected</b>	<b>77,40,54,615</b>

**( The above report is in reference to the Financial Year of 2017-18)**

#### **Regulation of Sairat Sources through Concession rules (Odisha Minor Mineral Concession Rulrs,2016)**

In February 2012, observing the illegal and unscientific nature of mining of minor minerals, the Supreme Court ordered that “leases of minor minerals, including their renewal for an area of less than five ha, be granted by the states/Union Territories only after getting environmental clearance from the MoEF.” In May the same year, the MoEF issued an office memorandum (OM) asking all states to follow the apex court’s order, thus requiring all small-scale minor mineral projects to get an EC.

## **Highlights of the EIA Notification Amendment, 2016**

**(Establishment of authorities at the district level to clear projects and provisions)**

### **District-level authorities: DEIAA and DEAC**

The latest notification provides for the establishment of district level authorities—the district environment impact assessment authority (DEIAA) and district expert appraisal committee (DEAC)—to give EC to small-scale mining projects. The authorities have been charged with evaluation of EC proposals for minor mineral leases that are equal to or below five ha and also for clusters of small leases where the size of the cluster is upto 25 ha, with no individual lease being more than five ha. According to the MoEF&CC, the creation of district level authorities was necessary because “as a result of the Supreme Court order, the number of cases which are now required to obtain prior EC has increased substantially”.

A four-member DEIAA will be responsible for grant of EC for minor mineral projects with leases equal to or below five ha. The DEIAA will be chaired by the district magistrate or collector and the sub-divisional magistrate or sub-divisional officer of the district headquarter will be the member-secretary. The other two members will be the senior-most divisional forest officer and an expert member to be nominated by the divisional commissioner or chief conservator of forests.

For the purpose of assisting the DEIAA, there will be an 11-member DEAC. The DEAC will be chaired by the senior-most executive engineer of the irrigation department. The assistant or deputy director or district mines officer or geologist in the district (in that order) will serve as the member -secretary. The other members will be from senior-most sub-divisional officer (forest), a representative of remote sensing department or geology department or state groundwater department to be nominated by the district magistrate or district collector, occupational health expert or medical officer to be nominated by the district magistrate or district collector, engineer from *zila parishad*, a representative from state pollution control board or committee, senior-most assistant engineer of public works

department, and three experts to be nominated by the divisional commissioner.

## **Proposal of a district survey report**

The requirement of a district survey report for sand or riverbed mining and also for mining of other minor minerals has been specified. The survey report needs to be prepared for each minor mineral in the district separately. The main objective of the report is to determine areas where mining can be allowed and where it must be prohibited. For this, the report should identify aggradations, depositions, areas of erosion, and proximity to infrastructure and installations. It must also calculate the annual rate of replenishment and allow time for replenishment after mining in a particular area.

A general structure of the report has also been outlined which requires information on mining and minerals in place and information on geology, meteorology, hydrology etc. of the district. A survey guideline has also been given which is to be undertaken by the DEIAA. The DEIAA should conduct the survey with the assistance of any of the following departments: geology, irrigation, forest, public works, remote sensing and mining; or groundwater board etc. in the district.

## **Provisions of cluster mining**

The amendment includes provisions for cluster mining, detailing out procedure for obtaining an EC for clusters. A cluster situation will arise when the distance of the periphery of one lease is less than 500 meters from the peripheries of other leases in a homogeneous mineral area which shall be applicable to the mine leases or quarry licenses granted on and after 9 September 2013.

For consideration of EC to one cluster, a single EIA report/environmental management plan (EMP) is required to be prepared for the entire cluster “in order to capture all the possible externalities”. In addition, a single public hearing is to be conducted for the entire cluster (except B2 category). However, ECs shall be applied for and issued to individual project proponents in the cluster based on the common EIA/EMP and the public hearing.

## **Monitoring of mining activities with technology-enabled services**

Various technology-enabled services have been specified for monitoring sand or riverbed mining activities including movement of mined materials. Security features have been specified for transit permits such as the use of a unique barcode and unique quick response (QR) code etc., details on how the permit should be printed, use of smart phones and CCTV cameras at the mine

site, sophisticated weighing equipments to monitor the movement of sand from the mines, tracking vehicles through radio-frequency identification (RFID) tags and GPS etc.

## **GRANT OF MINING LEASE FOR SPECIFIED MINOR MINERALS**

- (1) In areas where existence of specified minor minerals is established, the State Government shall notify such areas for grant of mining lease indicating the terms and conditions subject to which such mining lease shall be granted.
- (2) For the purpose of granting a mining lease in such areas, the State Government shall select, through auction by the method of competitive bidding, including e-auction, an applicant who fulfils the specified eligibility conditions.
- (3) The State Government shall specify the terms and conditions, and procedure, subject to which the auction shall be conducted, including the bidding parameters for the selection which may include any payment linked to the royalty payable, size and area of mineral deposits, or any other relevant parameters.
- (4) The Government shall grant a mining lease for specified minor mineral to an applicant selected in accordance with the procedure laid down in this rule in any notified area subject to submission of mining plan duly approved by the authorized officer and forest clearance under the provisions of the Forest (Conservation) Act, 1980, if required.
- (5) The persons selected through competitive bidding shall execute the mining lease deed in Form-E, within three months from the date of the issue of the order by the State Government or within such further period as the State Government allow in this behalf and if no such deed is executed within the said period due to any default on the part of the person selected, the State Government may cancel the mining lease and in that event the earnest money shall be forfeited to the State Government.
- (6) Any holder of a mining lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.



## Notwithstanding anything contained in this rule

- (a) where before the commencement of these rules a prospecting license has been granted in respect of any land for any specified minor mineral, the holder of the prospecting license shall have a right for obtaining a mining lease in respect of that minor mineral in that land, if the Government is satisfied that the licensee,—
- (i) has undertaken prospecting operations to establish the existence of mineral contents in such land in accordance with such parameters as was prescribed by the Government;
  - (ii) has not committed any breach of the terms and conditions of the prospecting license;
  - (iii) has not become ineligible under the provisions of the rules which were in force before commencement of these rules; and.
  - (iv) has not failed to apply for grant of mining lease within a period of three months after expiry of the prospecting license;

where order for grant of mining lease has been issued by the Government for grant of mining lease, before the commencement of these rules, the mining lease may be granted subject to the condition that the applicant has fulfilled all conditions for the grant in terms of the said grant order within the period specified therein, or such further period as may be allowed for the reasons to be recorded.

## Framework Regulatory for small-scale minor mineral mining :

Regulation of minor minerals has three key components, the granting of concessions (leases/ permits); the awarding of clearances and consents including monitoring of clearance and consent conditions; and addressing issues of illegal mining (see Figure 1: *Regulatory framework for small-scale mining* and Figure 2: *Institutional framework for regulating small-scale mining*). The regulatory framework for such mining activities is, in turn, primarily guided by two Central laws, the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 (amended in 2015); and the EIA Notification, 2006 (as amended in 2016) framed under the Environment Protection (EP) Act, 1986, and subsequent rules developed under them.

Section 15 of the MMDR Act delegates the power to make rules in respect of minor minerals to state governments. Subsequently, all states have developed such rules. Uttar Pradesh has the UP Minor Mineral (Concession) Rules (MMC),

1963 (and its subsequent amendments). As the name suggests, the MMC Rules primarily outline the mechanism for granting of leases for various minor minerals and issues related to it. This involves the district and state mining departments. Section 23 of the MMDR Act further empowers state governments to make rules for prevention of illegal mining, transportation and storage of Minerals.

### **How to prevent Illegal Mining as per different Legal Section:**

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. iii) Under section 22 of Mines and Mineral (Regulation and Development) Act, 1957 complaint can be lodged before appropriate Court of the District Magistrate by Director of Geology and Mining, Joint Director, Regional Deputy Director and District Mining Officers for illegal mining. iv) 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.

### **Section 51 of OMMC Rules,2016**

- (1)** (i) Whenever any person is found extracting or transporting any minor mineral or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal extraction or removal of such minor minerals and every such person shall be punishable with simple 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 case of a continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such **contravention continues after conviction for the first such contravention.**

- (ii) No court shall take cognizance of any offence punishable under these rules except upon complaint in writing made by such officer or authority mentioned under clause (ii) of this sub-rule having jurisdiction.
- (iii) Where the offender agrees in writing to compound the offence punishable under these rules, the Tahasildar or Deputy Director or Mining Officer or Divisional Forest Officer, within their respective jurisdiction, shall, either before or after filing the complaint, compound the offence on payment of such sum, as determined by the officers mentioned under clause (ii), not exceeding the maximum amount of fine prescribed under these rules and value of the mineral and other properties seized and on payment of such fine and value, the seized mineral and properties shall be released forthwith: The Collector or Sub-Collector or Tahasildar or Director or Joint Director or Deputy Director or Mining Officer or Senior Inspector of Mines or Divisional Forest Officer or Assistant Conservator of Forest or Range Officer or Police Officer not below the rank of Sub-Inspector of Police may seize the minor minerals and its products together with all tools, equipments and vehicles used in committing such offence within their respective jurisdiction.
- (iv) Provided that the accused shall be liable to furnish an undertaking or bond to the effect that he shall not commit such offence in future:  
Provided further that, in case the offender fails to pay the value of mineral and any other property, such properties shall be confiscated to Government and disposed of through public auction.
- (v) Where an offence under these rules is compounded, no proceeding or further proceeding, as the case may be, shall be initiated against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith.

(vi) If no person claims the mineral and other property, if any, so seized within a period of thirty days, the authority competent to compound the offence may confiscate the same to the State and dispose of the same through public auction.

- (2) Whenever any person trespasses into any land in contravention of the provisions of these rules, such trespasser may be served with an order of eviction by the Tahasildar or Sub-Collector or Collector or Deputy Director or Mining Officer or Assistant Mining Officer or Divisional Forest Officer or Assistant Conservator of Forest or Range Officer within their respective jurisdiction and such Government Officer, if necessary, may obtain the help of the police to evict the trespassers from the land.
- (3) Any mineral, tool, equipment, vehicle or any other things seized under these rules in respect of which complaint has been filed under clause (iii) of sub-rule (1), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence and shall be disposed of in accordance with the directions of such court.
- (4) Whenever the person wins, without any lawful authority, any mineral from any land, the Tahasildar or Mining Officer or Deputy Director or Divisional Forest Officer, as the case may be, may recover from such person the mineral so won, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.
- (5) If the person committing an offence under these rules is a company, every person, who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished as per the provisions of the Act and these rules:

Provided that nothing contained in this sub-rule shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (6) Notwithstanding anything contained in sub-rule (5), where an offence under these rules has been committed with the consent or connivance of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation: – For the purposes of this rule –*

- (a) *“Company” means anybody, corporate and includes a firm or other association of individuals;*
- (b) *“Director” in relation to a firm means a partner in the firm.*

- (7) In case of breach of any condition of the lease deed, the Competent Authority may give notice of sixty days to the lessee to rectify the defects within the time specified and if the lessee fails to rectify the defects within the specified time, the Competent Authority may cancel the lease and/or levy a penalty not exceeding rupees fifty thousand.

- (8) In case of breach of any condition of the lease deed, the Competent Authority may give notice of sixty days to the lessee to rectify the defects within the time specified and if the lessee fails to rectify the defects within the specified time, the Competent Authority may cancel the lease and/or levy a penalty not exceeding rupees fifty thousand.

### **Practical Aspects to deal Illegal Theft:**

AS Minor Mineral are gift of the nature, in order to protect the minor mineral following steps to be taken

- (A) A dedicated police forces are to be deployed in all sensitive Minor Mineral resources with regular patrolling System..
- (B) At least in all Tahasil where Minor Mineral resources are present, an independent officer must be entrusted to handle the Minor Mineral to prevent the leakage of loses.
- (C) Where Mining sources are there, Quantity of Minor Mineral has to be assesses by the team of ORSAC and a database of each sairat sources has to be maintained.

- (D) Mining plan of all each Sairat sources has to be done in order to protect them.
- (E) Cheak gates has to be opened in the sensitive point in order to prevent the theft..
- (F) Pillar Posting through DGPS survey and photography of each sairat sources has to be posted at the site of the sairat sources.
- (G) Steps should be taken to lease out the sairat sources as per the provision of OMMC Rules and also timely transit pass should be given to the lease.
- (H) Awareness has to be created among the bidders and sensitive points such as Eco-Sensitive Zone; Elephant corridor has to be sensitized.
- (I) Environment Management Fund, DMF should be given priorities for expenditure in order to the betterment of the locality.
- (J) So a compressive planning with adequate knowledge need to be required to tackle the theft of sairat sources.

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