

COMMENTARY

Mining Policy - protecting environment and people or investment?

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A New Mineral Policy is in the offing. If it is guided by the recommendations of the Anwarul Hoda Committee on the National Mineral Policy, it will pave the way for large-scale FDI in the mining sector, and increase the social and ecological devastation caused by mining.

The UPA government is currently deliberating changes to the National Mineral Policy, which was enacted in 1993. A Group of Ministers (GOM) has been constituted for this purpose. Union Home Minister Shivraj Patil is the chairman of this 12-member GOM, whose members include Montek Singh Ahluwalia, Deputy Chairman of the Planning Commission. The GOM is likely to follow the recommendations of the High Level committee set up by the Planning Commission, under Anwarul Hoda, a member of the Planning Commission.

The idea that the National Mineral Policy needs to be revamped and that a high level committee was required to look into this matter was first brought up during the Planning Commission's mid-term review of the 10th Five Year Plan. This is what the review had to say while discussing Private Investment and Foreign Direct Investment (FDI) - "...so far, the Central government has approved as many as 188 reconnaissance permits, involving an area of 2,54,307.303 sq. km and the Foreign Investment Promotion Board (FIPB) has granted 73 approvals for FDI in the mining sector involving an investment of Rs 4,044 crores there is no successful case of a reconnaissance permit being converted into a mining lease so far. Although liberalization of the sector is more than a decade old, the results have not been encouraging so far. This is mainly due to procedural delays in various clearances at the levels of both Central and state governments, especially in the case of mandatory environment clearance and inadequate infrastructureTo go into the whole gamut of questions relating to development of the mineral sector including the requirements for the infrastructure, expeditious clearance from the environmental angle and other related issues, a high level committee needs to be established." (emphasis added). This was the mandate given to the Hoda committee which was subsequently set up by the Planning Commission.

The Planning Commission's views are merely an echo of the Govindarajan Committee's recommendations, which was set up by the NDA government in 2002 to suggest ways of 'reforming' investment approvals and implementation procedures. The writing on the wall is clear - whether it was the Govindarajan Committee then, or the Planning Commission now, policy makers see 'delays' in investments due to environmental clearances as the main hurdle. The massive devastation to the country's forests, wildlife and biodiversity is not an issue. Neither is the large-scale displacement of people, with next to no 'compensation', rehabilitation and resettlement, a major issue. What is important for policy makers is investment, preferably foreign direct investment.

The idea that forest clearances are difficult to get, and that they involve unnecessarily time

consuming procedures is ridiculous if not laughable. For one, the time required for obtaining clearances in India is much less than in other 'developed' countries. Secondly, the facts on forest diversion are telling enough. The Forest Conservation Act (FCA) was enacted in 1980 - which made it mandatory for the Ministry of Environment and Forests (MoEF) to evaluate the ecological impact of diversion of each and every inch of forest land, and thereafter grant clearances. From 1980 to 1997, a period of 17 years, 317 mining leases were granted in forest areas, resulting in a diversion of 34,527 hectares of forest land. From 1998 to 2005, 881 mining leases were granted, diverting 60,476 hectares of forest land. Therefore, forest diversion for mining activity per year during 1998-2005 was four times higher than diversion during 1980-1997. Similarly, the government's opinion that the environmental clearance process in general and public hearings in particular, delays investments has no logical basis. It is clear that the government peddles these views as a justification to further erode any attempt to protect the environment. They provide the smokescreen governments need to promote investments by short-circuiting environmental governance.

Also in the backdrop of the Hoda committee was the report submitted in 2005 by the R.K Dang committee. The Dang committee itself was pushed by the Steel industry, which wanted to ensure long-term supply of raw material for itself. The committee was formed by the Ministry of Steel, and was supposed to look at various issues for granting mining leases for ores required as raw material for the steel industry (iron ore, chrome and manganese).

Since it was pushed by the Steel industry, the Dang committee recommended that all integrated steel companies (both in the private as well as public sectors) be granted captive mining leases to meet their ore demands for 30 years. While the Dang committee largely protected the interests of the steel industry, it also encouraged large multinational steel corporations wanting to invest in India - "[captive mining leases should be given to meet the] iron ore requirements for 25 years of an integrated steel plant with a minimum capacity of 10 mtpa of finished steel promoted by an international steel company of proven track record and bringing in FDI to the extent of minimum 85% of project cost (excluding land) implemented through a widely held Indian Public Limited Company (this refers to a company in the private sector)".

The committee also pushed for large-scale investment in the steel industry in Scheduled Areas - "priority consideration [should be given] for the phased iron ore requirements for 25 years for only one ...steel plant promoted by Indian widely held Public Limited (i.e private) company in or near iron ore reserves falling within Schedule Areas. ... No foreign partnership to be permitted." This recommendation was ostensibly for pushing 'affirmative' action.

The steel lobby also wanted a moratorium on iron ore exports; particularly high-grade iron ore with an iron content of more than 65%. Again keeping the Indian steel industry in mind, the Dang committee also tried to push for slowing down of exports of iron ore - "...mining enterprises, whether in the public or private sector ... must ... allocate a certain minimum proportion of production (say 70%) to cater to the needs of domestic users ...mining companies could be permitted to export the remaining 30% percent of production." The mining lobby obviously fought back. Says the report of the committee - "A view contrary to the ... above was voiced by some members of the Group. Since no common ground could be found in respect of this proposal, this proposed Preference does not find place in the final recommendations."

The battle between to the mining industry and the steel industry was one of the reasons for setting up of the Hoda committee. The Hoda committee came out strongly in favour of exports - "In light of theappraisal of the impact of export controls on the health of the mining industry and its attractiveness for investment, the Committee has concluded that there is no need to impose any quantitative restrictions on exports. ...However... the Committee recommends that an export duty may be levied on exports of iron ore in lump form with Fe content above 65 per cent."

However, while Hoda committee supported the mining industry when it came to exports, it did support the steel lobby on captive mines for steel companies – “Stand alone mining and... captive mining should continue to co-exist in the country. in a situation of multiple applications for grant of iron ore leases, the existing investment in steel plants that have exhausted their current captive mines should be a consideration. Existing captive mines should be renewed.Steel making capacities ... that do not have captive mines may also be given preferential allocation of adequate iron ore reserves within the state.”

What is important to note is that while the Hoda committee has actively advocated large-scale privatisation and FDI in the Indian mining industry, the Dang committee also did its bit to promote privatisation (though it did protect the interests of existing public sector steel companies, along with steel companies in the private sector). And the fact is that privatisation of mining is being promoted in a large way, encouraged by both the mining as well as steel lobbies in the government.

A case in point is the controversy over the Rawghat iron ore mines in Chhattisgarh. The Bhilai Steel Plant, owned by the public sector Steel Authority of India Ltd., needs these mines for its long-term sustainability, and had been promised leases in these mines. However, portions of the mines have been leased out to various private investors, including the Essar group owned by the Ruia. This is by no means an isolated case – for instance, Essar has been preferred over the National Mineral Development Corporation (a government owned mining company), and the Jindals are in the process of acquiring mining leases in Andhra Pradesh, Jharkhand, Orissa, Chhattisgarh and elsewhere. There are also strong lobbies working behind the scene to privatise the coal mining industry.

Coming back to the Hoda committee. The mandate given to the committee – to simplify procedures for obtaining leases and to speed up the environment and forest clearance process - made most of its recommendations predictable. What has the committee recommended? Regarding forest clearance, the committee has recommended that if a company has received a prospecting license, it should be assured forest clearance if it finds minerals as a result of the exploration. As per the current rules of the FCA, granting a company a prospecting license in forest areas (which is given without extensive ecological impact analysis) does not mean that forest clearance for mining will be automatically given. Final forest clearances can be given (at least theoretically) only after the ecological impact of forest diversion is comprehensively studied. This is exactly what the Hoda committee wants to change. Says the report – “such a stipulation militates against the seamless transfer dispensation that the Committee would like to promote to attract investment into mining.” What the committee essentially wants is that mining in forests be automatically allowed, subject to certain conditions being followed. The committee has a touching belief that mining in forest areas is environmentally benign - “the essential difference between a mining intervention and other interventions is that the miner eventually leaves the land and can recreate or even improve upon the forest as it existed before commencement of operations.” This pronouncement, made in all seriousness by the Hoda committee, is so way off the mark that it does not even merit serious critical evaluation! Anyone who has seen the millions of hectares covered by massive pits created by mining would agree. This touching trust in miners’ environmental and social consciousness has also led the committee to recommend unconditional renewal of mining leases, without any evaluation of the impacts of the existing mining operations. So, mining will continue in Jadugoda, in Jharia and elsewhere.

Regarding environmental clearance, the committee has echoed most of the Govindrajan committee’s recommendations that subsequently led to the new Environment Impact Assessment (EIA) notification in 2006. These were essentially that the public hearing process be limited to the issues covered in the EIA report prepared by a consultant for the investor. Also, the public hearings could be done away with if “...owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed.” The Hoda committee has however gone a step ahead and recommended that no environmental clearance

be required for lease areas under 50 hectares, since the committee lives under the delusion that small mines are somehow less environmentally devastating. The committee has of course ignored the impact of the hundreds of small mines in Bellary-Hospet in Karnataka for instance, and has also chosen to ignore the fact that companies might just apply for many small mining leases instead of just one large lease.

What is interesting is that the Hoda committee is actually quite accurate in its description of what environmental and forest clearances in India really constitute. Says the report – “A close look at the issues arising out of the two statutes [FCA and the Environment Protection Act] reveals that the preoccupation is mainly with two concerns, namely, compensation for diversion in various forms, including compensating afforestation, and the need for EIA studies prior to grant of environmental clearances.”

This is true – in India, diversion of any forest, however valuable, and however rich in biodiversity, is allowed for any development project as long as the payments for ‘compensatory afforestation’ are made. The very idea that afforestation can compensate for deforestation is flawed. Once a forest, a biodiverse region, or a wildlife habitat has been destroyed, it means destruction forever of that particular ecosystem. Nothing can replace it, or replicate it. It is rarely possible to find areas where afforestation can be done next to, or even near, the area where the deforestation has taken place. Therefore, at best, compensatory afforestation can create (after some decades), a new and very different ecosystem. There can never be adequate ‘compensation’ for deforestation.

Regarding environmental clearances, the Hoda committee is again remarkably accurate. Protecting the environment from adverse impacts of industrialisation has been reduced to a bureaucratic necessity of submitting an EIA report. Whatever analysis the EIA reports come up with, the prevalent practice is to clear any project, as long as there is a proper ‘environment management plan’ and adequate ‘mitigation’.

The quality of the EIA reports is itself highly suspect. Companies pay consultants to prepare EIA reports, and the obvious conflict of interest ensures that EIAs rarely do an honest environmental impact assessment. Inaccurate data, ‘cut-and-pastes’ from other EIA reports, shoddy analysis and sometimes plain untruths, are unfortunately the hallmarks of EIA reports (they have sometimes been called ‘Engineered’ Impact Assessments!). If at all EIAs identify high impact areas, such identification is inevitably qualified with confident pronouncements that the adverse impacts will be ‘mitigated’. It is also a fact that consultants always suggest the least-cost option, and rarely recommend expensive mitigative measures – for instance an alternative technology, or improved infrastructure – which could be much more effective at mitigation. Compensation and mitigation are catch all phrases in EIA reports. But unfortunately, development projects continue to have adverse impacts; either because these impacts were just not identified, or because the mitigation suggested was not adequate, and sometimes because the adverse impacts could simply not be ‘mitigated’.

What the Hoda committee has not done, and cannot do (since it is constrained by its mandate) is to address the actual problems with mining projects – large-scale destruction of forests and wildlife habitats, large-scale environmental pollution and destruction of ecosystems, and large-scale displacement. None of these have been addressed by the committee, despite raging debates on all of these issues. Regarding forest and environmental clearances, there have been demands that certain areas be declared as ‘no-go’ areas – where mining cannot take place come what may, because of the sheer ecological fragility of the region.

There have been many suggestions to improve the EIA process. One of these suggestions is the creation of an independent body of consultants appointed and paid by, and accountable to, the MoEF – the MoEF would assign the job of conducting EIA to any one consultant from the pool of available

consultants, rather than the companies themselves (to reduce the conflict of interest). Another suggestion is to institutionalise an effective and legally enforceable impact monitoring mechanism, involving people living in the area (rather than the highly understaffed and corrupt pollution control boards), to constantly monitor the environmental performance of projects post-clearance. Yet another suggestion is to create a quality control system for environmental consultants - making consultants accountable for poor assessments, whereby a consultant could be blacklisted for shoddy assessment, for inadequately identifying impacts, and for suggesting ineffective mitigative measures.

Regarding land acquisition, many groups, including the National Advisory Council (NAC), have suggested radical changes in the colonial Land Acquisition Act, 1894 (LAA), while some political and social movements have suggested scrapping of the Act. One of the recommendations of the NAC is that 'public purpose' should be redefined - no private sector investment, and only limited public sector investment, such as power or infrastructure, should classify as public purpose. The NAC has also suggested that the 'public purpose' clause within the LAA should be replaced with 'public good', including the good of people being displaced. Another suggestion is that a clear distinction be made between 'public purpose' and 'public interest' - according to the NAC, public interest, rather than public purpose should be the basis of the LAA. Also, 'public interest' should be decided only after a thorough analysis of the social, environmental and economic costs and benefits, whose results should be discussed openly and transparently. The analysis should be able to comprehensively prove that land acquired under the LAA would serve 'public interest' more than it is currently doing.

The NAC has also dealt with the rehabilitation and resettlement policy extensively, suggesting amongst others, land-for-land compensation. However, by far the most powerful suggestion regarding change in the land acquisition rules is that the people likely to be displaced should have the right to say no to a project - they should have the right to decide what is 'public purpose', 'public good' or 'public interest' (whatever be the wording in the LAA).

To deal with the extreme poverty in mineral rich areas, there have been suggestions of benefit sharing schemes (the Samata judgment being a good case in point) - ensuring that people affected by mining projects get a sizable portion (say 20 per cent) of royalties from mining. Keeping in mind the fact the state governments get peanuts as royalties compared to the companies' turnovers, some have even suggested that benefit sharing be done on the basis of revenue sharing - thus making the project affected people partners in the projects.

Some of these suggestions to mitigate the social and environmental impacts may by all means be inadequate in addressing problems. For instance, the suggestion that an independent body of consultants under the MoEF be created to reduce the conflict of interest between industry and consultants is unlikely to be effective in the current scenario where the MoEF is essentially a broker for industry. Most of the suggestions need a drastic change in existing power relationships to be really effective.

However, instead of grappling with the various suggestions and looking for ways and means to make them more effective, the Hoda committee chose to completely ignore them. And the UPA government seems eager to embrace the suggestions of the committee - to 'develop' the mineral sector and 'attract investment'.

P.S.

* From Liberation, July 2007.