IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 4056-4064 OF 1999

IN THE MATTER OF :

Mineral Area Development Authority ….APPELLANT

Versus

M/s Steel Authority of India & Others …RESPONDENTS

VOLUME-II (F) - ADDITIONAL WRITTEN SUBMISSIONS

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 512 OF 2018

IN THE MATTER OF:

M/S SANGHI INFRASTRUCTURE M.P. LTD. …. PETITIONER

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UNION OF INDIA & ANR. …. RESPONDENTS

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ON BEHALF OF THE SOLICITOR GENERAL OF INDIA

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A. HISTORICAL PERSPECTIVE

1. The Hon'ble Court, in the present reference is concerned with the interplay between Entry 54 List I on one side and Entry 23 & Entry 50 of List II on the other side. All the three entries are reproduced hereunder for ready reference-

> **"Entry 54. List I**
> 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
>
> **Entry 23 List II**
> 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.
>
> **Entry 50 List II**
> Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development."

2. The ***history and rationale behind conferment of supremacy to the Central legislation*** in case of mines and minerals has its roots in the National Mineral Policy in India is in the Industrial Policy Resolution which was proposed as a roadmap for an overall industrial growth of India as a nation. The first Industrial Policy Resolution is dated 6th April, 1948 and, thereafter, 30th April, 1956 which is enclosed herewith and marked as **Annexure SG-1**.

3. The Mineral Policy Conference held in January 1947 resulted in the enactment of the Mines and Minerals (Regulation and Development) Act, 1948,. The conference also resulted in the establishment of the Indian Bureau of Mines (IBM) in March 1948 as the main regulatory agency for monitoring and supervising mining activity in the country. With the adoption of the Constitution of India on 26 January 1950, the

legislative powers of the Central government and the state governments were clearly defined. Entry 54 of List I in the Seventh Schedule of the Constitution empowered the Parliament to regulate mining activities and the development of minerals. Entry 23 of List II in the Seventh Schedule empowered the Legislature of the State with the same legislative competence on the condition that the field is not occupied by a legislation enacted by the Parliament under Entry 54 List I.

4. The Industrial Policy Resolution, 1956 (IPR) put major minerals such as coal, lignite, mineral oils, iron ore, copper, zinc, atomic minerals, etc. in Schedule A, which was reserved exclusively for the public sector, and minor minerals in Schedule B, in which the private sector was allowed to participate in mining activities along with the public sector.

In pursuance of the IPR, the Parliament enacted the Mines and Minerals (Regulation and Development) Act, 1957 for the regulation of mines and development of minerals, applicable to all minerals except mineral oils. Two Rules, viz. MCR and MCDR, were framed under the Act. While the MCR deals with the major minerals the state governments are free to frame their own rules for mineral concessions with respect to minor minerals. Accordingly, most states have framed their own Minor Mineral Concession Rules.

5. The Minerals available in the nation are ***naturally finite and are perhaps the most valuable resource for the development of the country***. Minerals are the vital raw material for the <u>***core sectors of the economy***</u>. The exploration, extraction and management of minerals have to be guided by national goals and perspectives, to be integrated into the overall strategy of the country's economic development. The endeavour shall be to promote domestic industry and reduce import dependency which makes domestic industry resilient and self-sustainable.

6. Natural resources, including minerals, are a shared inheritance where the State is a trustee on behalf of the people and therefore ***it is imperative and constitutionally mandated that allocation of mineral resources is done in a fair and transparent manner*** to ensure equitable distribution of mineral wealth to sub-serve the common good amongst the citizens residing in mineral rich states and those residing in States having no mineral resources.

Mining needs to be carried out in an environmentally sustainable manner keeping stakeholders' participation, and devolution of benefits to the mining affected persons with the overall objective of maintaining high level of trust between all stakeholders having an all-India vision.

7. The following facts will have to be seen in the context of an undisputed position that with all its diversities, India consists of States some of which are mineral-rich States and some of which are either mineral deficient or are not having any mineral.

8. The mining sector and extraction of mineral, by the very nature of the subject requires to be taken up holistically at a national level as its regulation and development shall have to be based upon the following-

(i) National landscape for protection, exploration and extraction of mining.

(ii) Mineral being a national wealth, its distribution for the benefit of every citizen of each State as per the principles of socialism enshrined in the Preamble of the Constitution [which is the heart and soul of Industrial Policy Resolution dated 30th April, 1956].

(iii) Impact of high burden of levy on Indian minerals in comparison to international mining jurisdictions.

(iv) Dependence of imports for certain minerals and regulation of exports of domestic minerals, use of which is needed for the core domestic industries. The import and export is mostly based upon the comparative price fixation in domestic as well as global market and such price fixation shall depend upon the levy of royalty and others imposed on each mineral in India.

(v) The national concern about growth of mineral sector at a national level so as to ensure that the share of mineral industry contributes in the country's GDP.

(vi) The fixation of consolidated amount like royalty etc. at a national level for each mineral will ensure availability of domestic mineral at a reasonable price as compared to international prices. Separate levy regime by mineral-rich States results into disparity and high cost of domestic production leading to closure of mines necessitating import of cheaper mineral from global market.

(vii) The fixation of the total levy on minerals in such a manner that not only the concern of all mineral rich but the concerns of the mineral deficient States are also taken care of. This also allows co-relation with the international price regime.

(viii) To bring in uniformity in the structure of regulation & development minerals and other aspects so as to make it an investor friendly regime incentivizing more investment in that mineral sector while balancing environmental concerns at a holistic national level.

(ix) The development of mineral industry needs uniformity at a national level failing which fragmented State-wise levy will adversely impact the development of mineral and systemic utilization of minerals in larger public interest.

(x) Sustainable development of mining sector at a national level.

9. For the aforesaid reasons, the scheme of MMDRA read with Rules framed thereunder has not left the function of deciding the levy [by whatever name called] upon subjective and narrow provincial interest and has left it to be decided at the national level by the central Government through the Central enactments.

Note: it must be pointed out, at the outset, that the only statutory power the Central Government exercises is prescribing the quantum of royalty [and other statutory levies as mentioned in the Act]. The entire amount so collected by the State is appropriated by the State and used by the State.

It is not a fact in dispute that the present matter refers to –

(i) An undisputably position that the Center merely fixes the rate;

(ii) The amount is fixed after a detailed consultation with the State Governments and state holders [as reflected hereunder] keeping int mind the global perspective.

(iii) The amount so arrived at as the amount of royalty is collected by the State and used by the State for its own purpose and the Central Government does not take anything from such collection.

The said money collected and appropriated by the State remains available to the State for its own overall development being a part of States Consolidated Fund.

(iv) The only contention is the States' assertion that over and above the amount of royalty fixed by the Central Government with their active consultation, they can still independently impose levies exercising its legislative competence under Entry 50 List II of the Seventh Schedule.

B. THE AMOUNT OF ROYALTY AND OTHER LEVIES GO TO THE STATE GOVERNMENT ONLY

10. At the outset, it is necessary to clarify that the present matter does not raise any issue of a fiscal tussle between Centre on one hand and the States on the other as has been tried to be portrayed by the Appellants. The Parliament has only vested the power of fixation of royalty, dead rent, etc. [the complete code of exactions in lieu of the extraction of minerals] with the Central Government. The actual flow of benefits and/or exactions of any nature or nomenclature flows to the State Government. In that

view of the matter the Union only fixes the rate of royalty for uniformity which goes directly to the States and not a single rupee is retained by the Union.

11. It may be noted that the States have multiple revenue streams arising from the mining and minerals sector (with reference to major minerals). The *first revenue stream* is royalty and dead rent under Sections 9 and 9A of the MMDRA.

12. Since FY 2016-17, States have received a total of Rs. 1,57,000 crore as royalty from major minerals. However, the auctioned mines alone have contributed revenue of over Rs. 40,000 crore to the State exchequer, in addition to the revenue from royalty. The increased pace of auction coupled with operationalisation of such mines is spurring the progress of the mining sector towards self-reliance and advancing initiatives for the development of persons residing and working in areas in which mining is being undertaken.

13. The statutory regime established by the MMDRA and the rules framed thereunder therefore ensures equitable mineral development across States, while also balancing the interests of States by ensuring adequate revenue streams.

14. In 2015, the MMDRA was amended to add *other revenue streams* inter-alia introducing a new section 9-B which provides for establishment of District Mineral Foundation (DMF) in all districts affected by mining operations. The object of DMF is to work for the interest and benefit of persons and areas affected by mining related operations, in such manner as may be prescribed by the State Government. DMFs are funded by statutory contributions from mining lease holders. Therefore, contributions to the DMFs form a *second important revenue stream* for State Governments for development at the State level. 644 DMFs are established across 23 States have accrued over Rs. 87,000 crore, sanctioned around 3,20,000 projects worth around Rs. 80,000 crore and completed a total number of around 1,71,000 projects for the development and welfare of areas and people affected by mining related operations.[1] The State-wise breakup of the figures in respect of DMF collection is provided hereunder: -

S.No.	State	Total amount collected under DMF (In ₹ Cr.)
1.	Andhra Pradesh	1911.66
2.	Chhattisgarh	12396.51
3.	Goa	243.40
4.	Gujarat	1516.85
5.	Jharkhand	11960.27
6.	Karnataka	4587.16
7.	Maharashtra	4940.51

[1] **Vol. III(D), Pg. 26-27.**

S.No.	State	Total amount collected under DMF (In ₹ Cr.)
8.	Madhya Pradesh	6829.98
9.	Odisha	25426.39
10.	Rajasthan	8897.64
11.	Tamil Nadu	1327.69
12.	Telangana	3746.58
13.	Assam	123.21
14.	Bihar	132.78
15.	Himachal Pradesh	315.19
16.	Jammu & Kashmir	68.19
17.	Kerala	71.27
18.	Meghalaya	89.18
19.	Uttarakhand	384.91
20.	Uttar Pradesh	1633.64
21.	West Bengal	149.13
22.	Punjab	205.64
23.	Haryana	91.24
	Total	87049.03

15. The key feature of the 2015 Amendment to the MMDRA was the inclusion of a provision for awarding mineral concessions through auctions, replacing the previous 'first-come-first-served' method. The objective of this amendment was to enhance transparency and eliminate any discretionary powers in the granting of mineral concessions at all levels.

16. Under the Mineral (Auction) Rules, 2015, the allocation of mineral blocks takes place through e-auction. The biddable element in these auctions is, essentially, the amount that bidders are willing to share with the State Government for the mineral block (expressed as a percentage of the value of mineral dispatched). Therefore, *a third (and substantial) revenue stream* for the State Government is the auction premium received from successful bidders for mineral blocks. The auction method guarantees the revenue generated from the auction mines accrues to the State Government.

17. Since the amendment to MMDRA in 2015, 337 mineral blocks have been auctioned (as of 10.02.2024) across 11 States. The pace of auction has increased significantly since year 2022-23. The revenue from the auctioned mines will start accruing to the State Governments from the date of commencement of production from such mines. The gestation period for development of greenfield mines take around 5-7 years to start production, hence the full impact of auction regime on revenue of the States will be reflected in next few years only. However, currently

around 50 auctioned mines have started production in the country and have already contributed significant revenue to the States, as brought out in the Chart at **Annexure SG 2** to these Written Submissions. A bar chart setting out the impact of the 2015 legislative reforms, including a case study in respect of the State of Odisha is set out at **Annexure SG 3**.

C. FIXATION OF RATES IS CARRIED OUT IN CONSULTATIVE PROCESS WITH STATES AND IS FIXED IN PUBLIC INTEREST

18. Under Section 9 of the MMDRA, the Central government has the power to fix royalty, by amending the Second Schedule to the MMDRA (subject to the Proviso to Section 9(3), which specifies that these rates cannot be enhanced more than once during any period of 3 years).

19. That said, this the fixation of rates by the Central Government is not a *unilateral* process. It is a *cooperative* process involving the States, while also considering the supervening objective of *mineral development in public interest*, keeping nation as the unit.

20. This is apparent from a reading of the **"Report of the Study Group for Revision of Rates of Royalty and Dead Rent for Minerals" of July 2019** (hereinafter **"the Central Government Report"**) [which is set out at **Annexure SG 4**]. Para 2.4 of the Report throws light on the history of the cooperative process of fixing royalties, through "Study Groups": -

> "2.4 With a view to have comprehensive review of the royalty rates on all minerals in terms of its impact on production, mineral based industries, exports and the State revenues, for the first time in the year 1966, Union Government set up a Study Group. **This Study Group submitted its report in 1968 and recommended delinking of royalty rates from the pit's mouth value for most of the minerals and suggested unit of production (tonnage) as the basis, because of the difficulties experienced by the States in administration of charging royalty as per value of minerals at the pit's mouth which led to litigations and disputes. Subsequent Study Groups constituted in the year 1973, 1978, 1984 and 1989 retained the tonnage system.**" **[Emphasis in original]**

21. Clearly, the fixation of royalties, while in the hands of the Central Government, is carried out with the *active cooperation and input* of State Governments. For instance, as seen from the above extract, the difficulties faced by States led to the change to a royalty system based on tonnage (as opposed to pit's mouth value).

22. With the opening up of the economy, the process of fixing royalty required consideration of the international scenario: -

> "2.6 As a result of the adoption of the policy of economic liberalization and also as a sequel to the International Round Table Conference held in New Delhi in April, 1994,

under the aegis of the UNDP, the Ministry of Mines, constituted a Study Group in January, 1995, <u>**with a view to rationalize the rates of royalty to make them comparable with the international rates, and at the same time ensure rapid development of mining industry and augmentation of revenue earnings of State Governments.**</u> Based on the recommendations of the Study Group, these rates were notified in April, 1997 whereby the scope of advalorem system was· enlarged to 17 rates covering as many minerals. The Study Group also expressed the hope to have in future a complete switch over to the advalorem system." <u>**[Emphasis in original]**</u>

23. Therefore, keeping in mind the objective of mineral development in public interest, the competing considerations of international trade, rapid development of the mining industry <u>and augmentation of revenue earnings of State Governments</u> were all factored into the royalty fixation process. It is submitted that these supervening objectives govern the fixation and exaction of royalty till date, <u>added to which is the massive supplementation / augmentation of State revenue with the introduction of Section 9C (contributions to DMF) and the auction regime through the amendments of 2015.</u>

24. The comparison of Effective Tax Rates is provided in the following table, forming part of the Report: -

TABLE Annexure 2

Name of Country	Effective Tax Rate (in %)
Mongolia	31.30
Canada(NWT)	39.50
Chile	37.60
Indonesia (Sulawesi)	38.10
Australia	39.70
South Africa	39.70
Namibia	44.20
India (new mines)	59.84
India (old mines)	63.97

<u>Note :</u>

ETR does not include a number of other payments such as

- *Auction price (base price + premium)*
- *Purchase of land for mining*
- *GST of 18% of royalty made effective w.e.f. 01.07.2017.*
- *10% tax levied by Supreme Court in Goa and Karnataka and FDT levied by Karnataka as well as highest rate of royalty on iron ore in Odisha.*
- *Net Present Value (NPV) in case of survey in forest land :*
  - *Coal, lignite, ferrous and non-ferrous minerals using core drilling technology having density upto 40% = 2% of total Prospecting Lease (PL) area*
  - *Coal, lignite, ferrous and non-ferrous minerals using core drilling technology having density upto 70% = 5% of total Prospecting Lease (PL) area*
  - *Any amount of NPV deposited in stipulated government account is non-refundable. However, the NPV deposited for prospecting in the area will be adjusted against the estimated NPV to be levied, in case the approval is obtained for diversion of the forest land for mineral extraction under Section 2 of FCA 1980.*
- *Net Present Value (NPV) = Rs 4.38 lakhs to Rs 10.43 lakhs per hectare depending on the density of forests at the time of grant of lease.*
- *Compensatory afforestation charges which differs from State to State.*
- *Upfront payment at the time of grant of mining lease = @0.50% of value of estimated resources.*
- *Performance security = @0.50% of the value of resources*

This one more reason why Sections 2 and 9, and the Act in general, should be read as a limitation (in public interest) on the State's power to tax mineral rights. Any further burden would gravely impair mineral development.

25. The Central Government Report also throws light on the high fiscal burden in India (in comparison to other nations) and its impact on mineral development: -

> "4.4 Indian Mining Sector is carrying the burden of highest taxation in the world. The Effective Tax Rate for example in case of iron ore works out to be as high as 64% in case of the mines granted before 1z'h January, 2015 and 60% in case of the new mines granted after 11th January, 2015. Against this high incidence of taxation prevailing in the country, internationally Effective Tax Rate is in the range of 31 % to 45% as depicted in the Table given at the end of chapter.
> 4.5 **The mining sector in India is heavily taxed, not only in comparison to international level but also in comparison to other domestic sectors. The taxation regime for mining in India affects all downstream industries and employment opportunities in the economy, while fuelling the already skewed balance of payment through additional import of minerals. Hence, there is need to rationalize the taxation structure for the mining sector for sustainable development and deriving long-term benefits in terms of sustained raw material security for industries.**" **[Emphasis supplied]**

26. The Report also shows that the States viewed royalty as a source of revenue *and* as consideration for exploitation of mineral resources. This corroborates the position that royalty, as a statutory exaction while also partaking of the character of consideration. The relevant Paragraph is extracted hereunder: -

> "6.4 An analysis of the feedback given by the State Governments shows that **principal mineral producing state perceives royalty primarily as a source of revenue as well as consideration for permitting exploitation of state mineral resources.** These states are also of view that royalty is a consideration due to the State Government for allowing exploitation of its mineral resources besides a tool for source of fund for local area and community development..." **[Emphasis supplied]**

27. Chapter 7 of the Report, thereafter, exhaustively discusses the rates for each minerals with reference to the position of the States, other stakeholders and the international scenario.

28. Therefore, while Report makes it clear that: -

a. Fixation of royalties is a cooperative process.

b. Royalties are fixed keeping in mind the international scenario, domestic concerns and the need to ensure adequate revenue to States with mineral resources. In other words, all factors with reference to *mineral development in public interest* are kept in mind.

c. States themselves see royalty as both an exaction *and* as consideration for extraction of mineral resources.

D. DEVELOPMENT AND REGULATION OF MINERALS BY THE UNION IS EXPEDIENT IN PUBLIC INTEREST AS ENVISAGED IN ENTRY 54 OF LIST I TO MAINTAIN UNIFORMITY OF PRICE

D.1. Disparities in mineral resources across States

29. India is endowed with substantial natural resources, including mineral resources. However, the occurrence of minerals varies with geological characteristics present in different States. As a result, certain States, especially the States in the eastern part of the country, are blessed with large mineral deposits, whereas certain State (like Punjab, Haryana, Kerala etc.) have relatively lesser mineral deposits.

30. For instance, as per the data available in the public domain on the Ministry of Coal's website (https://coal.gov.in/en/major-statistics/coal-reserves), the state-wise break-up of coal resources (expressed in million tonnes) is as follows: -[2]

State	Estimated with high level of confidence (331)	Estimated with moderate level of confidence (332)	Estimated with low level of confidence (333)	Total Resource
TOTAL	**187105.32**	**147252.18**	**27053.96**	**361411.46**
Odisha	48572.58	34080.42	5451.60	88104.60
Jharkhand	53245.02	28259.67	5155.41	86660.10
Chhattisgarh	32053.42	40701.35	1436.99	74191.76
West Bengal	17233.88	12858.84	3778.53	33871.25
Madhya Pradesh	14051.66	12722.97	4142.10	30916.73
Telangana	11256.78	8344.35	3433.07	23034.20
Maharashtra	7983.64	3390.48	1846.59	13220.71
Bihar	309.53	4079.69	47.96	4437.18
Andhra Pradesh	920.96	2442.74	778.17	4141.87

[2] **Vol. III(D), Pg. 15-16.**

State	Estimated with high level of confidence (331)	Estimated with moderate level of confidence (332)	Estimated with low level of confidence (333)	Total Resource
Uttar Pradesh	884.04	177.76	0.00	1061.80
Meghalaya	89.04	16.51	470.93	576.48
Assam	464.78	57.21	3.02	525.01
Nagaland	8.76	21.83	447.72	478.31
Sikkim	0.00	58.25	42.98	101.23
Arunachal Pradesh	31.23	40.11	18.89	90.23

From the above figures, it may be seen that over 78% of coal resources are present in four States – Odisha, Jharkhand, Chhattisgarh and West Bengal.

31. Similarly, resources and reserves of iron ore are concentrated only in few States of the country. Chhattisgarh, Jharkhand, Odisha and Karnataka are major producers of iron ore in the country. These 4 States together have around 90% of iron ore resources in the country, as per the National Minerals Inventory. The State of Odisha alone contributes more than half of the total production of the iron ore in the country. The iron ore production data in last 5 years (till 2022-23), sourced from the Indian Minerals Yearbook, is given below:[3]

(Unit: Million Tonnes)

S. No.	Year	Production (All India)	Production (Odisha)	% contribution of Odisha in Annual Production
1	2018-19	206.49	113.12	54.78%
2	2019-20	244.08	146.64	60.08%
3	2020-21	205.04	104.48	50.96%
4	2021-22	253.97	136.36	53.69%
5	2022-23	257.86	140.43	54.46%

[3] **Vol. III(D), Pg. 17.**

32. Similar data (published in the Indian Mineral Yearbook published by the Indian Bureau of Mines) in respect of other minerals as set out in the National Minerals Inventory, shows for instance that: -[4]

a. About 82% of manganese ore is found in four states – Karnataka, Odisha, Madhya Pradesh and Maharashtra. In fact, Karnataka and Odisha are endowed with 58.67% of manganese ore resources.

b. 72.9% of bauxite reserves are concentrated in Andhra Pradesh, Odisha and Chhattisgarh.

c. 95.9% of Chromite resources are found in Odisha alone.

d. 84.3% of tungsten ore reserves are concentrated in Karnataka, Rajasthan and Andhra Pradesh.

D.2 Importance of minerals for core sectors, Infrastructure and Industry, which, again, involve "public interest" requiring uniformity of price pan-India

33. Minerals are a major resource for the core sectors of the economy. Many industries, especially those critical to the infrastructure sector (such as power, steel, cement, aluminium etc.) are heavily dependent on minerals, e.g. coal, iron ore, bauxite, limestone etc. Industrial growth across States, is therefore dependent on mineral resources available only in a few of the States.

Two simple examples would demonstrate this – coal and iron ore.[5]

34. In India, 55% of the total commercial energy production is coal reliant and 68% of total coal production is currently used in the generation of electricity, which is higher than the global figures. Power, needless to say, is an essential input across all sectors.

35. Moreover, coal is an essential raw material for several key industries like iron and steel, cement, etc. which are in turn basic ingredients for almost all manufacturing industries and for physical infrastructure like roads, buildings, etc. Therefore, the availability of coal across all states is essential for equitable industrial development of all States.

36. Similarly, iron ore is essential for the production of steel, which in turn is essential to maintain a strong industrial base. Almost all (98%) iron ore is used in steelmaking.

[4] **Vol. III(D), Pg. 17.**
[5] **Vol. III(D), Pg. 18-19.**

37. Consumption of steel in the country reflects the prosperity of its economy. In order to increase the domestic steel production, the Central Government has come out with the National Steel Policy 2017, to facilitate faster growth and development of steel industry in the country. The policy envisages that the entire demand of steel and high-grade automotive steel, electrical steel, special steel and alloys for strategic applications would be met domestically. The policy projects crude steel capacity of 300 million tonnes (MT), production of 255 MT and a robust finished steel per capita consumption of 158 Kg by 2030-31, as against the current per capita consumption of 77.2 Kg.

38. It is estimated in the National Steel Policy 2017[6] that to fulfill the crude steel capacity of 300 million tonnes[7] by 2030-31, about 437 million tonnes[8] of iron ore production would be required. The "Make in India" initiative is expected to witness significant investments in Construction, Infrastructure, Automobile, Shipbuilding and Power sectors, which will stimulate steel demand.

39. Therefore, to drive development across the nation in a streamlined and *equitable* manner, availability of minerals-based raw materials (including iron ore and steel) across the country at competitive prices is essential, which involves addressing legislatively the effects of concentration of mineral resources in a few States.

D.3 Importance of Uniform Levies for Mineral Development at the national level which manifestly reflect "public interest"

40. Since minerals are concentrated in a few States, but are critical for industrial and economic development across States, the extraction and management of these mineral resources is to be guided by national goals to ensure sustained economic growth across the nation. The MMDRA of 1957 was enacted because Parliament, in public interest, sought to place the regulation and development of major minerals within the Union's control. Under the MMDRA, the Union of India has the power coupled with the duty to advance the national public interest *inter alia* by ensuring harmonized mineral development (and consequent economic development) across the nation through uniformity in prices, rather than creating localized pockets of mineral resource driven growth.

[6] **Vol. III(D), Pg. 230-260.**
[7] **Vol. III(D), Pg. 237 and Pg. 255.**
[8] **Vol. III(D), Pg. 257.**

41. At present, the relevant policy document setting out the national vision for mineral development is the National Mineral Policy of 2019.[9] It states: -

> "1. VISION
>
> Minerals are a valuable natural resource being the vital raw material for the core sectors of the economy. Exploration, extraction and management of minerals have to be guided by national goals and perspectives, to be integrated into the overall strategy of the country's economic development. **Endeavour shall be to promote domestic industry, reduce import dependency, and feed into Make in India initiative.**
> **Natural resources, including minerals, are a shared inheritance where the State is a trustee on behalf of the people and therefore it is imperative that allocation of mineral resources is done in a fair and transparent manner to ensure equitable distribution of mineral wealth to sub-serve the common good. …"**
> …
> 6. MINING AND MINERAL DEVELOPMENT
> 6.1 General Strategy
> Minerals are a major resource for the core sectors of the economy. There is a huge demand for minerals in view of the rapid urbanization and the projected growth in the manufacturing 4 sector. With the thrust on Make in India initiative the demand for minerals is likely to grow at a rapid pace. Extraction and management of minerals has to be guided by long-term national goals and perspectives and integrated into the overall strategy of the country's economic development. Mining technology will be upgraded to ensure extraction and utilisation of the entire Run-of-Mines (RoM). A thrust will be given to extraction of mineral resources in which the country is well endowed **so that the needs of domestic industry are fully met keeping in mind both present and future needs, while at the same time fulfilling the demand of external markets for such minerals, so as to enhance domestic economic and social well-being**.
> …
> 7. FOREIGN TRADE AND FOREIGN INVESTMENT
> General:
> **Attracting foreign investment in the mining sector will be encouraged by appropriate mechanism.** Efforts shall be made to export minerals in value added form as far as possible. **The indigenous mineral industry shall be attuned to the international economic situation in order to derive maximum advantage from foreign trade by carefully anticipating technology and demand changes in the international market for minerals…" [emphasis supplied]**

42. The policy, therefore, stresses on: -

a. Promoting domestic industry.

b. Reducing export dependence.

c. Feeding into the "Make in India" initiative.

d. Equitable distribution of mineral wealth.

e. Meeting the demand of international markets through export.

f. Attracting foreign investment in the mining sector.

[9] **Vol. III(D), Pg. 261-274.**

43. A uniform, harmonized regime of royalty as fixed by the Union of India under Section 9 of the MMDRA (and consequent harmonization of prices) advances the above objectives. A regime of different cesses and taxes applicable in different States, which has the effect of increasing prices of the minerals (that too, to different degrees across States) would defeat the above policy objectives, which would be contrary to the public interest and hinder mineral development, as detailed hereunder.

44. A non-harmonized fiscal regime, with varied levies across States, would result in a scenario where industries located in States with lesser mineral deposits would be forced to procure mineral raw materials at higher prices from States endowed with rich minerals deposits, placing the latter category of States at a significant economic advantage that would come at the cost of the national interest in maximizing economic development from the nation's mineral wealth. As illustrated in the dissenting opinion of Sinha, J. in ***State of West Bengal v. Kesoram Industries Ltd.*, (2004) 10 SCC 201**, Paragraphs 411-413,[10] industries in mineral rich States imposing higher levies (e.g. West Bengal) distort and create inefficiencies in the market for minerals essential for national development. Such high levies disadvantage the industries in the states imposing the levy and their neighbouring states and create an inefficient mineral rate arbitrage, resulting in increased transportation costs etc.

45. Therefore, a uniform levy of royalty prescribed by the Govt. of India under the MMDRA levels the playing field, thereby promoting domestic industry across the nation in a manner which is *equitable*, while at the same time ensuring revenue generation for the States.

46. Further, the Government of India's vision for economic development emphasizes the importance of "Atmanirbhar Bharat". Self-sufficiency across sectors, consequently, boosts domestic production in line with the "Make in India" initiative. A uniform levy, leading to predictability and uniformity, ensures the availability of raw material at reasonable and competitive prices for domestic industries and reduce incentives for producers in India to rely on imported minerals. Varied state taxes would drive up prices and, inevitably, increase export dependence.[11]

47. The Government of India fixes the royalties under Section 9 of the MMDRA after taking into account the levies/royalty rates in the international arena,[12] to make Indian minerals and minerals-based industries internationally competitive. This is

[10] **Vol. V, Pg. 2211-2214.**

[11] See e.g. Press Release dated 09.03.2022 at **Vol. V, Pg. 275-277.**

[12] See e.g. Letter dated 18.05.2023 from the Ministry of Mines, Govt. of India to the Mining Depts. of State Governments at **Vol. III(D), Pg. 280-294**; read with Press Release dated 09.03.2022 at **Vol. V, Pg. 275-277.**

done with a view to boost export of products from mineral-dependent industries, to shrink the trade deficit and ensure a favorable balance of trade.

48. Recently, in respect of "Critical and Strategic Minerals" listed in Part D of the First Schedule of the MMDRA, such as lithium, rare earth elements ("REE"), molybdenum, potash etc., the royalties have been reduced substantially in light of comparable international levies.[13] This has been aimed at reducing vulnerabilities in respect of the supply chain of these critical and strategic minerals, which are important in the sectors such as electric vehicles ("EV"), battery storage systems, solar wafers, semiconductor chips, permanent magnets (for the wind energy sector) etc. This is evident from recent releases of the Press Information Bureau on the subject, as also from communications/consultation with the State Governments in respect of royalty rates. Ensuring that the power to impose fiscal levies on minerals is reserved for the Central Government is therefore fundamental to ensuring rapid and flexible responses at the national level to international developments in the mineral markets. This national imperative cannot be permitted to be stultified or distorted by an overlay of state levies.

49. Critical and strategic minerals are essential to the Green Energy sector. Proper and harmonized mineral development, which includes a uniform pan-India royalty prescribed by the Govt. of India, which takes the international scenario into consideration, also subserves India's international commitments, such as its commitment to achieving Net Zero emission targets provided at the United Nations Climate Change Conference (COP 28). Varied levies across States imposed in respect of such critical and strategic minerals would, inevitably, drive up prices of mineral-dependent products in the Green Energy sector, and reduce incentives for adoption of such technology.

50. The National Mineral Policy of 2019[14] also states: -

> "8. FISCAL ASPECTS
>
> It will be the endeavour of government to design fiscal measures, within the context of the budget, conducive to the promotion of mineral exploration and development including beneficiation and other forms of product refinement. In the context of the changing mineral scenario and the economies of mineral development and products, both at the national and international level, fiscal changes will be examined from time to time consistent with the general tax structure and through the normal budgetary process. Efforts shall be made to benchmark and harmonize royalty and all other levies and taxes with mining jurisdictions across the world to make India an attractive destination for exploration and mining.
>
> Under the 'Make in India' initiative, the Government of India aims to increase the share of the manufacturing sector in the economy. This national initiative requires a holistic

[13] See Press Release of 11.10.2023 at **Vol. III(D) at Pg.278-279,**

[14] **Vol. III(B) at Pg. 272.**

> development of the mineral sector on a sustainable basis in order to fulfil the demand of downstream industries dependent on mineral/ore supply." [emphasis supplied]

51. Today, 100% FDI is permitted in the mining sector. However, the flow of investment to the mining sector will be dependent on having a uniform regime of levies and payments, in order for potential investors to accurately predict risk and for ease of doing business. Differing levies across States would discourage investment in this sector, and stem the inflow of foreign exchange.

52. The impact of a varying fiscal regime across States is being felt acutely in the Minor Minerals sector. The Govt. of India has received representations[15] from the Federation of Minor Minerals Industry (FEMMI), requesting the Government to consider amendments to Section 15 of the MMDRA to "streamline the taxation structure". It is evident from the representation that varying levies across different states have impacted growth in the minor minerals sector and hindered competitiveness. A similar scenario would, inevitably, unfold in the major minerals sector with a variable fiscal regime across States, thereby hindering mineral development.

53. In addition, since minerals are important raw material for important sectors of economy like power, steel, cement, aluminum, etc., any increase in the price of these minerals on account of additional cess by the States will fuel inflation in the country. For example, if additional cess is levied on coal by one of the major producing State, all the States who purchase coal from such State would be forced to increase the power tariff, which would directly impact the inflation. The same is true for other manufacturing sectors like cement, steel, copper wires, etc., which are heavily dependent on minerals as their raw material.

E. SCHEME OF THE MMRDA

54. Historically, the regulation of mines and development of minerals has always been under the control of the Union Government, since such control is in larger "public interest", as pointed out hereunder in detail. At the moment, it would apposite to refer to the debates in parliament while enacting the MMRDA before specifically referring to the provisions of the MMRDA.

DATE	PARTICULARS
29.07.1957	The MMRDA Bill was introduced in the Lok Sabha.

[15] See representations dated 19.09.2023 and 12.10.2023 at **Vol. III(D), Pg. 295-298 and Vol. III(D), Pg. 299-300**.

DATE	PARTICULARS
13.11.1957	The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri Keshava Deva Malaviya was discussed in the Lok Sabha and adopted on the same day.
19.11.1957	The Bill was debated in the Rajya Sabha.
21.11.1957	The message from the Rajya Sabha was read out in the Lok Sabha.
November – December 1957	Committee held ten sittings in all.
09.12.1957	The Report of the Committee was to be presented but was granted extension of time by the Lok Sabha on the 9th December, 1957 upto the 16th December, 1957.
13.12.1957	The Committee considered and adopted the Report. The relevant portions of the committee are quoted as under : "The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs. ; 13. Clause 3.—Item (a).—<u>The Committee feel that the exclusion of minor minerals from the definition may have the effect of excluding them from the declaration under clause 2. Accordingly the words "and minor minerals" have been omitted in this item. .</u> Item (e).—The Committee feel that sand used for industrial purposes particularly in the manufacture of glass should not be treated as a minor mineral. It is not possible to define this of sand in technical and scientific terms. The Committee therefore consider that rules may describe such sand with reference to the purpose for which it may be used. The definition has been amended accordingly. 18. Clause 9.—<u>The Committee feel that the rates of royalty laid down in the Second Schedule should also apply to minerals mined by holders of mining leases granted before the commencement of this Act, including those granted before 1949. The Committee further feel that the restriction imposed on the power of the Central Government to alter the rate of royalty under item (b) of the proviso to sub-clause (2) should apply only where the royalty is enhanced and that the period of two years specified in that item should be increased to four years. The clause has been amended accordingly."</u> **[See Vol. IV (K), Pg. 859-920 (Pg. 865-866)]**

DATE	PARTICULARS
21.12.1957	The Mines and Minerals (Regulation and Development) Bill was debated in the Lok Sabha on 21.12.1957. The relevant extracts are given below: - **[Vol. IV (K), Pg. 933-934]** **"Shri J.R Mehta:** These is one general observation I would like to make, and that is this, that in the present state of the mining industry in India which is not very well developed, Government will do well, not only the Central Government but the State Governments also, to bear in mind <u>that monetary considerations should not have predominance over other considerations. On the other hand, I should think that it will be well in the interests of mineral development if we bear the cause of development more in mind than the question of income or the revenue that we might get from these sources</u>." ... **[Vol. IV (K), Pg. 936]** **"Shri K.D Malaviya:** ... As regards rates, Shri Panigrahi has stated that the rates of royalties have not been increased in spite of repeated requests from the State Governments. There is a history behind it. I am sure my hon. friend Shri Panigrahi who is taking a lot of interest on behalf of the State Governments knows something about it. For the last four or five years, we have been continuously trying to increase the rates of royalty. If he looks at the schedules, he will find that we have introduced increased rates of royalty<u>**. I agree with him that left to ourselves we should increase the rates of royalty further. But the rates of royalty cannot go beyond a point, when in international competition, the price element becomes somewhat against us. And this is a factor which we cannot ignore. The moment we increase the royalties beyond a point, it will have its own repercussion on the total price factor, and we cannot ignore that.**</u> But I want to assure Shri Panigrahi that it is the policy of the Central Government and our Ministry to see to it that the revenue from the royalty is increased to the utmost, consistent with the export trade of the country, so that the State Governments could derive the maximum income from their own natural resources and it will be our consistent effort to stick to this goal which I have stated just now." This shows that, at the time of the passing of the MMDR Act: - i. State Governments were urged to look beyond narrow considerations of revenue. ii. The legislators were cognizant of the impact of royalty on prices, and the consequent impact on international competition.
24.12.1957	The Bill was debated and passed in the Rajya Sabha. The relevant portion of the debate is as under : **[Vol. IV (K), Pg. 1045]** **"Shri Rajendra Pratap Sinha (Bihar):** ...

DATE	PARTICULARS
	Therefore the States are vitally interested, equally interested in the development of our mineral resources. They have the responsibility under the Constitution to develop the mineral resources, of the country. **<u>The taxes on the mineral resources, that is the royalty,</u>** accrue to them. Therefore, the States are very vitally interested in the mineral resources and their development. **<u>What we are doing in this Bill is to denude the States of all their powers and responsibilities, not only with respect to the minerals mentioned in Schedule I which is very comprehensive but in some respect we have even taken away the regulatory powers of the States in respect of all other minerals</u>**. If you look at the First Schedule you will find that the list given here include all the minerals mentioned in List A of the Industrial Policy Resolution., I am also aware that the Government is committed to the plan and the target set therein in respect of the mineral production, but the point I would like to make out is this, that is this the way in which we should exploit the resources of the country in respect of minerals? The point is how the division of responsibilities between the States and the Centre should take place. Yon will find that all the powers of the States have now been taken over by the Centre here. The States have more or less been reduced to a position of vassal States in so far as mineral powers or responsibilities are concerned. The Government of India is prepared to trust more even an Under Secretary in their Secretariat but they are not prepared to trust the State Governments. I would like you to refer to the various clauses and you will find that nothing could be done by the State Governments without taking the prior approval of the Government of India in respect of the minerals mentioned in Schedule I. **[Vol. IV (K)Pg. 1052, internal Pg. 4023]** **"SHRI SANTOSH KUMAR BASU (West Bengal):** Mr. Deputy Chairman, I welcome this Bill particularly because it promises an intensive drive in the field of regulation, and development of minerals and mining. We, in this Council of States,, are naturally inclined to secure and reserve the amplest possible power for the States which we represent and from that point of view I can fully understand the anxiety of my esteemed and hon. friend Mr. R. P. Sinha. **<u>At the same time we should not lose sight, of the fact that the whole purpose underlying this Bill is the implementation of the policy to centralise the regulation and development of mines and minerals. This policy, is intimately linked up with the policy and purpose of our national development, namely, the speedy and successful execution, of the Five Year Plan. Coal and other minerals play an essential part in the rapid industrialisation of our country. Minerals also play a vital part in our-scheme for earning foreign exchange. If we remember these two outstanding aspects of the part that minerals are expected to play in the execution of our Plan, it is easy to understand why so much emphasis is laid in this Bill upon centralisation of development and regulation of mines and minerals. The reason is that the Plan is a Central subject; it is at the centre of all Central subjects and as such centralization of mines and minerals so far as their development and regulation is concerned, is essential. There is no escape from that position if we are to engage ourselves in a speedy and efficient execution of our Plan."</u>** **[Vol. IV (K)Pg. 1055-1056]** **"Shri Amolakh Chand (Uttar Pradesh)**

DATE	PARTICULARS
	... Now, objection has been taken that the Central Government has taken more powers than were needed. As far as I know, being a Member of the Select Committee, we found that all the States were consulted and their view point was also taken. The Minerals Development Advisory Committee also considered the provisions of this Bill. Mr. Sinha wanted to say that there were no development councils. We know, in regard to special minerals, there are development councils-and instances can be quoted about the Mica Mineral Advisory Committee. We also know that these mineral resources are being tackled in the four zones and there are zonal councils also. If I recollect aright, a question was put by me to know what steps were being taken and how things were going. <u>**All these go to show that there is a progress which can be fairly commended and there is much possibility of earning more foreign exchange by better conservation, development and regulation of the minerals.**</u> <u>**Some of the figures might be very interesting. Today, what is the position? The position is that the production of chromite, one of the minerals in the first schedule, is 53,000 tons and the export is 42,000 tons; ilmanite, production 3,36,000 tons and export . . .**</u> (Time bell rings) I think, if you can give me two or three minutes . . . MR. DEPUTY CHAIRMAN: Yes. SHRI AMOLAKH CHAND: I will finish, because the figures are very interesting. MR. DEPUTY CHAIRMAN: All right; two or three minutes more. SHRI AMOLAKH CHAND: <u>**We are exporting 2,83,000 tons. Similarly, there are the manganese ore and mica. What are the earnings of these minerals? We are earning about Rs. 88 million in iron ore; Rs. 218 million in manganese ore and Rs. 87 million in mica.**</u> SHRI KISHEN CHAND (Andhra Pradesh): Did you say Rs. 18,000? SHRI AMOLAKH CHAND: **Rs. 87 million—Rs. 8,70,00,000. That is the figure given to us. Considering all these, there is every necessity of conserving and regulating the production. When the Ministry is taking account of all these things, they have to take some consideration of the special minerals just as mica and manganese ore. There are the two minerals about which, I would like to say, the Government should take special care because they are our foreign exchange earners.** **Why has the new clause 16 been added? A provision has been made because the Central Government, in special cases, will be able to do justice in regard to such minerals where there is no competition in the world market. I think it is but just and proper that the Central Government should have those powers.** Mr. Perath Narayanan Nair referred to clause 13 with regard to the point that wherever the Government of India feels that it is in the public interest, it is necessary for them to do away with any provisions of the Act or the rules and powers given to them. We, in the Select Committee, thought over the matter and it was pointed out that in view of the foreign collaboration which might be available for the development of the mineral resources of the country, it might be necessary that the Government of India might have those powers. In view of this, the Bill as recommended by the Joint Select Committee fulfils the aspirations for which we-stand today and I fully support it." **[Vol. IV (K), Pg. 1060-1063]**

DATE	PARTICULARS
	"DR. RADHA KUMUD MOOKERJI: Mr. Deputy Chairman, Sir, I rise to support wholeheartedly this Bill on the main ground that it declares in unequivocal terms further the sound principles upon which every prosperous economic system is based, namely, a judicious combination of the principle of nationalization along with that of private industry. I think that the modern economic thought is certainly based on this assumption and it is a thought that inspires such economic institutions upon which India is dependant for the supply of some kind of foreign aid—I mean the International Monetary Fund or the World Bank and so forth. The governing authorities of all these international economic institutions are always governed by this principle that in the economic system, there should be a combination of State enterprise as well as private enterprise. In this Bill Government stands boldly on an enunciation of this principle. At the same time I think that this Bill is really inspired by the stress that is laid in the Second Plan upon the development of the industry connected with mines and minerals and it is in that context that this Bill has really come forward in a most appropriate time. Now I think that there are two points which have been urged by previous speakers on which I should like to raise a sort of a caveat or caution. The first is that we should not regard the ores as a very great dollar earner. If we are possessed by this kind of merchantile spirit, narrow views of profit and loss. I am afraid that India may be parting with its real wealth. On the contrary this mineral wealth, sometimes has to be conserved in the best interests of the country. Therefore, we cannot allow the unregulated exploitation of the mineral resources of the country, simply because we are, for the time being, earning some profitable dollars. Coming next to certain key industries, like steel or coal,—of course, it is not quite relevant, but I wish to take advantage of this occasion to say something—I would say that India owes a good deal in the matter of the development of both coal and the steel industry, to private enterprise and even to the efforts of private scientists and individuals like Mr. P. N. Bose of hallowed memory in the sphere of steel industry. Of course, Jamshedpur has done the right thing by commemorating the services done by Bose by having a bust or statue in that town. And the late Jamshedji Tata took advantage of the scientific talent of Bose and made a beginning of what is now the most important of our key industries. I mean, in that sense also, I found from my personal study—I do not attach much value to my own studies because I am not a scientist—that individual enterprise too had done a lot. I had a very intimate talk with the Manager of the Tatas and we argued this point whether it Would be more economical and profitable to finance the expansion of existing steel industries than trying to institute or establish new steel plants, in these days of foreign exchange difficulties. So also as regards the coal industry, for the past 50 years or so, we have had great pioneers who have built up the coal industry in our land like Bird & Company, Andrew Yule and Tatas besides a host of Bengali private industrialists to whom the country owes the development of the coal industry. **No doubt, the time has come when the Central Government must step in and control all these developments.** Otherwise it may be isolated and unregulated. Therefore, this is necessary. In that connection I would like to remind my hon. friend Mr. Basu that this Bill starts on the assumption or on the principle that: "It is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

DATE	PARTICULARS
	That is in clause 2 and that is really based on the important provision in our Constitution which states that if a natural resource which belongs to the State is declared to be in the national interest, then after such declaration, the State subject becomes a Union subject. Therefore, from that point of view I would like to draw the attention of my hon. friend Mr. Basu to this fundamental assumption of the measure, that Government declares that the time has arrived when the Central Government must declare that some of these important key industries in the field of mining are possessed of national interest. SHRI SANTOSH KUMAR BASU: I am entirely at one with the hon. Member on that point. DR. RADHA KUMUD MOOKERJI: **<u>Therefore, what was really in the list of the States has now been transferred to the Union list, has been made a Union subject and for a very good reason, namely, for the centralised and scientific regulation of this very important resource of our economic wealth. That is very very necessary in the national interest.</u>**" **[Vol. IV (K), Pg. 1062-1063]** "SHRI K. D. MALAVIYA: ... My hon. friend Mr. Sinha accuses the Central Government of denuding the State Governments of all their powers, of taking away those powers, of poaching on the powers and rights of the State Governments so far as the regulation and development of their mineral and natural resources are concerned. He has rightly pointed out that they are. the proprietors of their resources, and as such he thinks that we are being unjust to them in taking away all their powers of regulation or development and even without consulting them fixing or assessing the royalties on different ores that are to be exported from the country. Sir, I do not plead guilty to the charges made against the Government. I would not like to go into details. **<u>I will take only the question of royalties which was specifically mentioned by Mr. Sinha. Now royalties are not fixed on a uniform rate. A proper rate of royalties cannot in the natural course, and in the very nature of things, be adopted by the State Government, because naturally the desire of the State Governments is to load the price structure by swelling the royalty as much as they would like to. Obviously there is a limit to the royalties raising the price of a specific mineral ore, say iron ore or manganese or chromite or mica. So from that point of view, the Government of India, equipped with the information about the formations etc. is in a position to fix the rate. The State Governments will not be able to take into consideration all those factors which go to make up a reasonable price for a particular ore, and also at the same time have due regard to the fact that it will be an exportable commodity— if the State Governments are allowed to increase the rate of royalty according to their choice.</u>** SHRI RAJENDRA PRATAP SINHA: What is the reason for presuming that the State will always adopt an anti-national outlook in this question? SHRI K. D. MALAVIYA: Surely, I never said that it will amount to an anti-national policy. Our experience shows that they cannot in the very nature of things pay due regard to all those factors which they ought to take into consideration. There are several States which have been demanding almost out of proportion rise in the rate of royalty for some years. We were advised not to do and we told them that we would not do like that. They wanted us to raise the rate of royalty but we did not accept that. We wanted to reason out with them. **<u>In their desire to raise their revenues, they would not like to see all those factors because those factors are not before them.</u>**

DATE	PARTICULARS
	There was no question of any antinational policy or anti-national attitude being adopted. SHRI RAJENDRA PRATAP SINHA: But nothing would be lost by consulting them. SHRI K. D. MALAVIYA: We have been trying to persuade them and we always consult them. We call them here for consultations in the advisory committees and all those points are put before them. They accept our suggestions. It is not as if we either increase or decrease the rate of royalty without consulting them. We always consult them." **[Emphasis supplied]** The above debates show that: - i. The legislators viewed royalty as akin to taxes, showing an intention to occupy the fiscal field through introduction of royalties under Section. ii. There was manifest intention to denude the State Governments of their powers. iii. There was emphasis on centralization of regulation and development of mines and minerals, in the interest of national development as per the Five Year Plans. iv. It was apprehended that allowing States to determine levies would lead to a situation where other factors would be subordinated to State revenue, consequently loading the price structure.
28.12.1957	The MMDR Bill was passed.

55. Section 2 of MMDRA statutorily recognizes this fact and statutorily declares that Union should take under its control the regulation of mines and development of minerals in the public interest. Section 2 of the MMDRA[16] reads as under: -

> "**2. Declaration as to the expediency of Union control.**
> It is **hereby declared that it is expedient in the public interest** that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided." **[Emphasis supplied]**

There is no challenge to the constitutional validity of Section 2 of MMDRA and this statutory declaration is in existence even prior to the existing MMDRA regime.

56. It is in exercise of that "control" which is vested in the Union under Entry 54, List I, Sch. 7 of the Constitution of India that the Parliament has imposed "limitations" as stipulated under Entry 50 of List II and they are in public interest and has a rationale with a specific and discernible object, viz. uniformity in fiscal regulation of minerals

[16] **Vol. IV, Pg. 920.**

throughout the country, keeping the international scenario in mind, which only the Union can do.

57. The "limitation" imposed under Section 9 of MMDRA[17] necessarily denudes the State Government / State legislature from charging/levying anything other than the royalty fixed under Section 9 of MMDRA, the contribution to District Mineral Foundation under Section 9B of the MMDRA and the premium paid under the Mineral (Auction) Rules, 2015. Any such levy by the State Government would be beyond the competence of the State Legislatures and would thus be unconstitutional.

58. The amount of royalty is only the consideration required to be paid by the mining lessee in lieu being permitted to extract the minerals, which is owned by the State (as a trustee for and on behalf of the citizens). The royalty stipulated under Section 9 is thus not a "tax". The State is denuded of any power to impose any "fiscal levy" on minerals under any nomenclature, over and above the royalty under Section 9, the contribution to the District Mineral Foundation (a non-profit trust established by the State Government) under Section 9-B, and the contribution to the National Mineral Exploration Trust (a non-profit autonomous body established by the Central Government) under Section 9-C and the auction premium referred to hereinabove, in view of the limitations stipulated in the MMDRA, in light of a conjoint reading of Entry 54, List I and Entry 50 of List II of Schedule 7 of the Constitution.

59. Further, the State cannot resort to Entry 49 List II which is "**tax on lands and buildings**".

60. Firstly, both the words, i.e. "lands" and "buildings", having been used simultaneously, in the same entry, the term "land" will get the meaning from the term "buildings". Entry 49 List II, thus, deals only with the surface of the land on which a building can be constructed and not anything below the surface. Entry 49, List II thus cannot be resorted to in order to impose any levy on minerals. It only includes "land" per se.

61. No levy can also be imposed, under any nomenclature, upon "mineral rights" under Entry 49 List II. The term "land" used in Entry 49, List II would only mean the surface of the land and cannot mean, in the context of minerals, anything underneath the land, as the subject matter of mine and minerals is fully contained in Entry 23 and Entry 50 of List II and Entry 54 List I and, therefore, no other Entry can be resorted to for making any provision with regard to minerals. It is well settled that taxing entries

[17] **Vol. IV, Pg. 942.**

must be construed in a manner that avoids overlap.[18] Entry 49, List II is, thus, completely excluded.

62. The MMDRA and the Rules thereunder form a complete code covering all aspects of this subject matter, right from exploration to prospecting and exploitation of the minerals in the country. The Act provides for the manner of grant of concession for reconnaissance, prospecting and mining, levy of royalty for the mineral extracted, dead rent, conservation and mineral development, scientific and sustainable mining, transportation and regulation of illegal mining, makes special provisions for the government to undertake exploration and mining, penalties for the contravention of the Act and Rules, rights of lessor and lessees, etc. The Act does not leave any aspect regarding mineral rights untouched.

63. This is apparent from Section 18 of the Act, which reposes in the Central Government the exclusive power coupled with the duty to "take all such steps as may be necessary for the conservation and systematic development of minerals in India…" An indication of the width and breath of the regulatory functions of the Central Government in this regard is provided in the various sub-clauses of Section 18(2), and reinforces the position that Parliament has legislated comprehensively and exhaustively in the matter of mines and mineral development.

64. The coverage of the MMDRA extends to exhausting the field of statutory charges and levies on minerals. As stated above, Section 9 of the Act provides for levy of royalties in respect of mining leases, which are payable by the holder of the lease. Section 9 begins with a non-obstante clause which imposes the levy "*notwithstanding anything contained in the instrument of lease or in any law in force*". This indicates that –

(i) Parliament was intending that ever lease of minerals subsisting on the date of coming into force of the MMDRA, and every lease issued thereafter, would be subject to the levy of royalty; and,

(ii) the levy was a compulsory statutory charge on every lessee and would be payable regardless of the terms of the lease; thus, even though the Union Government was not the owner of the minerals or a party to such leases, it was determining the consideration payable for the grant of the lease.

65. Section 9(3) brings out that that the MMDRA not only itself exhaustively specifies the statutory charges on the grant of leases, but does so to the exclusion of the States. Section 9(3) reserves for exercise by the Central Government the power to enhance or reduce the rate of royalty in respect of any mineral. Conversely, the State Legislature cannot enhance or reduce the royalty fixed by the Central Government,

[18] ***Godfrey Phillips India Ltd. v. State of U.P. & Ors.*, (2005) 2 SCC 515.**

whether directly or indirectly. The proviso to Section 9(3) provides that even the Central Government shall not enhance the rate of royalty more than once every three years. This is a clear indication that Parliament intended to cover fully the field of fiscal aspects of mineral development, by specifying the statutory charge, prescribing the procedure for imposition of the levy and imposing restraints on the power of the Central Government to impose a financial burden on mines and mineral development.

66. Keeping in view considerations of mineral development *in public interest*, Parliament in 2015 amended the MMDRA to introduce a requirement of grant of mining lease in respect of notified minerals through auction. Accordingly, Section 10-B was inserted in the Act, sub-section (4) of which mandates that in respect of notified minerals, the State Government shall grant mining leases through auction by method of competitive bidding. Section 10-B(5) delegates to the Central Government the power to prescribe the terms, conditions and procedure subject to which the auction shall be conducted. It states that the Central Government may specify the bidding parameters in such auction, which may include requiring the successful bidder to share a portion of the production of the mineral with the State Government (which is commonly known as auction premium).

67. The insertion of Section 10-B further reinforces the position that the 1957 Act enacts a complete code in relation to mineral development in public interest, including occupying the fiscal space in regard to this subject matter. This statutory framework, by implication, leaves no space for a State levy that would have the effect of increasing the price of minerals and thereby prejudicially impacting mineral development viewed through a national lens.

68. <u>The loading of a State levy on top of the statutory levies in Section 9, 9-A, 9-B, 9-C and the auction premium prescribed under Section 10-B would undermine the auction process and may have the effect of rendering mining financially unviable. It is precisely this outcome that Parliament has legislated comprehensively under the 1957 Act to prevent.</u>

69. Section 13 specifies the scope of the rule-making power of the Central Government under the MMDRA. In relevant part, Section 13(2)(i) specifies that the Rules made under the Act could deal, inter alia with "*the fixing and collection of fees for reconnaissance permits, prospecting licences or mining leases surface rent, security deposit, fines, **<u>other fees or charges</u>** and the time within which and the manner in which the dead rent or royalty shall be payable*". In effect, the power to prescribe and collect any fiscal levy

in connection with the grant of a lease has been reserved by Parliament for exercise by the Central Government.

70. An indication of the breadth of the residual phrase "*other fees or charges*" in Section 13(2)(i) can be found in Section 25(1) of the Act, which contemplates that any "*rent, royalty, **tax**, fee or other sub due to the Government **under this Act** or the rules made thereunder…*". It matters not that the MMDRA does not contain a taxing provision. What is relevant is that these provisions bring out that Parliament has reserved for itself the power to tax minerals and mineral development, should this be deemed necessary. The issue is not whether the MMDRA imposes a tax, but whether the field in respect of statutory charges and levies on mineral rights has been covered. Sections 13(2)(i) and 25 are a clear indication that the MMDRA is not only a general regulatory statute that fully occupies the field of mines and mineral development and as such, exhausts the legislative competence of the state under Entry 50 of List II, but the provisions of the Act imposes limitations on fiscal levies by states on this subject matter.

71. In this regard, specific reference is also made to ***Form K of the Mineral Concession Rules, 1960*** which specifically provides that that the field occupied by the MMRDA is the only exaction permissible within the constitutional scheme as the field is occupied.

72. Further, the rationale for MMDRA's occupation of the entire field is apparent from the declaration in Section 2 of the Act, namely, to advance public interest in optimal utilization of the mineral wealth of the country. This Hon'ble Court in ***Orissa Cement Ltd. v. State of Orissa*** **1991 Supp (1) SCC 430** has given expression to the Parliamentary objective in the following terms: "*(r)ead as a whole, the purpose of the Union control envisaged by Entry 54 and the MMRD Act, 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule I in the matter of royalties, and consequently prices*". The judgment in *Orissa Cement* has not been doubted by the Majority in *Kesoram*.

73. Further, in ***State of MP v. Mahalaxmi Fabric Mills*, 1995 Supp (1) SCC 642 [Vol. V, Pg. 1567-1595]** this Hon'ble Court observed: "*(e)nhancing uniformly rates of royalty for the entire country even though minerals might be extracted from different State's territory is necessary for having uniform pattern of price of minerals and that has a direct linkage with the development of minerals. Regulating the rates of royalty on extraction of minerals has also an important role to play in opening up new mining areas for winning minerals. The rules framed under Section 18 (2) have a direct nexus with the development of*

minerals." The Majority in *Kesoram* does not express any disagreement with this observation. To the contrary, the Majority decision makes it clear that its disagreement with the law laid down in *Mahalaxmi* is limited to a single paragraph (para 12 – **Vol. V, Pg. 1580-1581**) of *Mahalaxmi* and not with any other part of the judgment.

74. In light of the above supervening objective of the enactment of the MMDRA as discerned by this Hon'ble Court in a consistent line of cases, there can be no doubt that the provisions of the Act must be given a wide and liberal construction to advance rather than constrain this objective. There can thus be no doubt that the charge under Section 9 occupies the subject matter of statutory charges and levies (of whatever nomenclature) on mines and mineral development and does not countenance any levy that would have the effect of increasing the fiscal burden on mines or mineral development.

75. As such, the MMDRA occupies the entire field of legislation covered by both Entries 23 and 50 of List II. In light of the enactment of the MMDRA, any levy imposed under a state law that in its pith and substance is relatable to Entry 50 of List II is without legislative competence.

76. It is in the context of the interplay of Entry 54 of List I and Entry 50 of List II and the enactment of the MMDRA that the present reference must be answered. The *ratio* in ***India Cements*, (1990) 1 SCC 12**, read in the above constitutional context of Entry 54 of List I and Entry 50 of List II, is that the *royalty imposed under Section 9 of the MMDRA*, read with the statutory declaration under Section 2, denudes the State Legislature of its legislative competence under Entry 50 of List II to levy a tax on minerals. It does not lay down any proposition of general application, or application outside this specific constitutional and statutory framework.

77. This is the manner in which India Cements has been consistently understood in subsequent judgments of this Hon'ble Court (see, for example, ***Quarry Owners Association v. State of Bihar* (2000) 8 SCC 655 at para 34 – Vol. V, Pg. 1923-1924**). Any attempt to cull out a proposition of application beyond the four corners of the aforementioned Entries and the complete code made up of the MMDRA and the Rules/Regulations thereunder, is, it is submitted, a misreading of the law laid down in *India Cements*.

F. SCOPE OF THE REFERENCE

78. The question of an alleged typographical error in para 34 of India Cements is academic.

79. The present reference has arisen in the context of the judgments of the perceived divergence between the law laid down in ***State of W.B. v. Kesoram Industries Ltd.*, (2004) 10 SCC 201**[19] and ***India Cement Ltd. v. State of T.N.*, (1990) 1 SCC 12**.[20] It is respectfully submitted that that no useful purpose is served in examining whether, as a matter of judicial discipline, the Bench of five (5) Hon'ble Judges in ***Kesoram*** could have interpolated words in the decision of the larger Bench in ***India Cements*** in an attempt to bring out what the smaller Bench believed was the legal position that was intended to be laid down in ***India Cements***. The judgment rendered in these proceedings will in any event be the authoritative pronouncement of law on the above issues and clarify any ambiguity in the legal position that has arisen in light of the judgments in ***India Cements*** and ***Kesoram***.

80. It is submitted that the present reference arises in the context of specific legislative entries in the Seventh Schedule (Entry 54 of List I and Entries 23, 49 and 50 of List II) and the interplay of these Entries with the provisions of 1957 Act. The primary issue that falls for consideration is with reference to a specific statutory levy, namely, the "royalty" under Section 9 of the 1957 Act, and pertains to whether this levy imposed by Parliament **<u>limits</u>** the legislative competence of the State Legislature under Entry 50 of List II. It is respectfully submitted that no other issue of general implication, such as the legal status and attributes of any other royalty other than that imposed under Section 9 of the MMDRA. or royalties in general, is required to be considered to answer the reference.

81. This Hon'ble Court is not called upon to undertake any broader or generalized inquiry into the nature of a tax or a royalty or lay down any abstract principles of general application for distinguishing a tax from a royalty. This determination would vary from one levy to another and would depend *inter alia* on the legislative entry to which Parliament/the State Legislature traces its legislative competence to impose the levy and the statutory scheme and specific provisions of the statute under which the levy is imposed. The adjudication of whether a specific statutory levy is in the nature of a tax or not is therefore best left for adjudication in and confined to the specific circumstances in which it arises. The present adjudication is limited to the aforementioned legislative entries and the impact of the provisions of the 1957 Act and should confine itself to this specific constitutional and statutory context.

82. The individual cases and individual state legislations whose validity would be determined with reference to the law laid down in the present reference are all

[19] **Vol. V, Pg. 2020-2255.**
[20] **Vol. V, Pg. 1151-1174.**

situated within the specific constitutional and statutory context indicated above. In view of the specifically demarcated legal contours of the present reference, it is respectfully prayed that this Hon'ble Court may be pleased to clarify that the following matters do **not** arise for consideration and have not, either expressly or by necessary implication been decided:

a. The constitutionality of levy of Goods and Services Tax ("**GST**") on the royalty under Section 9 of the MMDRA or on any other royalty or levy of whatever description or nomenclature under any other statute

b. The constitutionality of provisions of the MMDRA inserted by way of amendments in 2015, including Section 9-B (relating to payments to the District Mineral Foundation ("DMF") or any other provisions of the said Act

c. Cases involving the levies on or in relation to oil fields, mineral oil resources, petroleum, petroleum products etc. which do not arise under or in reference to the 1957 Act and involve a distinct constitutional and statutory framework [Entry 53 of List I, in terms of which a statutory framework enacted by Parliament comprising the Oilfields (Regulation and Development) Act, 1948; The Oil Industry Development Act, 1974; The Petroleum and Natural Gas Regulatory Board Act, 2006; The Petroleum and Natural Gas Rules, 1959 etc.].

83. In light of the above-stated position, and in view of the Affidavit filed by the Union of India (through the Ministry of Petroleum & Natural Gas) **[Vol. III(G), Pg. 2-7]**, this Hon'ble Court may not examine any questions concerning petroleum, natural gas and oilfields.

84. Further, one category of cases before this Hon'ble Court are challenges to *cess on royalty*. For instance, the subject matter of challenge in Civil Appeal No. 7938/2019, Item 901.4 is the levy imposed in the following terms **[Vol. III, Pg. 2351]**: -

> "In exercise of the powers conferred by section 6 of the Cess Act, 1880 (Bengal Act IX of 1880) as amended by the Bihar Cess (Amendment) Ordinance 1985 (Bihar Ordinance No 24 of 1985), the Governor of Bihar is pleased to determine with effect from 21st June 1985 **the rate of cess at five hundred (500) per cent on the amount of royalty of Bauxite Ore and Sand for stowing.**" **[Emphasis supplied]**

85. It is submitted that ***India Cement***[21] and ***Kesoram***[22] both hold that the State Legislatures do not have the legislative competence to levy a *cess / tax on royalty*. *India Cement* struck down Section 115 of the Madras Panchayat Act, 1958, which levied local cess payable at 45 paise on every rupee of land revenue, and "land revenue" was defined to include royalty (see para 5).

[21] **Vol. V, Pg. 1151-1174.**
[22] **Vol. V, Pg. 2020-2255.**

86. It may be noted that ***Kesoram*** did not disagree with the conclusion that such a levy is unconstitutional, though it does so on a different basis. This is apparent from Paragraph 115[23] of ***Kesoram***, which reads as under: -

> "115. India Cement is clearly distinguishable so far as the present cases are concerned. As we have already pointed out, it was a case of cess levied by the State Legislature on royalty and not on mineral rights or land and buildings. That is why the levy was held ultra vires. Seervai's comment and objective criticism on India Cement is noteworthy (see ibid., para 22.257 C). **Royalty is income and State Legislatures are not competent to tax an income. This single ground was enough to strike down the levy of cess impugned in India Cement.** Nothing more was needed. Orissa Cement Ltd. also, as the very opening part of the report shows, dealt with the levy of a cess by the State based on the royalty derived from mining lands which was held to be directly and squarely governed by India Cement and, therefore, struck down."

87. It is respectfully submitted that that this aspect, i.e. the impermissibility and unconstitutionality of cess on royalty, therefore, does not require revisiting.

88. With these caveats, it is submitted that the present reference must be answered by holding that:

a. The provisions, architecture and the scheme of the 1957 Act, including Section 2 and 9, constitute a limitation imposed by Parliament by law relating to mineral development on the imposition by the State Legislature of any tax or other levy on mineral rights;

b. Any levy imposed by the State on or with reference to the **value of mineral produced** from mineral bearing lands is, in its pith and substance, an impermissible tax on mineral rights under Entry 50 of List II (contrary to the limitation imposed by Parliament under Entry 54, List I) and is also not a tax on land under Entry 49 of List II;

c. The royalty levied under Section 9 of the 1957 Act is not a tax.

G. HISTORY OF REGULATION OF MINES AND MINERAL DEVELOPMENT IN INDIA

89. The following is a brief list of dates on the same :

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1890	The first concrete proposal for inspection and regulation of mining operations in India came from the Secretary of State, Lord Cross. Mr. James Grundy was the first Inspector of Mines appointed by the Government of India. He worked with the organisation, Geological Survey of India (GSI) with the duty to inspect mines and to make

[23] Para 115 of *State of W.B. v. Kesoram Industries Ltd.*, (2004) 10 SCC 201, **Vol. V at Pg. 2020-2255 (2135).**

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	recommendations on the type of regulations required. In the first report which Mr. Grundy submitted to the then Director of GSI, he stressed the need for passing the Mines Regulations Act which amongst other things would provide for special Rules with legal standing as the Act itself. Briefly, the Act was to provide for notices of opening of mines and of accidents, minimum age for boys and girls employed underground, first aid, management & supervision and safety matters. Special rules for coal and other minerals were incorporated so as to provide for additional safety provisions, which also specified the need for regular report of inspection of all parts of mines and machinery.
13.12.1894	Rules for the grant of mineral concessions in British India were for the first time made by the Department of Revenue and Agriculture (Geology and Minerals) by a resolution.
1895	The Government of India appointed a Committee to frame general rules applicable to mines or groups of mines and to clarify the heads under which legislation was desirable and also the provisions which need to be made under each head.
1896	The Committee submitted its report.
1899	Rules for the grant of mineral concessions in British India were amended.
1901	The finalisation of mining legislation took place and the Mines Act, 1901 was enacted. The Mines Act which came into force in 1901 covered all minerals worked up to a depth of over 6 meters, and provided for appointment of inspectors, appointment of persons possessing the prescribed qualifications as managers of mines, empowered the Chief Inspector to enter and inspect mines, and to enquire into accidents and prohibit the employment of children.
15.09.1913	The revised Mining Rules were made by Resolution No. 7552-7581-121.

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	These rules were intended to provide guidance to officials of the government in granting prospecting licences and mining leases.
1919	**<u>Significance of mineral development was duly acknowledged in the Government of India Act 1919</u>** which incorporated a dual form of government, referred to as dyarchy, for major provinces. As per Schedule 'L' of the said Act, entry at Sl. Nos. 24 and 25, Geological Survey and Control of Mineral Development insofar as such control was reserved for the Governor General in Council under rule made or sanctioned by the Secretary of State, and regulation of mines respectively were in domain of the Part-l viz. Central Subjects. The relevant portions are quoted as under : "GOVERNMENT OF INDIA ACT, 1919 PART I **Rule 3. Classification of Subjects**. <u>(1) For the purpose of distinguishing the functions of local Governments and local legislatures from the functions of the Governor General in Council and the Indian legislature, subject shall be classified in relation to the functions of Government as central and provincial subjects in accordance with the lists set out in Schedule I.</u> <u>(2) Any matter which is included in the list of provincial subjects set out in Part II of Schedule I shall, to the extent of such inclusion, be excluded from any central subject of which, but for such inclusion, it would form part</u>. **PART I. CENTRAL SUBJECTS.** 19. <u>Control of production, supply and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor General in council or by or under legislation by the Indian legislature to be essential in the public interest.</u> 20. <u>Development of industries, in cases where such Development by a central authority is declared by order of the Governor General in Council expedient in the public interest.</u> <u>21. Geological survey.</u> **<u>25. Control of mineral development in so far as such control is reserved to the Governor General in Council under rule made or sanctioned by the Secretary of State, and regulation of mines.</u>**

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	41. Legislation in regard to any provincial subject, insofar as such subject is in Part II of this Schedule stated to be subject to legislation by the Indian legislature, and any powers relating to such subject reserved by legislation to the Governor General in Council. **PART II - PROVINCIAL SUBJECTS.** <u>24. Development of mineral resources which are Government property; subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines."</u> The Mining Industry was recognised as an important profession then. Persons nominated to represent Indian Mining Association, Indian Mining Federation from Mining Constituency (referred to as special constituency) featured in the Legislative Council of the Governors of the States, such as, Bihar and Odisha. **[See Vol. IV (K), Pg. 166-482]**
1934	A Joint Parliamentary Committee on Indian Constitutional law reform submitted its report. The said Report became the basis of the Government of India Act, 1935. The Joint Committee Report of 1934 (hereinafter referred to as the "JCR") explains original the rationale for distribution of legislative powers. The relevant portion of the said report may be noted as under : **Distribution of legislative powers between Centre and Provinces.** 50. The first problem is to define the sphere within which Provincial Autonomy is to be operative. **<u>The method adopted by the White Paper (following in this respect the broad lines of Dominion Federal Constitutions) is to distribute legislative power between the Central and Provincial Legislatures respectively, and to define the Central and Provincial spheres of government by reference to this distribution. In Appendix VI, List II, of the White Paper are set out the matters · with respect to which the Provincial Legislatures are to have exclusive legislative powers, and the sphere of Provincial Autonomy in effect comprises all the subjects in this list. The subjects in List II (the exclusively Provincial List) represent generally with certain additions /those which the Devolution Rules under the Act of 1919 earmarked as "Provincial subjects" and we are of opinion that in its broad outline the List provides a satisfactory definition of the Provincial sphere</u>**. We shall have certain suggestions and recommendations to make later, when we come to consider the List in detail, and there are a few subjects included in it with regard to which a complete provincialization might, as it seems to us, be prejudicial to the interests of India as a whole. It will, however, be convenient to leave this aspect of the matter for subsequent examination. xxx **SECTION V** **SPECIAL SUBJECTS (1) THE DISTRIBUTION OF LEGISLATIVE POWERS**

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	Importance of the subject. 228. **In an earlier part of this Report we have discussed briefly and in. general terms our conception of a statutory distribution of legislative powers between the Centre and the Provinces as an essential feature of Provincial Autonomy and as being itself the means of defining its ambit. But the precise method by which this general purpose is to be effected is a matter of such paramount importance to the working of the Constitution which we envisage as to demand more detailed examination**. **The plan of a statutory delimitation of legislative powers** 229. We have already explained that the general plan of the White Paper, which we endorse, is to enumerate in two lists the subjects in the two lists in relation to which the Federation and the Provinces respectively will have an exclusive legislative jurisdiction ; and to enumerate in a third list the subjects in relation to which the Federal and each Provincial Legislature will possess concurrent legislative powers - the powers of a Provincial Legislature in relation to the subjects in this list extending, of course, only to the territory of the Province. The result of the statutory allocation of exclusive powers will be to change fundamentally the existing legislative relations between the Centre and the Provinces. At present the Central Legislature has the legal power to legislate on any subject, even though it be classified by rules under the Government of India Act as a Provincial subject, and a Provincial Legislature can similarly legislate for its own territory on any subject, even though it be classified as a Central subject ; for the Act of each Indian Legislature, Central or Provincial, requires the assent of the Governor-General, and, that assent having been given, section 84 (3} of the Government of India Act provides that " the validity of any Act of the Indian Legislature or any local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a Provincial subject or a Central subject as the case may be." If our recommendations are adopted, an enactment regulating a matter included in the exclusively Provincial List will hereafter be valid only if it is passed . by a Provincial Legislature, and an enactment regulating a matter included in the exclusively Federal List will be valid only if it is passed by the Federal Legislature : and to the extent to which either Legislature invades the province of the other, its enactment will be ultra vires and void. It follows that it will be for the Courts to ·determine whether or not in a given enactment the Legislature has transgressed the boundaries set for it by the exclusive List, federal or provincial, as the case may be. The questions which may arise as to the validity of legislation in the concurrent field are more complicated, and we shall discuss them later : but here, also, disputes· as to the validity of legislation will in the last resort rest with the Courts. xxx **The revised Lists** 231. The Lists, as they appear in Appendix VI to the White Paper, are described as illustrative and do not purport to be either complete or final. Since their publication, however, they have been subjected to a careful scrutiny by the Government of India and the Provincial Governments, whose criticisms have in their turn been examined by the framers of the original Lists ; and the results

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	of this scrutiny and examination have been placed at our disposal; In the light of this further information we are satisfied (though the final form must be a matter for the draftsman) that the revised Lists which we append to this chapter represent a workable and appropriate allocation of legislative powers. **Two Lists or one as the method of defining exclusive jurisdictions** 232**. We confine our attention for the moment to Lists I and II, which define respectively the exclusive jurisdiction of the Centre and of the Provinces. We believe that the attempt which these Lists represent to allocate by enumeration with any approach to completeness elusive juris40 the functions of legislation, including taxation, to rival Legislatures is without precedent.** In other Constitutions the method adopted has usually been to specify exhaustively the subjects allocated to one Legislature and to assign to the other the whole of the unspecified residue. But, as we have said elsewhere, the method adopted in the White Paper has one definite constitutional advantage, apart from its virtues as a compromise between two sharply opposing schools of thought in India. We are ourselves convinced that the laborious and careful enumeration of both sets of subjects has secured that in fact no material and unforeseen accretion of power, either to Centre or Provinces, would result from the elimination of one List or the other ; and we are satisfied that the process has reduced the residue· to proportions so negligible that the apprehensions which have been felt on one side or the other are without foundation. Recognising the strength of Indian feeling on this matter we are unwilling to disturb the compromise embodied in the White Paper, the effect of which is to empower the Governor-General acting in his discretion to allocate to the Centre or Province as he may think fit the right to legislate on any matter which is not covered by the enumeration in the Lists. We are conscious of the objections to this proposal. It is inconsistent with our desire to see a statutory delimitation of legislative jurisdictions ; and the power vested in the Governor General necessarily empowers him not merely to allocate an unenumerated subject, but also, in so doing, to determine conclusively that a given legislative project is not, in fact, covered by the enumeration as it stands,-a question which might well be open to argument, though we assume that in practice the Governor-General would seek an advisory opinion from the Federal Court. On the other hand, it must not be forgotten that an enumeration of the powers of the Centre and the allocation of the unspecified residue to the Provinces would involve not only the reservation to the Federal Legislature of a generally defined overriding power, but also the consequence that the Provinces would acquire the right to assume to themselves any unspecified sources of taxation which might hereafter be devised ; and if this position were accepted it might well be necessary to deal separately and by a different method with the power to impose taxation. We recommend, however, as some mitigation of the uncertainty arising from the inevitable risks of overlapping between the entries in the Lists, that the Act should provide that the jurisdiction of the Federal Legislature shall, not-withstanding anything in Lists II and III, extend to the matters enumerated in List I; and that the jurisdiction of the Federal Legislature under List III shall, notwithstanding anything in List II, extend to the matters enumerated in List III. **The effect of this will be that, in case of**

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	<u>conflict between entries in List I and entries in List II, the former will prevail, and, in case of conflict between entries in List III and entries in List II, the former will prevail so far as the Federal Legislature is concerned</u>." The relevant portion of the recommendations of the Committee as to the legislative distribution proposed is as under : "THE REVISED LISTS **Federal List** Entry 26 Development of industries in cases where such development is declared by or under federal law to be expedient in the public interest. Entry 51 - Taxes on mineral rights and on personal capital other than land. **Provincial List** Entry 36 - Mines and the development of mineral resources in the Province. **Concurrent List** Entry 13 - Regulation of the working of mines, but not including mineral development."
1935	With the enactment of the Government of India Act, 1935 came Federation of India, comprising both provinces and states. As per Section 100 of the Government of India Act 1935, the Federal Legislature had powers to make laws with respect to any matter enumerated in List-l in the Seventh Schedule to the Act, called 'Federal Legislative List" Entry at Sl. No. 36 in the Federal Legislative List related to 'regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest. Specifically on the issue of mines and minerals, the relevant portions were as under : "**LIST I. FEDERAL LEGISLATIVE LIST.** <u>36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.</u> **LIST II. PROVINCIAL LEGISLATIVE LIST**

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	Entry 8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province. Entry 21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove. Entry 23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control. **Entry 44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development."** **[See Vol. IV (A), Pg. 2-6]**
1939	The Government of India made the Mining Concessions (Central) Rules, 1939, for regulating grants of prospecting licences and mining leases or Chief Commissioner's Provinces and British Baluchistan. Rule 6 of the 1939 Rules provided that these Rules were not to apply to minor minerals such as slate, building stone, limestone and clay, the extraction of which was to be regulated by such separate rules as the Chief Commissioner might prescribe. Thus, the provisions relating to minor minerals in the 1939 Rules were similar to those in the 1913 Rules and the list of minor minerals was also identical under these two sets of rules.
1947	The Mineral Policy Conference was held in January.
06.04.1948	The need for Central regulation of mines and oilfields and mineral development began to be increasingly felt and became highlighted during the second world war with the result that certain key minerals had to be controlled under the Defence of India Act, 1939. It was recognized that a planned and uniform policy of mineral development was essential for economic and industrial progress. After independence the Government of India set out in its Industrial Policy Resolution of April 6, 1948, the policy which it proposed to pursue in the industrial field. The Industrial Policy Resolution included minerals amongst the

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	industries whose location had to be governed by economic factors of all-India import or which required considerable investment or a high degree of technical skill and consequently had to be the subject of Central regulation and control.
1948	The enactment of the Mines and Minerals (Regulation and Development) Act, 1948. The first legal framework in independent India for the regulation and development of mines. The object of the 1948 Act was to regulate mines and oilfields and mineral development on the lines contemplated in the Industrial Policy Resolution of April 6, 1948 [see the Statement of Objects and Reasons to the Legislative Bill which when enacted became the Mines and Minerals (Regulation and Development) Act, 1948, published in the Gazette of India, 1948, Part V, p. 601]. The 1948 Act was brought into force on October 25, 1949, by Notification No. M. II-155(24)-dated October 8, 1949, published in the Gazette of India, Extraordinary, 1949, at p. 2075. Section 2 of the said Act, is quoted as under : "Section 2. Declaration as to expediency of control by Central Government :- It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oilfields and the development of minerals to the extent hereinafter provided." Clause (c) of Section 3 of the 1948 Act defined "minerals" as including "natural gas and petroleum". Section 5(1) conferred power upon the Central Government to make rules to regulate the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area. Under clause (d) of Section 5(2), in particular, and without prejudice to the generality of the power conferred by Section 5(1), such rules could provide for "the fixing of the maximum and minimum rent payable by a lessee, whether the mine is worked or not". Section 6(1) conferred power upon the Central Government to make rules for the conservation and development of minerals. Under clause (i) of Section 6(2), in particular, and without prejudice to the generality of the power conferred by Section 6(1), such rules could provide for "the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected". Section 7 conferred upon the Central

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	Government the power to make rules for the purpose of modifying or altering the terms and conditions of any mining lease granted prior to the commencement of the 1948 Act so as to bring such lease in conformity with the rules made under Sections 5 and 6. Under Section 10, all rules made under the 1948 Act were to be laid, as soon as may be after they were made, before the Central legislature and after the commencement of the Constitution of India, before the House of the People.
1949	In exercise of the power conferred by Section 5 of the 1948 Act the Central Government made the Mineral Concession Rules, 1949, for regulating the grant of prospecting licences and mining leases for minerals other than petroleum and natural gas. The said Rules came into force on October 25, 1949, namely, the date on which the 1948 Act was brought into force.
31.08.1949	The Entries in the Union List [Entry 52, 53 and 54 in the final Constitution and Entries 64, 65 and 66 in the Draft Constitution], were debated in the Constituent Assembly. The relevant portion of the debates is as under : "The Honourable Dr. B.R. Ambedkar : Sir, I move: "That for entry 64 of List I, the following entry be substituted :— <u>'64. Industries, **the control of which by the Union is declared by Parliament** by law to be expedient in the public interest'."</u> xxx <u>**Shri H. V. Kamath : Mr. President, I move amendment No. 214 of Third List (Sixth Week) which reads as follows:— "That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the words 'the control' the words 'the development and control' be substituted."**</u> This amendment includes or embraces the amendment Just now moved by my honourable Friend, Kaka Bhagwant Roy. The original entry as it stood in the Draft Constitution referred to the development of industries. I wonder why the Drafting Committee has suddenly developed an antipathy to the word "development" in this entry. My amendment is on the lines of a legislative measure which was introduced in the Assembly during the last Budget Session and which has been referred to a Select Committee. That Bill provided for governmental action in industries, the development and control of which was to be regulated by the Centre and the title of the Bill was "Industries (Development and Control) Bill", that is to say, the subject-matter of this entry has been already taken cognizance by the Central Government in a Bill, the title of which includes not merely control but the development of industries

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	which are deemed necessary or expedient in the public interest. I realize it is quite possible the Drafting Committee owing to the excessive strain under which it has laboured during the last two years and especially during the last few weeks or months, is liable to commit slips here and there, but I hope that the Drafting Committee has not developed a closed or a calcified mind, which is not receptive to any change whatsoever. I think that the meaning of this entry will be, more adequately and more fully conveyed by amending this word "control" on the lines I have suggested and seeking to incorporate in this entry not merely control but also the development of industries, which means, industries the development and control of which by the Union is declared by Parliament, by law, to be expedient in the public interests I move amendment No. 214 of List III (Sixth Week) and commend it to the House for its earnest Consideration. xxx The Honourable Dr. B. R. Ambedkar : Sir, the entry as it stands is perfectly all right and carries out the intention that the Drafting Committee has in mind. My submission is that **once the Centre obtained jurisdiction over any particular industry as provided for in this entry that industry becomes subject to the jurisdiction of Parliament in all its aspects, not merely development but it may be in other aspects. Consequently, we have thought that the best thing is to put the industries first so as to give undoubted jurisdiction to Parliament to deal with it in any manner it likes, not necessarily development. Therefore, the entry is far wider than Mr. Kamath intends it to be**. Mr. President : The question is: "That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the word 'Industries' the words 'Development of Industries' be substituted." The amendment was negatived. Mr. President : The question is: "That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the words 'the control' the words 'the development and control' be substituted." The amendment was negatived. Mr. President : The question is: "That for entry 64 of List I, the following entry be substituted:— '64. Industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest.' " The amendment was adopted. Entry 64, as amended, was added to the Union List. **Entry 65**

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	Shri H. V. Kamath : It is with your kind permission that I am now moving this amendment to entry 65. Sir, I move : "That with reference to amendment No. 37 of List I (Sixth Week), in entry 66 of List I and entry 65 of List I, for the words 'and oil fields' the words 'oil fields, and submarine regions' be substituted." I do not know why "submarine, regions" have been excluded from the scope of this entry. Only the other day we adopted an article whereby all lands and all minerals underlying the ocean were vested in the Centre. I am told on reliable authority that the Pearl Industry, to mention only one instance, could be very usefully developed in the Cutch region, and I am sure that in many other parts of our oceanic areas the pearl industry stands a good chance of development in the future. Japan has developed this industry very considerably, and some Japanese scientists or experts have observed that India also can produce pearls of a very high quality. This will be a submarine industry and it will be as hazardous an occupation as labour is in mines and oil fields. <u>I therefore feel that when you are regulating for labour and for their safety in mines and oil fields, it is equally necessary and essential in the public interest to regulate for labour and its safety in those industries which we might develop in submarine regions. As I have already said, that is an equally dangerous occupation and the House might consider whether it is not desirable that an amendment to this effect should be incorporated in entry 65. I move, Sir, this amendment, seeking to incorporate submarine regions in entry 65 and commend it to the House for its consideration.</u> The Honourable Dr. B. R. Ambedkar : With regard to Mr. Kamath's amendment, it seems to me to be quite unnecessary because the word "oil fields" is used in general terms. Wherever it occurs, the Centre shall have jurisdiction. If an oilfield can occur below water...... Mr. President : He says "and submarine regions". Shri H. V. Kamath : I say "mines, oil fields and submarine regions". The Honourable Dr. B. R. Ambedkar : What my friend has in mind is diving operations. Shri H. V. Kamath : No, the Pearl industry. The Honourable Dr. B. R. Ambedkar : All I can say is that I shall consider that matter. Mr. President : Then I will first put the amendment moved by Prof. Saksena. The question is: "That in entry 65 of List I, after the word 'Regulation' the words 'and welfare' be inserted." The amendment was negatived.

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	Shri H. V. Kamath : In view of Dr. Ambedkar's assurance, I do not press my amendment now. It may be considered by the Drafting Committee. Mr. President : The question is: "That entry 65 stand part of List I." The motion was adopted. Entry 65 was added to the Union List. Entry 66 The Honourable Dr. B. R. Ambedkar : Sir, I move: "That in entry 66 of List I, the words 'and oil fields' be deleted." It has already been transferred to entry 63. Shri H. V. Kamath : Mr. President, I move, Sir : "That with reference to amendment No. 37 of List I (Sixth Week), in entry 66 of List I for the words 'and oil fields' the words 'oil fields, and submarine regions' be substituted." The effect of it will be not only to include submarine regions in this entry but also to oppose the amendment of Dr. Ambedkar seeking to delete the word "oil fields". The point of my amendment is this. Dr. Ambedkar rightly pointed out that this matter of oil fields has been comprised in entry 63. But as the House will see, entry 63 which we have adopted a few minutes ago is to regulate and develop oil fields and mineral oil resources. Entry 65 which we have already passed refers to regulation of labour and safety in mines and oil fields. This is a matter different from the matter included in 63. So also I feel that this 66 refers to a subject which is not comprised in 63, because the qualifying clause is to the effect "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". I do not know whether the retention of the words "mineral development" and omission of the word "oil fields" would be in consonance with entry 63 which the House has adopted. That entry refers to mineral oil resources. And here we have got mineral development. "Mineral development" refers to mineral resources in general. If there are adequate, valid and cogent reasons for retaining the words "mineral development" in entry 66, I see no reason why the word "oil fields" also should not be retained, because the particular term "oils" is only a part of the general term "minerals", scientifically speaking. Shri T. T. Krishnamachari : It is there in 63. Shri H. V. Kamath : I know that. My Friend would, I am sure, have made a different remark if he had closely followed what I was pointing out. I was pointing out that when we have mentioned oil resources in 63 and when we have also mentioned mineral development as a general matter there will be no harm in retaining the word "oil fields" also just to make it absolutely clear. I see no absolute necessity for it, but there will be no harm in retaining the word "oil fields". xxx <u>Mr. President : Then amendment No. 215.</u>

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	Shri H. V. Kamath : I leave it to the wisdom of the Drafting Committee. Mr. President : Very well, then; that is not put to vote. He leaves it to the Drafting Committee. Then the amendment moved by Dr. Ambedkar. The question is: **"That in entry 66 of List I the words 'and oilfields' be deleted."** **The amendment was adopted.** Mr. President : The question is : "That entry 66, as amended stand part of List I." The motion was adopted. Entry 66, as amended, was added to the Union List." The above debates make it evident that: - i. In fields akin to mineral development, such as controlled industries, the, once the Centre obtained jurisdiction / established control, that field was thereafter within the Parliament's competence "in all its aspects". ii. The subject of "oilfields" was deleted from what came to be Entry 54, List I. It came to be covered by Entry 53, List I. **[See Vol. IV (A), Pg. 7-16]**
02.09.1949	On the said date, the clauses of the State List were debated [Entry 49 & 50 - corresponding entry in CAD are 53 and 54, respectively]. The said debates were very short and do not really shed any light on the issue. However, they are quoted for the sake of convenience : "State Lists Entry 53 Entry 53, was added to the State List. Entry 54 Shri Brajeshwar Prasad : Sir, I move: "That entry 54 of List II be transferred to List I." Mr. President : There is no other amendment. The question is: "That entry 54 of List II be transferred to List I." The amendment was negatived. Mr. President : The question is: "That entry 54 stand part of List II." The motion was adopted. Entry 54 was added to the State List."
Note	It is submitted that subsequent to the 1935 Act, the British Cabinet Mission Plan outlined a broad federal structure for India, allocating only

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	defence, foreign affairs and communication to the Centre, with all residuary powers vested in State Governments. However, the Union Powers Committee, set up by the Constituent Assembly and chaired by Jawaharlal Nehru, stated that the Cabinet Mission Plan was no longer operative in light of partition and the Committee was not bound any more by the "limitations on the scope of Union Powers". The said committee unanimously took the view that a weak central authority would be injurious to the interests of the country and concluded that "*the soundest framework for our Constitution is a Federation, with a strong Centre*". During the Constituent Assembly discussions, Mr. B.R. Ambedkar stated that Draft Constitution was a federal constitution as it created such a "Dual Polity" and that the Legislative and executive authority was partitioned between the Centre and the States, not by any law to be made by the Centre, but by the Constitution itself. Ambedkar also explained that the drafters had sought to overcome two "inherent weaknesses of federalism" which he had identified to be rigidity and legalism. The Draft Constitution attempted to overcome these issues by, inter alia, specifying certain powers as concurrent, and by granting exclusive powers to the Centre over as many as 91 subjects.
26.01.1950	With the adoption of the Constitution of India on 26th January 1950, the legislative powers of the Central government and the State governments were clearly defined. Entry 54 of List 1 in the Seventh Schedule of the Constitution empowered the Central government to regulate mining activities and development of minerals. Entry 23 of List I in the Seventh Schedule empowered the state governments to frame rules and regulations respect of mining activities and mineral development, subject to the provisions of List I.
July 1951	The First five year plan was brought in to being. The following is an excerpt from the same : "CHAPTER 10 MINERALS INTRODUCTION In the last two years the Government have laid the foundations for mineral development by:

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	(i) the announcement of a mineral policy; (ii) the expansion of the Geological Survey of India for implementing a programme of mineral exploration and development; and (iii) the establishment of a Bureau of Mines for securing co-ordinated development of the country's mineral reserves with due regard to conservation, especially of the higher grade ores. 2. Although Progress has been made in the survey of mineral reserves in recent year's and the principal mineral regions have been ascertained, exploration has not been thorough or complete and present estimates of reserves are rough guesses. The Plan, therefore, provides for systematic detailed investigation and surveys by the Geological Survey of India, the Bureau of Mines and the National Laboratories for the quantitative and qualitative assessment of the country's reserves of important minerals. 3. The position in regard to mineral resources, as at present known, may now be stated. Coal, iron ore, manganese ore, mica, gold, ilmenite, and building materials are produced in India in quantities of real importance to industry and other sectors of the economy. Other minerals of which India possesses good reserves are bauxite, industrial clays, steatite, chromite, atomic energy minerals - refractory minerals and abrasives. The more important minerals, supplies of which are inadequate for any large industrial development, are sulphur, copper, tin, nickel, lead, zinc, graphite, cobalt, mercury and liquid fuels. Except for these India is endowed with the basic mineral and power resources needed for industrial expansion though, in relation to the population, the reserves compare unfavourably, with the important mineral regions of the world. MINERAL POLICY 4. **Till recently the tendency in India was to exploit minerals largely for purposes of export; they were not regarded as a source of national wealth whose working and utilisation should be planned on sound economic principles in the best interests of the country**. As minerals form the basis of modern industries in peace and in war, it is necessary to have a clear-cut policy for their working and utilisation. The keynote of this policy should be conservation and economic working. The essentials of such a policy of co-ordinated and economic development of the mineral resources should include:- (i) Appraisal of reserves: In regard to almost every mineral there is no reliable data on reserves. It is therefore necessary to investigate the mineral deposits in a systematic manner and prepare detailed maps. The more important minerals, whether for domestic consumption, for defence purposes or for export, should be given high priority in this programme. xxx (iv) Statistics of Mineral Industry: · There is provision under the Act LIII of 1948 for the collection of detailed statistics of the mining industry. The Bureau of

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	Mines should be empowered to collect statistics relating to the mining industry, so that they can be collated and studied in relation to development and planning. Statistics regarding certain aspects of the mineral trade and mineral economics of other countries, which may have a bearing on India's economy, will also have to be collected. xxx PROGRAMME OF MINERAL DEVELOPMENT – 11. It should be stated again that in regard to important minerals the reserves, though known to be large enough, are not known in sufficient detail especially in regard to quality for purposes of development. There is much work remaining to be done immediately in exploration, estimation of reserves, improvement of mining, collection and organization of statistics and researches into the beneficiation and utilisation of minerals. The Government organisations mainly concerned in the execution of this programme are: 1. The Geological Survey of India 2. The Indian Bureau of Mines 3. The National Fuel Research Institute 4. The National Metallurgical Laboratory 5. The Central Glass & Ceramic Research Institute Detailed programmes of work in order of priority to be carried out by the above organizations have been suggested in the Basic Plan. The Geological Survey of India, the National Research Institutes concerned and the Indian Bureau of Mines, have to be expanded in order to implement this programme of work during the next five-year period. Provision for this purpose amounting to about Rs. 1 crore has been made in the Plan." The First Five Year Plan, therefore, emphasized the importance of mineral development founded on "on sound economic principles in the best interests of the country". **[See Vol. IV (K), Pg. 483-788 (Pg. 629, 630, 634)]**
February 1956	The Second Five year plan was brought about. The following is the relevant portion from the same : "II MINERALS **1. The rate at which mineral development takes place and the extent to which minerals are used for industrial production are among the principal indicators of a country's economic development. Development programmes for minerals and for industries have to be closely integrated. The fact that on the eve of the second plan, when ambitious industrial programmes are envisaged, the exploration of India's mineral resources is incomplete, emphasises the urgency of obtaining more detailed knowledge of them.** During the second

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	five-year plan, on account of the requirements of steel and transport, the development of coal production will claim the first attention. xxx 7. During the second plan it is proposed to organise intensive surveys of the country's mineral resources. In established industries such as coal, new production has to come mainly from virgin areas, so that detailed prospecting of selected coalfields is an essential part of the production programme. The Geological Survey of India and the Indian Bureau of Mines will be expanded considerably. Details of their expansion programmes are under consideration. Their programmes of work will include investigations of all important minerals by geological and geophysical methods and drilling wherever necessary and the investigation of ground water resources and of the geological aspects of irrigation and power projects. Selected areas will be prospected in detail by the Indian Bureau of Mines. xxx SURVEY OF INDIA 9. The work of the Survey of India has considerable bearing on the development of mineral resources, although it extends to several other fields as well. Maps are required for geological and geophysical investigations of minerals, mineral oil and groundwater and of the geological aspects of engineering. They are also required for other purposes like the development of forest resources, railways and roadways, irrigation and power projects. The work of the Survey of India, which is one of the oldest departments of the Government of India, was considerably dislocated during the second world war with the result that large arrears of work accumulated. In the post-war years additional demands have been placed on the organisation. To meet this situation, a programme of expansion and mechanisation was approved in 1953. The programme of mechanisation is nearing completion. In view of the work load expected during the second plan, further expansion and mechanisation programmes, at a cost of Rs. 107 lakhs, have been approved for in the second five year plan. Provision has also been made for the reorganisation of the Geodetic and Research Branch of the Survey of India which is responsible for keeping up-to-date the levelling and triangulation work as well as magnetic data and for maintaining tidal and gravity surveys." Again, the urgency of proper mineral development was highlighted. **[See Vol. IV (K), Pg. 789-858 (Pg. 843, 845)]**
1956	The States Reorganisation Act, 1956 was a major reform of the boundaries of India's states and territories, organising them along

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	linguistic lines. Prior to this the States were not organized in properly discernible manner.
29.07.1957	The MMRDA Bill was introduced in the Lok Sabha.
13.11.1957	The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri Keshava Deva Malaviya was discussed in the Lok Sabha and adopted on the same day.
19.11.1957	The Bill was debated in the Rajya Sabha.
21.11.1957	The message from the Rajya Sabha was read out in the Lok Sabha.
November – December 1957	Committee held ten sittings in all.
09.12.1957	The Report of the Committee was to be presented but was granted extension of time by the Lok Sabha on the 9th December, 1957 upto the 16th December, 1957.
13.12.1957	The Committee considered and adopted the Report.
21.12.1957	The Mines and Minerals (Regulation and Development) Bill was debated in the Lok Sabha on 21.12.1957.
24.12.1957	The Bill was debated and passed in the Rajya Sabha.
28.12.1957	The MMDR Bill was passed.

H. THE "PUBLIC INTEREST" INTERPRETATION OF ENTRY 54, LIST I AND ENTRIES 23 AND 50 OF LIST II OF SCHEDULE 7 OF THE CONSTITUTION OF INDIA

90. The primary legal issue that falls for consideration is the interplay of Entry 54, List I with Entry 50 of List II. In particular, the issue that arises is whether the enactment by Parliament of the MMDRA (and the provisions contained therein) constitutes a limitation "*imposed by Parliament by law relating to mineral development*" on the imposition of State tax on mineral rights.

91. Parliament's competence to legislate in the field of mines and mineral development, in the public interest, is described in Entry 54, List I, Schedule 7 of the Constitution of India, which reads as under: -

> "54. <u>Regulation of mines and mineral development</u> to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be **<u>expedient in the public interest.</u>**" **<u>[Emphasis supplied]</u>**

92. Before adverting to other aspects, it is critical to note the ***Report of the Study Group on Revision of Rates of Royalty and Dead Rent***. The report refers to the States duties/levies/cess etc. in the pre ***India Cement*** **supra** regime which provides a reality check on the issue. The said report shows that if the MMRDA is not held to be a complete code in matters concerning State impositions, what drastic consequences will follow – not in in an abstract situation, rather clearly evinced in reality and history.

93. It is submitted that a decision permitting State to impose taxes on minerals / mineral rights would inevitably lead to a return to the scenario prevalent prior to the ***India Cements*** **judgment**. This would be contrary to public interest, and would impede overall mineral development, due to the load on the pricing structure.

94. To get a sense of the scenario prior to *India Cement*, one may refer to the Rates of Cess / Tax imposed by states at that time, as derived from the "Report of the Study Group on Revision of Rates of Royalty and Dead Rent" published in March 1990. The rates imposed by certain mineral rich States are extracted below: -

Sl. No.	State	Rate of Cess / Tax
1.	Andhra Pradesh **[Vol. IV(K), Pg. 1130]**	Cess at 25% of Royalty in Telangana area Cess at 37% of Royalty in Andhra area Mineral Rights Tax on Coal at **<u>300% of royalty</u>** Mineral Rights Tax on Limestone at **<u>150% of royalty</u>** Mineral Rights Tax on other minerals at **<u>100% of royalty</u>**
2.	Bihar **[Vol. IV(K), Pg. 1131]**	Cess on iron ore at **<u>300% of royalty.</u>** Cess on limestone and pyrites at **<u>200% of royalty.</u>**

		Cess on bauxite, chinaclay, dolomite and fireclay at **133.33% of royalty.** Cess on copper ore, mica, quartz, quartzite, steatite and felspar at **100% of royalty.**
3.	Karnataka **[Vol. IV(K), Pg. 1132]**	Mineral Rights Tax on Copper ore, kyanite, manganese ore and quartzite at 50% of royalty. Mineral Rights Tax on magnesite and moulding sand at **100% of royalty.** Mineral Rights Tax on Iron ore and limestone except Shahabad stone at **150% of royalty.** Mineral Rights Tax on Gold at **500% of royalty.**
4.	Madhya Pradesh **[Vol. IV(K), Pg. 1133]**	Cess at **100% of royalty or dead rent, whichever is higher.** For coal, the rate was set at **125% of royalty or dead rent, whichever is higher.**
5.	Orissa **[Vol. IV(K), Pg. 1134-1135]**	Cess (as percentage of royalty): - i. Sand for stowing – 650% **ii.** Coal – **500% of royalty or 30% of Pit Mouth Value, whichever is higher.** iii. Chromite – **400%** **iv.** Iron Ore – **300%** **v.** Andalusite, asbestos, bauxite, dolomite, ilmenite, iron ore (for other grades of ore), kyanite, lead ore, limshell, limestone, (except those meant for manufacture of cement), manganese ore (for internal consumption),mica, precious & semi precious stones, rutile, sillimanite, tin ore – **200%.** **vi.** China, fireclay, limestone (for cement manufacture) – **200%.** vii. Graphite – **150%.** viii. All other minerals (not specified above) – **100%.**
6.	Rajasthan	Land Tax – **4 times** annual dead rent or twice the royalty, whichever is higher.

	[Vol. IV(K), Pg. 1135]	
7.	Tamil Nadu **[Vol. IV(K), Pg. 1136]**	Local Cess at 45% of royalty and local cess surcharge at **250% of royalty.**

Accordingly, it is submitted that a uniform fiscal and pricing structure under the MMDRA, regulated by the Central Government, would subserve mineral development *in public interest*, and prevent a return to the pre-*India Cements* scenario.

95. It may further be noted that constitutional interpretation, especially in cases of conflict and overlap, ought to lean in favour of a construction which furthers public interest. This Hon'ble Court in ***Kalpana Mehta v. Union of India*, (2018) 7 SCC 1 [5 judges]**, has held as under :

> 157. In the Indian context, this Court has recognised the comprehensive, progressive and engaging role of constitutional courts in a catena of judgments starting from Lakshmi Kant Pandey v. Union of India [Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 244] , Vishaka v. State of Rajasthan [Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932] , Prakash Singh v. Union of India [Prakash Singh v. Union of India, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417] , Common Cause v. Union of India [Common Cause v. Union of India, (2018) 5 SCC 1] and Shakti Vahini v. Union of India [Shakti Vahini v. Union of India, (2018) 7 SCC 192] . In all these judgments, the dynamic and spirited duty of the Supreme Court has been recognised and it has been highlighted that this Court ought not to shy away from its primary responsibility of interpreting the Constitution and other statutes in a manner that is not only legally tenable but also facilitates the progress and development of the avowed purpose of the rights-oriented Constitution. The Constitution itself being a dynamic, lively and ever changing document adapts to the paradigm of epochs. That being the situation, it is also for this Court to take a fresh look and mould the existing precepts to suit the new emerging situations. **Therefore, the constitutional courts should always adopt a progressive approach and display a dynamic and spirited discharge of duties regard being had to the concepts of judicial statesmanship and judicial engagement, for they subserve the larger public interest**.

96. Similarly in ***Union of India v. V. Sriharan*, (2016) 7 SCC 1 [5 judges]**, it has been held as under :

> "173.7. The ratio and principles laid down by this Court as regards the interpretation and construction of the constitutional provisions which conflicts with the constitutional goal to be achieved should be eschewed and interest of the Nation in such situation should be the paramount consideration. **Such principles laid down in the said context should equally apply even while interpreting a statutory provision having application at the national level in order to achieve the avowed object of national integration and larger public interest.**"

97. In ***Chief Justice of A.P. v. L.V.A. Dixitulu*, (1979) 2 SCC 34 [5 judges]**, it has been held as under :

"66. The primary principle of interpretation is that a Constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the Rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, <u>it is legitimate for the Court to go beyond the and literal confines of the provision and to call in aid other well recognised rules of construction, such as its legislative/history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.</u>

<u>67. Where two alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment.</u> These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of its basic framework can be felt all over its body, even in the extremities of its limbs. Constitutional exposition is not mere literary garniture, nor a mere exercise in grammar. As one of us (Chandrachud, J. as he then was) put it in Kesavananda Bharati case: [(1973) 4 SCC 225, 969 (para 2017)]

"While interpreting words in a solemn document like the Constitution, one must look at them not in a school-masterly fashion, not with the cold eye of a lexicographer, but with the realization that they occur in 'a single complex instrument in which one part may throw light on the other' so that the construction must hold a balance between all its parts."

98. In ***Jindal Stainless Ltd. v. State of Haryana*, (2017) 12 SCC 1 [9 judges]**, it has been held as under :

"15. It is trite that a narrow interpretation that may have the potential or tendency to subvert the delicate balance which the Framers of the Constitution had in mind while distributing legislative businesses including the sovereign power to levy taxes must be avoided and a construction that is most beneficial for a harmonious relationship between different limbs of the State including that between the Centre and the States or States inter se adopted. <u>This may, at times, involve ironing out of rough edges which exercise a constitutional court must necessarily undertake to avoid confusion and resultant negation of the constitutional objectives</u>."

99. In ***K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1 [9 judges]**, it has been held as under :

"130. Now, would this Court in interpreting the Constitution freeze the content of constitutional guarantees and provisions to what the Founding Fathers perceived? The

Constitution was drafted and adopted in a historical context. The vision of the Founding Fathers was enriched by the histories of suffering of those who suffered oppression and a violation of dignity both here and elsewhere. Yet, it would be difficult to dispute that many of the problems which contemporary societies face would not have been present to the minds of the most perspicacious draftsmen. No generation, including the present, can have a monopoly over solutions or the confidence in its ability to foresee the future. As society evolves, so must constitutional doctrine. **The institutions which the Constitution has created must adapt flexibly to meet the challenges in a rapidly growing knowledge economy**. Above all, constitutional interpretation is but a process in achieving justice, liberty and dignity to every citizen."

100. It is submitted that six judges of the Hon'ble Supreme Court, while discussing the overall expanse of the powers of the Parliament viz. the State Legislatures, specifically discussed the Entry 54 and the declarations under the 1948 Act and the 1957 Act. The relevant portion of the judgment in ***State of W.B. v. Union of India,* (1964) 1 SCR 371**, are quoted as under :

"**38.** It is pertinent also to note that under several entries of List I it is open to the Union Parliament to legislate directly upon properties which are situate in the States including properties which are vested in the States, for instance, Railways (Entry 22). Highways declared by or under law made by Parliament to be national highways (Entry 23), Shipping and Navigation on inland waterways, declared by Parliament by law to be national waterways (Entry 24), Lighthouses including lightships etc. (Entry 26), Ports declared by or under law made by Parliament or existing law to be major ports (Entry 27), Airways, aircraft and air navigation, provision of aerodromes etc. (Entry 29), Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels (Entry 30), property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save insofar as Parliament by law otherwise provides (Entry 32), **Industries, the control which by the Union is declared by Parliament by law to be expedient in the public interest (Entry 52), Regulation and development of oilfields and mineral oil resources, petroleum and petroleum products other liquids and substances declared by Parliament by law to be dangerously inflammable (Entry 53), Regulation of mines and, in mineral development (Entry 54).** Regulation and development of inter-State rivers and river-valleys (Entry 56), Ancient and historical monuments and records and archaeological sites and remains declared to be of national importance (Entry 67). **These are some of the matters in legislating upon which the Parliament may directly legislate in respect of property in the States. To deny to the Parliament while granting these extensive powers of legislative authority to legislate in respect of property situate in the State, and even of the State, would be to render the Constitutional machinery practically unworkable**. It may be noticed that in the United States of America the authority of Congress to legislate on a majority of these matters was derived from the "Commerce clause". The commerce clause is not regarded as so exclusive as to preclude the exercise of State legislative authority in matters which are local, in their nature or operation, or are mere aids to commerce. As observed in *Cooley's Constitutional Limitations*, 8th Edn., p. 3004 Mr Justice Hughes, in delivering the opinion of Supreme Court of the United States, (in *Minnesota Rate Cases*, 230 U.S. 352 : 57 Law Edn. 1511) said:

xxx

Our Constitution recognises no such distinction between the operation of a State law in matters which are local, and which are inter State, If an enactment falls within the Union List, whether its operation is local or otherwise State legislation inconsistent therewith, will subject to Article 254(2) be struck down.

40. The power to acquire land sought to be exercised by the Union, which is challenged by the State of West Bengal, is power to acquire in exercise of authority conferred by Sections 6, 7 and 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, The Act was enacted for establishing in the economic interest of India greater public control over the coal mining in industry and its development by providing for the acquisition by the State of land containing or likely to contain coal deposits or of rights in or over such land for the extinguishment or modification of such rights accruing by virtue of any agreement, lease, licence or otherwise, and for matters connected therewith. By Entries 52 and 54 of List I the Parliament is given power to legislate in respect of:

(*52*) "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest".

(*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 the expedient in the public interest".

In exercise of powers under Entry 36 of the Government of India Act, 1935 which corresponds with Entry 52 of the Constitution the Central legislature enacted the Minerals & Mining (Regulation & Development) Act, 53 of 1948. By Section 2 of the Act it was declared that it was expedient in the public interest that the Central Government should take under its control the regulation of mines and oil fields and development of minerals in the extent specified in the Act. 'Mine' was defined under the Act as meaning any excavation for the purpose of searching for or obtaining minerals and includes an oil well. No mining lease could be given after the commencement of the Act, otherwise than is accordance with the rules made under the Act. By Section 13 the provisions of the Act were to be binding on the Government, whether in the right of the dominion or of State. **BY THE DECLARATION BY SECTION 2 THE MINERALS BECAME IMMOBILIZED**. The Act is on the Statute Book, and the declaration, in the future application of the Act since the Constitution must also remain in force, as if it were made under Article 52 of the Constitution.

41. After the Constitution, the Industries (Development & Regulation) Act, 65 of 1951 was enacted by the Parliament. By Section 2 it was declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. In the Schedule item (3) "Coal, including Coke; and other 'derivatives' was included as one of such industries. **The legislature then enacted the Mines & Minerals (Regulation & Development) Act 67 of 1957. By Section 2 a declaration in terms similar to the declaration in Act 53 of 1948 was made**. The Act deals with all minerals except oil, and enacts certain amendments in Act 53 of 1948. There being a declaration in terms of Item 52 the Parliament acquired exclusive authority to legislate in respect of Coal industry set out in the schedule to Act 65 of 1951 and the State Government had no authority in that behalf."

101. The State Legislature's competence to enact a regulatory law relating to regulation of mines and mineral development is expressly made subject to the provisions of List I dealing with the subject matter of regulation and development of

mines and mineral (i.e., including Entry 54 of List I). The legislative competence of the State to impose a tax on mineral rights is made subject to the exercise by Parliament of its legislative competence under, *inter alia*, Entry 54 of List I to make a law relating to mineral development that limits the power of the state to levy taxes on mineral rights. This is evident from a reading of Entries 23 and 50 of List II, Schedule 7 of the Constitution of India, extracted hereunder:

> "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.
> …
> 50. Taxes on mineral rights **subject to any limitations** imposed by Parliament by law relating to **mineral development**." **[Emphasis supplied]**

102. In interpreting these three legislative Entries, this Hon'ble Court may note that:

a. The phrase "mineral development" is the common thread running through all three entries and was evidently of foremost concern to the framers of the Constitution. This cannot be lost sight of while interpreting the various entries.

b. The repeated reference to "mineral development" across the three Entries provide that in addition to the well settled principles of interpretation of legislative entries, another principle can be added in this context, namely, that any ambiguity should be resolved by favouring an interpretation that advances the interests of mineral development.

c. The framing of the Entries makes clear the Constitutional tilt in favour of control of mineral development being vested in Parliament; mineral development was therefore viewed as a matter of national interest rather than only a matter to be dealt with at only the level of individual states having mineral reserves;

d. Accordingly, Parliament, by making a law in the *public interest* can – to the extent considered necessary – provide for central control over the regulation of mines and mineral development. The legislative competence in this regard is traceable to Entry 54 of List I.

e. Entry 23 of List II and Entry 54 of List I are inextricably linked, since the former entry has been made subservient *inter alia* to the latter. A similar relationship exists between Entry 50 of List II and Entry 54 of List I, as brought out by the common reference to "mineral development" in both entries. In other words, a law enacted by Parliament which is traceable to Entry 54 of List I in *public interest* can limit the power of the state to tax minerals. The Constitution, therefore, tilts in favour of *mineral development in public interest*, and it is submitted that the appropriate interpretation of the Constitution and the statutory provisions must be one which advances this purpose.

I. WORDS AND PHRASES USED IN THE ENTRIES

"Regulation" and "mineral development" in "public interest"

103. It is submitted that "Regulation", as a concept, includes prohibition within its scope. This was the *ratio* in ***State of T.N. v. Hind Stone*, (1981) 2 SCC 205**[24] (in the context of mines and minerals) holds **[See Vol. V(A), Pg. 133]**:

> "10. One of the arguments pressed before us was that Section 15 of the Mines and Minerals (Regulation and Development) Act authorised the making of rules for regulating the grant of mining leases and not for prohibiting them as Rule 8-C sought to do, and, therefore, Rule 8-C was ultra vires Section 15. Well-known cases on the subject right from Municipal Corporation of the City of Toronto v. Virgo [1896 AC 88] and Attorney-General for Ontario v. Attorney-General for the Dominions [1896 AC 348] up to State of U.P. v. Hindustan Aluminium Corporation Ltd. [(1979) 3 SCC 229 : AIR 1979 SC 1459 : (1979) 3 SCR 709] were brought to our attention. **We do not think that "regulation" has that rigidity of meaning as never to take in "prohibition". Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation.** It was observed by Mathew, J. in G.K. Krishnan v. State of Tamil Nadu [(1975) 1 SCC 375 : AIR 1975 SC 583 : (1975) 2 SCR 715, 721] : "The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied." In modern statutes concerned as they are with economic and social activities, "regulation" must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in Commonwealth of Australia v. Bank of New South Wales [1950 AC 235 : (1949) 2 All ER 755 (PC)] — and we agree with what was stated therein — that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. **Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."** [Emphasis supplied]

[24] **Vol. V(A), Pg. 121-136.**

104. It is submitted that ***Hind Stone*** (supra.) was thereafter relied on in ***Quarry Owners' Assn. v. State of Bihar,*** **(2000) 8 SCC 655,**[25] which also took the law forward, and clarified that "regulation" included the fixation of rates of royalties **[See Vol.V, Pg. 1921-1922]**: -

> "31. Returning to the present case we find that the words "regulation of mines and mineral development" are incorporated both in the Preamble and the Statement of Objects and Reasons of this Act. Before that we find that the Preamble of our Constitution in unequivocal words expresses to secure for our citizens social, economic and political justice. It is in this background and in the context of the provisions of the Act, we have to give the meaning of the word "regulation". <u>**The word "regulation" may have a different meaning in a different context but considering it in relation to the economic and social activities including the development and excavation of mines, ecological and environmental factors including States' contribution in developing, manning and controlling such activities, including parting with its wealth, viz., the minerals, the fixation of the rate of royalties would also be included within its meaning.**</u> This Court in State of T.N. v. Hind Stone [(1981) 2 SCC 205] held: (SCC Headnote)
>
> > "Word 'regulation' has not got that rigidity of meaning as never to take in 'prohibition'. In modern statutes concerned as they are with economic and social activities, 'regulation' must of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated legislation. Each case must be judged on its own facts and in its own setting of time and circumstances and it may be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly is the only practical and reasonable manner of regulation. The Mines and Minerals (Development and Regulation) Act aims at the conservation and the prudent and discriminating exploitation of minerals and prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."
>
> <u>**So in regulating mineral development, the royalty/dead rent is the inherent part of it. The State has thus before it a number of factors, as aforesaid, which would guide it to fix, enhance or modify the rate of royalty/dead rent payable by a lessee.**</u> The conservation and regulation of mines and mineral development includes wide activity of the State including parting with its wealth, which are all relevant factors to be taken into consideration as a guiding force for fixing such royalty/dead rent. For interpretation of a statute with reference to "Preamble" we may usefully refer the case of Bhatnagars & Co. Ltd. v. Union of India [AIR 1957 SC 478 : 1957 SCR 701] where the Constitution Bench held:
>
> > "In other words, in considering the question as to whether guidance was afforded to the delegate in bringing into operation the material provisions of the Act by laying down principles in that behalf, the Court considered the statement of the principles contained in the Preamble to the Act as well as in the material provisions of Section 3 itself. This decision shows that if we can find a reasonably clear statement of policy underlying the provisions of the Act either in the provisions of the Act or in the Preamble, then any part of the Act cannot be

[25] **Vol. V, Pg. 1895-1936.**

attacked on the ground of delegated legislation by suggesting that questions of policy have been left to the delegate."

With reference to the "regulation of mines and mineral development, with reference to the minor minerals, the policy of the Act is communicating loudly from its rooftop, that let it be done by the delegatee State who is fully aware of the local conditions as such minerals are also used for the local purposes and on whom this largesse falls. What the delegatee should do and what it should not do is also enshrined in the Act. Section 18 is also not excluded from its application to the minor mineral development. Under it, duty is cast on the Central Government to take all necessary steps for the conservation and systematic development of minerals in India. Its sub-section (2) focuses the periphery within which it has to do and what not to do. This itself is a guidance which the "State" may take note of while framing its own rules. Similarly Section 23-C gives detailed guidance on what the State should provide to check illegal mining, storage and transportation." **[Emphasis supplied]**

105. "Mineral development" is further analyzed in ***Premium Granites v. State of T.N.*, (1994) 2 SCC 691**,[26] which observes: -

"48. After considering the facts and circumstances of the case and giving our careful consideration to the arguments advanced by the learned counsel for the respective parties, it appears to us that the MMRD Act was enacted by Parliament under Entry 54 List I of the Seventh Schedule to the Constitution. The aforesaid entry enables the Central Government to regulate mines and mineral development in public interest by making such declaration and Parliament, has in fact, made such declaration by Section 2 of the MMRD Act. In respect of minor minerals, Parliament by the said MMRD Act has left the powers of regulating minor minerals to the State Governments under Section 15 of the MMRD Act. Different State Governments have exercised such power under Section 15 of the MMRD Act and State of Tamil Nadu has enacted in 1959 the Mineral Concession Rules. **There is no dispute that the MMRD Act and the rules framed thereunder either by the Central Government or by the State Government are for mineral development subserving the cause of public interest. It cannot also be disputed that mineral development is not a vague expression and the MMRD Act and the rules framed under it, clearly furnish the scope and purport of the word "mineral development". It has been very reasonably contended that scientific exploitation of minerals without waste is undoubtedly a part of mineral development as envisaged by the MMRD Act and the rules framed thereunder. The expression "public interest" finds place in the Constitution and in many enactments which have since been noted and considered by this Court in various decisions. The said expression is, therefore, a word of definite concept.** There is also force in the contention of the appellants that the guidelines need not be expressly found in the impugned provisions but such guidelines can be gathered from the setting of the Act and the rules framed thereunder. Such contention gets support from the decisions of this Court in P.J. Irani [(1962) 2 SCR 169 : AIR 1961 SC 1731] , S. Kandaswamy Chettiar [(1985) 1 SCC 290] , Jalan Trading Co. [(1967) 1 SCR 15 : AIR 1967 SC 691 : (1966) 2 LLJ 546] , Workmen of Meenakshi Mills Ltd. [(1992) 3 SCC 336 : 1992 SCC (L&S) 679]

…

51. **"Public interest" is a paramount consideration in the MMRD Act itself** and the rules framed thereunder cannot but subserve "public interest" in furthering the cause of mineral development. We are, therefore, unable to hold that Rule 39 is per se obnoxious

[26] Vol. V,

and having contained unbridled, unguided and uncanalised discretionary power offends Article 14 of the Constitution.

…

53. Although, at the first glance, such argument appears to be reasonable but on closer scrutiny the same does not appear to be sustainable. The Mineral Concession Rules have been framed by the State of Tamil Nadu in exercise of power under Section 15(1) of the MMRD Act for development of minor minerals in the State "in public interest". The development of minor minerals cannot and should not be confined to a set principle or policy. With the advancement of technology and changes in the social, economic and political set-up in the country and also changes in the economic and political scenario in other countries, there are bound to be exigencies requiring reappreciation of the policy of the development of minor minerals in the State. As a matter of fact, the Government of Tamil Nadu has from time to time changed its policy as to the manner in which the exploitation of granite in the State should be made in respect of revenue lands by different agencies and under different operational methodology**. It does not appear to us that consideration of foreign exchange and export of granite in the State by effective and scientific exploitation of quarrying, polishing, and sizing of the granite will be alien to the consideration of mineral development in "public interest"." [Emphasis supplied]**

106. The above decision in *Premium Granites* (supra.) is significant in two respects: -

a. It adds to our understanding of the term "mineral development" as including scientific exploitation of minerals, thereby adding to the meaning of the term as reflected in Section 18 of the MMDRA.

b. It also adds that considerations of export and foreign exchange form part of mineral development in "public interest".

107. Further, in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61**, it was observed: -

"22. The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. **In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition .** It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. [State of Bihar v. Kameshwar Singh (AIR 1952 SC 252)]. **It also means the general welfare of the public that warrants recommendation and protection; something in which the public as a whole has a stake** [Black's Law Dictionary (Eighth Edition)]." **[Emphasis supplied]**

Interpretation of the word "Mine"

108. It is submitted that "Mine" is defined in Black's Law Dictionary as follows: -

"An excavation in the earth from which ores, coal, or other mineral substances are removed by digging or other mining methods, and in its broader sense it denotes the vein, lode, or deposit of minerals. Atlas Milling Co. v. Jonas, C.C.A.Okl., 115 F.2d 61, 63. It may include open cut, strip, or hydraulic methods of mining. Rudd v. Hayden, 265 Ky. 495, 97 S.W.2d 35, 37."

109. The definition of "Mine" in "Words and Phrases", 3rd Ed., Pg. 145 is as follows:-

"The word 'mine' is not a definite term, but is susceptible of limitation or expansion according to the intention with which it is used. 'Mine' originally meant an underground excavation made for the purpose of getting minerals, but in particular contexts the word has been given differing meanings. Thus, it has been interpreted so as to include a place where minerals commonly worked underground are in the particular case being worked on the surface, as in opencast coal workings and in certain ironstone mines.

It may also denote a stratum, vein or seam of mineral, as in the phrase 'all that mine, vein, or seam of coal'. If, in such a case, the mine is unopened, it is clear that the word is used in the sense of a stratum of mineral. Where so used, the primary meaning of 'mine' is that of a vein or seam, but it may be used in a wider sense to denote a number of veins or seams, or in a narrower sense to denote only that part of a vein or seam which is within a particular tenement.

A further meaning of 'mine' includes not only the mineral deposits but also so much of the adjoining strata, whether above or below, as it may be necessary to remove for the purpose of working the mineral in a proper manner. The word has also been given, in some cases, a meaning which includes, in addition to the mineral itself, the space created as the mineral is being worked, and the space left when the mineral has been worked out. (31 Halsbury's Laws (4th edn) para 1)" **[Emphasis supplied]**

110. Therefore, "mine" is a term of wide import, which includes the mineral deposits. Therefore, the legislative power to regulate mines is a power to regulate all aspects of mines, mining and underlying mineral deposits.

"Mineral Rights" (as opposed to surface rights)

111. To understand Entry 50, List II, however, it would be important to understand the meaning of "mineral rights". "Mineral right" is defined in Black's Law Dictionary as follows: -

"An interest in minerals in land, with or without ownership of the surface of the land. **A right to take minerals or a right to receive a royalty.** Missouri Pac. R. Co. v. Strohacker, 202 Ark. 645, 152 S.W.2d 557, 561." **[Emphasis supplied]**

112. The meaning of these phrases become apparent from the following excerpt from *Corpus Juris Secundum*: -

"The term "mineral right" has a well-recognized meaning. It is the right or title to all, or to certain specified, minerals in a given tract. It is a broader term and is more inclusive than the term "oil and gas", and it has been held that, in the light of the surrounding

> facts and circumstances under which it is used, it may not necessarily include the right to oil and gas. "Mineral interests" in land means all the minerals beneath the surface.
> …
> The term "surface" usually refers to that part of the earth lying over the minerals in question.
> …
> The word "surface" in mining controversies, unless the contract or conveyance otherwise defines it, means that part of the earth or geologic section lying over the minerals in question," the non-mineral portion of land, which is capable of being used for agricultural purposes.
>
> As used in an instrument conveying "surface rights" the term means the entire surface of the land, reserving the minerals to the grantor.""

113. Therefore, the State's legislature's competence to tax mineral rights means that the levy that it can impose is on <u>right to extract the minerals</u>, and <u>not on other aspects like mining activities and/or the minerals produced</u>.

J. ANALYSIS OF CASE LAW

The Hingir-Rampur decision

114. The judgment of a Constitution Bench of this Hon'ble Court in *Hingir-Rampur Coal Co. v. State of Orissa*, 1960 SCC OnLine SC 60; [1961] 2 SCR 537 ("**Hingir Rampur**") **[Vol. V, Pg. 142-174]** provides a firm foundation for undertaking an analysis of the provisions of the 1957 Act in the background of the relevant legislative entries in List I and II. No aspect of the judgment of Court has been doubted in any subsequent decision including *India Cements* and *Kesoram*. To the contrary, the law laid down in *Hingir Rampur* has been followed and/or cited with approval by all subsequent decisions.

115. Hingir Rampur concerned the validity of a State Act which empowered the State Government to impose a cess or fee on value of the minerals as determined at the pit's mouth. The cess/fee was challenged on the basis that it was a duty of excise relatable to Entry 84 of List I and that the State Legislature was therefore not competent to impose the levy. The second limb of the challenge, to the extent relevant for present purposes, was that even if it was a fee relatable to Entry 23 read with Entry 66 of List II, it was hit by Entry 54 of List I read with the MMDRA, 1948.

116. The first argument was rejected by the majority of the Court, which found that the form of the levy, although relevant in determining its character, was a matter of convenience and not determinative of the nature of the levy. It was held that though the method by which an impost is levied may be relevant in determining its character,

its significance and effect cannot be exaggerated. The levy was therefore found to be neither a tax nor a duty but a fee.

117. As regards the second argument, the issue involved determining whether the power of the state to levy the fee - which was traceable to Entry 66 read with Entry 23 of List II - had been limited by the law made by Parliament under Entry 54 of List I, viz., the MMDRA, 1948. In this regard, the Court held (para 24) **[Vol. V, Pg. 155]**:

> "…The effect of reading the two Entries together is clear. The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself. This position is not in dispute."

118. The decision in *Hingir Rampur* however turned on the issue of whether the phrase "declared by Parliament by law" occurring in Entry 54 of List I could be interpreted as including a declaration in a pre-constitutional (Dominion) Law. This issue was answered in the negative, the Court holding (para 34, 35)) **[Vol. V, Pg. 159-160]**:

> "…Unless a declaration is made by Parliament after the Constitution came into force it will not satisfy the requirements of Entry 54, and that inevitably would mean that the impugned Act is validly enacted under Entry 23 in List II of the Seventh Schedule.
>
> …..
>
> Therefore, we reach this position that the field covered by Act 53 of 1948 is substantially the same as the field covered by the impugned Act but the declaration made by Section 2 of the said Act does not constitutionally amount to the requisite declaration by Parliament, and so the limitation imposed by Entry 54 does not come into operation in the present case.
>
> …..
>
> In the absence of the requisite parliamentary declaration the legislative competence of the Orissa Legislature under Entry 23 read with Entry 66 is not impaired, and so the said Legislature is competent either to repeal, alter or amend the existing law which is the Central Act 53 of 1948; in effect, after the impugned Act was passed, so far as Orissa is concerned the Central Act must be deemed to be repealed."

119. Nevertheless, the Court undertook an examination of the provisions of the 1948 Act and held as follows (para 25) **[Vol. V, Pg. 155-156]**:

> "…Section 6 of the Act, however, empowers the Central Government to make rules by notification in the Official Gazette for the conservation and development of minerals. Section 6(2) lays down several matters in respect of which rules can be framed by the Central Government. This power is, however, without prejudice to the generality of

> powers conferred on the Central Government by Section 6(1). Amongst the matters covered by Section 6(2) is the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected. It is true that no rules have in fact been framed by the Central Government in regard to the levy and collection of any fees; but, in our opinion, that would not make any difference. If it is held that this Act contains the declaration referred to in Entry 23 there would be no difficulty in holding that the declaration covers the field of conservation and development of minerals, and the said field is indistinguishable from the field covered by the impugned Act. What Entry 23 provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 in List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest. Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals, and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject-matter covered by the said declaration. In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that this required is a declaration by Parliament that it is expedient in the public interest to take the regulation and development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act 53 of 1948."

120. The Court in Hingir Rampur made it clear (para 37)[27] that in view of its conclusion that the law was relatable to Entry 23 and 66 of List II, which remained unimpaired in view of the absence of a law under Entry 54 of List I, there was no necessity to consider whether the impugned Act could be justified under Entry 50 of List II.

121. It is respectfully submitted that the ratio of *Hingir Rampur*, to the extent relevant to the present reference, is that the effect of a law enacted with reference to the field of legislation carved out in Entry 54 of List I is to "*cover the field*" in so far as the subject matter of mineral development and conservation is concerned. If the Central Law contains the declaration specified in Entry 54 of List I, the State Legislature would not be competent to pass an Act in respect of the subject-matter covered by this declaration. The Court examined the declaration in Section 2 of the 1948 Act and found that the subject matter of Entry 23 of List II was covered by the declaration. Specifically, the Court examined the width and plenitude of the declaration contained in Section 2 of the Act and found that the said declaration was sufficient to occupy the field even in so far as a levy determined with reference to minerals was concerned ("*the declaration covers the field of conservation and development of minerals, and the said field is indistinguishable from the field covered by the impugned Act*" – para 24 at **Vol. V,**

[27] **Vol. V at Pg. 162.**

Pg. 155), despite the fact that the declaration itself contained no such specific language or indication. Therefore, but for the finding that the 1948 Act was not a law made by Parliament in the sense of Entry 54 of List I, the levy would have been struck down on the ground that the State Legislature did not have the legislative competence to enact it.

Analysis of statutory provisions in light of the decision in Hingir-Rampur

122. The declaration under Section 2 of the 1948 Act is *pari materia* with that in Section 2 of the 1957 Act:

Declaration in Section 2 of 1948 Act	Declaration in Section 2 of 1957 Act
Declaration as to expediency of control by Central Government: It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oilfields and the development of minerals to the extent hereinafter provided.	**Declaration as to the expediency of Union control.—** It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.

123. As per the law laid down in *Hingir Rampur*, this declaration would also cover the field of a levy which operates with reference to the subject matter of the 1957 Act, namely, minerals and mineral development.

124. The width and breadth of the coverage of the provisions of the 1957 Act must be interpreted with reference to the declaration under Section 2 of the Act. This is not only of relevance in determining the legislative field occupied under Entry 23 of List II, but also for a determination of the extent to which the regulation of mines and mineral development "*is declared by Parliament by law to be expedient in the public interest*" for the purposes of Entry 50 of List II.

125. The declaration in Section 2 of the 1957 Act makes it clear that Parliament has found it expedient in public interest to "*take under its control the regulation of mines and the development of minerals*". This is language of wide coverage, which must be interpreted widely so as to advance rather than retard the considerations of public interest that animated Parliament's enactment of the 1957 Act. The qualification contained in Section 2, i.e., "*to the extent hereinafter provided*", must be read in the light of Parliament's stated intention to "*take under its control*" matters relating to mines and mineral development in the public interest. Therefore, if a matter has a nexus with mines and mineral development and therefore can reasonably be inferred to fall within the coverage of the 1957 Act, it must be presumed that Parliament has intended to occupy the legislative space in regard to this matter.

126. An indication of the extent to which Parliament has occupied the legislative field in respect of the subject matter of mines and mineral development is provided in Section 18(1) of the 1957 Act, which imposes on the Central Government the duty to "*take all such steps as may be necessary for the conservation and systematic development of minerals in India*". The enumeration in Section 18(2) of specific matters to be regulated by the Central Government is expressly clarified to be without prejudice to the generality of the language specified in Section 18(1).

127. In this view of the matter, the correct approach, it is submitted, is to discern whether anything in the 1957 Act supports the inference that Parliament has abjured from occupying the legislative space of statutory levies on mines and mineral development. Absent such specific statutory indication, the default position must be that a matter otherwise relatable to mines and mineral development is squarely covered by the 1957 Act. As submitted below, this interpretation is reinforced by a holistic reading of the provisions of the 1957 Act.

128. In *Hingir Rampur*, the Court examined the rule-making power conferred under Section 6(1) of the 1948 Act, noting specifically that wide powers had been conferred on the Central Government to make rules for the conservation and development of minerals. A similarly wide rule-making power has been conferred on the Central Government under Section 13(1) of the 1957 Act. The enumeration of specific matters in respect of which the Central Government has explicitly been conferred rule-making power in Section 6(2) of the 1948 Act and Section 13(2) of the 1957 Act respectively, is clarified in these provisions themselves to be "*without prejudice to the generality*" of the preceding sub-section.

129. Section 6(2)(i) of the 1948 Act specifically recognised the power of the Central Government to make rules providing for "*the levy and collection of royalties, fees,* ***or taxes*** *in respect of minerals mined, quarried, excavated or collected*". In exercise of its powers under this provision, the Central Government notified the Mineral Concession Rules, 1949. Rule 41 of the said Rules provided for exaction of royalty/dead rent. The absence of a provision similar to Section 6(2)(i) in the 1957 Act does not mean that Parliament has not "covered the field" in respect of statutory levies on mineral rights, or that it has not legislated in a manner analogous to the 1948 Act to limit the power of the state to tax mineral rights. Such an interpretation would be in the teeth of the plain language of Section 13(1), which makes it clear that the various matters enumerated in Section 13(2) are only illustrative of the width and plenitude of the subject matter of the statutory delegation by Parliament under the 1957 Act. Section 13(1) of the 1957 Act militates against any argument that any matter relating

to mineral development that has not been specifically dealt with in a provision of the 1957 Act must be understood as falling outside legislative field occupied by Parliament with reference to Entry 54 of List I. To the contrary, Section 13(1) makes clear the Parliamentary intent to cover the field *"in respect of minerals and for purposes connected therewith"*

130. The judgment in *Hingir Rampur* also repels any suggestion that Parliament needs to specifically legislate into existence a limitation on the imposition of a statutory levy by a State in order for the same to operate as a limitation on the legislative field of the State Legislature under Entry 50 of List II. The Court, after noting Section 6(1) and 6(2) of the 1948 Act, held that it was of no relevance that a rule in respect of *"royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected"* had not been made in exercise of the statutory delegation by Parliament. What was of relevance was that the legislative field in this regard had been covered by the very enactment of Section 6 of the 1948 Act, which, by necessary implication was found to limit the legislative power of the State to impose the levy on the value of the minerals.

131. It is respectfully submitted that the law laid down in *Hingir Rampur* is applicable *a fortori* to limit the legislative competence of the State Legislature following the enactment of the 1957 Act. The 1948 Act, with which *Hingir Rampur* was concerned, did not specify any statutory levy having a nexus with mines and mineral development. The 1957 Act, on the other hand, does so. Sections 9(1) and (2) imposes a fiscal levy *"in respect of any mineral removed or consumed"* by the holder of a mining lease from the leased area, whether such lease has been granted before or after the commencement of the Act. Section 9(3) reserves for exercise by the Central Government the power to reduce or enhance such levy "in respect of any mineral".

132. The proviso to Section 9(3) imposes a limitation on the exercise of this power by the Central Government. A reading of the various sub-sections of Section 9 with Sections 13 and 18 of the 1957 Act make it clear that Parliament has enacted a complete code with regard to statutory levies. A fundamental feature of this statutory code is that the Central Government alone has been conferred the power to fix the statutory levy, such power being canalised by Parliament's stipulations of limitations on enhancement of the levy. <u>The immediately apparent features of this statutory code are (i) uniformity of rates across the country in regard to a particular mineral and (ii) consistency and predictability of the price so fixed, since the rates once fixed cannot be enhanced for a period of three (3) years.</u>

133. Since the power to impose a statutory levy has been reserved by Parliament under the 1957 Act for exercise by a particular Government (the Central Government) and the manner of such exercise has been specified and made subject to limitations specified by Parliament, it follows that the legislative power to impose a statutory levy in the form of a tax on mineral rights has been limited, since States cannot impose a statutory levy "in respect of any mineral removed or consumed" by a lease holder from the leased area. Where the repository of the exclusive statutory power in any regard has been made subject to limitations imposed under law by Parliament, such limitations cannot be subverted by a law enacted by the State Legislature. Further, any levy (regardless of its nomenclature or method of valuation) which has the effect of enhancing the exaction under law "in respect of any mineral removed or consumed" by a lease holder from the leased area would be in breach of the proviso to Section 9(3). Such levy would be in contravention of the limitation imposed under the 1957 Act and therefore, without legislative competence, since the taxing power of the State Legislature under Entry 50 of List II can be limited by a law made by Parliament and has been limited *inter alia* by Section 9 of the MMDRA.

134. The final link in this chain is Section 25 of the 1957 Act, which once again provides an indication of the extent of the occupation of the legislative field in respect of statutory levies on mines and mineral development. Section 25 provides for recovery of "*(a)ny rent, royalty, fee or other sum due to the Government* ***<u>under this Act</u>*** *or the rules made thereunder*" (emphasis added). In effect, Parliament has made it clear that any statutory levy of any nomenclature shall be only one imposed within the four corners of the 1957 Act, and shall be recovered only where authorised by the 1957 Act. Reference in this regard may also be had to Section 21(2) of the 1957 Act, which again speaks of the recovery of any "royalty or tax" from a person raising any mineral from any land without lawful authority. This reinforces that the 1957 Act does occupy the field in relation to any statutory levy on mines and minerals.

135. One behalf of the States, reliance has been placed on Section 29 of the 1957 Act. This provision states that "*(a)ll rules made or purporting to have been made*" under the 1948 Act, shall, "*in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules were made and shall continue in force…*". The States have sought to narrow the scope of the phrase "*(a)ny rent, royalty, fee or other sum due*" occurring in Section 25 by contending that this must be read as limited to a tax imposed by the Central Government during the period in which the 1948 Act was in operation, which is preserved by Section 29 and, by a legal fiction, is deemed to be a levy imposed under the 1957 Act. In this regard, it has been pointed out that

while Section 6(2)(i) contemplated rule-making power of the Central Government in respect of the levy and collection of royalties, fees or taxes, there is no corresponding provision in the 1957 Act.

136. It is respectfully submitted that the States' reliance on Section 29 is in fact self-defeating. Firstly, Rule-making power under the 1948 Act under Sections 6 and 7 was conferred exclusively on the Central Government. What is preserved under Section 29 of the 1957 Act is (in relevant part) a Rule made by the Central Government in exercise of its powers under Section 6 of the 1948 Act which provides for the levy and collection of royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected. It is the common position that no rule imposing a tax was made by the Central Government in exercise of its powers under Section 6(2)(i). This position was noted by the Court in *Hingir Rampur*, and the Court held (as noted above) that the absence of such a Rule did not detract from the position that the legislative field in this regard had been occupied by Section 6 even de hors the framing of a Rule in exercise of the rule-making power.

137. Secondly, and assuming without conceding that a state levy of the sort under consideration in *Hingir Rampur* could at all enjoy the benefit of the savings provision in Section 29, this would amount to an admission by the State Government that the legislative field in respect of *all* fiscal levies (including taxes) has been covered in the 1957 Act as well. This is because, under Section 29, a levy would be saved only "*in so far as they relate to matters for which provision is made in this (i.e., the 1957) Act and are not inconsistent herewith*". In order for the state to contend that a tax imposed by the State in the statutory context of the 1948 Act has been saved by the 1957 Act, it must accept that the 1957 Act covers the subject matter of – or legislates in a manner that takes within its fold – *all* statutory levies in respect of the subject matter of mines and minerals, including taxes. Further it must be accepted that the tax saved is "not inconsistent" with the provisions of the 1957 Act, i.e., that the provisions of the 1957 Act are not inconsistent with the inferring of a limitation on the taxing power of the State.

138. Far from advancing the case of the States, Section 29 therefore makes it clear that the 1957 Act must be read as occupying the field of all statutory levies in respect of mines and minerals and therefore imposing a corresponding limitation on the taxing power of the State under Entry 50 of List II. This conclusion is reinforced by the legal fiction created in the latter portion of the provision, which stipulates that (in relevant part) a limitation on the taxing power of the State in the form of a Rule made by the Central Government under the 1948 Act which has been saved under the 1957 Act would be deemed to have been made under the 1957 Act. The very enactment of

this legal fiction makes it clear that Parliament has, in enacting the 1957 Act, legislated in the manner contemplated in Entry 50 of List II to limit the power of the state to levy a tax on minerals.

The decision in M.A. Tulloch's case

139. The above interpretation of the legal position emerging from the judgment in *Hingir Rampur* is reinforced by the judgement **in *State of Orissa v. M.A Tulloch and Co.* 1963 SCC OnLine SC 18; [1964] 4 SCR 461 [Vol. V, Pg. 278-295]** ("**Tulloch**"). The subject matter of *Tulloch* was the very same cess that had been upheld in *Hingir Rampur* on the basis that there was no operative declaration under any law made by Parliament which limited the legislative power of the state under Entry 23 of List II. In Tulloch, the vires of this levy was tested against the 1957 Act, a law made by Parliament which unambiguously contained the requisite declaration in Section 2. The first issue that arose for consideration was the scope of the "*extent to which regulation and development under the control of the Union has been declared by Parliament to be expedient in the public interest*". This issue was framed by the Court as follows (para 6) **[Vol. V, Pg. 281]**:

> "It would, however, be apparent that the States would lose legislative competence only to the "extent to which regulation and development under the control of the Union has been declared by Parliament to be expedient in the public interest". The crucial enquiry has therefore to be directed to ascertain this "extent" for beyond it the legislative power of the State remains unimpaired."

140. In undertaking this inquiry, the Court analysed the provisions of the 1957 Act, including Sections 9, 13, 18 and 25 discussed above, and framed the following question for consideration (para 9) **[Vol. V, Pg. 284]**:

> "The question for consideration is whether "the extent of control and regulation" provided by the Central Act takes within its fold the area or the subject covered by the Orissa Act."

141. The Court noted the findings (discussed above) in *Hingir Rampur* and held that these would apply with full force to invalidate the levy imposed by the State of Orissa with effect from the date on which the 1957 Act came into force (i.e., 01.06.1958). The Court found that there was no material distinction between the 1957 Act and the 1948 Act (even though it did not examine the materiality of the absence in the 1957 Act of a specific rule making power in relation to taxes). To the contrary, it was found that the coverage of the 1957 Act was in fact wider in scope and amplitude than the 1948 Act. The relevant finding is as under (para 12) **[Vol. V, Pg. 286-288 @ 288]**:

"…It is only necessary to add that the validity of this impost was affirmed, however, for the reason that whereas the Orissa Act was a post Constitution enactment, the Central Act of 1941 was a pre-Constitution law and as in terms of Entry 54 "Parliament" had not made the requisite declaration, but only the previously existing Central legislature it was held not to be within the terms of Entry 54 and the State enactment was held to continue to be operative. Since the Central Act 67 of 1957 contains the requisite declaration by the Union Parliament under Entry 54 and that Act covers the same field as the Act of 1948 in regard to mines and mineral development, we consider that the decision of this court concludes this matter unless there were any material differences between the scope and ambit of Central Act 54 of 1948 and that of the Act of 1947. Learned Counsel for the appellant was not able to point to any matter of substance in which there is any difference between the two enactments. It was suggested that whereas Section 6 of the Act of 1948 empowered rules to be made for taxes being levied, there was no specific power to impose taxes under that of 1947. It is not necessary to discuss the materiality of this point because what we are concerned with is the power to levy a fee, and there is express provision therefor in Section 13 of the Central Act of 1957 apart from the implication arising from Section 25 thereof…

We ought to add that besides we see considerable force in Mr Setalvad's submission that sub-sections (1) and (2) of Section 18 of the Central Act of 1957 are wider in scope and amplitude and confer larger powers on the Central Government than the corresponding provisions of the Act of 1948."

142. The Court also dealt with the submission that even assuming that on a combined reading of *inter alia* Sections 13 and 18 of the 1957 Act, the power to impose levies had been vested in the Central Government, since no such rules had been framed by the statutory delegate, the Central Act would not cover the field. This argument was noted and rejected in the following terms (paras 13 and 14) **[Vol. V, Pg. 286-288 @ 288-290]**:

"The second point urged by the appellant is based on the fact that Section 18(1) of the Central Act merely lays a duty on the Central Government to "take steps" for ensuring the conservation and development of the mineral resources of the country and in that sense is not self-acting. The submission is that even assuming that under the powers conferred thereunder read in conjunction with Section 13 and the other provisions in the Act, it would be competent for the Central Government to frame rules on the lines of the Orissa Act i.e. for the development of "mining areas" and for that purpose to provide for the imposition of fees and for the constitution of a fund made up of these monies, still no such rules had been framed and until such rules were made or such steps taken, the Central Act would not cover the field so that the Orissa Act would continue to operate in full force.

….

We consider that this submission in relation to the Act before us is without force besides being based on a misapprehension of the true legal position. In the first place the point is concluded by the earlier decision of this court in Hingir Rampur Coal Co. Ltd. v. State of Orissa where this court said:

"In order that the declaration should be effective it is not necessary that rules should be made or enforced. All that this required is a declaration by Parliament

> that it was expedient in the public interest to take the regulation of development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not."

> But even if the matter was res integra, the argument cannot be accepted. Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation. In the present case, having regard to the terms of Section 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession, of the State Act."

143. In *Tulloch*, the argument on behalf of the State was that since the power to levy a fee was an independent head of legislative power, the fact that the Union could levy a fee under a Central Act would not affect or invalidate a State legislation imposing a fee for a similar service. This contention was rejected, holding, that the effect of the enactment of the 1957 Act was that the entire subject matter of conservation and development of minerals had been "taken over" by Parliament and that the state's legislative power had been correspondingly limited. The relevant finding (at para 15) **[Vol. V, Pg. 290]**is set out for ease of reference:

> "If by reason of the declaration by Parliament the entire subject-matter of "conservation and development of minerals" has been taken over, for being dealt with by Parliament, thus depriving the State of the power which it theretofore possessed, it would follow that the "matter" in the State List is, to the extent of the declaration, subtracted from the scope and ambit of Entry 23 of the State List. There would, therefore, after the Central Act of 1957, be "no matter in the List" to which the fee could be related in order to render it valid."

144. It is respectfully submitted that the *ratio* of the judgment in *Tulloch,* although rendered in the context of the 1957 Act and Entry 23 of List II, applies with equal force to discerning the impact of the enactment of the 1957 Act on the legislative power of the State under Entry 50 of List II. *Tulloch* considered a submission that the legislative power to levy a fee was traceable to Entry 66 of List II, which, although framed as "*Fees in respect of any of the other matters in this List*", had an existence independent of Entry 23 of List II. The submission on behalf of the States was therefore that even if

the legislative power of the State under Entry 23 of List II was subject to the Parliamentary legislation under Entry 54 of List (i.e., the 1957 Act), the independent legislative power under Entry 66 of List II was not impacted by any such law. The Court accepted that the power to levy a fee was an "independent grant of legislative power" but nevertheless rejected this contention in light of the reasoning set out in the preceding paragraph of these submissions, namely, that by virtue of Section 2 of the 1957 Act, "*the entire subject-matter of 'conservation and development of minerals' had been taken over*" by Parliament and the states stood correspondingly deprived of this power, not only for the purpose of Entry 23 but also for the purpose of Entry 66 of List II.

145. <u>It is respectfully submitted that this reasoning would apply with even greater force to the analysis with reference to Entry 50 of List II. Entry 66 of List II is not qualified in the manner in which Entry 50 of List II is.</u> Entry 66 on a plain reading provides that if the subject matter of the fee is relatable to any other matter in List II, the State is legislatively competent to levy the fee. A fee in respect of the subject matter of Entry 23 of List II is therefore one that the State Legislature has the independent legislative power to impose. This power was however held to have been "subtracted" from the scope and ambit of not only Entry 23 of List II but also Entry 66 of List II, since the field in respect of the subject matter of mines and minerals had, in its entirety, been occupied by the 1957 Act.

146. The fulcrum of the case of the States is that there is no specific limitation in the 1957 Act in regard to the taxing power of the State under Entry 50 of List II. Equally, there is no specific limitation in the 1957 Act on the levy of a fee under Entry 66 of List II in respect of the subject matter of Entry 23 of List II. <u>Nevertheless, such a limitation was found to be implied in the provisions of the Act and a necessary consequence of the position that Parliament had covered comprehensively the field in relation to the subject matter of mineral development. The law laid down in Tulloch (which has not been called into question by any subsequent decision or in the present reference) is an authority for the proposition that a limitation on the legislative power of the state need not be an express one can be implied from the provisions of the Parliamentary statute read together and as a whole.</u>

The Baijnath Kedia's case

147. This ratio was taken further in ***Baijnath Kedia v. State of Bihar*, (1969) 3 SCC 838 [Vol. V at Pg. 412-425]**. The challenge in this case was in the context of minor minerals vested in the State of Bihar under the Bihar Land Reforms Act, 1950 and

pertained *inter alia* to an amendment to the 1950 Act and Rules thereunder which clothed the State Government with the power to modify the terms and conditions of the lease of the minor minerals in a manner consistent with the 1957 Act. In this context, this Court had occasion to once again consider the effect of the declaration in Section 2 of the 1957 Act, and held **[Vol. V, Pg. 422]**:

> "14. The declaration is contained in Section 2 of Act 67 of 1957 and speaks of the taking under the control of the Central Government the regulation of mines and development of minerals to the extent provided in the Act itself. We have thus not to look outside Act 67 of 1957 to determine what is left within the competence of the State Legislature but have to work it out from the terms of that Act."

148. The Constitution Bench in *Baijnath Kedia* reiterated the law laid down in *Hingir Rampur* and *Tulloch* and held as under **[Vol. V, Pg. 422-424]**:

> "16. <u>These two cases bind us and apply here.</u> Since the Bihar State Legislature amended the Land Reforms Act after the coming into force of Act 67 of 1957, the declaration in the latter Act would carve out a field to the extent provided in that Act and to that extent Entry 23 would stand out down. <u>To sustain the amendment the State must show that the matter is not covered by the Central Act. The other side must, of course, show that the matter is already covered and there is no room for legislation.</u>
> 17. **We have already analysed Act 67 of 1957. The Act takes over of regulation of mines and development of minerals to the Union; of course, to the extent provided.** It deals with minor minerals separately from the other minerals. In respect of minor minerals it provides in Section 14 that Sections 4-13 of the Act do not apply to prospecting licences and mining leases. It goes on to state in Section 15 that the State Government may, by notification in the Official Gazette, make rules for regulating the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith, and that until rules are made, any rules made by the State Government regulating the grant of prospecting licences and mining leases in respect of minor minerals which were in force immediately before the commencement of the Act would continue in force. It is admitted that no such rules were made by the State Government. **It follows that the subject of legislation is covered in respect of minor minerals by the express words of Section 15(1). Parliament has undertaken legislation and laid down that regulation of the grant of prospecting licences and mining leases in respect of minor minerals and for purposes connected therewith must be by rules made by the state Government. Whether the rules are made or not the topic is covered by Parliamentary legislation and to that extent the powers of State Legislature are wanting. Therefore, there is no room for State legislation.**
>
> …
>
> 21. <u>We have already held that the whole of the legislative field was covered by the Parliamentary declaration, read with the provisions of Act 67 of 1957, particularly Section 15. We have also held that Entry 23 of List II was to that extent cut down by Entry 54 of List I. The whole of the topic of minor minerals became a Union subject. The Union Parliament allowed rules to be made but that did not recreate a scope for legislation at the State level.</u> Therefore, if the old leases were to be modified a legislative enactment by Parliament on the lines of Section 16 of Act 67 of 1957 was necessary. The place of such a law could not be taken by legislation by the State Legislature as it

> purported to do by enacting the second proviso to Section 10, of the Land Reforms Act. It will further be seen that Parliament in Section 4 of Act 67 of 1957 created an express bar although Section 4 was not applicable to minor minerals. Whether Section 4 was intended to apply to minor minerals as well or any part of it applies to minor minerals are questions we cannot consider in view of the clear declaration in Section 14 of Act 67 of 1957 that the provisions of Sections 4-13 (inclusive) do not apply. Therefore, there does not exist any prohibition such as is to be found in Section 4(1) proviso in respect of minor minerals. Although Section 16 applies to minor minerals it only permits modification of mining leases granted before October 25, 1949. In regard to leases of minor minerals executed between this date and December 1964 when-Rule 20(1) was enacted, there is no provision of law which enables the terms of existing leases to be altered. A mere rule is not sufficient."
>
> **[Emphasis supplied]**

149. It is submitted that *Baijnath Kedia* was also a case where there was no express limitation in the 1957 Act on the enactment by the State of a legislation specifying the terms of a lease. Rather, Section 15 conferred rule-making power in this regard on the State Government. However, the consequence of the whole of the legislative field being occupied by Parliament under the 1957 Act was found to be that, as a matter of necessary implication, State Legislatures had only such power as was expressly conferred on them under Parliament. In other words, they had no plenary legislative power in respect of this subject matter and could only act as a delegate of Parliament in this regard.

150. There is no basis for the conclusion that the consequence of the enactment of the 1957 Act on the legislative power under Entry 50 of List II is different in any substantive sense from its effect on the legislative power under Entry 23 of List II. The legislative power under Entry 50 of List II is expressly limited by the law made by Parliament in respect of mineral development. This very law, i.e., the 1957 Act, has been held in *Tulloch*, *Hingir Rampur* and *Baijnath Kedia* to leave no legislative room for the States in respect of the subject matter of mines and mineral development. It has repeatedly been reaffirmed by these three Constitution Bench decisions that the limitations on the legislative power of the States under List II need not be express, but can be implied from a holistic reading of the provisions of the 1957 Act and in the context of the declaration contained in Section 2. It has (correctly) not even been suggested by the States that there is an occasion for reconsidering the correctness of these decisions.

The decision in the H.R.S. Murthy case

151. The judgment in ***H.R.S Murthy v. Collector of Chittoor*, (1964) 6 SCR 666 [Vol. V., Pg. 302-310]** does not mark a departure from the line of precedent described above.

Murthy dealt with the validity of a land cess levied on the "annual rent value", which term was defined in a manner that included the royalty payable to the Government "*for the lands*". Rejecting the submission that the cess was really a tax on mineral rights falling under Entry 50 of List II, the Court held **[Vol. V, Pg. 308]**:

> "…When a question arises as to the precise head of legislative power under which a taxing statute has been passed, the subject for enquiry is what in truth and substance is the nature of the tax. No doubt, in a sense, but in a very remote sense it has relationship to mining as also to the mineral won from the mine under a contract by which royalty is payable on the quantity of mineral extracted. But that, does not stamp it as a tax on either the extraction of the mineral or on the mineral right. **It is unnecessary for the purpose of this case to examine the question as to what exactly is a tax on mineral rights seeing that such a tax is not leviable by Parliament but only by the State and the sole limitation on the State's power to levy the tax is that it must not interfere with a law made by Parliament as regards mineral development. Our attention was not invited to the provision of any such law enacted by Parliament**. In the context of Section 78 and 79 and the scheme of those provisions it is clear that the land cess is in truth a "tax on lands" within Entry 49 of the State List".
>
> (emphasis supplied)

152. As the above extract makes clear, *H.R.S Murthy* did not render any finding on the issue of whether a levy operating as a cess on royalty was without legislative competence under Entry 50 of List II, in light of the enactment of the 1957 Act. The judgment, however, correctly states the legal position to the extent that it observes that the levy of a tax relatable to Entry 50 of List II "*must not interfere with a law made by Parliament as regards mineral development*".[28] The Court did not however carry this analysis any further, since its attention was not drawn to the existence of such a provision in the 1957 Act, viz., Section 9. *H.R.S Murthy* does not therefore advance the case of the States, at least as regards the interplay between Entry 50 of List II and the provisions of the 1957 Act.

153. *H.R.S Murthy* is also at odds with the reasoning in *Kesoram*. As noted above, the levy under challenge in *H.R.S Murthy* was a cess on royalty, which was upheld as being within the legislative competence of the State Legislature. A plain reading of para 115 of the judgment in *Kesoram*[29] makes it clear that the Majority would have reached the opposite conclusion, namely, that cess on royalty is in effect a tax on income, which the State Legislature is not competent to levy **[Vol. V, Pg. 2135]:**

> "115. India Cement is clearly distinguishable so far as the present cases are concerned. As we have already pointed out, it was a case of cess levied by the State Legislature on royalty and not on mineral rights or land and buildings. That is why the levy was held ultra vires. Seervai's comment and objective criticism on India Cement is noteworthy (see ibid., para 22.257 C). **Royalty is income and State Legislatures are not competent**

[28] **Vol.V at Pg. 308.**

[29] (2004) 10 SCC 201 at **Vol. V, Pg. 2020-2255**.

> <u>to tax an income.</u> This single ground was enough to strike down the levy of cess impugned in India Cement. Nothing more was needed. Orissa Cement Ltd. also, as the very opening part of the report shows, dealt with the levy of a cess by the State based on the royalty derived from mining lands which was held to be directly and squarely governed by India Cement and, therefore, struck down."
>
> (emphasis supplied)

India Cements and beyond

154. It is in the background of the aforementioned cases that the judgment in ***India Cements*, (1990) 1 SCC 12 [Vol. V, Pg. 1151-1174]** is required to be analysed. The levy under challenge in *India Cements* was a local cess of 45 paisa on every rupee of land revenue payable to the government. Land revenue was defined as including royalty payable in respect of the land. The issue framed by the Court (para 15 **at Vol. V, Pg. 1160**) was whether, "[*s*]*ince the control of mines and the development of minerals were taken over by Parliament, the question that arises here is whether the levy or the impost by the State Legislature imposed in this case can be justified or sustained either under entry 49, 50 or 45 of list II of the 7th Schedule*". This question was framed in the context of what the Court described (para 19 **at Vol. V, Pg. 1162**) as a "cess on royalty".

155. The central finding in India Cements is a reiteration of the law laid down in the consistent line of cases discussed above, starting with *Hingir Rampur*. In para 26 of the judgment **[Vol. V, Pg. 1166-1167]**, it was held as follows:

> "…the extent to which regulation of mines and mineral development under the control of the Union is declared by Parliament by law to be expedient in the public interest, to the extent such legislation makes provisions will denude the State Legislature of its power to override the provision under entry 50 of list II. In view of the Parliamentary legislation under entry 54, list I and the declaration made under Section 2 and provisions of Section 9 of the Act, the State Legislature would be overridden to that extent. Section 2 declares that it is expedient in the public interest that Union should take under its control the regulation of mines and the development of minerals to the extent provided therein. In this connection, reference may be made to the decision of this Court in Hingir-Rampur Coal Co. v. State of Orissa. See also the observations in State of Orissa v. M.A. Tulloch & Co. and Baijnath Kadia v. State of Bihar".

156. Having restated the position of law emerging from the aforementioned decisions, the Court in *India Cements* also dealt with the lone note of discord in *H.R.S Murthy*, in effect holding that this decision was rendered *per incuriam* on account of the attention of the Court not being drawn to Section 9 of the MMDRA. It was held (para 30, 32) **[Vol. V, Pg. 1168-1169]** that:

> "It seems, therefore, that attention of the Court (in H.R.S Murthy) was not invited to the provisions of Mines and Minerals (Development and Regulation) Act, 1957 and Section 9 thereof. Section 9(3) of the Act in terms states that royalties payable under the 2nd Schedule of the Act shall not be enhanced more than once during a period of 4 years.

It is, therefore, a clear bar on the state legislature taxing royalty so as to in effect amend 2nd Schedule of the Central Act. In the premises, it cannot be right to say that tax on royalty can be a tax on land, and even if it is a tax, if it falls within entry 50 will be ultra vires the State legislature power in view of s. 9(3) of the Central Act.

….

32. It was contended by Mr. Krishnamurthy Iyer that the State has a right to tax minerals. It was further contended that if tax is levied, it will not be irrational to correlate it to the value of the property and to make some kind of annual value basis of tax without intending to tax the income. In view of the provisions of the Act, as noted hereinbefore, this submission cannot be accepted. Mr. Krishnamurthy Iyer also further sought to urge that in entry 50 of list II, there is no limitation to the taxing power of the State. In view of the principles mentioned hereinbefore and the expressed provisions of Section 9(2) of the Mines & Minerals (Regulation & Development) Act, 1957, this submission cannot be accepted. This field is fully covered by the Central legislation."

157. It is respectfully submitted that *India Cements* does nothing more than follow, adopt and apply the consistent law laid down since the decision in *Hingir Rampur* in regard to the interpretation of Entry 54 of List I and Entries 23, 49 and 50 of List II. The reasoning of the Court in regard to this matter was decisive of the issue falling for consideration in the case, namely the constitutionality of a state levy which operated as a tax on minerals. The *ratio* of *India Cements* is that provisions of the MMDRA (in particular, Section 9) operates as a limitation on the taxing power of the state under Entry 50 of List II. It is respectfully submitted that this reasoning does not merit any reconsideration. Rather, displacing this legal position will have the effect of unsettling the law going back to *Hingir Rampur* and the long line of cases that followed it. It bears reiteration that the correctness of these decisions has never been doubted.

158. The findings in *India Cements* in regard to Entry 50 of List II and the provisions of the MMDRA Act were reiterated and clarified in ***Orissa Cement Ltd. v. State of Orissa*, 1991 Supp (1) SCC 430 [Vol. V, Pg. 1329-1402]**. The judgment in *Orissa Cement* undertook a still more detailed analysis of the provisions of the MMDRA in support of the conclusion that the 1957 Act imposed a limitation on the taxing power of the State Legislature under Entry 50 of List II. It was held, on a reading of Sections 9, 13, 18 and 25, that the legislative competence of the state legislature under Entry 50 of List II stood limited by the provisions of the MMDRA **[Vol. V, Pg. 1371; 1379-1381;1384-85]**:

"39. To take up Entry 50 first, a perusal of entry 50 world show that the competence of the State Legislature with respect thereto is circumscribed by ``any limitations imposed by Parliament by law relating to mineral development''. The M.M.R.D Act, 1957, is - there can be no doubt about this a law of Parliament relating to mineral development. Section 9 of the said Act empowers the Central Government to fix, alter, enhance or reduce the rates of royalty payable in respect of minerals removed from the land or consumed by the lessee. Sub-section (3) of Section 9 in terms states that the royalties payable under the Second Schedule to the Act shall not be enhanced more than once during a period of three years. India Cement has held that this is a clear bar on the State legislature taxing royalty so as, in effect, to amend the Second Schedule to the Central Act and that if the cess is taken as a tax falling under Entry 50 it will be ultra vires in view of the provisions of the Central Act.

….

50. To turn to the respective spheres of the two legislations we are here concerned with, the Central Act (M.M.R.D. Act, 1957) demarcates the sphere of Union control in the matter of mines and mineral development. While concerning itself generally with the requirements regarding grants of licenses and leases for prospecting and exploitation of minerals, it contains certain provisions which are of direct relevance to the issue before us. Section 9, which deals with the topic of royalties and specifies not only the quantum by also the limitations on the enhancement thereof, has already been noticed. Section 9-A enacts a like provision in respect of dead rent. Reference may also be made to Section 13 and Section 18, which to the extent relevant, are extracted here….

….

Section 18, which originally laid a duty on the Central Government to take all such steps as may be necessary "for the conservation and development of minerals in India" has been amended by Act 37 of 1986 to cover steps "for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations" and the scope of the rule-making power under Section 18(2) has likewise been enlarged. Section 25(1) reads thus:

….

51. <u>If one looks at the above provisions and bears in mind that, in assessing the field covered by the Act of Parliament in question, one should be guided (as laid down in Hingir-Rampur and Tulloch) not merely by the actual provisions of the Central Act or the rules made thereunder but should also take into account matters and aspects which can legitimately be brought within the scope of the said statute, the conclusion seems irresistible, particularly in view of Hingir-Rampur and Tulloch, that the State Act has trespassed into the field covered by the Central Act</u>. The nature of the incursion made into the fields of the Central Act in the other cases were different. The present legislation, traceable to the legislative power under Entry 23 or Entry 50 of the State List which stands impaired by the Parliamentary declaration under Entry 54, can hardly be equated to the law for land acquisition or municipal administration which were considered in the cases cited and which are traceable to different specific entries in List II or List III

….

53. …. The object of S.9 of the Central Act cannot be ignored. The terms of S.13 of the Central Act extracted earlier empower the Union to frame rules in regard to matters concerning roads and environment. Section 18(1) empowers the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India and for protection of environment. These, in the very nature of things, cannot mean such amenities only in the mines but take in also the areas leading to and all around the mines. The development of mineral areas is implicit in them. <u>Section 25 implicitly authorises the levy of rent, royalty, taxes and fees under the Act and the rules. The scope of the powers thus conferred is very wide. Read as a whole, the purpose of the Union control envisaged by Entry 54 and the M.M.R.D. Act 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule I in the matter of royalties and, consequently prices</u>. Sri Bobde, who appears for certain Central

Government undertakings, points out that the prices of their exports are fixed and cannot be escalated with the enhancement of the royalties and that, if different royalties were to be charged in different States, their working would become impossible. There appears to be force in this submission. As pointed out in India Cement, the Central Act bars an enhancement of the royalty directly or indirectly, except by the Union and in the manner specified by the 1957 Act, and this is exactly what the impugned Act does. We have, therefore, come to the conclusion that the validity of the impugned Act cannot be upheld by reference to Entry 23 or Entry 50 of List II".

159. In ***P. Kannadasan v. State of TN*** **(1996) 5 SCC 670 [Vol. V(C), Pg. 114-144]**, the position emerging from *India Cements* and *Orissa Cement* was summarised as under (para 35) **[Vol. V, Pg. 141-142]:**

"...<u>Parliament has already denuded the State legislatures of their power to levy tax on minerals inhering in them by making the declaration contained in Section 2 of the MMRD Act</u>. Sri Sanghi argued that the denudation is not absolute but only to the extent provided in the MMRD Act. Section 9, learned counsel submitted, is one of the facets of the extent of denudation. Section 9, it is submitted, sets out the rates of royalty levied states that such rates of royalty can be revised only once in three years. If Section 9 is sought to be amended, whether directly or indirectly, the learned counsel says, a fresh declaration in terms of Entry 54 of List-I is called for. This contention assumes that notwithstanding the declaration. contained in Section 2 of the MMRD Act, the States still retain the power to levy taxes upon minerals over and above those prescribed by the M.M.R.D. Act and that a fresh declaration is called for whenever such subsisting power of the State is sought to be further encroached upon. This suppositions however flies in the face of the decisions of this Court in India Cement and Orissa Cement. The said decisions are premised upon the assumption that by virtue of the said declaration, the States are totally denuded of the power to levy any taxes on minerals. It is for this reason that the State enactments were declared incompetent insofar as they purported to levy taxes/cesses on minerals<u>. The denudation of the States is not partial. It is total. They cannot levy any tax or cess on minerals so long as the declaration in Section stands</u>. Once the denudation is totals there is no occasion or necessity for any further declaration of denudation or, for that matters for repeated declarations of denotations. Indeed if Sri Sanghi's arguments were to be accepted a fresh declaration would be required every time the Parliament increases the rate af royalties. No such requirement can be deduced from the relevant constitutional provisions as interpreted by this Court..."

(emphasis added)

<u>Note:</u> P. Kannadasan **was overruled on a different point in** ***District Mining Officer v. Tata Iron and Steel Co.*** **(1990) 1 SCC 12, namely, whether the Validation Act of 1991 passed after the judgment in** ***Orissa Cement*** **conferred upon states the right to make a fresh levy and collection of dues which were collectible up to 04.04.1991 (the date of the judgment in** ***Orissa Cement*****)**

160. The scope of the departure in ***State of W.B v. Kesoram Industries Ltd.,*** **(2004) 10 SCC 201 [Vol. V, Pg. 2020-2255]** from the consistent line of decisions extending from *Hingir Rampur* to *Kannadasan* is discernible from paras 88-99 of the judgment

[Vol. V, Pg. 2122-2128]. *Kesoram* read the judgments in *Hingir Rampur* and *Tulloch* narrowly in order to avoid a conflict with the law laid down by benches of co-ordinate strength. Such a reading is however inconsistent with the aforementioned body of precedent read as a whole, as brought out by the analysis above.

161. The <u>second issue</u> falling for consideration in *India Cements* was whether the levy could be found to be legislatively competent as being a tax on Land under Entry 49 of List II. If this were the case, Entry 50 of List II would not enter the analysis and the line of decisions from *Hingir Rampur* would not stand in the way of upholding the levy. The key findings of the Court in regard to this issue were as follows:

a. The cess is not on land but on royalty. None of the three lists of the 7th Schedule of the Constitution permits or authorises a State to impose tax on royalty (para 20) **[Vol. V, Pg. 1162-1163]**.

b. royalty being that which is payable on the extraction from the land and cess being an additional charge on that royalty, cannot by the parity of the same reasoning, be considered to be a tax on land; the impugned legislation is a tax on royalty and not a tax on land (para 22) **[Vol. V, Pg. 1164-1165]**.

c. There is a clear distinction between tax directly on land and tax on income arising from land; Entry 49 of List II contemplates a levy on land as a unit and the levy must be directly imposed on land and must bear a definite relationship to it. Royalty, which is connected with land, cannot be said to be a tax directly on land as a unit (para 22) **[Vol. V, Pg. 1162-1163]**.

d. Even though minerals are part of the State List they are treated separately, and therefore the principle that the specific excluded the general, must be applied. A tax on mineral rights is expressly covered by Entry 50 of List II, if it is brought under the head taxes under Entry 49 of List II, it would render Entry 50 redundant (para 25) **[Vol. V, Pg. 1166]**.

162. For the reasons detailed in the next Part of these Written Submissions, these findings are also unexceptionable and should be declared to set out the correct legal position in regard to the interpretation of Entry 49 of List II.

K. ENTRY 49 OF LIST II – TAXES ON LANDS AND BUILDINGS

163. Entry 49, List II of Schedule 7 of the Constitution of India reads as under: -

<u>**"49. Taxes on lands and buildings."**</u>

164. <u>Firstly</u>, it may be noted that the said field is occupied b y the MMRDA through the Mineral Concession Rules, 1960, which at Rule 36, states as under :

"36. Boundaries below the surface :- T
he boundaries of the area covered by a mining lease shall run vertically downwards below the surface towards the centre of the earth."

165. both the words, i.e. "lands" and "buildings", having been used simultaneously, must get colour from the other and, therefore, the term "land" will get the meaning from the term "buildings". Entry 49 List II, thus, deals only with the surface of the land on which a building can be constructed and not anything below the surface.

166. *This principle, i.e. noscitur a sociis*, has been used in constitutional interpretation is several cases and, most particularly, has been used in construing legislative entries in ***Godfrey Phillips India Ltd. v. State of U.P.,*** **(2005) 2 SCC 515 [Vol. V, Pg. 2267-2306]** (in construing the word "luxuries" in Entry 62, List II), wherein it was observed **[Vol. V, Pg. 2301-2302]**: -

> "**75. Where two or more words susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. <u>They take, as it were, their colour from and are qualified by each other, the meaning of the general word being restricted to a sense analogous to that of the less general</u>.** As said in Maxwell on the Interpretation of Statutes, 12th Edn., p. 289:
>
> > "Words, and particularly general words, cannot be read in isolation; their colour and their content are derived from their context [Attorney General v. Prince Ernest Augustus of Hanover, 1957 AC 436 : (1957) 1 All ER 49 (HL), per Viscount Simonds, at AC p. 461, All ER p. 53 I.] ."
>
> …
>
> **77. In the present context the general meaning of "luxury" has been explained or clarified and must be understood in a sense analogous to that of the less general words such as entertainments, amusements, gambling and betting, which are clubbed with it." <u>[Emphasis supplied]</u>**

167. Justice Ruma Pal's judgment *Godfrey Phillips* (supra.) also observes **[Vol. V, Pg. 2290-2291, 2292]**: -

> "42. But theoretically "luxuries" is capable of covering each of the several meanings ascribed to the word. The question is how the word is to be construed in the constitutional entry. Neither the dictionary meaning nor the meaning ascribed to the word judicially (for the reasons stated) resolve the ambiguity. **<u>The solution must be found in the language of the entry taking into consideration the constitutional scheme with regard to the imposition of taxes and the collection of revenues.</u>**
>
> …
>
> 46. **<u>Therefore, taxing entries must be construed with clarity and precision so as to maintain such exclusivity, and a construction of a taxation entry which may lead to overlapping must be eschewed. If the taxing power is within a particular legislative field, it would follow that other fields in the legislative lists must be construed to exclude this field so that there is no possibility of legislative trespass.</u>**" **<u>[Emphasis supplied]</u>**

168. In ***Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (P) Ltd.,*** **(1963) 3 SCR 209**, it was held: -

"It is next argued for the appellants that even if a law on Forward Contracts can be said to be a law on Futures Markets, it must be held to be legislation falling under Entry 26 in List II, and not Entry 48 in List I, because Forward Contracts form a major sector of modern trade, and constitute its very core, and to exclude them from the ambit of Entry 26 in List II, would be to rob it of much of its contents. Reliance was placed in support of this contention, on the rule of construction that the entries in the Lists should be construed liberally and on the decision in Bhuwalka Brothers Ltd. v. Dunichand Rateria [AIR (1952) Cal 740] , which, on this point was affirmed by this Court in Duni Chand Rateria v. Bhuwalka Brothers Ltd. [(1955) 1 SCR 1071] . The rule of construction is undoubtedly well established that the entries in the Lists should be construed broadly and not in a narrow or pedantic sense. But there is no need for the appellants to call this rule in aid of their contention, as trade and commerce would, in their ordinary and accepted sense, include forward contracts. That was the view which was adopted in Bhuwalka Brothers Ltd. case [AIR (1952) Cal 740] and which commended itself to this Court in Duni Chand Rateria case [(1955) 1 SCR 1071] . Therefore, if the question were simply whether a law on Forward Contracts would be a law with respect to Trade and commerce, there should be no difficulty in answering it in the affirmative. But the point which we have got to decide is as to the scope of the entry "Trade and commerce" read in juxtaposition with Entry 48 of List I. As the two entries relate to the powers mutually exclusive of two different legislatures, the question is how these two are to be reconciled. Now it is a rule of construction as well established as that on which the appellants rely, that the entries in the Lists should be so construed as to give effect to all of them and that a construction which will result in any of them being rendered futile or otiose must be avoided. <u>It follows from this that where there are two entries, one general in its character and the other specific, the former must be construed as excluding the latter. This is only an application of the general maxim that Generalia specialibus non derogant. It is obvious that if Entry 26 is to be construed as comprehending Forward Contracts, then "Futures Markets" in Entry 48 will be rendered useless.</u> We are therefore of opinion that legislation on Forward Contracts must be held to fall within the exclusive competence of the Union under Entry 48 in List I." <u>[Emphasis supplied]</u>

169. In ***Kerala SEB v. Indian Aluminium Co. Ltd.,*** **(1976) 1 SCC 466***,* it was observed: -

"5. In view of the provisions of Article 254, the power of Parliament to legislate in regard to matters in List III, which are dealt with by clause (2), is supreme the Parliament has exclusive power to legislate with respect to matters in List 1. The State Legislature has exclusive power to legislate with respect to matters in List II. But this is subject to the provisions of clause (1) [leaving out for the moment the reference to clause (2)]. The power of Parliament to legislate with respect to matters included in List I is supreme notwithstanding anything contained in clause (3) [again leaving out of consideration the provisions of clause (2)]. No what is the meaning of the words "notwithstanding" in clause (1) and "subject to" in clause (3)? They mean that where an entry is in general terms in List II and part of that entry is in specific, terms in List I, the entry in List I takes effect notwithstanding the entry in List II. <u>This is also on the principle that the "special" excludes the "general" and the general entry in List II is subject to the special entry in List 1.</u> For instance, though house accommodation and rent control might fall within either the State list or the concurrent list, Entry 3 in List I of Seventh Schedule carves out the subject of rent control and house accommodation in Cantonments from the general subject of house accommodation and rent control (see Indu Bhusan v. Sundari

> Devi [(1969) 2 SCC 289 : (1970) 1 SCR 443]). Furthermore, the word "notwithstanding" in clause (1) also means that if it is not possible to reconcile the two entries the entry in List I will prevail…" **[Emphasis supplied]**

170. In light of the clear legal principle set out above, no levy can be imposed, by whatever name, upon "mineral rights", with the aid of Entry 49 List II. The term "land" used in Entry 49, List II would cannot mean and/or include, in the context of minerals, anything underneath the land. Put different, the general subject "land" must necessarily exclude that which is below the ground because of the special entry in respect of mineral rights. This because the subject matter of "mineral rights" is covered in Entry 50, List II which, in turn, can be limited by a Parliamentary law relating to mineral development. If Entry 49, List II is read in a manner where "land" is extended to mineral deposits below the ground, this would necessarily lead to overlap with Entry 50, List II (which is part of a composite scheme which includes Entry 54, List I), and effectively render Entry 50, List II redundant (as also the limitation on the State's powers contained therein). **To be clear, this is not merely an issue regarding an overlap between two taxing powers in List II, but also impacts the Union's power to legislate under Entry 54 of List I to limit taxes on mineral rights in the manner contemplated in Entry 50 of List II. This is, therefore, not merely a question which involves reconciling multiple entries in List II, but what is at issue is also an artificial whittling down of the Union Parliament's legislative power (include the power to limit State taxes on mineral rights) under Entry 54, List I read with Entry 50, List II.**

171. Further, a tax on land under Entry 49, List II can only be on *land as a unit*, and the levy must be directly imposed on the land and bear a definite relationship to it.

172. In ***Asstt. Commr. of Urban Land Tax v. Buckingham & Carnatic Co. Ltd.*, (1969) 2 SCC 55 [Vol. V, Pg. 390-405]** it was held (para 4) **[Vol. V, Pg. 397-398 @ 398]**: -

> "… But Entry 49 of List II, contemplates a levy of tax on lands and buildings on both as units. It is not concerned with the division of interest or ownership in the **units of lands or buildings** which are brought to tax. Tax on lands and buildings is **directly imposed on lands and buildings**, and **bears a definite relation to it**." **[Emphasis supplied]**

173. In ***Sudhir Chandra Nawn v. WTO*, (1968) 69 ITR 897 [Vol. V, Pg. 384-389]**, it was held (para 3) **[Vol. V, Pg. 385-386 @ 386]**: -

> "…Again Entry 49 List II of the Seventh Schedule contemplates the levy of tax on lands and buildings or both **as units**. It is normally not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. **Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it.**" **[Emphasis supplied]**

174. In ***Union of India v. H.S. Dhillon*, (1971) 2 SCC 779 [Vol. V, Pg. 457-537]**, it was held **[Vol. V, Pg. 483]**: -

> "**74.** The requisites of a tax under Entry 49, List II, may be summarised thus:
> (1) It <u>must be a tax on units</u>, that is lands and buildings separately as units.
> (2) The tax cannot be a tax on totality, i.e., it is not a composite tax on the value of all lands and buildings.
> (3) The tax is not concerned with the division of interest in the building or land. In other words, it is not concerned whether one person owns or occupies it or two or more persons own or occupy it." <u>[Emphasis supplied]</u>

175. It is submitted that State taxes, such as those at issue in these proceedings, which purport to impose a land cess / tax on the basis of "value of mineral produced". First, such taxes, on the face of it, are not on land as a unit. Second, they bear no definite relationship to "land" (in the sense that the word is used in Entry 49, List II), as mineral right and/or minerals produced are not relatable to land which, as stated above, must be read to indicate surface land alone.

176. On additional aspect must be considered. It has been contended (on behalf of the States) that the nature of a tax and the measure of a tax are distinct, and the measure of a tax will not alter the nature or character of the levy. This submission ignores the following aspects:

a. There must be a nexus between the nature or subject matter of the tax and the method of computation, i.e. the measure of the tax.

b. The method of computation or valuation must be a recognized method of valuation, failing which the same would be fictitious / arbitrary.

177. In ***Ujagar Prints (II) v. Union of India*, (1989) 3 SCC 488 [Vol. V(A), Pg. 302-44]**, it was held **[Vol. V, Pg. 344]**: -

> "74. The nature of the excise duty is not to be confused with, or tested with reference to, the measure by which the tax is assessed. The standard adopted as the measure of assessment may throw light on the nature of the levy but is not determinative of it. When a statutory measure for assessment of the tax is contemplated, it "need not contour along the lines which spell out the levy itself", and "a broader based standard of reference may be adopted for the purposes of determining the measure of the levy". <u>Any statutory standard which maintains a nexus with the essential character of the levy can be regarded as a valid basis for assessing the measure of the tax.</u>" <u>[Emphasis supplied]</u>

178. On the issue of method of valuation, in **H.M. Seervai's CONSTITUTIONAL LAW OF INDIA, Vol. 3, Third Edition, Pg. 2423-2424** it is stated: -

> "22.178 We have seen that in levying a tax on lands and buildings the Legislature is free to select any recognized method of valuation, and to adopt the value so arrived at as a measure of taxation, <u>but we saw also that it is not permissible to employ a method of valuation which is not a recognized method.</u> Thus in Lokmanya Mills v. Barsi Borough

Municipality Shah J. observed that "If the rate is to be levied on the basis of the capital value, the building to be taxed must be valued on some recognized method". These observations were quoted with approval in the New Maneck Chowk Mills Case, and it was held, following the Barsi Mills Case, that valuing buildings on the basis of "floorage" area was impermissible as it was not a recognized method except where buildings were nearly identical. And in Kerala v. Haji K. Kutty, Shah J. again struck down the floorage area method following the Maneck Chowk Mills Case. The principle underlying the insistence on a recognized method of valuation is this: A Legislature authorized to impose a tax on lands and buildings can adopt any method of valuation which gives a reasonably accurate value of the property to be taxed, which value can then be used as a measure of taxation. **Where the value of lands and buildings is determined by applying a recognized method of valuation, the assessee in the first instance, and a Court in the last, has an assurance that a fictitious or arbitrary value is not fixed in order to artificially inflate the assese's liability to pay tax.** The method of capitalizing the net annual rent of property is a recognized be said to method, and the capital value so determined gives the value of that property reasonable accurately. Once the value of property is so determined, that value furnishes a measure by reference to which a tax can be imposed and its validity judged. The thing to note is that once a recognized method is adopted, the principles underlying that method must be observed."

179. At this point, it is necessary to appreciate the factual position in respect of the separation between mineral rights and land, i.e. surface rights. In India, the position that ordinarily subsists is that even if surface rights are owned by a private person, the mineral rights vest in the States (by virtue of land reforms legislation **[See e.g. S. 4 of the Bihar Land Reforms Act, 1950 @ Pg. 2493, Vol. IV]**). Therefore, in India, there is no nexus between ownership of land / land rights (i.e. surface rights) and mineral rights. Therefore, a so-called land tax computed on the basis of mineral produced cannot be said to have a definite relationship with the land. Further, it can be said that there is no nexus between the nature of the levy and the measure of the levy. Since the rights are separate, a land tax computed on the basis of the value of minerals is like a person being charged a tax on his land on the basis of the value of crop production on some other plot of land – the lack of nexus between the two being self-evident since the underlying rights are separate and distinct.

L. NATURE OF ROYALTY

180. It is submitted that royalty is consideration payable by mining lessees, at the uniform rate prescribed by the Central Government under Section 9 of the MMDRA. It is not in the nature of a tax.

181. In ***D.K. Trivedi & Sons v. State of Gujarat*, 1986 Supp SCC 20 [Vol. V, Pg. 995-1053]** , it was observed **[Vol. V, Pg. 1027-1028]**: -

"36. "Royalty" is defined in Jowitt's Dictionary of English Law, 2nd Edn., at p. 1595, inter alia, as:

“Royalty, a payment reserved by the grantor of a patent, **lease of a mine** or similar right, and **payable proportionately to the use made of the right by the grantee.** It is usually a payment of money, but may be a payment in kind, that is, of part of the produce of the exercise of the right. See Rent.”
“Royalty” is defined in Wharton's Law Lexicon, 14th Edn., at p. 893, as:
“Royalty, payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised.”
The definition of “royalty” given in Black's Law Dictionary, 5th Edn., at p. 1195, is as follows:
“Royalty, Compensation for the use of property, usually copyrighted material or natural resources, expressed as a percentage of receipts from using the property or as an account per unit produced. A payment which is made to an author or composer by an assignee, licensee or copyright holder in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent. Royalty is share of product or profit reserved by owner for permitting another to use the property. In its broadest aspect, it is share of profit reserved by owner for permitting another the use of property....
In mining and oil operations, a share of the product or profit paid to the owner of the property....”

In H.R.S. Murthy v. Collector of Chittoor [AIR 1965 SC 177 : (1964) 6 SCR 666, 673] this Court said that **“royalty” normally connotes the payment made for the materials or minerals won from the land.**

37. In Halsbury's Laws of England, 4th Edn. in the volume which deals with “Mines, Minerals and Quarries”, namely, Vol. 31, it is stated in para 224 as follows:
“224. Rents and royalties. An agreement for a lease usually contains stipulations as to the dead rents and other rents and royalties to be reserved by, and the covenants and provisions to be inserted in, the lease....”
The topics of dead rent and royalties are dealt with in Halsbury's Laws of England in the same volume **under the sub-heading “Consideration”**, the main heading being “Property demised; Consideration”. Para 235 deals with “dead rent” and para 236 with “royalties”. The relevant passages are as follows:
“235. Dead rent. It is usual in mining leases to reserve both a fixed annual rent (otherwise known as a ‘dead rent’, ‘minimum rent’ or ‘certain rent’) and royalties varying with the amount of minerals worked. The object of the fixed rent is to ensure that the lessee will work the mine; but it is sometimes ineffective for that purpose. Another function of the fixed rent is to ensure a definite minimum income to the lessor in respect of the demise.”
“If a fixed rent is reserved, it is payable until the expiration of the term even though the mine is not worked, or is exhausted during the currency of the term, or is not worth working, or is difficult or unprofitable to work owing to faults or accidents, or even if the demised seam proves to be non-existent.”
“236. Royalties. A royalty, in the sense in which the word is used in connection with mining leases, is a payment to the lessor proportionate to the amount of the demised mineral worked within a specific period.”

In para 238 of the same volume of Halsbury's Laws of England it is stated:
“238. Covenant to pay rent and royalties. Nearly every mining lease contains a covenant by the lessee for payment of the specified rent and royalties.”” **[Emphasis supplied]**

182. In ***Inderjeet Singh Sial & Anr. v. Karam Chand Thapar & Anr.*, (1995) 6 SCC 166 [Vol. V, Pg. 1503-1511]** it was held **[Vol. V, Pg. 1505]**: -

> "2. In its primary and natural sense "royalty", in the legal world, is known as the equivalent or translation of jura regalia or jura regia. Royal rights and prerogatives of a sovereign are covered thereunder. **In its secondary sense the word "royalty" would signify, as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. It is found in the clause of the deed by which the grantor reserves something to himself out of that which he grants. It may even be a clause reserving rent in a lease, whereby the lessor reserves something for himself out of that which he grants.** But "What is in a name? A rose by any other name would smell as sweet". So said Shakespeare." **[Emphasis supplied]**

183. In ***Quarry Owners' Assn. v. State of Bihar,* (2000) 8 SCC 655[30],** it was observed as follows:

> "**33**. One of the submissions for the appellants is, since royalty is a tax, delegation for its enhancement cannot be left unbridled on the delegatee and if two interpretations are possible, the one which favours an assessee should be accepted. It is true that this Court has held royalties on the minerals to be a tax in India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12] , Orissa Cement Ltd. v. State of Orissa [1991 Supp (1) SCC 430] , State of M.P. v. Mahalaxmi Fabric Mills Ltd. [1995 Supp (1) SCC 642] and P. Kannadasan v. State of T.N. [(1996) 5 SCC 670]
> **34**. **In considering this submission we have to keep in mind, tax on this royalty is distinct from other forms of taxes. This is not like a tax on income, wealth, sale or production of goods (excise) etc. This royalty includes the price for the consideration of parting with the right and privilege of the owner, namely, the State Government who owns the mineral. In other words, the royalty/dead rent, which a lessee or licensee pays, includes the price of the minerals which are the property of the State. Both royalty and dead rent are integral parts of a lease. Thus, it does not constitute usual tax as commonly understood but includes return for the consideration for parting with its property.** In view of this special nature of the subject under consideration, namely, the minerals, it would be too harsh to insist for a strict interpretation with reference to minerals while considering the guidelines to a delegatee who is also the owner of its mineral. In the present case, we are not considering any liability of tax on the assessee but whether delegation to the State by Parliament with reference to minor minerals is unbridled."

184. In the case of ***State of H.P. v. Gujarat Ambuja Cement Ltd.,* (2005) 6 SCC 499,** it was held as follows:

> "**44**. "Royalty" is not a term used in legal parlance for the price of the goods sold. It is a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee as held in Titaghur Paper Mills Co. Ltd. case [1985 Supp SCC 280 : 1985 SCC (Tax) 538].
> **45**. In its primary and natural sense "royalty" in the legal world, is known as the equivalent or translation of "jura regalia" or "jura regia". Royal rights and prerogatives of a sovereign are covered thereunder. In its secondary sense, the word "royalty" would signify, as in mining leases, that part of the reddendum, variable though, payable in

[30] **Vol. V, Pg. 1895-1936.**

cash or kind, for rights and privileges obtained. (See Inderjeet Singh Sial v. Karam Chand Thapar [(1995) 6 SCC 166] .)

46. "Royalty" is not a tax. Simply because the royalty is levied by reference to the quantity of the minerals produced and the impugned cess too is quantified by taking into consideration the same quantity of the mineral produced, the latter does not become royalty. The former is the rent of the land on which the mine is situated or the price of the privilege of winning the minerals from the land parted with by the Government in favour of the mining lessee. The cess is a levy on mineral rights with impact on the land and quantified by reference to the quantum of mineral produced. The distinction, though fine, yet exists and is perceptible. (See State of W.B. v. Kesoram Industries Ltd. [(2004) 10 SCC 201 : JT (2004) 1 SC 375])"

185. In the case of ***State of M.P. v. Mahalaxmi Fabric Mills Ltd.,*** **1995 Supp (1) SCC 642,** it was held as follows:

"**15.** Mr Sanghi next submitted that Section 9(3) is a piece of delegated legislation and it should not suffer from the vice of excessive delegation. No exception can be taken to this submission of Shri Sanghi. Let us try to see whether Section 9(3) suffers from any such vice. It must be kept in view that Parliament itself has laid down the rates of royalty in the Second Schedule of the Act. However, Parliament felt that with passage of time these rates of royalty may have to be suitably modified. This is obvious as the Act was enacted years back in 1957. The purchasing power of rupee went on falling year after year and decade after decade. Therefore, instead of Parliament itself every time being required to increase the rates, it left to the Central Government to do so but it imposed certain fetters on the power of the Central Government. Firstly, the proviso to Section 9(3) clearly lays down that such enhancement should not be made before the end of four years and now after amendment before the end of three years. This itself indicates a guideline laid down by Parliament that the rate of inflation and fall of money value of the rupee should be considered once in three years and that the royalty should be enhanced only once in three years. The second guideline in Section 9(3) is pertaining to the very topic of delegation of such legislative power. The Central Government has to keep in view the original rates mentioned in Second Schedule in connection with different types of minerals and to suggest suitable enhancement once in three years depending upon the requirements of the States concerned for whom the royalty is meant. It is to be paid by the holder of mining lease who extracts minerals. If a person is merely in occupation of land which contains mines and minerals, he is not liable to pay any royalty but it is only when he holds a mining lease and by virtue of that extracts one or more minerals then only he is called upon to pay royalty to the State Government as the lease is in respect of the land in which minerals vest in the State Government. **This exercise is to be carried out keeping in view the very object and purpose of the Act, namely, regulation of mines and development of minerals which are the catchwords of Entry 54 of List II under which the Act is enacted. Therefore, fixation of royalty should have a direct nexus with the minerals throughout the country on a uniform pattern so that the activity of winning the minerals for the benefit of the lessees of such mining leases in the first instance and ultimately for the economy as a whole should not get in any way frustrated**. There are sufficient guidelines from the Act to enable the Central Government to exercise its delegated legislative function in a just and proper manner keeping in view the uniform development of minerals throughout the country. In this connection it is also necessary to keep in view Section 28 sub-section (1) which provides that every rule or notification made by the Central Government be placed before each House of Parliament for a total period of 30 days in one session or two or more successive sessions and if both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be. When such a safety valve is provided it cannot be said that the exercise of delegated legislative power by the Central Government in the first instance under Section 9(3) would suffer from any excessive delegation of legislative power or effacement of legislative power of Parliament.

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20. It becomes, therefore, clear that enhancing uniformly rates of royalty for the entire country even though minerals might be extracted from different State's territory is necessary for having uniform pattern of price of minerals and that has a direct linkage with the development of minerals. **It is also to be kept in view that regulating the rates of royalty on extraction of minerals has also an important role to play in opening up new mining areas for winning minerals.** In this connection we may refer to Section 18 of the Act which deals with mineral development. Sub-section (1) of Section 18 lays down that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operation and for such purposes the Central Government may by notification in the Official Gazette, make such rules as it thinks fit. Sub-section (2) thereof lays down that in particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely, (*a*) the opening of new mines and the regulation of mining operations in any area, (*b*) the regulation of the excavation or collection of minerals from any mine. It is obvious that rules framed under Section 18(2) have a direct nexus with the development of minerals. In this connection we may refer to Minerals Conservation and Development Rules, 1988 framed under Section 18 sub-section (2) of the Act. It is true that these rules do not apply to coal but as laid down by Section 18(1) read with Section 30-A even for mining leases for coal such rules in appropriate cases may be made applicable. Rule 45 of these rules deals with monthly, quarterly and annual returns by owners of every mine. When we refer to prescribed return from the owner of the mine we find from Form I-9 that Form I-1 will govern the monthly return for other mines and various information sought for iron ore in Part I of the form. Item 4 in that part deals with rent and royalty paid. Thus royalty amount has to be mentioned in the form. **It becomes, thus, clear that fixation of royalty rates is in the realm of development of minerals as envisaged by Section 18 of the Act. It is, therefore, not possible to agree with the learned counsel for the writ petitioners that fixation of rates of royalty has nothing to do with the development of minerals.**

21. That takes us to the contention that even if it were so the impugned notification is ultra vires Section 9(3) as it has nothing to do with the development of minerals. **As we have already seen earlier, to have a uniform pattern of rates of royalty to be charged for extracting different qualities and quantities of minerals from different parts of the country is a very vital aspect of the development of minerals. It is true that one of the main objects of the notification was for recompensating the loss suffered by States**; but the fact remains that they suffered loss since the last hike in royalty was done in 1981 by the Central Government. It cannot be said that even as purchasing power of rupee had fallen and inflation had risen including the prices of coal in national and international market, there was no felt need for raising the rates of royalty to be charged for extraction of minerals like coal from the lease-holders when the mineral belonged to the State. If the amount of royalty is so enhanced, it has to go to the coffers of the State concerned which is the owner of the mineral. This is a logical corollary of enhanced rates of royalty. It cannot be said to be an irrelevant consideration as tried to be suggested by the learned counsel for the petitioners. On the contrary, it was a relevant consideration because the States have to monitor the working of the mines and the income generating from extraction of minerals within their respective territories. If the Central Government exercised its power under Section 9(3) of the Act though belatedly in 1991 for bringing out this result, it cannot be said that it has done what is ultra vires or beyond the scope of Section 9(3) of the Act. In this connection we may keep in view the basic fact that mineral as found in the bowels of the earth or attached to the earth surface by itself cannot develop. For developing it, it has to be brought on the surface and separated from the crust of mother earth and that can be done by mining operation for winning these minerals. In this connection it is profitable to look at Section 3 of the Act. It defines minerals to include all minerals except mineral oils including natural gas and petroleum. Mining lease is defined to mean a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for such purpose. Mining operation means any operations undertaken for the purpose of winning any mineral. It is obvious that development of mineral as envisaged by Section 18 of the Act and even by Entry 50 of List II of the Seventh Schedule of the Constitution, necessarily would mean extraction of mineral out of the bowels of the earth or from the crust of the earth by mining operations. Therefore, the term development of minerals has a direct linkage with mining operation. Without that minerals cannot develop by themselves. In *Words and Phrases*, Permanent Edn., Vol. 27 issued by West Publishing Company, St. Paul Minn., the term mineral is defined at page 210 as follows:

"A mineral is a natural body destitute of organisation or life."

It has also been shown that a mineral is anything that grows in mines and contains metals. It is further mentioned therein that the term mineral as used in a deed will be restricted to that given to it by the custom of the country in which the deed is to operate. Mineral in ordinary and common meaning is a comprehensive term including every description of stone and rock deposit whether containing metallic or non-metallic substance. The word mineral in popular sense means those inorganic constituents of the earth's crust which are commonly obtained by mining or other process for bringing them to the surface for profit. Minerals hidden in the bowel of the earth by themselves cannot yield profit to anyone and they become minerals when they are brought out on the surface of the earth by mining operations.

22. <u>It must therefore be held that regulation of mines and development of minerals are interconnected concepts. Consequently, it is not possible to agree with the contention of the learned counsel for the writ petitioners that imposition of royalty has nothing to do with the development of minerals or that enhancing the rates of the royalty by the impugned notification is extraneous to the purpose of developing mines but is solely for swelling the coffers of the States. Once that conclusion is reached, there would survive no question of notification being issued partly for legitimate purpose of enhancing royalty rates after a decade from 1981 and partly for an irrelevant purpose of swelling the State exchequer. In fact the entire purpose of this exercise is for a legitimate relevant purpose for developing the minerals and enabling the States which are the owners thereof to properly manage the mining leases so that minerals can develop on a uniform pattern throughout the country. In that view of the matter the submission made by Shri Ramaswamy relying on case *S. Pratap Singh* v. *State of Punjab* [(1964) 4 SCR 733 : AIR 1964 SC 72] that alien purpose cannot be mixed with</u>

<u>statutory purpose is of no avail to him</u>. The argument of Shri Sanghi relying upon the decision of this Court in case *State of Haryana* v. *Chanan Mal* [(1977) 1 SCC 340] in para 23 at page 350 that declaration, under section has a limited coverage also cannot be of any assistance to him for the simple reason that whatever may be covered by Section 2 declaration, it has definitely covered the imposition of royalty by Parliament as held in the Constitution Bench decision of this Court in *India Cement case* [*India Cement Ltd.* v. *State of T.N.*, (1990) 1 SCC 12] . As a result of this discussion it must be held that the impugned notification cannot be said to be ultra vires of Section 9(2) of the Act. The second point is, therefore, answered in the negative.

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24. It is obvious that this aspect of colourable legislation would not strictly apply while judging the legality of the exercise of the delegated legislative function. In fact it could not be contended by learned counsel for the writ petitioners that the Central Government had no power to act under Section 9(3). Therefore, in the strict sense, there is no question of the said notification being a piece of colourable legislation touching upon the power of some other authority functioning under any other provision of delegated legislation. However, it has also to be observed that even in cases of delegated legislation, there are well-defined limitations beyond which if such an exercise projects itself, it would become ultra vires the provision permitting such an exercise. We may profitably refer to a decision of this Court in case *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [(1985) 1 SCC 641 : 1985 SCC (Tax) 121 : AIR 1986 SC 515] . A Bench of three learned Judges of this Court speaking through Venkataramiah, J., as he then was, in connection with notification issued under Section 25 of the Customs Act which was a piece of subordinate legislation has made the following observations : (SCC p. 689, para 75)
"A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

Keeping in view this legal position, let us examine the challenge to the impugned notification on the ground that it is a colourable device. It was submitted by the writ petitioners that though purporting to act under Section 9(3) of the Act and by which an effort was made by the Central Government to raise the rates of royalty, in substance they wanted only to augment the coffers of the State Government and nothing more and in that manner it was a colourable exercise of power on the part of the Central Government. While discussing Point 2, we have already repelled this contention. For the reasons recorded therein even this contention has to be rejected. Our attention was invited by Mr Sorabjee, learned counsel for the appellants, M/s Birla Jute Industries Limited, to the counter filed by the Union of India and the State Government in the High Court for justifying the impugned notification. That counter is found at page 52 in SLP (C) No. 8190 of 1994. A combined counter was filed on behalf of Respondents 1, 3 and 4 in Miscellaneous Petition No. 2907 of 1992 before the High Court in the case of *Saurashtra Cement & Chemicals India Ltd.* [AIR 1979 Guj 180 : (1970) 20 Guj LR 895] and it was relied upon by the authorities concerned in all the other cases. In the said counter at para 'Q' it has been averred that the State Government tried various methods for increasing their revenue from time to time as stated in the petition. The State Government enacted various laws imposing Minerals Area Development and other cesses. These have been struck down by the Hon'ble Supreme Court and the State Governments, therefore, were left with practical difficulties in making necessary financial arrangement. The matter was examined in detail on the representation made by the various State Governments and after considering all aspects of the matter, a reasonable increase in the royalty was found justified and, therefore, the Central Government has issued the said notification. That after revision of rates of royalty on coal in February 1981 the next revision was due in February 1985. **Study group was appointed in 1984 to consider all aspects in depth regarding revision of rates of royalty on coal. The study group met representatives of the State Government and ascertained their views. It also issued a questionnaire to the State Governments, calling for data relating to production of coal, rates of royalty, cesses, if any levied by them and other relevant information. The study group found that most of the coal producing States were levying cesses and taxes on coal, the incidence of which was much higher than that or royalty. Some of these taxes/cesses were being levied as a percentage of the pit-head value of coal by the State Governments. All the State Governments represented to the study group that the rates of royalty on coal should bear a close correlation with the prices of coal**. The coal producing States, particularly West Bengal and Bihar pressed for fixation of royalty on ad valorem basis instead of the existing specific rates. The study group expressed its views that any levy of royalty on ad valorem basis, without a commitment from the State Governments to refrain from levying cesses, would not be equitable as it would have a cascading effect on the prices of coal paid by the consumers. Thereafter the counter referred to the striking down of cesses imposed by various State Legislatures by this Court and then at para 'T' it is stated that Governments whose Cess Acts were declared unconstitutional and collection of cesses was stopped were suffering substantial loss of revenues, they approached the Central Government to revise the rates of royalty on coal immediately to help them to get out of the financial crisis. **It is further averred in the counter that in order to examine the requests of State Governments to increase the rates of royalty, Department of Coal appointed yet another study group on 6-2-1991 to examine the report of the earlier study group and recommend appropriate increase in royalty in the wake of the Supreme Court's judgment in *India Cement case* [*India Cement Ltd.* v. *State of T.N.*, (1990) 1 SCC 12] and subsequent judgments of the High Courts. The study group discussed the issues with the representatives of the coal producing State Governments and considered their views**. Then follows para 'U' which states that after considering the report of the second study group the rates of royalty on coal have been revised from an average of Rs 5.30 per tonne to Rs 70 per tonne w.e.f. 1-3-1991. These rates have not been made applicable to the States of Assam and West Bengal because these States are levying/collecting cesses on coal as their Cess Acts have not been struck down by the courts so far."

186. In ***Surajdin v. State of Madhya Pradesh*, 1959 SCC OnLine MP 19** it was observed: -

"In Wharton's Law Lexicon (Fourteenth Edition) the word "royalty" has been explained as "payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised". In

Mozley and Whiteley's Law Dictionary (Sixth Edition) "royalty" has been defined as "a prorata payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the grant or lease. The word is especially used in reference to mines, patents and copyrights**." It, therefore, appears that royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the Government. Two important features of royalty have to be noticed : they are, that the payment made for the privilege of removing the articles is in proportion to the quantity removed, and the basis of the payment is an agreement.** The petitioner, in the instant case, did not represent to the Government that he wanted to remove any fuel from the forest and to pay for it. It does not appear that the Government can, of itself, impose a compulsory levy on all liquor contractors irrespective of the fact whether they avail of the privilege of removing fuel from the protected forest or not. In this aspect, the levy would amount to a "tax" or a "cess" which can only be imposed under the authority of law as provided in Article 265 of the Constitution." **[Emphasis supplied]**

187. In ***Dr. Shanti Saroop & Anr. v State of Punjab & Ors.***, **AIR 1969 P&H 79 [Vol. V(B), Pg. 49-92]**, it was held **[Vol. V(B), Pg. 62-65]**: -

"(21) In the Shorter Oxford English, Dictionary, Volume II, at page 1761, royalty is stated to mean:-.

"A payment made to the landowner by the lessee of a mine in return for the privilege of working it. A sum paid to the proprietor of a patented invention for the use of it. A payment made to an author, editor, or composer for each copy of a book, piece of music. etc., sold by the publisher. or for the representation of a play."

(22) The subject of royalty has been dealt with exhaustively in Words and Phrases (Permanent Edition). Volume 37A at page 600, where it is stated as follows:

"A Royalty is an interest in real estate entitling the royalty-owner to a share in the production of oil, gas or other minerals therefrom

A royalty proper is a share of the product of profits reserved by the owner for permitting another to use or develop his property, and both in theory and in practice pre-supposes a lease or production under a lease in order to obtain that profit.

Defined as portion reserved to owner of minerals after another brings the minerals to the surface. The word "royalty" as used in contract whereby plaintiff sold mineral interest for a cash consideration and an undivided interest in profits, if any, to be derived from sale of or from royalty received under the lease, would be construed as referring to the mineral interest itself. The word "royalty" as originally conceived was portion of mineral extracted or **payment for privilege of extracting minerals, or for use of a mine or of land for that purpose and embodies basic idea of payment for use of mine or of premises with acquisition of title to severed minerals as incidental.**

The word "royalty" as used in mining and oil operations, means a share of produce or profits paid to owner of land for granted privilege of producing minerals therefrom and excludes the concept of fee-simple title to minerals in place.

It is common knowledge that the word "royalty" is frequently used to denote an interest in mineral rights (Melton v. Sheed). The word "bonus," "Rental"

And "royalty" used in connection with oil and gas leases are to be construed in the ordinary and popular sense: "bonus" meaning the cash consideration paid or agreed to be paid for the execution of the lease "rental" being the consideration for the delaying drilling operations, and "royalty" being a share of the product or proceeds therefrom reserved to the owner for permitting another to use the property.

“The word "royalty" originated in England where it was used to designate the share in production reserved by the Crown from those to whom the right to work mines and quarries was granted. Such is its proper use today in mineral contracts. It is the price paid for the privilege of exercising the right to explore. If that right is granted by lease-contract it is the whole or part of the consideration for the lease. If that right is granted o1 reserved by a sale, it is the consideration in part or whole of the sale. Royalty in itself cannot be used to designate the fundamental right which is being dealt with but only to indicate the percentage, the price, the rent the consideration attached to or proceeding out of the right or that may proceed from it during its existence. The royalty depends upon the continued existence of the right to which it is an appendage. It cannot have a life of its own any more than could interest exist apart from the note or debt to which it is attached. If a party to a contract sells royalty under an existent lease, he is selling a part or the whole of his rent due from the lease upon which his royalty depends. If he sells royalty under an existing servitude, he is selling a part of the produce to issue from the use of that servitude and the royalty sale is dependent upon the life and use of the servitude. If a land-owner sells royalty he is selling the proceeds that may issue from his right to explore for minerals on his own land, which is an inherent part of his ownership of the land. If the land-owner sells his land and the right to explore inherent in the land and reserves royalty, he is reserving a share in the anticipated production to result if and when successful exploration ensues upon the land sold in full ownership.

The legal nature of royalty must be grounded upon the contract in which it appears. If it be used within the understanding of the parties to indicate a sale or reservation of the right to extract oil and gas, then it is a servitude by whatever name it may be called, and the established rules connected with this type of servitude rules apply. If it is used in a lease-contract to indicate a proportionate share of the production going to the landowner or to the lessor of a servitude or to his lessee, the law of lease and sub-lease will be applied. If the word is used in the contract to indicate a passive interest in possible production, without the leasing or production privilege usually inherent in the right, then a new and as yet uninterpreted situation appears, upon which the Court has not declared itself fully."

(23) From all this it is abundantly clear that the word 'royalty' has a well-recognised and defined meaning. **As used in Mineral and Oil Operations it means share of produce or profit paid to the owner of the land for granted privilege of producing minerals therefrom** and excludes the concept of fee-simple title to minerals in place. In Words and Phrases (Permanent Edition), Volume 37A at page 600, royalty as originally conceived was portion of mineral extracted or payment for privilege of extracting minerals, or for use of a mine or of land for that purpose and embodies basic idea of payment for use of mine or of premises with acquisition of title to severed minerals as incidental.” **[Emphasis supplied]**

188. Lastly, in ***State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201,*** it was observed as follows:

> "**69.** In India Cement [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] (vide para 31, SCC) decisions of four High Courts holding "royalty is not tax" have been noted without any adverse comment. Rather, the view seems to have been noted with tacit approval. Earlier (vide para 21, SCC) the connotative meaning of royalty being "share in the produce of land" has been noted. But for the first sentence (in para 34, SCC) which we find to be an apparent error, nowhere else has the majority judgment held royalty to be a tax.
>
> **xxx**
>
> **71.** **We have clearly pointed out the said error, as we are fully convinced in that regard and feel ourselves obliged constitutionally, legally and morally to do so, lest the said error should cause any further harm to the trend of jurisprudential thought centring around the meaning of "royalty". We hold that royalty is not tax. Royalty is paid to the owner of land who may be a private person and may not necessarily be a State. A private person owning the land is entitled to charge royalty but not tax. The lessor receives royalty as his income and for the lessee the royalty paid is an expenditure incurred. Royalty cannot be tax.** We declare that even in India Cement [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] it was not the finding of the Court that royalty is a tax. A statement caused by an apparent typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court. We also record our express dissent with that part of the judgment in Mahalaxmi Fabric Mills Ltd. [1995 Supp (1) SCC 642] which says (vide para 12 of SCC report) that there was no "typographical error" in India Cement [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] and that the said conclusion that royalty is a tax logically flew from the earlier paragraphs of the judgment."

189. Therefore, royalty is not in the nature of a tax, but is a charge payable for the privilege of extracting minerals, fixed by the Central Government under the MMDRA.

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PART I—Section 1

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CABINET SECRETARIAT

INDUSTRIAL POLICY RESOLUTION

New Delhi, the 30th April, 1956

No. 91/CF/48.—The Government of India set out in their Resolution dated the 6th April, 1948, the policy which they proposed to pursue in the industrial field. The Resolution emphasised the importance to the economy of securing a continuous increase in production and its equitable distribution, and pointed out that the State must play a progressively active role in the development of industries. It laid down that besides arms and ammunition, atomic energy and railway transport, which would be the monopoly of the Central Government, the State would be exclusively responsible for the establishment of new undertakings in six basic industries—except where, in the national interest, the State itself found it necessary to secure the co-operation of private enterprise. The rest of the industrial field was left open to private enterprise though it was made clear that the State would also progressively participate in this field.

2. Eight years have passed since this declaration on industrial policy. These eight years have witnessed many important changes and developments in India. The Constitution of India has been enacted, guaranteeing certain Fundamental Rights and enunciating Directive Principles of State Policy. Planning has proceeded on an organised basis, and the first Five Year Plan has recently been completed. Parliament has accepted the socialist pattern of society as the objective of social and economic policy. These important developments necessitate a fresh statement of industrial policy, more

particularly as the second Five Year Plan will soon be placed before the country. This policy must be governed by the principles laid down in the Constitution, the objective of socialism, and the experience gained during these years.

3. The Constitution of India, in its preamble, has declared that it aims at securing for all its citizens—

"JUSTICE, Social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation."

In its Directive Principles of State Policy, it is stated that—

"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

Further that—

"The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that childhood and youth are protected against exploitation and against moral and material abandonment."

4. These basic and general principles were given a more precise direction when Parliament accepted in December, 1954, the socialist pattern of society as the objective of social and economic policy. Industrial policy, as other policies, must therefore be governed by these principles and directions.

5. In order to realise this objective, it is essential to accelerate the rate of economic growth and to speed up industrialisation and, in particular, to develop heavy industries and machine making industries, to expand the public sector, and to build up a large and growing co-operative sector. These provide the economic foundations for increasing opportunities for gainful employment and improving living standards and working conditions for the mass of the people. Equally, it is urgent, to reduce disparities in income and wealth which exist today, to prevent private monopolies and the concentration of economic power in different fields in the hands of small numbers of individuals. Accordingly, the State will progressively assume a predominant and direct responsibility for setting up new industrial undertakings and for developing transport facilities. It will also undertake State trading on an increasing scale. At the same time, as an agency for planned national development, in the context of the country's expanding economy, the private sector will have the opportunity to develop and expand. The principle of co-operation should be applied wherever possible and a steadily increasing proportion of the activities of the private sector developed along co-operative lines.

6. The adoption of the socialist pattern of society as the national objective, as well as the need for planned and rapid development, require that all industries of basic and strategic importance, or in the nature of public utility services, should be in the public sector. Other industries which are essential and require investment on a scale which only the State, in present circumstances, could provide, have also to be in the public sector. The State has therefore to assume direct responsibility for the future development of industries over a wider area. Nevertheless, there are limiting factors which make it necessary at this stage for the State to define the field in which it will undertake sole responsibility for further development, and to make a selection of industries in the development of which it will play a dominant role. After considering all aspects of the problem, in consultation with the Planning Commission, the Government of India have decided to classify industries into three categories, having regard to the part which the State would play in each of them. These categories will inevitably overlap to some extent and too great a rigidity might defeat the purpose in view. But the basic principles and objectives have always to be kept in view and the general directions hereafter referred to followed. It should also be remembered that it is always open to the State to undertake any type of industrial production.

7. In the first category will be industries the future development of which will be the exclusive responsibility of the State. The

second category will consist of industries, which will be progressively State-owned and in which the State will therefore generally take the initiative in establishing new undertakings, but in which private enterprise will also be expected to supplement the effort of the State. The third category will include all the remaining industries, and their future development will, in general, be left to the initiative and enterprise of the private sector.

8. Industries in the first category have been listed in Schedule A of this Resolution. All new units in these industries, save where their establishment in the private sector has already been approved, will be set up only by the State. This does not preclude the expansion of the existing privately owned units, or the possibility of the State securing the co-operation of private enterprise in the establishment of new units when the national interests so require. Railways and air transport, arms and ammunition and atomic energy will, however, be developed as Central Government monopolies. Whenever co-operation with private enterprise is necessary, the State will ensure, either through majority participation in the capital or otherwise, that it has the requisite powers to guide the policy and control the operations of the undertaking.

9. Industries in the second category will be those listed in Schedule B. With a view to accelerating their future development, the State will increasingly establish new undertakings in these industries. At the same time private enterprise will also have the opportunity to develop in this field, either on its own or with State participation.

10. All the remaining industries will fall in the third category, and it is expected that their development will be undertaken ordinarily through the initiative and enterprise of the private sector, though it will be open to the State to start any industry even in this category. It will be the policy of the State to facilitate and encourage the development of these industries in the private sector, in accordance with the programmes formulated in successive Five Year Plans, by ensuring the development of transport, power and other services, and by appropriate fiscal and other measures. The State will continue to foster institutions to provide financial aid to these industries, and special assistance will be given to enterprises organised on co-operative lines for industrial and agricultural purposes. In suitable cases, the State may also grant financial assistance to the private sector. Such assistance, especially when the amount involved is substantial, will preferably be in the form of participation in equity capital, though it may also be in part in the form of debenture capital.

11. Industrial undertakings in the private sector have necessarily to fit into the framework of the social and economic policy of the State and will be subject to control and regulation in terms of the Industries (Development and Regulation) Act and other relevant legislation. The Government of India, however, recognise that it would, in general, be desirable to allow such undertakings to develop with as much freedom as possible, consistent with the targets and objectives of the national plan. When there exist in the same industry both privately and publicly owned units, it would continue to be the policy of the State to give fair and non-discriminatory treatment to both of them.

12. The division of industries into separate categories does not imply that they are being placed in water-tight compartments. Inevitably, there will not only be an area of overlapping but also a great deal of dovetailing between industries in the private and the public sectors. It will be open to the State to start any industry not included in Schedule A and Schedule B when the needs of planning so require or there are other important reasons for it. In appropriate cases, privately owned units may be permitted to produce an item falling within Schedule A for meeting their own requirements or as by-products. There will be ordinarily no bar to small privately owned units undertaking production, such as the making of launches and other light-craft, generation of power for local needs and small scale mining. Further, heavy industries in the public sector may obtain some of their requirements of lighter components from the private sector, while the private sector in turn would rely for many of its needs on the public sector. The same principle would apply with even greater force to the relationship between large scale and small scale industries.

13. The Government of India would, in this context, stress the role of cottage and village and small scale industries in the development of the national economy. In relation to some of the problems that need urgent solutions, they offer some distinct advantages. They provide immediate large scale employment; they offer a method of ensuring a more equitable distribution of the national income and they facilitate an effective mobilisation of resources of capital and skill which might otherwise remain unutilised. Some of the problems that unplanned urbanisation tends to create will be avoided by the establishment of small centres of industrial production all over the country.

14. The State has been following a policy of supporting cottage and village and small scale industries by restricting the volume of production in the large scale sector, by differential taxation, or

by direct subsidies. While such measures will continue to be taken, whenever necessary, the aim of the State policy will be to ensure that the decentralised sector acquires sufficient vitality to be self-supporting and its development is integrated with that of large scale industry. The State will, therefore, concentrate on measures designed to improve the competitive strength of the small scale producer. For this it is essential that the technique of production should be constantly improved and modernised, the pace of transformation being regulated so as to avoid, as far as possible, technological unemployment. Lack of technical and financial assistance, of suitable working accommodation and inadequacy of facilities for repair and maintenance are among the serious handicaps of small scale producers. A start has been made with the establishment of industrial estates and rural community workshops to make good these deficiencies. The extension of rural electrification and the availability of power at prices which the workers can afford will also be of considerable help. Many of the activities relating to small scale production will be greatly helped by the organisation of industrial co-operatives. Such co-operatives should be encouraged in every way and the State should give constant attention to the development of cottage and village and small scale industry.

15. In order that industrialisation may benefit the economy of the country as a whole, it is important that disparities in levels of development between different regions should be progressively reduced. The lack of industries in different parts of the country is very often determined by factors such as the availability of the necessary raw materials or other natural resources. A concentration of industries in certain areas has also been due to the ready availability of power, water supply and transport facilities which have been developed there. It is one of the aims of national planning to ensure that these facilities are steadily made available to areas which are at present lagging behind industrially or where there is greater need for providing opportunities for employment, provided the location is otherwise suitable. Only by securing a balanced and co-ordinated development of the industrial and the agricultural economy in each region, can the entire country attain higher standards of living.

16. This programme of industrial development will make large demands on the country's resources of technical and managerial personnel. To meet these rapidly growing needs for the expansion of the public sector and for the development of village and small scale industries, proper managerial and technical cadres in the public services are being established. Steps are also being taken to meet

shortages at supervisory levels, to organise apprenticeship schemes of training on a large scale both in public and in private enterprises, and to extend training facilities in business management in universities and other institutions.

17. It is necessary that proper amenities and incentives should be provided for all those engaged in industry. The living and working conditions of workers should be improved and their standard of efficiency raised. The maintenance of industrial peace is one of the prime requisites of industrial progress. In a socialist democracy labour is a partner in the common task of development and should participate in it with enthusiasm. Some laws governing industrial relations have been enacted and a broad common approach has developed with the growing recognition of the obligations of both management and labour. There should be joint consultation and workers and technicians should, wherever possible, be associated progressively in management. Enterprises in the public sector have to set an example in this respect.

18. With the growing participation of the State in industry and trade, the manner in which these activities should be conducted and managed assumes considerable importance. Speedy decisions and a willingness to assume responsibility are essential if these enterprises are to succeed. For this, wherever possible, there should be decentralisation of authority and their management should be along business lines. It is to be expected that public enterprises will augment the revenues of the State and provide resources for further development in fresh fields. But such enterprises may sometimes incur losses. Public enterprises have to be judged by their total results and in their working they should have the largest possible measure of freedom.

19. The Industrial Policy Resolution of 1948 dealt with a number of other subjects which have since been covered by suitable legislation or by authoritative statements of policy. The division of responsibility between the Central Government and the State Governments in regard to industries has been set out in the Industries (Development and Regulation) Act. The Prime Minister, in his statement in Parliament on the 6th April 1949, has enunciated the policy of the State in regard to foreign capital. It is, therefore, not necessary to deal with these subjects in this resolution.

20. The Government of India trust that this restatement of their Industrial Policy will receive the support of all sections of the people and promote the rapid industrialisation of the country.

SCHEDULE A

1. Arms and ammunition and allied items of defence equipment.
2. Atomic energy.
3. Iron and steel.
4. Heavy castings and forgings of iron and steel.
5. Heavy plant and machinery required for iron and steel production, for mining, for machine tool manufacture and for such other basic industries as may be specified by the Central Government.
6. Heavy electrical plant including large hydraulic and steam turbines.
7. Coal and lignite.
8. Mineral oils.
9. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.
10. Mining and processing of copper, lead, zinc, tin, molybdenum and wolfram.
11. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.
12. Aircraft.
13. Air transport.
14. Railway transport.
15. Shipbuilding.
16. Telephones and telephone cables, telegraph and wireless apparatus (excluding radio receiving sets).
17. Generation and distribution of electricity.

SCHEDULE B

1. All other minerals except "minor minerals" as defined in Section 3 of the Minerals Concession Rules, 1949.
2. Aluminium and other non-ferrous metals not included in Schedule 'A'.
3. Machine tools.
4. Ferro alloys and tool steels.
5. Basic and intermediate products required by chemical industries such as the manufacture of drugs, dyestuffs and plastics.
6. Antibiotics and other essential drugs.
7. Fertilizers.
8. Synthetic rubber.
9. Carbonisation of coal
10. Chemical pulp.
11. Road transport.
12. Sea transport.

Y. N. SUKTHANKAR, Secy.

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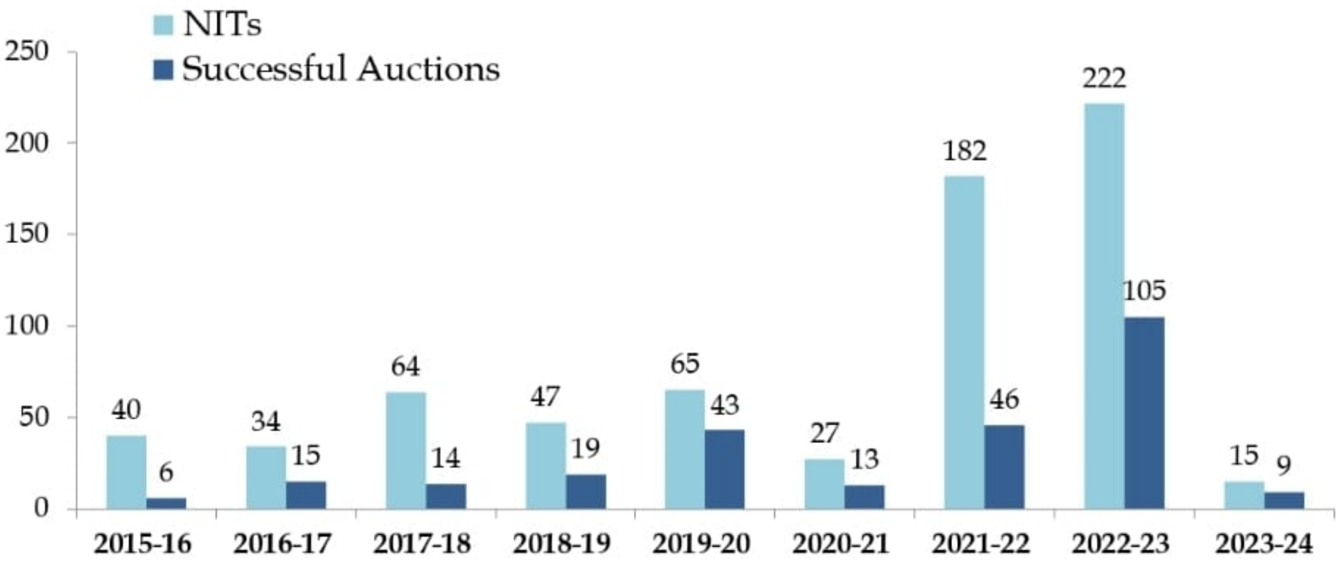
ANNEXURE SG/2

States (All figures in Rs. crore)	2013-14	2014-15	2015-16	2016-17		2017-18		2018-19		2019-20	
	Royalty	Royalty	Royalty	Royalty	AP*	Royalty	AP*	Royalty	AP*	Royalty	AP*
Andhra Pradesh	400	16	249	286		319		401		359	
Chhattisgarh	1142	1556	1077	1115		1651	10	2212	5	2188	2
Gujarat	298	401	432	323		334		353		317	
Jharkhand	743	932	1325	880		1498		1438		1439	
Karnataka	726	824	811	1034	15	1271	24	1282	123	1424	468
Madhya Pradesh	342	373	393	378		462		539		457	
Maharashtra	163	163	162	146		172		182		184	
Odisha	3768	3443	3306	2562		3442		7515		8011	
Rajasthan	1566	1941	1939	2437		2542		3138		2571	
Uttar Pradesh	0	0	0	0		15		21		22	
Goa	9	2	43	315		240		22		5	
Total	**9,156**	**9,652**	**9,737**	**9,474**	**15**	**11,945**	**34**	**17,104**	**128**	**16,979**	**470**

States (All figures in Rs. crore)	2020-21		2021-22		2022-23	
	Royalty	AP*	Royalty	AP*	Royalty	AP*
Andhra Pradesh	340		412	7	427	0
Chhattisgarh	2320	19	8838	42	7758	25
Gujarat	298		467		446	
Jharkhand	1457		3200		4256	
Karnataka	1504	471	2542	1551	2228	1147
Madhya Pradesh	482		581	1	554	2
Maharashtra	167		305		602	
Odisha	9093	1906	25724	19259	16485	15288
Rajasthan	2979		3780		4080	
Uttar Pradesh	21		23		0	
Goa	73		98		96	
Total	**18,733**	**2,396**	**45,970**	**20,858**	**36,932**	**16,462**

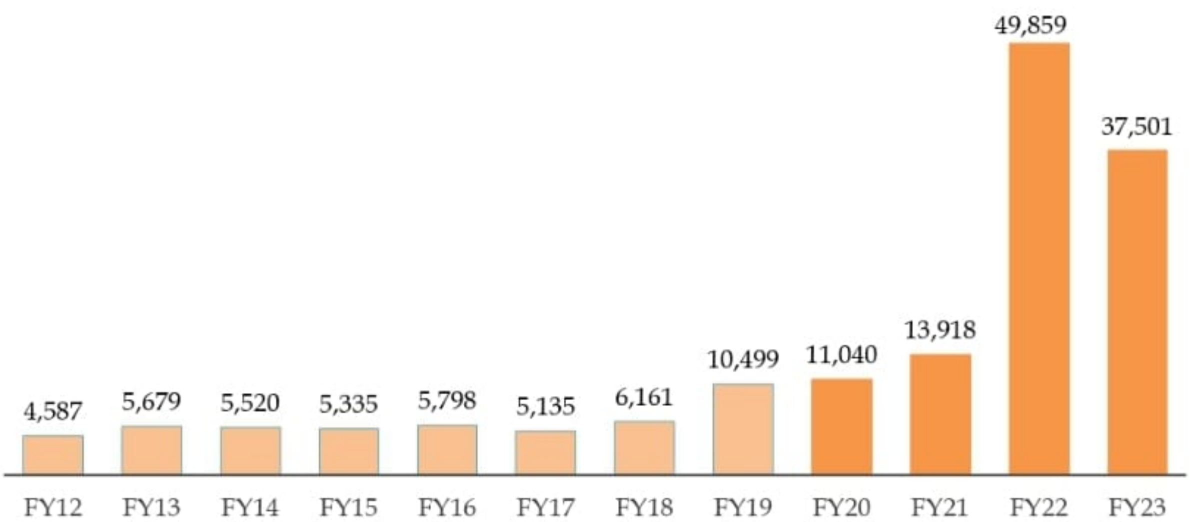
Impact of Legislative reforms since 2015

Year-wise auction summary : 2015-2023



Benefits of Auction – Case Study Odisha

Increase in revenue accrual from mining (in Rs. Cr.)



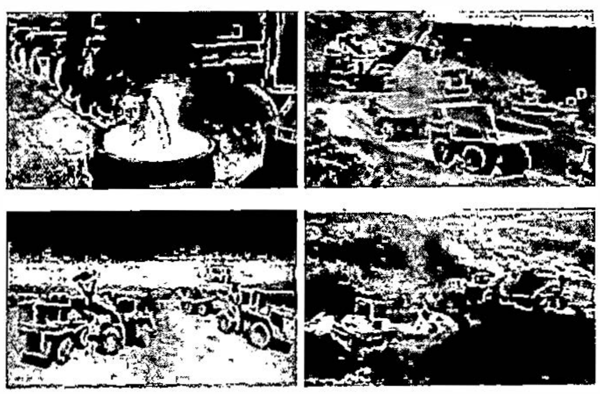
ANNEXURE SG/4

REPORT OF THE STUDY GROUP FOR REVISION OF RATES OF ROYALTY AND DEAD RENT FOR MINERALS

(OTHER THAN COAL, LIGNITE, SAND FOR STOWING AND MINOR MINERALS)

Chaired By

Dr. K. Rajeswara Rao



सत्यमेव जयते

Ministry of Mines

Government of India

Preface

The rates of the royalty and dead rent for minerals (other than minor minerals) are specified in the Second Schedule and Third Schedule respectively of the Mines and Minerals (Development and Regulation) Act, 1957 (**"MMDR Act 1957")**. As provided by the MMDR Act 1957, the Central Government may, by notification in the Official Gazette, amend the Second and Third Schedule of the MMDR Act 1957 provided that the rate(s) of royalty and/or dead rent shall not be enhanced more than once during any period of three years. The Ministry of Mines, vide Order no. 9/1/2018-M.V dated 09.02.2018 had constituted a Study Group including the stakeholders to revise the rates of royalty and dead rent for minerals (other than coal, lignite, sand for stowing, and minor minerals).

We would like to thank all the members of the Study Group from the Central Ministries, State Governments, Subordinate offices of this Ministry and the Industry Associations. The members have shown continued support and enthusiasm in attending the meetings of the Study Group and furnishing written comments/suggestions that benefitted the Study Group to finalize its Report in timely manner.

(Bipul Pathak) IAS
Member Secretary
Joint Secretary to the Government of India
Ministry of Mines

Foreword

Minerals are a valuable natural resource being the vital raw material for the core sectors of the economy. Natural resources, including minerals, are a shared inheritance where the State is a trustee on behalf of the people. Management of mineral resources is the responsibility of both the central and state governments in terms of entry 54 of the Union List (List I) and entry 23 of the State List (List II) of the Seventh Schedule of the Constitution of India. The State Governments have a legitimate right to have appropriate revenue by way of royalty on mineral produced in the State. Royalty is a payment made by the mining leaseholders to the State Government in consideration for extraction of mineral resources.

The rates of the royalty and dead rent for minerals (other than minor minerals) are specified in the Second Schedule and Third Schedule respectively of the Mines and Minerals (Development and Regulation) Act, 1957 (**"MMDR Act 1957")**. As provided by the MMDR Act 1957, the Central Government may, by notification in the Official Gazette, amend the Second and Third Schedule of the MMDR Act 1957 provided that the rate(s) of royalty and/or dead rent shall not be enhanced more than once during any period of three years. .

The rates of royalty and dead rent were last revised with effect from 01.09.2014. It has been more than three years since the rates of royalty and dead rent were revised. Therefore, the Ministry of Mines, vide Order no. 9/1/2018-M.V dated 09.02.2018 had constituted a Study Group including the stakeholders to revise the rates of royalty and dead rent for minerals (other than coal, lignite, sand for stowing, and minor minerals).

The Study Group adopted a consultative and rational approach to make appropriate recommendations to the Government with respect to revision of rates of royalty and dead rent. The Study Group dedicated itself heartily in the planning, preparation and delivery of the task taken in hands. Based in the deliberations and PPTs held at the Study Group meeting and the comments/ suggestions received from the members, Study Group prepared its Report. It is our pleasure and privilege to thank all the members of the Study Group for their valuable suggestions and for sparing time for finalization of this Report.

The Report is being submitted to the Government.

(Dr. K. Rajeswara Rao, IAS)
Chairman of the Study Group
Additional Secretary to the Government of India
Ministry of Mines

July, 2019

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CHAPTER-1

INTRODUCTION

1.1 Definition of Royalty

As per the Oxford Dictionary, the genesis and definition of the term 'royalty' is as under :

> Late Middle English: from Old French roialte, from roial (see royal). The sense 'royal right (especially over minerals') (late 15th century) developed into the sense 'payment made by a mineral producer to the site owner' (mid 19th century), which was then transferred to payments for the use of patents and published materials.
>
> A royal right (now especially over minerals) granted by the sovereign to an individual or corporation.
>
> A payment made by a producer of minerals, oil, or natural gas to the owner of the site or of the mineral rights over it.

As per the Dictionary of mining, mineral and related terms brought out by US Bureau of Mines (Department of The Interior), 1968, the term royalty is explained as

> "A lease by which the owner or lessor grants to the lessee the privilege of mining and operating the land in consideration of the payment of a certain stipulated royalty on the mineral produced, creates the relation of landlord and tenant and when that relation is created whatever is paid for the occupation and use of the premises, whether it be in money or kind, is equally in substance rent, and under such circumstances the royalties received are rentals."

Status of Royalty regime in India

The principles of royalty rest on an accepted legal and customary base. Minerals are non-renewable assets which, once removed cannot be replenished. As owner of minerals, the State needs to be adequately compensated for the permanent loss of an asset thus depleted. Royalty, therefore, whether fixed as a share of profit from the mining industry or a compensation for a depleting asset is a consequence of ownership of an asset to which title is transferred.

1.2 Thus royalty is a payment made by mining lease holders to the owner of a mineral in consideration for exploitation of mineral resources. Royalty is a payment which the State Government may demand for the appropriation of minerals belonging to it. This payment is irrespective of the use to which the mineral may be put to, or where it may be taken or the profit made or loss incurred by the lessee in his / her mining operation.

Royalty Regime in Ancient India

1.3 India is an ancient country and records showing mining since ancient times is extant. The mining operations were so significant that well defined laws existed to regulate the mining operations and the accrual of revenue to the state there from. According to the ancient law, even though the king represented the State, the mineral wealth did not vest in the king, but the king was entitled to realize the revenue from his subject at 2% of the value of minerals. The concept, however, underwent a drastic change after Kautilya wrote his Arthashastra which is claimed to pertain to the period BC 321-296 when India was ruled by Chandra Gupta Maurya. According to Kautilya, mining and commerce in minerals were the monopoly of the States. Mining operations could not be carried out by other without licence from the Government and the Government was entitled for certain share of the output.

Royalty Regime in British India

1.4 In the British regime grant of mineral concessions was regulated by Government of India Act of 1913. Subsequently as per the Government of India Act 1935 many constitutional changes were brought about under this Act and minerals became a provincial subject. As a consequence, the then provincial Governments of Assam, Bihar, Bombay and United Provinces framed their own rules for grant of mining concessions. In 1939, the Government of India framed the Mining Concession (Central) Rules, 1939, for regulating the grant of prospecting licences and mining leases in centrally administered areas. The Mining Concession Rules of 1939 specified royalties on mica, petroleum and natural gas, oil, shale, gold and silver, iron ore and precious stones and the rest of the minerals were not specified. The royalty was based on a specific percentage of the sale value in respect of specified minerals, except oil, shale, iron ore, gold and silver and precious stone.

Present Legislative Provisions

1.5 The royalty rates for major minerals are fixed by the Government of India and levied on the minerals consumed or removed from the lease area as per Section 9 of the Mines and Minerals (Development & Regulation) Act, 1957. It also provides for levying of dead rent for the area included in the mining lease if minerals are not extracted. Thus the lessee has to pay either royalty or dead rent, whichever is higher. The enhancement of rates of royalty in respect of any minerals is allowed not more than once during a period of three years. The revenues on account of royalty as fixed by the Central Government for the major minerals are collected and retained by the State Governments. As regards minor minerals, State Governments have powers to both fix and collect royalty / dead rent.

Types of Royalty in India

1.6 In India, there are mainly two types of royalty – unit of production basis (also called royalty on tonnage basis) and royalty on advalorem basis on the sale price. In case of coal and lignite, a hybrid system was introduced w.e.f. 1.8.2007 which combined the properties of both tonnage basis and advalorem basis and royalty is a sum of two parts, first is a unit based royalty rate fixed for a particular grade, and second part is a royalty levied on advalorem basis on the pit's mouth value of the mineral. However, this Hybrid system was fully replaced by advalorem system with effect from 10th May, 2012.

1.7 The royalty rates currently (w.e.f. 1st September, 2014) in force are given in **Annexure-1.** Subsequent to transfer of 31 minerals from 'major minerals' to 'minor minerals' vide Ministry of Mines' Notification No. 423(E) dated 10th February, 2015, the total category of major minerals for charging royalty in Second Schedule are 36 (excluding coal and sand for stowing) against 53 categories of major minerals (excluding coal and sand for stowing) which were listed in the Ministry of Mines' Notification No. G.S.R. 630E dated 1st September, 2014. Out of these 36 minerals, royalty is levied on tonnage basis for 6 minerals, royalty is levied on advalorem basis for 29 minerals and only for asbestos, royalty is charged on both tonnage and advalorem basis for its different varieties. In case of royalty levied on advalorem basis, generally the basis is average sale price of the mineral, but in case of bauxite despatched for extraction of alumina and aluminum, and metals like copper, gold, lead, nickel, silver, tin and zinc, the rates of royalty are linked to the international benchmark metal prices as quoted by the London Metal Exchange and London Bullion Market Association. In the case of tungsten, royalty is chargeable on the metal content in ore and on pro rata basis. In the case of uranium the rate is two percent of compensation amount received by M/s. Uranium Corporation of India Limited (UCIL) and the total amount is to be apportioned among states on the basis of data provided by Department of Atomic Energy.

CHAPTER-2

Evolution of Royalty Regime in India

2.1. Mineral Resources are the basic and integral part of the economy of the country which are mined for development purposes. Levy of royalty on minerals is a universal concept and it is a payment to mineral right holder / owner made by the mineral producer in consideration for the extraction of mineral resources.

Brief History

2.2 The concept of levying royalty in one form or the other had been prevailing in the country in ancient times and is still in vogue. The system of collection of royalty by the State was redefined and regularized under the Mines and Minerals (Regulation and Development) Act, 1957 which was passed in June, 1958.

2.3 The royalty rates were being modified as and when required for different minerals at different rates till the year 1996. Rate of royalty were levied on the basis of unit of production in respect of twenty one minerals and for other minerals, it was based on pit's mouth value and advalorem basis.

2.4 With a view to have comprehensive review of the royalty rates on all minerals in terms of its impact on production, mineral based industries, exports and the State revenues, for the first time in the year 1966, Union Government set up a Study Group. ***This Study Group submitted its report in 1968 and recommended delinking of royalty rates from the pit's mouth value for most of the minerals and suggested unit of production (tonnage) as the basis, because of the difficulties experienced by the States in administration of charging royalty as per value of minerals at the pit's mouth which led to litigations and disputes. Subsequent Study Groups***

constituted in the year 1973, 1978, 1984 and 1989 retained the tonnage system.

2.5 Royalty rates notified in the year 1992 consequent to the recommendations of Study Group in 1989, were in most of the cases on flat rate basis which were arrived at by the Study Group by giving due weightage to the unit value of the minerals and the pit's mouth. However, there was a steep increase in the royalty rates in the revision effected in February, 1992. This steep increase was effected to compensate the loss of revenue as levying of cess by some of the State Governments on mineral production was struck down by the Hon'ble Supreme Court.

2.6 As a result of the adoption of the policy of economic liberalization and also as a sequel to the International Round Table Conference held in New Delhi in April, 1994, under the aegis of the UNDP, the Ministry of Mines, constituted a Study Group in January, 1995, with a view to rationalize the rates of royalty to make them comparable with the international rates, and at the same time ensure rapid development of mining industry and augmentation of revenue earnings of State Governments. Based on the recommendations of the Study Group, these rates were notified in April, 1997 whereby the scope of advalorem system was enlarged to 17 rates covering as many minerals. The Study Group also expressed the hope to have in future a complete switch over to the advalorem system.

2.7 In October, 1998, Ministry of Mines constituted a Study Group and as a result of the recommendations of the Study Group, the scope of advalorem system was enlarged to 21 rates covering as many as 39 minerals along with a separate group of 'other minerals' which were not mentioned separately in the Second schedule to the MMDR Act. This Study Group also recommended different rates of dead rent for high, medium and low value minerals. The rates were notified on 11 September, 2000.

2.8 In line with prevailing practice, Ministry of Mines constituted a Study Group in May, 2002 for reviewing the issue of royalty and dead rent. This Study Group suggested 39 royalty rates for major minerals which included 18 royalty rates on unit of production basis applicable to 21 minerals and 21 advalorem rates covering 39 specified minerals and a group of unspecified minerals. In respect of dead rent, one more group of minerals according to value in respect of precious metals and stones was incorporated in addition to already existing 3 group of minerals depending on the value of minerals. Based on the recommendations of this Study Group, the revised rates of royalty and dead rent were notified in October, 2004.

2.9 Consequent to the notification of royalty rates in 2004, a High Level Committee (HLC) was set up under the Chairmanship of Shri Anwarul Hoda, Member, Planning Commission to review the National Mineral Policy and recommend possible amendments in the MMDR Act, 1957. The recommendations of this HLC in respect of royalty were as under :

a) The method of fixation of rates of royalty should move forward decisively on the basis of advalorem rates.

b) For retaining specific rates (tonnage basis) for any mineral, a very strong rationale should be required.

c) While considering raising the advalorem rates further, the rates prevailing in Western Australia would act as a point of reference.

d) A lowering of rates to be considered only for such mineral for which there is evidence to show that the royalty rates are inhibiting mining operations and mineral production is registering a downward trend.

e) The royalty rates for base metals, noble metals, and precious stones, in which the country is grossly deficient, needs to be low to encourage exploration for these minerals.

f) Imposition of an escalating scale of dead rent for idle holding of mines.

2.10 In line with the past practice, Ministry of Mines in August, 2006 constituted a Study Group on the revision of rates of royalty and dead rent on major minerals (other than coal, lignite and sand for stowing) with the objectives to review the existing rates of royalty on minerals given in Second Schedule to MMDR Act, 1957 and to recommend revision of rates keeping in view the recommendations of the High Level (Hoda) Committee, to review the guidelines for calculation of advalorem rates of royalty, to suggest incentivized royalty rates on advalorem basis for beneficiated or concentrated ore, to review and suggest penal action for failure to pay royalty on minerals extracted with special exceptions for allowing moratorium or suitable structure for deferment of royalty payment to support investment in deserving cases and to suggest appropriate revision in the existing rates of dead rent given in the Third Schedule to the Mines and Minerals (Development and Regulation) Act, 1957 on an escalating scale, taking into consideration measures for effective deterrence against idle mines. Based on the recommendations of this Study Group the revised rates of royalty and dead rent were notified vide Gazette of India notification Nos. GSR 574E and GSR 575E dated 13.8.2009.

2.11 The period between 2007-2011 witnessed significant development in the Indian mineral sector. Based on the recommendations of the Hoda Committee, Government of India, in consultation with State Governments, replaced the 'National Mineral Policy 1993' with new National Mineral Policy 2008 on 13th March, 2008. The National Mineral Policy 2008 provides for a change in the role of the Central Government and the State Governments particularly in relation to incentivizing the private sector investment in exploration and mining and ensuring level playing field and transparency in the grant of concessions and promotion of scientific mining within a sustainable development framework so as to protect the interest of local population in mining areas.

2.12 Consistent with the past practices, Ministry of Mines constituted a Study Group vide its Memorandum No. 3/3/2011-MVI dated 13.9.2011 for revision of rates of royalty and dead rent for major minerals (Other than coal, lignite and sand for stowing) and to make appropriate recommendations to the Government.

2.13 The Study Group recommended for continuing the advalorem system of royalty in respect of the minerals as notified earlier in 2009 excepting that in case of graphite, royalty was recommended on advalorem basis which was on tonnage basis hitherto. In majority of the cases, the Study Group recommended for increase in royalty to the extent of 20% (example bauxite from 0.5% to 0.6% of LME aluminum metal price) to 50% (example iron ore increased from 10% to 15% advalorem)., Further rates of dead rent were recommended to revise upwards by 100%. Study Group also recommended for amendments in guidelines laid down in Rule 64D of MCR, 1960 with regard to manner for computing royalty on minerals on advalorem basis. Based on the recommendations of the Study Group, the revised rates of royalty and dead rent were notified vide Gazette of India notification No. G.S.R. 630E dated 1st September, 2014.

CHAPTER-3

ROYALTY REGIME - A GLOBAL VIEW

Internationally the framework and rates of minerals royalty vary from country to country. However, the basic objective for collecting the royalty is same i.e. effecting the payment to the owner of the mineral resources in return for the extracting / removal of the minerals from the land. There are various mechanism across the globe for computation and collection of royalty in various countries with no clear trend for global conversion. However, the royalty tax framework as prevalent globally can be classified as follows :

(i) Unit based;
(ii) Value-added (Advalorem) ;
(iii) Profit-based and income-based; and
(iv) Hybrid system.

Unit-based royalties :

3.1 The oldest form of royalty assessment is based on a fee levied per unit volume or weight and is termed as unit-based or specific royalty. The unit based method or royalty on tonnage basis is mostly applied to high volume, low value and homogenous minerals. This system provides a certain and continuous revenue flows to Governments and is relatively easy to administer. The royalty on tonnage basis is also simple to determine. However, it has demerits in terms of an element of inherent arbitrariness, lack of flexibility about adjustment of the rates of royalty in tune with the variation in the values of the minerals.

Value-added royalties :

3.2 The most common way in which Governments assess royalty is to calculate the product of royalty rate times the value of the mineral. Such value based royalties are termed as advalorem royalties. Value can be determined in many ways, with the most common being the value of the mineral in the following circumstances:

i. Contained in the ore at the pit mouth;
ii. Contained in the first product sold (such as concentrate);
iii. Recoverable value of mineral / metal ;
iv. Determined by the gross revenues derived from the sales;
v. Determined by the gross revenues derived from the sales less certain allowable costs; and
vi. As reflected in a net-smelter return.

3.3 The advalorem based system needs the knowledge of mineral value. This system can be simple to administer or complicated depending upon how 'value' is defined. The simple type of advalorem calculations use a measure of "realized value" based on customer invoices while the more complex methods may involve inputting a mineral value applied in a reported international reference price to some measure of mineral content, seeking the opinion of independent appraiser in case of diamonds, using imputed value deducting defined costs such as transportation, insurance and freight, etc.

Profit-based and income-based royalties:

3.4 The profit based royalty assessment methods tend to be detailed, reflecting all revenues and costs, including capital and recurring operating costs, and arriving at the resulting profits to the miners. Some countries prefer this method which is based on the ability to pay, allows for early recovery of investment, responds to downturns in the market, does not distort production decisions such as cut off grade or mine life and does not add significantly to operating costs.

Hybrid system:

3.5 A variety of approaches combine the concept of profitability with value or unit-based royalties. For example, a measure of profit can be calculated and depending on that measure – perhaps a ratio of costs to the sales revenue, a rate of return or a ratio of price per unit to a reference price – the advalorem royalty rates is adjusted up or down. In another hybrid system the tax payer calculates both advalorem and a profit based royalty and then pays the higher of the two or pays both.

3.6 On analyzing the various types of royalty tax systems prevalent across the globe, it is found that there are certain advantages and disadvantages with each system. The Unit-based or tonnage basis system is transparent and simple to administer though it does not take into consideration fluctuations in the commodity prices. On the other hand, the advalorem based royalty system depends only on the sale value worked out in different jurisdictions.

3.7 Both the unit based and advalorem based royalty systems operate irrespective of whether the mine owners have profits or losses. The profit based system is administratively complex and results in uncertain revenue flows to the Government. In most governments the administrative manpower is limited, and therefore, simpler royalty methods are preferred across the globe. There is need for working out an optimal level of taxation since, if the taxation is too high, the investors will shift their focus to other alternatives and if the taxation is too low, the country will lose revenue useful to serve the public welfare. Hence the investor perceptions are very important in deciding the royalty rates besides keeping into account the fiscal interest of countries.

Comparison of royalties in Selected Nations :

3.8 There is lack of similarities in royalties between countries that could be attributed to the fact that every country is unique with its own legal system, history and interest groups. There is a need to adopt a system that has ease of administration with full transparency.

3.9 The rates of royalty prevailing in important countries are given in the Table **Annexure-2.** From the analysis of this **Annexure,** it can be observed that while some countries have adopted system of charging royalty on advalorem basis based on the ex-mine price, some countries are charging royalty on profit and income basis and few countries have also adopted Hybrid system comprising of Unit-based system, value-based system as well as profit-based system. It is evident that prevailing royalty rates in other countries are much lower than India and mainly in the range of 2.5% to 7.5% on Advalorem basis. For ease of comparison, fifteen mineral rich countries have been considered based on significant occurrence of the specific mineral.

CHAPTER-4

New landscape of Mining Industry

4.1 After the notification of royalty rates and dead rent in September, 2014, there have been major changes in the legal framework by way of effecting the MMDR Amendment Act, 2015 with effect from 12th January, 2015. As per the amendments, mining leases are to be granted through auction mechanism. Further the following additional financial levies were added :

(i) Payment to District Mineral Foundation DMF) at 30% of royalty for mining lease granted before 12-01-2015 and 10% for mining lease (ML) or prospecting-cum-mining lease (PL-cum-ML) granted on or after 12-01-2015.

(ii) Payment of 2% of royalty to National Mineral Exploration Trust (NMET).

(iii) Upfront payment for mining lease equal to 0.50% of the value of estimated resources in lease area.

(iv) Performance Security of 0.50% of the value of estimated resources. It shall be adjusted every year so that it continues to correspond to 0.50% of the reassessed value of estimated resources.

(v) Auction price (base price + premium)

(vi) GST at the rate of 18% on royalty w.e.f. 01-07-2017.

(vii) Payment equal to 80% of the royalty paid in case of transfer of captive leases.

4.2 The rates of royalty and dead rent were last notified on 1st September, 2014 and in view of the fact that more than three years have elapsed, Ministry of Mines has constituted a Study Group vide its Memorandum No. 9/1/2018-M.V. dated 9th February, 2018 for revision of rates of royalty and dead rent for major minerals (Other than coal, lignite and stand for stowing and minor minerals) and to make appropriate recommendations to the Government.

4.3 It is worth mentioning that in February, 2015, Ministry of Mines vide its notification No. 423(E) dated 10th February, 2015 declared the 31 minerals as 'Minor' minerals. Accordingly, revision of royalty on these minerals vests with the State Government and are out of the purview of the Study Group.

Mining Taxation Structure in India

4.4 Indian Mining Sector is carrying the burden of highest taxation in the world. The Effective Tax Rate for example in case of iron ore works out to be as high as 64% in case of the mines granted before 12th January, 2015 and 60% in case of the new mines granted after 11th January, 2015. Against this high incidence of taxation prevailing in the country, internationally Effective Tax Rate is in the range of 31% to 45% as depicted in the Table given at the end of chapter.

4.5 The mining sector in India is heavily taxed, not only in comparison to international level but also in comparison to other domestic sectors. The taxation regime for mining in India affects all downstream industries and employment opportunities in the economy, while fuelling the already skewed balance of payment through additional import of minerals. Hence, there is need to rationalize the taxation structure for the mining sector for sustainable development and deriving long-term benefits in terms of sustained raw material security for industries.

$$\text{Effective Tax Rate (ETR)} = \frac{\text{Value of all amounts paid to government}}{\text{Total revenue from minerals sales}}$$

TABLE Annexure 2

Name of Country	Effective Tax Rate (in %)
Mongolia	31.30
Canada(NWT)	39.50
Chile	37.60
Indonesia (Sulawesi)	38.10
Australia	39.70
South Africa	39.70
Namibia	44.20
India (new mines)	59.84
India (old mines)	63.97

Note :

ETR does not include a number of other payments such as

- *Auction price (base price + premium)*
- *Purchase of land for mining*
- *GST of 18% of royalty made effective w.e.f. 01.07.2017.*
- *10% tax levied by Supreme Court in Goa and Karnataka and FDT levied by Karnataka as well as highest rate of royalty on iron ore in Odisha.*
- *Net Present Value (NPV) in case of survey in forest land :*
    - *Coal, lignite, ferrous and non-ferrous minerals using core drilling technology having density upto 40% = 2% of total Prospecting Lease (PL) area*
    - *Coal, lignite, ferrous and non-ferrous minerals using core drilling technology having density upto 70% = 5% of total Prospecting Lease (PL) area*
    - *Any amount of NPV deposited in stipulated government account is non-refundable. However, the NPV deposited for prospecting in the area will be adjusted against the estimated NPV to be levied, in case the approval is obtained for diversion of the forest land for mineral extraction under Section 2 of FCA 1980.*
- *Net Present Value (NPV) = Rs 4.38 lakhs to Rs 10.43 lakhs per hectare depending on the density of forests at the time of grant of lease.*
- *Compensatory afforestation charges which differs from State to State.*
- *Upfront payment at the time of grant of mining lease = @0.50% of value of estimated resources.*
- *Performance security = @0.50% of the value of resources*

CHAPTER-5

APPROACH OF THE STUDY GROUP

One of the main objectives of the Study Group as laid down in the terms of reference (**Annexure-3**) is to review and suggest changes in the Second Schedule to the MMDR Act, 1957, regarding the royalty rates keeping in view the objectives of mineral development and interests of the State Governments and make appropriate recommendations to the Government.

5.1 **Terms of Reference of the present Study Group are as under :**

a. to review the existing rates of royalty for minerals (other than coal, lignite, sand for stowing and minor minerals) given in the Second Schedule to the MMDR Act, 1957 and to recommend the revision of rates of royalty;

b. to consider and recommend policies relevant to administration of royalty regime; and

c. to suggest appropriate revision in the existing rates of dead rent given in the Third Schedule to the MMDR Act, 1957.

Methodology Adopted by the Study Group

5.2 Study Group had series of meetings on 13th March 2018, 10th April, 2018 in New Delhi and 8th June, 2018 at Hyderabad, for deliberating the methodology to be adopted, in depth analysis of international and domestic demand-supply scenario, price trends of principal commodities, review of taxation and fiscal regime and engagement with all the stake holders to formulate the final recommendations of the Study Group.

5.3 The following six Sub-Groups were constituted by the Study Group under the aegis of Indian Bureau of Mines (IBM) to examine the royalty and dead rent :

1. Subgroup on Base metal;
2. Subgroup on Bauxite;

3. Subgroup on Iron Ore;
4. Subgroup on Gold and Precious metal;
5. Subgroup on Atomic minerals ; and
6. Subgroup on Limestone and other minerals

5.4 The meetings of the Sub-Groups were held on 21st and 22nd May, 2018 at Nagpur and on 8th June, 2018 at Hyderabad . The Sub-Groups analysed the rationale for royalty in the changed regulatory regime; preference for advalorem basis or tonnage basis rates for charging royalty on minerals; utilization of royalty for infrastructure development, environment protection, guidelines on charging of royalty on overburden, tailings and rates of dead rent, etc. for specific major minerals. The final reports of all the sub groups is at **Annexure-4.**

5.5 The questionnaires were also circulated for seeking information from the stakeholders with regard to the criteria for fixing rate of royalty, preference for advalorem basis or tonnage basis for charging royalty on minerals, periodicity of revision of royalty, perception of the State Government for the revenue earned from the imposition of royalty, utilization of royalty for infrastructure development, environment protection, guidelines on charging of royalty, guidelines for computing royalty on minerals on advalorem basis, separate entry for overburden materials including rejects or tailings, incentivize royalty rates for beneficiation and appropriateness of current rates of dead rent in force. Through an exclusive questionnaire, State Governments were also asked for the quantum of major minerals produced and minerals exported from the State along with the value of major minerals (grade wise) for the period 2014-15 to 2017-18. The annual accrual from the royalty and the annual dead rent mineral wise for the referred four years period besides gathering total annual accrual from the tax as well as non-tax revenues was also sought from the State Governments. The views of state governments are at **Annexure-5.**

5.6 In order to make an objective assessment and work out a rational system, the Study Group has considered the following issues in formulating its recommendations to revise the royalty rates.

New Factors since last revision of royalty rates and dead rent

5.7 After the notification of royalty rates and dead rent in September, 2014, there have been major changes in the legal framework by way of effecting the MMDR Amendment Act, 2015 with effect from 12th January, 2015. As per the amendments, mining leases are to be granted through auction mechanism. Further the following additional financial levies were added :

(i) Payment to District Mineral Foundation (DMF) at 30% of royalty for mining lease granted before 12-01-2015 and 10% for mining lease (ML) or prospecting-cum-mining lease (PL-cum-ML) granted on or after 12-01-2015.

(ii) Payment of 2% of royalty to National Mineral Exploration Trust (NMET).

(iii) Upfront payment for mining lease equal to 0.50% of the value of estimated resources in lease area.

(iv) Performance Security of 0.50% of the value of estimated resources. It shall be adjusted every year so that it continues to correspond to 0.50% of the reassessed value of estimated resources.

(v) Auction price (base price + premium)

(vi) GST at the rate of 18% on royalty w.e.f. 01-07-2017.

(vii) Payment equal to 80% of the royalty paid in case of transfer of captive leases.

5.8 In addition to the above, following factors also have added the financial cost on miners

(i) 10% tax levied by Hon'ble Supreme Court of India in Goa and Karnataka and Forest Development Tax (FDT) levied by Karnataka as well as highest rate of royalty on iron ore irrespective of its grade in Odisha.

(ii) While computing sales value by IBM, no deduction is made from the sales value in respect of royalty, payment to DMF and NMET which leads payment of royalty on royalty and also DMF and NMET amount on the increased sales value.

Criteria for Determining Royalty Rates

5.9 In determining the royalty rates for minerals, the Study Group assessed the following parameters :

(a) grant of concessions through auction mechanism and imposition of contribution to DMF plus NMET – leading to hefty revenue generation for the States

(b) Impact of High Burden of Taxation especially in comparison to the international mining jurisdictions.

(c) Dependence on imports of minerals

(d) Sluggish growth of mineral sector and declining trends of its shares in the country's GDP

(e) Trends in domestic production and export - quantity and prices of minerals

(f) Cost of mineral production, cost of transportation and handling charges

(g) Implication of revision of royalty rates on revenue realization of the State Governments and the industry

(h) Unused stocks of low grade ores and the mechanism to utilize them through beneficiation and concentration.

International Rates of Royalty

5.10 While considering the international royalty rates as a reference in the Indian context, the Study Group observed that lack of royalty similarities between the countries is unique with its own legal system, history, stage of economic development, interest groups, markets, availability of latest technology and different business, costs that affect the net realization to the miner etc. An approach to royalty rates that is optimal for one country may not be practical for another. The Study Group observed that there is a need to adopt a system that reconciles various interests and is suitable for easy administration.

Encourage Beneficiation of Minerals and utilization of low grade minerals

5.11 With a view to conserve and encourage the utilization of low grade minerals, Indian Bureau of Mines vide their notification dated 25 April, 2018 has already introduced two more grades of iron ore viz. Hematitic Siliceous Ore – 35% Fe (Min.) and Magnetite Ore - 15% Fe (Min.) while notifying the threshold value. Study Group felt that royalty incentive be made applicable to low grade minerals by way of beneficiation/ concentrate making etc. as recommended by the Ministry of steel. This incentive will lead to investments in the technology and will lead to optimal utilization of low grade ores especially of iron ore.

Investor-Friendly Royalty Regime

5.12 One of the objectives of the Study Group is to devise a royalty regime which is effective, transparent, stable and is attractive to the investors to invest in the mining sector particularly for the minerals like copper, gold, silver and diamond.

Views of the Stakeholders

5.13 The Study Group has tried to obtain the views of the State Governments, industries, Associations and other stakeholders in working out the royalty rates so as to devise a system which has widest possible acceptance.

CHAPTER-6

VIEWS OF STATE GOVERNMENTS, INDUSTRIES AND ASSOCIATIONS

In order to assess the views of the stakeholders on the subject, a questionnaire was circulated to State Governments, Union Territories, concerned departments in the Central Government, Industry linked to mineral and Industry Associations. A copy of the questionnaire is placed at **Annexure-6.**

6.1 The questionnaire was in two parts. First part of the questionnaire was pertaining to States only wherein information with regard to quantity and value of minerals produced in the State, unit cost of extraction of minerals and selling price besides the amount of accrual of royalty and dead rent during last five years was sought from the concerned State / Union Territory. The second part of the questionnaire was circulated to all stakeholders wherein the information was sought with regard to perception of stakeholders on the rationale for royalty, the criteria for fixation of royalty, preferences for advalorem basis or tonnage basis rates for charging royalty on minerals, guidelines on charging royalty on overburden tailings and rates of dead rent and the views about the charging of incentivize royalty rates on beneficiated ores besides the suggestions on the appropriateness of the prevailing dead rent on major minerals.

6.2 Apart from getting feedback through questionnaire, six Sub-Groups on various group of minerals were constituted by the Study Group which deliberated at length on various aspects keeping in view the Guidelines / TOR issued by the Ministry of Mines on revision of rates of royalty and dead rent on major minerals and gave their inputs for making appropriate amendments in the mechanism of charging royalty, rates of royalty and dead rent. Different States also made detailed representations before the Study Group during the various meetings of

Study Group held giving therein views on revision of rates of royalty and dead rent.

I – Views of the Stakeholders

6.3 The gist of the suggestions given by the various Ministries, Central Government Departments, State Governments and their Undertakings, Central PSUs, Industry and associations are as under :

a) **Ministry of Steel**: **Ministry of Steel** was of the view that currently India has the highest rate of royalty on iron ore i.e., 15% of average sale value among the major iron ore producing countries and thereby having highest taxes @ 64% of Effective Tax Rate. Ministry of steel made following recommendations with regard to royalty and dead rent:

(i) For newly auctioned mines, the payment of mining levies (like Royalty, DMF and NMET) may be subsumed in the bid premium and as such there should not be any royalty on the iron ore mined from the auctioned mines.

(ii) Currently the total mining levy including royalty, DMF and NMET comes out to be 19.8%. The total levies should be brought down to 15% level in order to relieve the burden on end users. Given the outlook of growth in iron ore production projected over the years on the back of increasing steel production, the present royalty rate can be reduced to 10%.

(iii) Beneficiation of low grades of iron ore into sinters and pellets, to be incentivized by fixing different rates of royalty, as also is the practice in Western Australia.

b) **Government of Andhra Pradesh:** The main recommendations of the A.P. Government were as under:

(i) Beach Sand:

a) Increase of royalty rate to 4% from existing 2% on Ad valorem basis for Ilmenite, Siliminite, Rutile & Zircon.

b) To promote value addition, a concession of 1% of Royalty may be allowed, if the mineral is processed within India.

(ii) Limestone:

- To increase Royalty Rate on Limestone (across all grades) by Rs.20 per tonne.

(iii) Manganese Ore:

- Increase to 6% on Ad valorem basis.

(iv) Iron Ore:

- Continue existing rate of royalty for Iron Ore 15% of average sale price on Ad valorem basis, irrespective of the grade of the Ore.

- To introduce two new price slabs for the low grade Iron Ore to be published by IBM:

  Iron ore (Lumps) and Iron ore (Fines):

  · 45% - 55% Fe
  · Less than 45 Fe

- Downward revision of Threshold value of Iron ore, which is currently at "Hematitic Ore - 45% Fe (Min.)".

c) Government of Chhattisgarh : While highlighting the scenario of coal, iron ore, bauxite & limestone in Chhattisgarh, State DMG had made the following recommendations:

- Since market rate is more as compared to basic price (as analyzed from auction premiums quoted for different blocks), there is some room for increase in royalty.

- Recommendations made for iron ore as under:

➢ Addition of one more grade in Iron Ore i.e. 65-67% and >67%

a. Inclusion of 65-67% will be beneficial as average sale prices shall be proportionally higher and will fetch higher royalty.

b. The royalty for this category should be increased to 16%

- For 62 to 65% grade, the royalty can be increased from 15% to 18% for non-captive mines.
- The royalty rates for <58%, 58-62% Iron content may be increased from 15% to 18% will increase State's revenue so to invest back more into development of mining affected areas.
- Deletion of 55-58% grade-the category should be clubbed with below 55% category because even the relaxation on trade duty is provided to below 58%
- For Captive Use-15 % of IBM sale price, to protect Make in India concept.

d) **Government of Gujarat :** Government of the Gujarat expressed the view that the sales prices of bauxite are not reflective of actual market prices and that there were series of litigation issues regarding revision of royalty rates which ultimately ended against the interests of State Government leading to a lot of financial as well as administrative burden. The royalty is dependent on sale prices of minerals and hence, the sale price should reflect true market conditions. There is a call for strengthening of the price discovery mechanism adopted by IBM. For other than captive consumers, the end-use category for collection of royalty is as per the category declared by the lessee. The process of reconciliation is cumbersome given that royalty is also linked with contribution to DMF and NMET.

The following recommendations were made:

i. For captive purposes, the current regime seems appropriate.

ii. For non-captive purposes, where end-use categorization issue prevails, there can be further classification for pricing options.

- Unified rate can be calculated using the weighted averages of prices of different categories (where weights can be consumption of the mineral in different end uses)

- Collecting the highest Royalty rate among all the grades as advance Royalty and later reconciliation to be done on the basis of end-use certificate provided.

e) **Government of Jharkhand :** DGM, Government of Jharkhand highlighted that the current system of charging royalty based on the average sales price as declared by IBM be dispensed with. It was recommended that royalty should be charged based on the sales price as reflected in the sales invoice raised by the non-captive miners and should be charged on advalorem basis on the similar lines as is being adopted in the case of sale of coal by subsidiaries of Coal India as well as by Singareni Collieries Limited. As regards captive mines, suitable methodology can be framed for the purpose of calculation of royalty.

f) **Government of Madhya Pradesh:** Government of M.P. made the following recommendations :

- The rate of royalty on diamond should be increased from 11.5% to 15%.

- To calculate the royalty on the basis of Sale Price instead of existing 'Average Sale Price' in the second schedule as State Government is losing revenue due to use of the said term.

- Royalty for both gem & industrial varieties should be linked to invoice value and not the average sale price.

- Large sized diamond over 10 carat be auctioned and price be ascertained separately owing to varied qualities and prices.

- Below 10 carat, ten percent of the lot from ROM be separated and assorted randomly and in line with policy laid down by the state and be offered for auction for price discovery.

g) **Government of Odisha** : Based on the assessment carried out with regard to cost of production vis-à-vis sales price / margins in respect of five major minerals for the period 2013-14 to 2016-17, DMG, Odisha recommended for upward revision of royalty rates as under :

Name of the mineral	Existing Royalty Rates	Suggested Royalty Rates
i) Iron ore	15% ad valorem	20% ad valorem
ii) Manganese	5% ad valorem	7.5% ad valorem
iii) Chromite	15% ad valorem	20% ad valorem
iv) Bauxite	0.6% of LME aluminium metal price	0.8% of LME aluminium metal price
v) Limestone (LD grade)	Rs. 90/- per MT	Rs. 105/- per MT

h) **Government of Telangana** : It was highlighted by Government of Telangana that the fixation of royalty should be based on unit/volume instead of advalorem mainly for adequacy, administrative efficiency, revenue stability, transparency & simplicity in monitoring royalty collections and reconciliation. It was also pointed out that the present royalty regime viz., Royalty, DMF, NMET etc. imposes higher tax burden on mining sector and is high comparatively with other countries relating to Effective Tax Rate (ETR) which is 64% and such a high taxation on mining may lead to exiting of major mining players and discourages investment in mining sector.

The following recommendations were made by Government of Telangana :

- Royalty on minerals in raw form that are exported should marginally be stepped up.

- Royalty on minerals that are consumed domestically adding value addition to the GoI/States exchequer should comparatively be at a lower side.

- Unit/volume based Royalty to be considered for simplified administration, reconciliation and assured revenue to State Govts.

- Considering value of mineral production during last three years & the unit based royalty on gross revenues, the Revision of Rates of Royalty on major minerals may be increased at 12%.

- Revision of Rates of Royalty may be considered every five years instead of existing three years by due review on Index of Industrial Production to augment growth of value of mineral production.

- Dead Rent may be fixed based on the annual mineral production in Approved Mining Plan Vs. the royalty component (mineral-wise & lessee-wise) and on total amount 15-20% may be considered towards dead rent. This will help to keep lease in operation; prevents blocking of mineral production; prevents artificial scarcity of mineral and prevents declaring mining leases as lapsed for non-working.

- Recommended to consider viz., factors currently helping in pursuing value-added production; factors currently hindering from moving toward value-added manufacturing and actions should/could be taken by the Govt., in concert with industry, to enhance/facilitate value-added production.

i) **FIMI** : After the notification of royalty rates and dead rent in September, 2014, there have been major changes in the legal framework by way of effecting the MMDR Amendment Act, 2015 with effect from 12th January, 2015. As per the amendments, mining leases are to be granted through auction mechanism. Further the following additional financial burden has been added :

➢ Payment to District Mineral Foundation (DMF) at 30% of royalty for mining lease granted before 12-01-2015 and 10% for mining lease (ML) or prospecting-cum-mining lease (PL-cum-ML) granted on or after 12-01-2015.

- Payment of 2% of royalty to National Mineral Exploration Trust (NMET).
- Upfront payment for mining lease equal to 0.50% of the value of estimated resources in lease area.
- Performance Security of 0.50% of the value of estimated resources. It shall be adjusted every year so that it continues to correspond to 0.50% of the reassessed value of estimated resources.
- Auction price (base price + premium)
- GST at the rate of 18% on royalty w.e.f. 01-07-2017.
- Payment equal to 80% of the royalty paid in case of transfer of captive leases.

In view of these developments, FIMI made the following recommendations :

It was expressed by FIMI that royalty is a payment made by a producer of minerals, oil, or natural gas to the owner of the site or of the mineral rights over it (sovereign). Since in case of auction of mines, payment towards mining / production of the minerals by way of premiums is to be made by the successful bidder of the mineral block, hence there is no rational for charging royalty on the minerals mined from the auctioned mines. FIMI emphasized that as such States will be gaining multiple times of revenue through the grant of mineral concessions by auction mechanism in terms of the premium than that through charging of royalty. FIMI further highlighted that State Governments should not focus only on revenue generation through royalty mode but States need to focus to provide conducive environment for the growth of the mining industry so that much needed employment is generated and development of the mining areas take place in the backward and tribal areas of the country.

In this context, FIMI cited the details of summary of auctioned mineral blocks as on 3 July, 2018 as mentioned in the

Backgrounder Note on Indian Mineral Sector 2018 of Ministry of Mines circulated during the 4th National Conclave on Mines Minerals (**Annexure-V**). As per the details, 43 blocks were auctioned against which additional contribution by way of auction premiums works out to the tune of Rupees 1,19,721 crores besides payment to DMF amounting to Rupees 3,191 crores while the royalty collection will be to the tune of Rupees 31,907 crores. As can be observed that through auction mechanism State Governments' revenue by way of additional contribution from auctions will be accrued manifold than that of revenue accrued on account of charging royalty.

Accordingly, FIMI recommended that there should be no (zero) royalty on minerals which are raised from auctioned mines.

As per the Rule 5(1) of Mineral (Mining by Government Company) Rules, 2015 – A Government company or corporation or a joint venture, granted a mining lease in accordance with the provisions of sub-sections (2A) and (2B) of Section 17A of the Act, shall pay an amount equivalent to a percentage of royalty paid in terms of the Second Schedule to the Act, as notified by the Central Government in each case.

Since in case of leases allotted by the Government to Government companies under Section 17A of the MMDR Amendment Act, 2015, the Government companies are required to pay an amount equivalent to a percentage of the royalty in terms of the Second Schedule, it is recommended that no (zero) royalty should be charged on the minerals produced from such allotted mines granted after 11th January, 2015.

On the minerals produced from the existing mines, granted (other than through auction mechanism or through allotment under MMDR Amendment Act, 2015), the rates of royalty should be so adjusted that the total impact does not exceed the existing royalty rate. Accordingly, the existing royalty rates on all major minerals should be reduced to the extent of impact of DMF and contribution to NMET.

Further in case of transfer of existing mines (granted other than through auction mechanism) for captive uses, 80% of royalty is required to be paid on the mined minerals. Since acquisition, mergers and restructuring are the common business practices, in order to face the competitive business and dynamic marketing environment, it was recommended by FIMI that the transfer charges of 80% of royalty be dispensed with.

FIMI also mentioned that in case of minerals where royalty is based on advalorem basis, royalty is charged based on the average monthly sales price declared by IBM which includes royalty, DMF and payment to NMET. As a result of which in effect, royalty on royalty is charged having its cascading effect on DMF and NMET. To avoid such a double charging of royalty, FIMI suggested for amending the Rule 38 of MCR, 2016 and Rule 45(8)(a) of MCDR, 2017 so that the component of royalty is not included in the average sale price declared by IBM.

As regards dead rent, FIMI recommended that dead rent be dispensed with. Since in case of auctioned mines, lessee required to be signed Mine Development and Production Agreement (MDPA) and is committed for the stipulated production, hence there is no rationale for any dead rent for such auctioned mines.

Purpose of Levying Royalty

6.4 An analysis of the feedback given by the State Governments shows that principal mineral producing state perceives royalty primarily as a source of revenue as well as consideration for permitting exploitation of state mineral resources. These states are also of view that royalty is a consideration due to the State Government for allowing exploitation of its mineral resources besides a tool for source of fund for local area and community development. FICCI has recommended that Rule 38 and 42 of MCR 2016 and sub rule 8(a) of rule 45 of MCDR (Amendment) Rules 2017 should be amended to ensure royalty on royalty is not charged.

Criteria for fixing royalty

6.5 The State Governments, in general, gave priority for increasing the revenue earnings from royalty as criteria for fixing the rates of royalty. Further, the states sought to consider optimum utilization of low grade mineral resources, fiscal measures for attracting investment and mineral conservation as other important criteria for fixing royalty rates. Some States are also of view that the criteria of fixing the royalty should be to attract improved technology, to bring royalty rates in tune with international rates for encouraging investments in mining sector. FICCI recommends that Differential rates of royalty should be charged on intermediate minerals and for wet and dry beneficiation. FICCI also recommended that royalty rates should be restored to 2014 levels as were existent before DMF and NMET was being charged to cushion effect of these levies.

Preferred Royalty Rate Systems

6.6 There was a general consensus in the approach of the States that the advalorem system of royalty should be the basis for fixing royalty rates. However, some of the State Governments like Telangana suggested that unit /

volume based royalty system be implemented for ease of administration and reconciliation along with assured revenue to the State Governments.

Periodicity of Revision of Royalty Rates

6.7 Some of the State Governments like Telangana and FIMI suggested that royalty should be reviewed only after every five years. Even FICCI has also recommended that the 3 year system of revision of royalty should be reviewed.

Guidelines for Computing Royalty on Adavlorem Basis

6.8 Most of the Stakeholders favoured continuation of computing royalty on advalorem basis. However, Jharkhand State suggested that royalty be charged based on the sale price as mentioned in the invoice raised by the lessee on the line as is being adopted for sale of coal by Coal India Limited and Singareni Coalfields Limited instead of based on average monthly sale price published by Indian Bureau of Mines. FIMI suggested that the guidelines for computing royalty on advalorem basis are not comprehensive and needs revision. It was pointed out by FIMI that in the current system of arriving at sale price, the component of royalty gets included in the sale price and suggested that the sale price be arrived at net of royalty to avoid double taxation. Further, FIMI highlighted that the average monthly sale price are published by IBM after a gap of 2-3 months which needs to delays in reconciliation of royalty amount at district level. FICCI has recommended that since the Indian mining is taxed at very high level, the concept of charging royalty on the highest grade of the ore for all the grades should be done away with.

Separate Entry in Second Schedule for Overburden

6.9 The opinion of the State Governments varied on the issue of keeping a separate entry specifying the royalty rates in second schedule for overburden tailing and rejects. FIMI and other mining Associations and industries did not favour separate entry for "overburden material including rejects or tailings".

Rate of Dead Rent

6.10 Most of the State Governments have favoured for current rate of dead rent. Telangana Government suggested that dead rent can be fixed as a percentage of total royalty and irrespective of mining lease area. Ministry of Steel expressed the view that dead rent is a unnecessarily burden for a miner for holding a mining lease. Such fixed levy should be applicable when there is no revenue stream available for the State Government and mine is not producing any mineral. FIMI suggested that dead rent be dispensed with. Since in case of auctioned mines, lessee required to be signed Mine Development and Production Agreement (MDPA) and is committed for the stipulated production, hence there is no rationale for any dead rent for such auctioned mines.
Further, FICCI has recommended that dead rent concept should be reviewed and done away with under the new regime after amendment of MMDR Act.

Royalty on Overburden, tailings and rejects

Tailings and rejects are the materials left over the process of separating the valuable fraction from the run of mine. Tailings and rejects consist of ground mineral and process effluents that are generated in mining, processing / beneficiation of minerals. Generally mechanical and chemical processes are used to extract the desired grade of mineral from the run of the mine ore and the left over ore known as tailings / rejects.

6.11 Inputs received from industry / associations indicate that the royalty should not be levied on the tailings / rejects and such ore from which metal cannot be recovered, especially in the case of base metal minerals. As per the provisions of Rule 39 of Mineral Concession Rules, 2016, royalty is to be charged on run-of-mine, mineral or concentrate and as such there is no provision for charging royalty on the tailings or rejects removed from the lease area.

CHAPTER-7

DISCUSSION ON RATES OF ROYALTY

The total category of major minerals for charging royalty in Second Schedule are 36 (excluding coal and sand for stowing). Out of these 36 minerals, royalty is levied on tonnage basis for 6 minerals, royalty is levied on advalorem basis for 29 minerals and only for asbestos, royalty is charged on both tonnage and advalorem basis for its different varieties.

7.1 While working out the royalty rates, the Study Group has kept in view changed legislation scenario (MMDR Amendment Act, 2015 and Rules thereof) in terms of the grant of the mining leases through auction mechanism, levy of DMF and NMET, transfer charges besides other high incidence of taxation, price trend, cost of production, cost of transportation, handling charges, international rates of royalty, need to encourage investment in mining, need to encourage beneficiation of low grade minerals and the trends of production of particular mineral.

7.2 With a view to carry out detailed analysis and suggesting the rates of royalty and dead rent for the respective minerals with full justifications, the Study Group constituted the six Sub-Groups. These Sub-Groups were :

1. Sub-Group on Base Metal;
2. Sub-Group on Bauxite;
3. Sub-Group on Iron Ore;
4. Sub-Group on Gold and Precious Metal;
5. Sub-Group on Atomic minerals; and
6. Sub-Group on Limestone and other minerals

7.3 First meeting of the Sub-Groups was held on 21st and 22nd May, 2018 at Nagpur and the second meeting of the Sub-Groups was held on 8th June, 2018 at Hyderabad. The Members of the Sub-Groups discussed and deliberated in detail on various aspects keeping in view the Guidelines / TOR issued by the Ministry of Mines on revision of rates of royalty and dead rent on major minerals and gave their inputs for making appropriate amendments in the mechanism of charging royalty, rates of royalty and dead rent.

7.4 The Study Group also circulated the questionnaire seeking information from the various stakeholders. The questionnaire was in two parts. First part of the questionnaire was pertaining to States only wherein information with regard to quantity and value of minerals produced in the State, unit cost of extraction of minerals and selling price besides the amount of accrual of royalty and dead rent during last five years was sought from the concerned State / Union Territory. The second part of the questionnaire was circulated to all stakeholders wherein the information was sought with regard to perception of stakeholders on the rationale for royalty, the criteria for fixation of royalty, preferences for advalorem basis or tonnage basis rates for charging royalty on minerals, guidelines on charging royalty on overburden tailings and rates of dead rent and the views about the charging of incentivize royalty rates on beneficiated ores besides the suggestions on the appropriateness of the prevailing dead rent on major minerals.

7.5 Apart from the above, the Study Groups also considered the various representations submitted by the State Governments / Union Territories / Industry / Associations and other reference material.

7.6 Royalty is a payment made by a producer of minerals, oil, or natural gas to the owner of the site or of the mineral rights over it (sovereign). In case of auction of mines, payment towards mining / production of the minerals by way of premiums is to be made to the State Government by the successful bidder of the mineral block. An analysis of the mineral blocks auctioned so far depicts that accrual by way of additional contribution on account of premiums will be much more than the royalty amount and as such the revenue to the States will be quite high. Study Group feels that though there is no rationale for charging royalty on the minerals mined from the auctioned mines, yet the sovereign rights over the mineral is established by charging royalty. The premiums offered by prospective bidders in auctions do take into account the royalty payments and are adjusted by bidders accordingly. Thus, the demand of industry for removing of royalty for auctioned mines is not acceptable. Moreover, the auctioned mines already would have factored in the royalty while quoting premiums. The removal of royalty for auctioned mines would give unfair advantage to these auctioned mines, and hence is not recommended by this group. However, there is enough justification to ease the burden imposed on the mines, allotted by auction, by way of introducing a slightly lower rate of royalty to cushion impact of DMF and NMET.

7.7 The analysis of the demands of state governments indicates that they are demanding upward revision of the royalty rates. The industry association and other stakeholders, including the central ministries are in favour of the lowering of royalty rates. The seminal changes in the MMDR Act and introduction of DMF and NMET contributions have definitely increased the burden on the miners even with existing royalty rates. Thus, in this scenario there is no justification for increase in royalty.

Moreover, for Iron ore the low grade iron ore dumps have increased all over the country and there is no incentive for their use through beneficiation at present. The contention of Ministry of steel ,some states and the industry association to incentivize the beneficiation of low grade iron ore is justified and accordingly recommendation has been made.

The Study Group after the due and detailed deliberations considering the various aspects *inter alia* the changed legislation particularly with regard to mode of grant of mineral concession, imposition of additional imposts and taxation structure recommend the following :

Mineral-wise recommendations of the Study Group are as follows :

APATITE & ROCK PHOSPHATE

Existing rate:

(i) Apatite (all grades) - 5% of average sale price on ad Valorem basis

(ii) Rock Phosphate

(a) Above 25% P_2O_5 - 12.5% of average sale price on ad Valorem basis

(b) Up to 25% P_2O_5 - 6% of average sale price on ad Valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(i) Apatite (all grades) - 4.5% of average sale price on ad Valorem basis

(ii) Rock Phosphate

(a) Above 25% P_2O_5 - 11.5% of average sale price on ad Valorem basis

(b) Upto 25% P_2O_5 - 5.5% of average sale price on ad Valorem basis

Justification:

Apatite and rock phosphate are identical in many ways - mineralogically, chemically, geologically and also in terms of end-use. These two minerals are primary inputs for the fertilizer industry and have huge demand in the country.

However, India is deficient in apatite & rock phosphate availability and the domestic demand is mainly met through imports.

In case of apatite, the country is fully dependent upon imports. There are only two apatite producing mines in the country in (in West Bengal and Andhra Pradesh), however there was zero production from these mines in 2016-17. Production of apatite in the country has dropped from 1300 tonnes in 2013-14 to zero in 2016-17. Since, production of apatite has declined to an extent where mines are uneconomic to operate, Industry feels that rate of royalty for apatite be accordingly reduced so as to bring these mines back into operation. No comments were received from any state with regards to revision in royalty rate of apatite.

Having analysed the production trend in case of apatite and its significance to the country's fertilizer industry and agriculture sector, the Study Group recommends that the rates be reduced to 4% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

In case of rock phosphate, more than 99% of the production is from the public sector and is produced in two states. Of the total 1.18 MT rock phosphate produced in 2016-17, Rajasthan accounts for 94% and Madhya Pradesh accounts for 6% of the domestic rock phosphate production. Approximately 60.5% of the rock phosphate produced in the country is of high grade (more than 25% P_2O_5) and 39.5% is of low grade (less than 25% P_2O_5). The production of rock phosphate has decreased from 1.45 MT in 2013-14 to 1.18 MT in 2016-17. Further, imports in 2016-17 was to the tune of 7.51MT, with negligible exports (0.006MT). Considering huge imports, insufficient domestic production and increased cost of production due to introduction of DMF, NMET, etc. for the essential fertilizer mineral, FIMI and industry players suggested a royalty rate of 5% for rock phosphate with (+) 25% of P_2O_5 and 2.5% for rock phosphate with (-)

25% of P_2O_5. The (-) 25% of P_2O_5 rock phosphate requires beneficiation after mining i.e. it requires additional cost of beneficiation apart from mining cost. No comments were received from any state in respect of rock phosphate.

Having analysed the production trend and quantum of imports of rock phosphate, the Study Group recommends that rates of royalty be adjusted for both high grade and low grade rock phosphate, so that the total impact post-MMDR Amendment in 2015 does not exceed the existing rates. Hence the Study Group recommends that royalty for rock phosphate above 25% P_2O_5 be reduced to 9.5% and for rock phosphate upto 25% P_2O_5 be reduced to 4.5% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

ASBESTOS

Existing rate:

(i) Chrysotile	:	Rs. 880/- per tonne
(ii) Amphibole	:	15% of average sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(i) Chrysotile	:	Rs. 786/- per tonne
(ii) Amphibole	:	13.5% of average sale price on ad valorem basis

Justification:

Presently, there is no working asbestos mine in India. No production of was reported in 2016-17 as well as 2015-16, whereas in 2013-14, 3 mines were producing chrysotile variety of asbestos from Andhra Pradesh. Production has declined from 172 tonnes in 2013-14 to nil in 2016-17 due to environmental restrictions imposed on varieties of asbestos. It is suggested that royalty rates may be adjusted to maintain the total impact of royalty at par with existing rates.

In view of the imposition of DMF, NMET, etc., the Study group recommends that royalty rate of chrysotile be reduced to Rs. 670 per tonne so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

On the same lines, the Study Group recommends royalty rate for amphibole to be adjusted to 11.4% so that net impact including DMF and NMET remains same as 15% of average sale price on ad valorem basis. so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

BAUXITE

Existing rate:

(a) Metallurgical Grade	:	0.60% of London Metal Exchange Aluminium metal price chargeable on the contained aluminium metal in ore produced for those dispatched for use in alumina and aluminium metal extraction
(b) Non Metallurgical Grade:		25% of average sale price on ad

valorem basis for those dispatched for use other than alumina and aluminium metal extraction

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(a) Metallurgical Grade	:	0.54% of London Metal Exchange Aluminium metal price chargeable on the contained aluminium metal in ore produced for those dispatched for use in alumina and aluminium metal extraction
(b) Non Metallurgical Grade:		22.5% of average sale price on ad valorem basis for those dispatched for use other than alumina and aluminium metal extraction

Justification:

Bauxite is the principal ore of aluminium which is one of the most important non-ferrous metals used in the modern industry. Odisha is the leading producer of bauxite accounting for about 49% of the total production followed by Gujarat (24%), Jharkhand (9%), Chhattisgarh and Maharashtra (8% each) and remaining quantities by Madhya Pradesh, Goa, Karnataka and Tamil Nadu.

Production of bauxite shows an increasing trend with 22.319 million tonnes in 2013-14, 22.493 million tonnes in 2014-15, 28.123 million tonnes in 2015-16 and 24.664 million tonnes in 2016-17. Consumption of bauxite in 2016-17 was 20.846 million tonnes, which was primarily used for alumina (90.63%), cement (8.41%) and others such as refractory, chemical, ferro-alloys etc (0.96%).

Analysis of royalty rate for metallurgical grade bauxite shows that it has continuously increased from 0.35% in 2000, 0.40% in 2004, 0.50% in 2009 and 0.60% in 2014 charged on LME aluminium metal price.

Royalty rate on metallurgical grade bauxite in India is 0.60% of LME metal price on metal content whereas it is 0.075% of LME metal price on metal content for the same grade in Guinea, one of the major producers of bauxite in the world. Similarly royalty rate on non-metallurgical grade bauxite in India is 25% of average sale price on ad valorem basis, whereas for all grades it is 7.5% on ad valorem basis in Australia, 3% on ad valorem basis in Brazil, 3% - 9% on ad valorem basis in China, 3.75% on ad valorem basis in Indonesia and 8% on ad valorem basis in Russia. It is evident that the royalty rates for both metallurgical and non-metallurgical grade bauxite in India are much higher compared to other major producers in the world.

FIMI highlighted that the cost of production of bauxite has gone up owing to imposition of DMF, NMET etc, increase in mining input costs such as diesel, manpower and transportation costs. In addition to the high royalty rates, the exorbitantly high effective tax rate on mining in India also discourages domestic production of bauxite and makes the final products less competitive vis-à-vis imports. In view of the above, FIMI suggested to reduce the royalty rate of bauxite so that the impact of DMF and NMET does not exceed the existing royalty rate, i.e., for metallurgical grade bauxite, royalty rate be reduced from 0.6% of LME price to 0.45% of LME price and for non-metallurgical grade, it should be reduced from 25% to 19% on ad valorem basis. It further suggested that no royalty should be charged from auctioned mines, as such mines are already paying significant auction-premium amount which satisfies the basic concept of royalty payment.

NALCO suggested that the rate of royalty for metallurgical grade bauxite be reduced to 0.5% of LME prices. BALCO suggested to reduce the royalty rate to 0.3%. GMDC suggested to reduce the royalty rate of non-metallurgical grade bauxite from 25% to 20% on ad valorem basis citing that such bauxite is not economical for domestic consumption and that its export has declined due to falling demand from China and availability of good quality bauxite from other countries at competitive prices.

The Government of Odisha has suggested to increase the royalty rate for metallurgical grade bauxite from 0.6% to 0.8% of LME aluminium metal price, citing the variation in profit margin of bauxite lessees. The Government of Gujarat suggested no change in royalty for metallurgical grade bauxite, whereas for non-metallurgical grade bauxite, it suggested a unified royalty rate using weighted averages of prices for different end-use categories.

IBM suggested that royalty of metallurgical grade bauxite may be linked to average sale price instead of LME metal price. However, for the same a suitable mechanism should be developed to capture ad valorem prices for captive use of metallurgical grade bauxite. Since calculation of average sale price of metallurgical grade bauxite is difficult, NALCO and BALCO both suggested that royalty can be charged by adding a suitable profit margin to the ex-mine price. Based on auctioning of bauxite by Odisha Mining Corporation, the Government of Odisha suggested charging royalty on bauxite based on cost of production plus certain profit. The Government of Telangana insisted that rates of royalty on metallurgical grade bauxite should not be levied on the basis of LME prices, rather it should be based on sale price of bauxite.

Global Analysis

Consumption

- Aluminium industry is the principal consumer of bauxite. World production of aluminium was 58 million tonnes in 2015. China continued to be the leading producer with a share of about 54% which is followed by Russia (6%), Canada (5%) and UAE & India (4% each).
- Global aluminium demand in 2015 increased 56 million tonnes (4% wrt to previous year), mainly driven by China, India and Middle East. Demand is being driven due to demand from construction, aerospace, automobile manufacturing sectors, mainly in emerging economies.

- In advanced economies, aluminium is increasingly replacing wood and steel in building sector and is being extensively used as a packaging material for pharmaceuticals and processed foods.

- In China, aluminium production is slowing gradually. In response to low demand and prices and further lending restrictions, primary aluminium smelters were shut down having a total capacity of 3.5 million tonnes.

- In Russia, primary aluminium production increased by 7% to 2.3 million tonnes in 2015 compared to previous year.

- In Canada, Rio Tinto plc expanded capacity of its primary smelter in Kitimat, British Columbia to 420,000 tpy from 280,000 tpy. Rio Tinto also increased the capacity of the Alma, Quebec smelter to 466,000 tpy from 440,000 tpy.

- In Brazil, primary aluminium production decreased to 772,000 tonnes 20% less as against in 2014, owing to increased power costs which increased by almost 23%. Alcoa and BHP Billiton temporarily shut down the remaining 124,000 tpy of capacity at the 447,000 tpy Alumar smelter in Sao Luis. Novelis permanently shut down its 18,000 tpy primary aluminium smelter in Ouro Preto, Minas Gerais State.

- Primary aluminium production in Australia declined by 3% in 2015 compared with previous year.

- In India, during 2015-16, the primary aluminium consumption increased to 1.87 million tonnes at 9.7%, primarily driven by robust demand from electrical, transportation, building and construction and packaging sectors.

- In 2016-17, the consumption of bauxite in India was estimated as 20.84 million tonnes as compared to 19.62 million tonnes in the previous year.

- Indian market offers a huge potential for demand growth of Aluminium industry in India. There is a huge potential for the nation to enhance the Bauxite Production as India's per Capita Aluminium Consumption is only 2.4 Kg against the World average of 11 Kg. Currently Indian Alumina refinery capacity is 8.78 MTPA with bauxite requirement of 26.33 MTPA. With upcoming refinery projects total alumina capacity will increase to 15.6 MTPA and the bauxite requirement will be 54.50 MTPA.

Production

- The world production of bauxite was estimated at 294 million tonnes in 2015. Australia continued to be the major producer and accounted for about 28% share in total production, followed by China (22%), Brazil (13%), India (10%) and Guinea (6%).

- Global alumina production decreased slightly in 2016. Alumina imports to China, which totalled 4.65 million tons in 2015, decreased by 30%.

- In Australia, bauxite production increased to 2.28 million tonnes in 2015 by about 3% compared to previous year. Rio Tinto expanded bauxite capacity of the Gove mine in the Northern Territory to 8 million tpy from 6 million tpy, and production increased by 15% to 9,69,000 tpy as compared to the production in 2014.

- Australian Bauxite Ltd. started bauxite production from its Bald Hill mine in Tasmania in 2017, which is expected to ramp up production to 1.5 million tonnes.

- Rio Tinto has plans to construct a 22.8 million tonnes bauxite mine in Queensland, which is scheduled for completion in 2019.

- In China, bauxite production was estimated to be 65 million tonnes in 2015, a 10% increase compared to previous year. Owing to its exploration focus, China has discovered two new deposits adding 210 million tonnes of bauxite reserves.

- Chinalco completed the 1.2 million tpy Maochang mine in 2015 and production is expected soon.

- In Guinea, additional bauxite production capacity of 8 million tonnes is expected in coming years.

- In 2016, global bauxite production decreased by 11% owing to reduced production from Malaysia pending stricter environmental laws.

- Indonesia, which earlier had banned raw material exports since 2014, has announced that it would issue 5-year bauxite export permits to companies building alumina refineries. A 1-million-ton-per-year alumina refinery in Indonesia was completed in May, 2017 and ramp-up of production had started.

- With its vast reserves to the tune of 656 million tonnes of bauxite, India is well placed in terms of raw material availability for aluminium production. India has 5th largest bauxite reserves in the world, can become a major global low cost aluminium production hub.

Keeping in view, the global consumption-production trend, analysis of global royalty rates, increase in production costs and future domestic demand, the Study group recommends that royalty rate for metallurgical grade bauxite be reduced to 0.45% of LME prices so that net impact including DMF and NMET remains same as 0.60% of LME aluminium metal prices chargeable on the contained aluminium metal in ore produced for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

For non-metallurgical grade, the Study Group recommends royalty rate to be reduced to 19% on ad valorem basis so that net impact including DMF and NMET remains same as 25% of average sale price on ad valorem basis for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

BROWN ILMENITE (LEUCOXENE), ILMENITE, RUTILE & ZIRCON

Existing rate : 2% of average sale price on ad valorem price

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

2% of average sale price on ad valorem price

Justification:

Brown ilmenite (leucoxene), Ilmenite, rutile and zircon alongwith other heavy minerals are important constituents of beach sand deposits, found along the coast tracts of India.

Ilmenite and rutile are the two chief minerals of titanium. The production of ilmenite in the country was 721,959 tonnes in 2013-14 and 521,801 tonnes in 2015-16. Tamil Nadu (48%) is the leading producer of ilmenite, followed by

Odisha (35%) and Kerala (17%). The production of rutile in the country was 13,459 tonnes in 2013-14 and 16,723 tonnes in 2015-16. Odisha (44%) is the leading producer of rutile, followed by Tamil Nadu (33%) and Kerala (23%). Production of zircon in the country has dropped from 20,626 tonnes in 2013-14 to 18,437 tonnes in 2015-16.

FIMI suggested that the rates be revised to rationalize the increase in cost of production owing to imposition of DMF, NMET etc.

The Government of Andhra Pradesh suggested to increase the rate of royalty for ilmenite, rutile and zircon from 2% to 4% on ad valorem basis. The state also suggested that a concession of 1% of royalty may also be provided for value addition done within the country.

The Study Group observed that the prices of ilmenite, rutile and zircon have been falling gradually. Hence, the Study Group recommends that royalty rates for brown ilmenite, ilmenite, rutile and zircon be adjusted to 1.5% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

CADMIUM

Existing rate: 15% of average sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
13.5% of average sale price on ad valorem basis

Justification:

Cadmium is recovered as a by-product of zinc smelting and refining in various units of Hindustan Zinc Limited. The Debari zinc smelter and Chanderiya lead-zinc smelter of HZL are the two smelters, which produce cadmium as a by-product from indigenous ores of Rajasthan. The average cadmium content in the lead-zinc ores of Rajasthan is about 0.04% and about 2500 tonnes of ore are required for producing on tonne of cadmium. The demand for cadmium is increasing due to increasing demand for Ni-Cd batteries in electric vehicles and other industrial applications.

However, domestic production of cadmium dropped from 228 tonnes in 2013-14 to 35 tonnes in 2016-17. Imports have simultaneously increased from 1531 tonnes in 2013-14 to 4734 tonnes in 2016-17, registering a 209% increase in imports of cadmium.

Since cadmium is recovered as a by-product, its recovery should be encouraged in the interest of conservation i.e. total utilisation of the lead-zinc ores. Industry bodies suggested that to encourage production of cadmium, royalty rates be adjusted to maintain the total impact of royalty at par with existing rates. No comments were received from any state with respect to cadmium.

Having considered the fact that its recovery is as a by-product and that production of cadmium has been declining in the country, despite surging demand, the Study Group recommends that royalty rate in respect of cadmium be adjusted to 11.4% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

CHROMITE

Existing rate: 15% of average sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

13.5% of average sale price on ad valorem basis

Justification:

Production of chromite fluctuated from 2.87 MT in 2013-14 to 3727 MT in 2016-17. The Government of Odisha has suggested to increase the royalty rate for chromite from 15% to 20%, citing the variation in profit margin of chromite lessees.

Considering the above views, the Study Group recommends that royalty rate in respect of chromite be adjusted to 11.4% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

COLUMBITE - TANTALITE

Existing rate : 10% of average sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

9 % of average sale price on ad valorem basis

Justification:

Columbite-Tantalite are atomic minerals found associated with mining of tin ore. Presently there is no production of the mineral in India. FIMI suggested that the existing rates may be reduced to incentivise domestic production.

The contribution of Columbite-Tantalite in the royalty collection is nil and therefore, the Study Group recommends that the existing rates may be revised to 7.5% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

COPPER

Existing rate : 4.62% of London Metal Exchange Copper metal price chargeable on the contained copper metal in ore produced

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

4.13% of London Metal Exchange Copper metal price chargeable on the contained copper metal in ore produced

Justification:

Copper is an important base metal having wide industrial applications, ranging from defence, space programme, railways, power cables, mint, telecommunication cables, etc. India is not self-sufficient in the production of copper ore. In addition to domestic production of ore and concentrates, India imports copper concentrates for its smelters.

The resources of copper ore though large are of low grade. The cost of production is high because of low metal content, increasing depth of mining operations and comparatively low scale of operations compared to global standards.

Madhya Pradesh is the leading producer of copper concentrates, accounting for about 51% of the production during 2016-17, followed by Rajasthan with 42% and Jharkhand with 7% production. Production was reported from 5 mines in 2016-17.

Production of copper ore and copper concentrates decreased by 1.6% and 11.2% respectively in 2016-17 as compared to the previous year. Analysis of copper ore production from mines over the period 2013-17 shows a fluctuating trend with 3.778 million tonnes in 2013-14, 3.505 million tonnes in 2014-15, 3.908 million tonnes in 2015-16 and 3.846 million tonnes in 2016-17. Analysis of production of copper concentrates over the period 2013-17 also shows a similar trend with 0.139 million tonnes in 2013-14, 0.108 million tonnes in 2014-15, 0.151 million tonnes in 2015-16 and 0.134 million tonnes in 2016-17.

Apparent availability of copper for domestic consumption in 2016-17 was 0.503 million tonnes of refined copper (calculated on the basis of production of refined copper cathodes, imports and exports of refined copper). It was primarily used in electrical and telecommunication Industry (56%), followed by transport (8%), consumer durables (7%), building & construction (7%), general engineering goods (6%) and other industries including process industry (16%).

Analysis of royalty rate for copper shows that it has been increasing from 3.2% in 2000, 3.2% in 2004, 4.2% in 2009 and 4.62%% in 2014 charged on LME copper metal price chargeable on the contained copper metal in ore produced.

Royalty rate on copper is 4.62% of LME copper price, whereas the royalty rate in other major copper producing countries such as Australia is 2.5% on ad valorem basis, Botswana is 3% on ad valorem basis, Chile is 0.5% - 4.5% on ad valorem basis, China is 2% - 8% on ad valorem basis, Zimbabwe is 2% on ad valorem basis, Argentina is 3% on profit, Brazil is 2% on profit and USA is 1.81% on profit.

GSI suggested lowering the royalty rates of copper, since the average grade of copper has been lowering from 1.1% to 0.6%-0.8% as mining is going deeper and beneficiation costs are going up.

FIMI highlighted that the cost of production of copper ore and concentrates has gone up owing to leaner grades and increased depth of mining operations, imposition of DMF, NMET etc, increase in mining input costs such as electricity, diesel, manpower and logistics costs. In addition to the high royalty rates, the exorbitantly high effective tax rate on mining in India also discourages domestic production of copper ore and makes the final products less competitive vis-à-vis imports. In view of the above, FIMI suggested to rationalize the royalty rate at par with mineral-rich countries and reduce the royalty rate of copper to 3.5% of LME copper price so that including the impact of royalty, DMF and NMET does not exceed the existing royalty rate. Highlighting the need for India to become self-sufficient in copper ore production and reduction of imports, FIMI also suggested 10% reduction in royalty to incentivize R&D, exploration, upgradation of mining/beneficiation technologies, etc.

HCL suggested a 20% reduction in royalty emphasizing that the grade of copper ore has been decreasing, cost of production has substantially increased and reduction of import duty of copper ore and concentrates has adversely affected primary copper production in the country. HCL also suggested that royalty on lean grade ore less than 0.45% Cu content should be incentivized by imposing lower royalty rate, since it is barely economical to mine such lower grades of copper.

The Government of Madhya Pradesh suggested to retain the existing rate of royalty on copper ore as the state revenues are declining will decreasing production of copper ore from Malajkhand deposit.

The State of Rajasthan pointed out that there is ambiguity in provision of royalty for base metals in Section 9 and IInd schedule of the MMDR Act, 1957. The state suggested that in the IInd schedule of the MMDR Act, 1957, the word "Ore produced" should be replaced by words "removed or consumed".

GLOBAL ANALYSIS

Consumption

- About 75% of the copper produced is used for electrical purposes, including power transmission and generation, building wiring, telecommunication, and electrical and electronic products, etc.
- The world consumption of refined copper was 22.65 million tonnes in the year 2015. China is the largest refined copper consuming country with 11.35 million tonnes (50.1% of world consumption) followed by USA (7.5%), Germany (5.4%), Japan (4.4%), and South Korea (3.1%).
- As per the International Copper Study Group (ICSG), global copper demand would remain essentially flat for the next few years owing to China's industrial demand growth expected at around 1%. Annual global refined copper consumption is 24 million tonnes in 2017, slightly more than global refined production.
- Consumption of copper will be weak in OECD countries due to subdued economic growth, housing and manufacturing activities.
- In India, refined copper consumption was estimated as 0.503 million tonnes in 2015-16 compared to 0.435 million tonnes in the previous year. The consumption increased by 15.6% primarily driven by electrical and telecommunications, transport, consumer durables and building & construction.
- Indian market offers a huge potential for demand growth of copper industry in India. There is a huge potential for the nation to enhance its copper ore and metal production as India's per capita copper consumption

in 2016 is only 0.6 kg which is very low in comparison to countries like Russia 3.3 kg, China 5.4 kg, USA 5.5 kg, Italy 8.9 kg and Germany 13.6 kg. India's per capita consumption is likely to be moderate and has many strides to cover so as to match that of China.

- The demand for copper is estimated to substantially increase owing to the Government of India's focussed initiatives on electrification, smart cities, solar power and electric vehicles.

Production

- World reserves of copper metal is estimated at 790 million tonnes of copper content, of which Chile has the largest share, accounting for about 22% of world reserves, followed by Australia (11%), Peru (10%), Mexico & USA (6% each) and China (3%).

- World mine production of copper was 19.15 million tonnes in 2015 (an increase of 3.34% wrt previous year). Chile is the largest producer of mined copper with 30.1% share, followed by China & Peru (8.9% each), USA (7.2%) and Australia (5%).

- World refined copper production was 23.05 million tonnes in the year 2015 which showed an increase of 0.6% from that of the previous year. China was the largest producer of refined copper with 7.96 million tonnes in the year 2015 (34.5% of world production) followed by Chile (11.6%), Japan (6.4%), USA (4.9%), and Russia (3.8%),

- International Copper Study Group (ICSG) estimated world refined copper production at 23.6 million tonnes in 2017, which is further expected to increase to 24.6 million tonnes in 2018.

- ICSG expects that global production of mined copper will decline slightly owing to supply disruptions at multiple leading copper mines, lower ore grades, and a general lack of new projects and mine expansions.

- In Chile, the National Copper Corporation of Chile operates seven mines with a total capacity of 1.7 million tonne of mined copper and accounted for 30% of Chile's production. Codelco's Ministro Hales Mine, which began production in 2013, ramped up production by 69% to 2,38,000 tonnes in 2015. The Sierra Gorda Mine which started in 2014 increased output to 87,900 tonnes in 2015.

- In China, mined copper output decreased by 4% in 2015 compared to previous year owing to higher production costs and low copper prices. Smelter and refined copper production, however, increased by 6% and 4%, respectively, owing to increase in smelting capacity during the previous years. In response to falling copper prices, 10 leading Chinese copper producers agreed to cut refined copper production in 2016 by 3,50,000 tonnes. China also announced that it would close high-cost and outdated operations over the next several years.

- In Peru, copper concentrate production increased in 2015 at various mines - the 13% at Antamina Mine through mill output, 21% at Antapaccay Mine, 9% at Cerro Verde Mine due to mine expansion. The Toromocho Mine commissioned in 2013 ramped up production of copper concentrate by 159% to 1,82,000 tonnes in 2015. The Constancia Mine started in 2015 and produced 1,06,000 tonnes of copper concentrate by year end and this mine is projected to produce an average of 82,000 tonnes per annum of copper concentrate over the next 22 years.

- In Brazil, mined copper production increased significantly to 1,55,000 tonnes due to a 58% increase in copper output at the Salobo Mine owing to mine expansion.

- In Mongolia, the Oyu Tolgoi mine produced 2,02,000 tonnes of copper in 2015, an increase of 36% compared to previous year and continues to ramp up production.

- With its reserves to the tune of 207.77 million tonnes of copper, India needs to focus significantly on exploration and beneficiation of low grade copper ores to reduce its import dependency.

- Copper is one of the most recycled metal of all the metals. The recycling of copper scrap is gaining importance worldwide simply because of the fact that recovery of copper metal from scrap requires much less energy than its recovery made from primary source. This is expected to increase with the shift towards electric vehicles and batteries.

Keeping in view, the global consumption-production trend, analysis of global royalty rates, increase in production costs and future domestic demand, the Study group recommends that royalty rate for copper be reduced to 3.5% of LME copper price so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

DIAMOND

Existing rate	:	11.5% of average sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(i)	Gem variety	10.5% of average sale price on ad valorem basis
(ii)	Industrial variety	10.5% of average sale price on ad valorem basis

Justification:

At present, production of diamond is reported from two public sector mines in Madhya Pradesh – one operated by NMDC and the other operated by DMG, Government of Madhya Pradesh. However, the mines operated by NMDC contributed almost the entire production of 36516 carats in 2016-17. Total production of diamond has not changed much from 36107 carats produced in 2013-14. The Bunder deposit discovered in Madhya Pradesh is further expected to be developed into a world-class mine. However, diamond exploration involves high risks and large investments.

NMDC highlighted that despite the Panna Diamond Mine has been suffering heavy losses and is not permitted to expand laterally so as to go further deeper and access the main ore-body. NMDC suggested to reduce the royalty rate of diamond due to high cost of production and low occurrence of diamonds in its mine.

To incentivize existing diamond mines and encourage exploration, FIMI suggested to reduce the royalty rate of diamond so as to neutralize the financial impact of increased production cost owing to DMF and NMET levies.

The Government of Madhya Pradesh suggested changes in both the percentage of royalty as well administration of royalty on diamonds. The state highlighted that the computation of royalty based on 'average' sale price of gem and industrial categories of diamond since 2014 has been resulting in loss of revenue to the state, as there is a huge price difference between the two categories. The state suggested that for both gem & industrial varieties should be linked to invoice value and not the average sale price. It suggested that royalty on diamonds should be increased from 11.5% to 15% of sale price.

The Government of Madhya Pradesh further suggested that large-sized diamonds over 10 carat should be auctioned individually. Below 10 carat, ten percent of the lot from ROM be separated and assorted randomly and in line with policy laid down by the state and be offered for auction for price discovery.

On the issue of computation of royalty on diamond, FIMI suggested that the issue of loss to the exchequer can also be resolved by separately publishing the average sale price of gem and industrial diamonds. This will also take care of any discrepancies in computation of royalty if more number of diamond mines come into operation in future.

In view of the fact that diamond is a high value mineral and its mining involves high risk, the Study Group recommends that royalty on diamond be adjusted to 9% on ad valorem basis so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

Considering the issue being faced by the State of Madhya Pradesh due to computation of royalty based on average sale price, the Study Group recommends that separate average sale price be published by IBM for gem and industrial category of diamonds.

FLUORSPAR / FLUORITE

Existing rate : 8% of average the sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
7.5% of average sale price on ad valorem basis

Justification:

At present, there are only 2 fluorspar mine in India – both in the public sector. However, production is reported from only 1 mine in Chandrapur, Maharashtra. Production of fluorspar has been continuously declining from 2487 tonnes in 2013-14 to 1175 tonnes in 2016-17. It is mainly consumed in the iron and steel industry.

To promote enhanced production, FIMI has suggested lowering of rate to 6% on ad valorem basis since it is also a low value commodity. No comments were received from any state government.

In view of the diminishing production and closing of operating mines, the Study Group recommends royalty rate to be adjusted to 6% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

GARNET

Existing rate:

(i) Abrasive	:	4% of average sale price on ad valorem basis
(ii) Gem	:	10% of average sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(i) Abrasive	:	3% of average sale price on ad valorem basis
(ii) Gem	:	9% of average sale price on ad valorem basis

Justification:

Production of abrasive grade garnet has drastically declined from 0.48 MT in 2013-14 to 0.085 MT in 2016-17. Andhra Pradesh accounted for 60% of the total garnet production in the country, followed by Odisha (25.8%), Tamil Nadu (12.4%) and Rajasthan (1.8%). Production of gem variety of garnet has not been reported since 2007-08. Garnet (abrasive) is one of the minerals that occurs in beach sand deposits in India and has the potential to attract a good amount of private sector investment.

The State of Telangana pointed out that the present royalty regime viz., Royalty, DMF, NMET etc has resulted in higher tax burden on mining sector as high as 64% compared to other countries. The State emphasized that such a high taxation on mining in India may lead to exiting of major mining players and discourages investment in mining sector. However, considering the value of mineral production during last three years which has increased by 12%, the State of Telangana has suggested to shift to royalty on tonnage basis with a proposed royalty for abrasive variety of garnet at Rs. 484 / tonne. The State also suggested that royalty on minerals in raw form that are exported should marginally be stepped up.

The Study Group recommended that since for abrasive variety of garnet, cost of production compared to sale price is low, the royalty rates may be adjusted to 3% for abrasive category and 7.5% for gem category so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

GOLD

Existing rate:

(i) Primary:	4% of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the gold metal in ore produced.
(ii) By-product gold:	3.3% of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the by-product gold metal actually produced

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(i) Primary:	3.58% of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the gold metal in ore produced.
(iii) By-product Gold:	2.95% of London Bullion Market Association

Price (commonly referred to as London Price) chargeable on the by-product gold metal actually produced

Justification:

There are 4 gold producing mines in the country in Karnataka and Jharkhand. Approximately 99% of the gold production comes from the public sector, i.e., HGML.

Despite huge demand in the country for gold, production of primary gold has remained almost stagnant from 1564 kg in 2013-14 to 1594 kg in 2016-17. India is the largest consumer market for gold in the world and almost the entire domestic demand is met through imports.

FIMI suggested that in order to reduce import dependence and encourage new entry into gold mining in India, the royalty rate of primary gold may be adjusted to 3% so as to rationalize the additional burden on existing gold miners due to imposition of DMF and NMET. HGML suggested that royalty rates on gold should be reduced, since its mining operations are venturing deeper and deeper and thus its production cost are rising sharply.

The Government of Madhya Pradesh expressed that royalty on gold should be maintained at the present rate.

The Study Group observed that since the last revision of royalty rates in the year 2014 prices of gold have risen considerably. However in view of the fact that the country is meeting its demand of gold almost entirely by imports, the Study Group is of the opinion that there is a need to encourage mining of gold and therefore the Study Group suggests that royalty rates of primary gold may be adjusted to 3% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

On similar lines, the Study Group recommended that royalty rate for by-product gold be adjusted to 2.5% of London price chargeable on the by-product gold metal actually produced for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

GRAPHITE

Existing rate:

(i) With 80% or more fixed carbon	:	Rs. 225 per tonne
(ii) With 40% or more fixed carbon(FC) but less than 80% fixed carbon(FC)	:	Rs. 150 per tonne
(iii) With 20% or more fixed carbon(FC) but less than 40% fixed carbon(FC)	:	Rs. 65 per tonne
(iv) With less than 20% fixed carbon (FC)	:	Rs. 25 per tonne

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(i) With 80% or more fixed carbon	:	Rs. 201 per tonne
(ii) With 40% or more fixed carbon(FC) but less than 80% fixed carbon(FC)	:	Rs. 134 per tonne
(iii) With 20% or more fixed carbon(FC) but less than 40% fixed carbon(FC)	:	Rs. 59 per tonne
(iv) With less than 20% fixed carbon (FC)	:	Rs. 23 per tonne

Justification:

There are 8 graphite producing mines in the country. Production of graphite in 2013-14 was 0.146 MT compared to 0.122 MT in 2016-17. Prior to revision of royalty in 2014, royalty on graphite was charged on ad valorem basis which caused administrative difficulties in computing average sale prices. As a result, in 2014, it was decided to shift to charging of royalty on graphite on tonnage basis.

FIMI suggested that royalty on graphite be reduced to increase production in the country. No comments were received from any state government.

In view of the above, the Study Group recommends that the royalty rates for various categories of graphite be reduced so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

IRON ORE

Existing rate (CLO, Lumps, Fines and concentrates all grades)	:	15% of average sale price on ad valorem basis

Recommended rate:

Haematitic Ore (minimum 45% Fe)	a) 15% of average sale price on ad valorem basis for mines allotted without auction. b) 13.5% of average sale price on ad valorem basis for auctioned mines
Haematite Siliceous Ore (minimum 35% Fe)	9% of average sale price on ad valorem basis for all mines
Magnetite Ore (minimum 15% Fe)	9% of average sale price on ad valorem basis for all mines
Concentrate prepared by beneficiation and/or concentration of low grade ore containing 40% Fe or less	3% of average sale price on ad valorem basis for all mines

Justification:

Iron-ore is the principal raw material for iron & steel, which is the driving force behind industrial development of a nation. Thus, iron-ore assumes prime importance among all mining activities undertaken by any country

Odisha is the leading producer of iron-ore accounting for about 52% of the total production in 2016-17 followed by Chhattisgarh (16%), Karnataka (14%), Jharkhand (11%), and remaining by Andhra Pradesh, Goa, Madhya Pradesh, Maharashtra and Rajasthan (7% collectively).

Production of iron-ore and concentrates shows a fluctuating trend from 152.18 million tonnes in 2013-14, 129.32 million tonnes in 2014-15, 158.11 million tonnes in 2015-16 to 192.08 million tonnes in 2016-17. Consumption of iron-ore in 2016-17 was 142.53 million tonnes, which was primarily used for iron & steel (83.6%), sponge iron-industries (15.7 %) and remaining 0.7% by other industries. Besides sizeable amount of iron ore is being exported also.

Royalty rate of iron-ore was charged in Rs./tonne for various categories of lumps, fines and concentrates from 2000 to 2009, while in 2009 India migrated to a uniform royalty rate on ad valorem basis for all grades. In 2009, the royalty rate for all grades of iron-ore was 10% of sale price which was increased to 15% of average sale price in 2014, indicating a 50% increase in royalty on iron-ore.

Royalty rate on iron-ore in India is 15% on ad valorem basis, whereas royalty is 7.5% on ad valorem basis in Australia, 2% on ad valorem basis in Brazil, 0.5% - 4% on ad valorem basis in China, 4% on ad valorem basis in Indonesia, 0.5% - 7% on ad valorem basis in South Africa, 4.5% on ad valorem basis in Thailand, 4% - 10% on ad valorem basis in USA, 2% - 16% on profit in

Canada and 7.5% on profit in Mexico. It is evident that the royalty rates for iron-ore in India is much higher compared to other major producers in the world.

In line with the Gazette Notification dated 25th April, 2018 on Threshold Value of Minerals, for the purpose of royalty administration, FIMI suggested to classify iron-ore into three categories as – (a) Haematitic Ore (minimum 45% Fe); (b) Haematitic Siliceous Ore (minimum 35% Fe); and (c) Magnetite Ore (minimum 15% Fe).

FIMI highlighted that the cost of production of iron-ore has gone up owing to imposition of DMF, NMET etc, increase in mining input costs such as electricity, diesel, manpower and logistics costs. In addition to the high royalty rates, the exorbitantly high effective tax rate on mining in India to the tune of 64% also discourages domestic production of iron-ore and makes the final products less competitive vis-à-vis imports. In view of the above, FIMI suggested to rationalize the royalty rate at par with mineral-rich countries and reduce the royalty rate of Haematitic Ore (min. 45% Fe) so that the impact of DMF and NMET does not exceed the existing royalty rate of 15% on ad valorem basis. Highlighting the need for mineral conservation, FIMI also suggested a further 20% reduction in royalty for utilization of low grade ores such as Haematitic Siliceous Ore (minimum 35% Fe) and Magnetite Ore (minimum 15% Fe).

FIMI pointed out that the charging of royalty on royalty in case of ad valorem based minerals needs to be stopped by suitably amending MCR, 2016.

The Ministry of Steel suggested to compare the royalty rates of iron-ore in other countries such as Canada, Australia, Japan and China, which are the major competitive countries in terms of exim trade. In view of the National Steel Vision to develop a crude steel capacity of 300 MT by 2030-31 and huge demand for iron-ore for domestic industry, the Ministry suggested that royalty rate of iron-ore should be reduced to 10%. The Ministry also strongly emphasized on incentivizing beneficiation of low grade iron-ore into sinters and pellets, as practiced in Western Australia. The Ministry suggested that for auctioned mines, the payment of mining levies such as royalty, DMF and NMET should be subsumed in the bid premium.

The Government of Karnataka suggested that royalty on low-grade ore may be reduced since its beneficiation requires heavy capital investment and operational cost. The State proposed a marginal increase of 3% to 5% on existing royalty rate.

The Government of Chattisgarh suggested to create one more grade in iron-ore, i.e. 65%-67% and >67%. The state suggested to increase royalty to 16% for 65%-67% Fe grade, 18% for 62%-65% grade and 58%-62% grade for non-captive mines.

The Government of Odisha has suggested to increase the royalty rate for iron-ore from 15% to 20% of average sale price on ad valorem basis, citing the variation in profit margin of iron-ore lessees.

The Government of Jharkhand suggested to increase the royalty for iron-ore from 15 to 20% citing higher profit margins by mining lessees. The state also suggested that royalty of iron-ore should be charged on the sale price, as reflected in the invoice, excluding taxes, levies, etc., rather than being charged on the average sale price presently. However, it doesn't handle the challenge of price discovery in case of captive mines.

The Government of Andhra Pradesh suggested to continue existing rate of royalty for iron-ore at 15% of average sale price on ad valorem basis.

Global Analysis

Consumption

- Iron & steel industry is the principal consumer of iron-ore. World crude steel production was 1,689 million tonnes in 2017. China continued to be the leading producer with a share of about 49% which is followed by Japan & India (6% each) and USA (5%).

- World pig iron production was about 1,230 million tonnes in 2015 with its major producers being China (56%), Japan (7%), India (6%) and Russia (4%).

- Apparent steel consumption was 1587 million tonnes in 2017, driven mainly by China (46.4%), Japan (4.1%), other Asian countries (15.9%), EU (10.2%) and remaining by rest of the world.

- In 2019, world steel production is forecasted to grow by 0.7% to reach 1,626.7 million tonnes, which will further fuel the demand for iron-ore globally. While in 2018, high confidence, strong investment levels and a recovery in commodity prices are generating a virtuous cycle for steel demand globally both in developed and developing economies, the slight deceleration in 2019 will be due to further deceleration in China and weakened investment momentum due to higher interest rates.

- In China, a mild deceleration trend is expected. Steel demand in 2018 is expected to stay flat. In 2019, it is expected to contract by 2.0% with a further slowdown in construction activity. In manufacturing, the machinery sector is expected to maintain positive growth on the back of a strong global economy while automotive and home appliances are expected to decelerate. High corporate and local government debt continues to raise concern but a hard landing for the Chinese economy is unlikely in the short run.

- The steel outlook remains robust in developed economies and is expected to increase by 1.8% in 2018 and decelerate to 1.1% in 2019.

- In USA, strong consumption and investment due to high confidence, rising income and low interest rates will sustain momentum of steel demand.

- In Japan, steel has been benefitting from an improving investment sentiment and government stimulus.

- In EU, steel demand is expected to be supported by a pickup in non-residential construction and strong manufacturing activities.

- In South Korea, despite improved consumer sentiment, steel demand growth will be constrained by high consumer debts, weakening construction and a depressed ship-building sector.

- In early 2017, Brazil started to come out of its deep recession, but uncertainty remains as to the sustainability of this recovery momentum. Furthermore, recovery of construction activities has been slow and so is demand for steel and iron-ore.

- Global steel demand over the next decade will mainly depend on the emerging and developing economies and so will be the demand for iron-ore.

- India is ranked as third largest producer of crude steel in the world. The steel outlook in India is robust propelled by strong demand particularly from construction, manufacturing and automotive sectors. The economy is stabilising from the impact of currency reform and GST implementation and steel demand is expected to accelerate gradually, mainly driven by public investment.

- In India, about 142.53 million tonnes of iron-ore was consumed in 2016-17 for iron & steel industries, coal washery and cement.

- The New Steel Policy, 2017 aspires to achieve 300 MT of steel making capacity by 2030. The new Steel Policy further seeks to increase per capita steel consumption to the level of 160 kg by 2030 from the existing level of around 60 kg.

- With the target of 300 million tonnes of steel, iron ore requirement will be to the tune of 450 million tonnes per annum. Although the iron-ore demand looks strong in the long-term, in the short-term supply disruption is imminent owing to closure of many non-captive mines in 2020 and various judicial and statutory pronouncements adversely affecting the iron-ore sector.

Production

- The world production of iron ore was 3,328 million tonnes in 2015. China continued to be the major producer and accounted for about 41% of the total iron-ore production, followed by Australia (25%), Brazil (12%), India (5%) and Russia (3%). These five countries accounted for about 86% of the world production of iron ore.

- In China, stockpiles of iron ore in 2014 surpassed 100 million tonnes. 20% to 30% of iron ore mines in China closed or were idled in 2014 owing to low prices.

- Australia's Economic Demonstrated Resources increased to 54.4 Giga tonnes with an estimated resource life of 75 years. In Australia, its three leading miners – BHP Billiton Ltd., Fortescue Metals Group Ltd., and Rio Tinto Group – were also among the four leading iron ore producers globally in 2014. Rio Tinto produced 225 million tonnes, BHP Billiton produced 193 million tonnes and Fortescue produced 140 million tonnes of iron ore in 2014.

- In Brazil, Vale S.A.'s production at Samarco mine was 332 million tonne in 2014 and in the same year Anglo American Plc completed the Minas-Rio project.

- In Canada, Arcelor Mittal completed the transition of the Fire Lake Mine to year-round operations, increasing production to 6.26 million tonnes in 2014.

- With its vast reserves to the tune of 5,422 million tonnes of iron-ore and further exploration alongwith mining, India is well placed in terms of raw material supply for its iron & steel industry. India has the 5th largest iron-ore reserves in the world and can become a major global low cost iron-ore production hub.

Considering the changes stipulated in the Gazette Notification dated 25th April, 2018 on Threshold Value of Minerals, the Study group recommends that royalty rate for iron-ore be classified into four categories accordingly – haematitic ore; haematitic siliceous ore; magnetite ore and concentrate etc. prepared by 40% or less Fe content ore. The separate category of low royalty for concentrate prepared by beneficiation of 40% or less Fe content ore existed upto year 2009 and it is being recommended to be restored again.

Keeping in view, the global consumption-production trend, analysis of global royalty rates, increase in production costs and future domestic demand of iron-ore, the Study group recommends that royalty rate for haematitic iron-ore be reduced to 11.4% so that the net impact including DMF and NMET remains same as 15% of average sale price on ad valorem basis for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

To further incentive the utilization of low grade ores, the Study Group recommends that royalty on both haematitic siliceous ore and magnetite ore be further reduced to 9% on ad valorem basis and also incentivize concentrate prepared by beneficiation and /or concentration of low grade ore containing 40% Fe or less for all category of mines.

KYANITE

Existing rate : 12% of average sale price on ad valorem basis.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
11% of average sale price on ad valorem basis.

Justification

Kyanite is an alumina-silicate mineral used primarily in the refractory industry. There are 4 producing mines, all in Maharashtra. Analysis of annual production trend shows a fluctuating trend with 3,679 tonnes in 2013-14, 6,260 tonnes in 2014-15, 2,901 tonnes in 2015-16 and 3,254 tonnes in 2016-17.

FIMI suggested that the rates be revised to rationalize the increase in statutory costs owing to imposition of DMF, NMET etc. No comments were received from any state government.

In view of the above, the Study Group recommends that royalty rates may be adjusted to 9% so that net impact including DMF and NMET remains same as 12% of average sale price on ad valorem basis for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

LEAD

Existing rate : 8.5% of London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced

14.5% of London Metal Exchange Lead metal price chargeable on the contained lead metal in the concentrate produced

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

7.59% of London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced

12.95% of London Metal Exchange Lead metal price chargeable on the contained lead metal in the concentrate produced

Justification:

About two-thirds of the lead produced in the world is used in manufacture of lead-acid storage batteries. However, India is in short supply of lead vis-a-vis demand in the country. The ever increasing demand for lead especially from Lead Acid Battery Sector is met by the thriving market of lead scrap recycling.

HZL based in Rajasthan is the only producer of primary lead and primary zinc in India. During 2016-17, production of lead and zinc ore in 2016-17 was 11.88 million tonnes, an increase of 13.7% over the previous year. The production of lead concentrates was 2,68,051 tonnes, whereas production of primary lead was 1,42,231 tonnes.

Analysis of production of lead concentrates shows an increasing trend from 0.194 million tonnes in 2013-14, 0.197 million tonnes in 2014-15, 0.261 million tonnes in 2015-16 to 0.268 million tonnes in 2016-17.

Apparent consumption of lead during 2016-17 was 1,75,599 tonnes (calculated on the basis of production of primary lead, imports and exports of refined lead). It was primarily used in the battery industry (74%), followed by pigments & compounds (9%), rolled and extruded products (8%), alloys (3%), cable sheathing (2%) and the balance 4% is consumed by other industries.

Analysis of royalty rate for lead shows that it has been increasing from 5% in 2000, 5% in 2004, 7% in 2009 and 8.5% in 2014 charged on LME lead metal price chargeable on the contained lead metal in ore produced. Since 2009, royalty on lead concentrate has been charged at 12.7% in 2009 and 14.5% in 2014 on LME lead price.

In India, royalty rates on lead in ore and concentrate are 8.5% and 14.5% of LME lead price, whereas the royalty rate in other major lead producing countries such as Australia is 2.5% on ad valorem basis, China is 2%-6% on ad valorem basis, Peru is 3% on ad valorem basis and Thailand is 2.5% on ad valorem basis. It is evident that the royalty rates for lead in India are much higher compared to other major producers in the world.

GSI suggested lowering the royalty rates of lead, since the average grade of lead-zinc ore has been lowering as mining is going deeper and beneficiation costs are going up.

HZL submitted that the royalty regime for lead and zinc is the highest not only globally, but also in comparison to other metals in India which are linked to LME price. Hence, royalty for lead needs to be rationalized at par with the rates of copper, bauxite, etc. which are linked to LME. It emphasized that cost of lead/zinc production has gone up substantially at HZL owing to its shift to underground method and falling ore grades as a consequence. A reduction in royalty will help greatly in promoting further investment and increasing productivity in lead/zinc mines, which will definitely enhance the state revenues.

FIMI highlighted that the cost of production of lead/zinc ore and concentrates has gone up owing to leaner grades and increased depth of mining operations, imposition of DMF, NMET etc, increase in mining input costs such as electricity, diesel, manpower and logistics costs. In addition to the high royalty rates, the exorbitantly high effective tax rate on mining in India also discourages domestic production of lead/zinc ore and makes the final products less competitive vis-à-vis imports. In view of the above, FIMI suggested to rationalize the royalty rate at par with mineral-rich countries and reduce the royalty rate of lead in ore and concentrate to 6.5% and 11% respectively of LME lead price so that including the impact of royalty, DMF and NMET does not exceed the existing royalty rate. Highlighting the need for India to become self-sufficient in primary lead production, FIMI also suggested 10% reduction in royalty to incentivize R&D, exploration, upgradation of mining/beneficiation technologies, etc.

The State of Rajasthan pointed out that there is ambiguity in provision of royalty for base metals in Section 9 and IInd schedule of the MMDR Act, 1957. The state suggested that in the IInd schedule of the MMDR Act, 1957, the word "Ore produced" should be replaced by words "removed or consumed".

GLOBAL ANALYSIS

Consumption

- World consumption of refined lead was 11.28 million tonnes in the year 2016 (including secondary lead). China is the largest refined lead consuming country with 4.65 million tonnes consumption during the year 2016 which was 41.2% of world refined lead consumption followed by USA (14%), Korea, Rep.of (6%), India (5%), Germany (3%), and Italy (2%).

- International Lead & Zinc Study Group (ILZSG) anticipates that global demand for refined lead metal will rise to 11.90 million tonnes in 2018. This will be primarily a consequence of increases in apparent usage in China and the United States which are forecast to grow by 3.4% and 3.1% respectively.

- In EU, usage of lead metal is expected to grow by 2.1%, influenced by a further 4.5% rise in Italy. A stable outlook is foreseen in Japan and South Korea.

- Global lead consumption is expected to grow at 2% to 2.5% a year from 2010 into the 2020s, which is in scope with the long-term growth trajectory of 2.4% from 1960 to 2016.

- Lead is one of the highest recycled metal, i.e., about 56% of refined lead produced worldwide is from recycled material as this process takes about one-third of the energy needed to extract it from its ores, entails low capital cost, less environmental hazards and high metal contents.

- ILZSG anticipates that global demand for refined lead metal will exceed supply by 17,000 tonnes in 2018.

- Used lead acid battery is one of the largest sources of secondary lead production globally including India. Lead battery industry in India is currently estimated at Rs. 40,000 crore with 60% automotive and 40% industrial.

- India is becoming a favourite manufacturing hub for major OEMs and automobiles production.

- The replacement market demand is growing year after year with an increased number of vehicles on the road. Power deficit in the country is restyling in an increased need of power backup and inverter battery.

- With the projected automobile and infrastructure growth, the Indian lead demand is expected to grow and sustain for 7% rate in the coming years. The demand of the Indian Battery industry is estimated to be around 90% of the Indian lead demand.

Production

- World mine production of lead ore was about 4.7 million tonnes in 2016. China is the leading producing country with 2.23 million tonnes (48%) followed by Australia (10%), USA and Peru (7% each), Mexico (5%), Russia (4%), India (3%), etc.

- As per the International Lead and Zinc Study Group (*ILZSG*), global lead mine production is forecast to rise by 4.2% to 4.90 million tonnes in 2018. This will be driven mainly by an expected increase in Australian output during the second half of the year.

- In China, mined lead productionis expected to grow by 1.2% in 2018.

- In Cuba, mined lead production is predicted to rise as a result of higher output at the Castellanos mine.

- World refined lead production (includes secondary production) was 11.12 million tonnes in 2016. Secondary lead production represented about 56% of total refined lead production worldwide. China is the largest producer of refined lead with 4.66 million tonnes in the year 2016 and contributed 42 % of world refined lead production followed by USA (10%), Korea Rep. of (7%), India (5%), Germany (3%), United Kingdom, Mexico and Canada (3% each), Japan , Australia and Italy (2% each), etc.

- ILZSG anticipates an increase in world lead metal output of 3.8% to 11.88 million tonnes in 2018. This will be mainly influenced by further rises in China and the United States.

- In China, lead metal output is forecast to rise by 4.7% and in the United States by 10%, recovering after a significant reduction in 2017.

- In Australia, output is predicted to expand by 13.7% in 2018 and in Europe is forecast to grow by 1.6%, influenced by rises in Belgium and Italy that are expected to more than offset a reduction in Poland.

- In India, lead mine output is predicted to be marginally lower due to a fall in output at Hindustan Zinc's Rampura Agucha operation.

- Lead metal will remain in demand for the electric vehicles in view of pressure on petrol fuel driven automobiles. Increased volume of transportation prompted by higher industrialisation is going to keep lead in demand.

- Government of India's thrust to the automobile industries to produce battery running vehicles would result in huge demand for lead in future, which is expected to be 6 lakh tonnes by 2020.

Keeping in view, the global consumption-production trend, analysis of global royalty rates, increase in production costs and future domestic demand, the Study group recommends that royalty rate for lead ore and concentrate be reduced to 6.5% and 11% respectively of LME lead price so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

LIMESTONE

Existing rate:

(i) L.D. grade (less than 1.5% SiO_2) - Rs. 90 per tonne

(ii) Others - Rs. 80 per tonne

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(a) L.D. grade (less than 1.5% SiO_2) - Rs. 81 per tonne

(b) Others - Rs.72 per tonne

Justification:

Production of limestone has increased from 280.863 MT in 2013-14 to 313.200 MT in 2016-17. In 2016-17, grade wise distribution of limestone is cement grade 302.785 million tonnes, iron & steel grade 6.596 million tonnes and chemical grade 3.815 million tonnes. Thus cement grade accounted for 96% of the total limestone production.

FIMI emphasized that limestone is a low value bulk mineral. In view of the increased cost of production due to imposition of DMF and NMET etc. and other mining inputs such as fuel (coal, petcoke), logistics, electricity, etc., FIMI suggested lowering of royalty rate of limestone to provide a boost to infrastructure sector. FIMI added that the newly auctioned limestone blocks will also contribute significantly to the state revenues, while adding to socio-economic growth in the mining areas and hence there should be no royalty imposed on auctioned limestone mines. To promote beneficiation and blending, reduced royalty rate may be considered for low-grade limestone.

The Government of Andhra Pradesh suggested to increase the royalty rate of limestone across all grades by Rs. 20 per tonne, citing the fact that limestone prices (cement grade) have doubled from Rs. 200 per tonne in 2009-10 to Rs. 400 per tonne in 2017-18.

The Government of Odisha has cited the variation in profit margin in limestone and suggested to increase the royalty rate for L.D. grade limestone to Rs. 105 per tonne from Rs. 90 per tonne and that of other grade limestone to Rs. 95 per tonne from Rs. 80 per tonne. The Government of Chattisgarh and Tamil Nadu suggested to increase the royalty rate of limestone.

The State of Telangana pointed out that the present royalty regime viz., Royalty, DMF, NMET etc has resulted in higher tax burden on mining sector as high as 64% compared to other countries. The State emphasized that such a high taxation on mining in India may lead to exiting of major mining players and discourages investment in mining sector. The Government of Telangana has only suggested to increase the royalty of other limestone grades to Rs. 90 per tonne from Rs. 80 per tonne.

The Government of Rajasthan suggested that limestone other than LD grade and cement grade may be declared as minor mineral to support the local industry.

After analysis of data on cement price for the last 3 years, impact of limestone as raw material cost and its significance for infrastructure growth, the Study Group recommends to adjust royalty rate of LD grade limestone to Rs. 70

from Rs. 90 per tonne and other grade limestone to Rs. 60 from Rs. 80 per tonne so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

LIMESHELL

- **Existing rate** : Rs. 80 per tonne

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
Rs. 72 per tonne

Justification:

Limeshell is a calcareous material of high purity, which is used in chemical industry and white cement and Portland cement. Production of limeshell was 18,750 tonnes in 2013-14 and 12,343 tonnes in 2016-17. Entire production of limeshell is reported from Kerala (68%) and Karnataka (32%). Owing to the increased financial burden on miners, FIMI suggested lowering the rates of royalty for limeshell. No comments were received from any state government.

In view of the fact that limeshell is also being used in cement industry, the Study Group recommends that the rates of royalty may be adjusted to Rs. 60 from Rs. 80 per tonne so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

MAGNESITE

Existing rate : 3% of average sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
3% of average sale price on ad valorem basis

Justification:

Magnesite is mainly used in the refractory industry, ferro-alloys and iron & steel industry. Analysis of production data of magnesite shows that production of magnesite has increased from 197,000 tonnes in 2013-14 to 299,000 tonnes in 2016-17. Tamil Nadu is the major producing state (75%), followed by Uttarakhand (23%) and Karnataka (2%).

FIMI has suggested that the existing rates be reduced to make it competitive in the international market and reduce dependence on imports, which were to the tune of 142,599 tonnes in 2016-17. Exports were a meagre 8,063 tonnes in 2016-17.

The Government of Tamil Nadu suggested to increase royalty rate of Magnesite.

After analysis of cost of production, import and export of Magnesite, the Study group recommends that royalty rate be reduced to 2.2% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

MANGANESE ORE

Existing rate:

(i) Ore of all grades: 5% of average sale price on ad valorem basis

(ii) Concentrates: 1.7% of average sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(i) Ore of all grades: 4.5% of average sale price on ad valorem basis

(ii) Concentrates: 1.55% of average sale price on ad valorem basis

Justification:

Manganese is always available in combination with iron, laterite and other minerals. It is an essential input for ferro-alloys and steel making. Analysis of production of manganese ore in the country shows fluctuating trend. Production of manganese ore was 2.626 MT in 2013-14, 2.369 MT in 2014-15, 2.148 in 2015-16 and 2.393 Mt in 2016-17. India is also heavily dependent on imports, which was to the tune of 1.908 MT in 2016-17, with insignificant quantity of export of only 244 tonnes during the same year. Madhya Pradesh accounted for 27% of the total manganese ore production in India, followed by Odisha (25%), Maharashtra (25%) and remaining by Andhra Pradesh, Gujarat, Jharkhand, Karnataka, Rajasthan and Telangana.

FIMI suggested that considering the increased cost of production due to additional levies, huge demand for steel-making and expected shortage of supply post-2020, rates may be adjusted to neutralize the increased impact of DMF and NMET.

The Government of Andhra Pradesh suggested to increase the royalty rate of manganese ore to 6% from the existing rate of 5% on ad valorem basis. The Government of Odisha has cited the variation in profit margin in manganese ore and suggested to increase the royalty rate to 7.5% of average sale price on ad valorem basis.

The State of Telangana pointed out that the present royalty regime viz., Royalty, DMF, NMET etc has resulted in higher tax burden on mining sector as high as 64% compared to other countries. The State emphasized that such a high taxation on mining in India may lead to exiting of major mining players and discourages investment in mining sector. The State of Telangana has suggested to shift to royalty on tonnage basis with a proposed royalty for manganese ore of all grades at Rs. 227 per tonne.

The Study Group after analysis of the data on cost of production, demand and imports, recommends that royalty rates for manganese ore of all grades may be adjusted to 3.8% and concentrates be adjusted to 1.3% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

MARL

Existing rate : Rs. 60 per tonne
Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
Rs. 54 per tonne

Justification

The entire production of marl in India is from Gujarat. There were 5 private sector mines which reported production of marl as an associate mineral in 2016-17. Production of marl was 3.254 MT in 2013-14 and 2.204 MT in 2016-17. Owing to the increased financial burden on miners, FIMI suggested lowering the rates of royalty for marl. No comments were received from any state government.

In view of the fact that marl is also being used in cement industry, the Study Group recommends that the rates of royalty may be adjusted to Rs. 45 from Rs. 60 per tonne so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

MONAZITE

Existing rate : Rs. 125 per tonne
Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction :

Rs. 112 per tonne

Justification:

Monazite is the principal source of rare earths and thorium in India. It occurs in association with other heavy minerals such as ilmenite, rutile, zircon, etc. in beach and inland placer deposits.

At present there is very little mining of this mineral. Production of monazite (96% pure) was reported from only IREL plant in Kanyakumari. Production of monazite was 491 tonnes in 2013-14, 2825 tonnes in 2014-15 and nil in 2015-16. As per the recent amendment to Atomic Mineral Concession Rules, 2016, all beach sand deposits containing more than 0.75% monazite in Total Heavy Minerals (THM) are reserved exclusively for Government-owned corporations. Subsequently, as per Atomic Minerals(Second amendment) Rules, 2019 dated 20th February 2019, all beach sand deposits containing more than 0% Monazite in Total Heavy Minerals (THM) are reserved exclusively for government owned corporations.

Considering the strategic nature of monazite as the prime source for rare earths, FIMI has suggested that the royalty rates be reduced to promote its production. No comments have been received from any state government.

In view of the above, the Study Group recommends to reduce the royalty rate of monazite to Rs. 95 from Rs. 125 per tonne to encourage R&D efforts for indigenous strategic resources, especially for nuclear power generation for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

NICKEL

Existing rate : 0.12% of London Metal Exchange Nickel metal price chargeable on the contained nickel metal in ore produced.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction: 0.11% of London Metal Exchange Nickel metal price chargeable on the contained nickel metal in ore produced.

Justification:

At present there is no mining of nickel and the entire requirement of nickel is met through imports. FIMI suggested that no royalty be charged for nickel so that exploration and mining of this strategic metal is encouraged. No comments were received from any state government.

In view of the above, the Study Group recommends that the royalty rate of nickel should be reduced to 0.10% from 0.12% of LME nickel price so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

PERLITE

Existing rate : 12% of average sale price on ad valorem basis.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
11% of average sale price on ad valorem basis.

Justification

There has been no production of perlite since 2007-08. Ironically, there are also no reserves reported, despite a resource base of 2.406 million tonnes as on 01.04.2015.

Considering the fact that there is no production for this mineral presently, but in case it is resumed, the Study Group recommends that the royalty rate on perlite be reduced to 9% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

PYRITE

Existing rate : 2% of average sale price on ad valorem basis s

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
2% of average sale price on ad valorem basis

Justification:

Since 2003, no production of pyrite is reported. Ironically, there are also no reserves reported, despite a resource base of 1674 million tonnes as on 01.04.2015.

FIMI has suggested that royalty on pyrite may be waived off completely to promote exploration and production.

Considering the fact that there is no production for this mineral presently, but in case it is resumed, the Study Group recommends that the royalty rate on pyrite be reduced to 1.5% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

RUBY

Existing rate : 10% of average sale price on ad valorem basis

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
9% of average sale price on ad valorem basis

Justification:

The Study Group observed that there is no production of this mineral. But keeping in mind its resumption in future and need to encourage production, the Study Group recommends that the royalty rate should be reduced to 8% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

SELENITE

Existing rate : 12% of average sale price on ad valorem basis.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
11% of average sale price on ad valorem basis.

Justification

There has been no data for selenite. Considering the fact that there is no reported production or reserves of selenite in the country, the Study Group recommends that the royalty rate on selenite be reduced to 9% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

SILLIMANITE

Existing rate : 2.5% of average sale price on ad valorem basis.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

2.5% of average sale price on ad valorem basis.

Justification

Sillimanite is an alumina-silicate mineral used primarily in the refractory industry. There are 4 producing mines, with Andhra Pradesh leading the production of sillimanite in India (54%), followed by Odisha (23%), Kerala (14%) and Maharashtra (9%). Analysis of annual production trend shows that there has been only minor fluctuation in production since 2013-14. Production was 67265 tonnes in 2013-14 vis-à-vis 68137 tonnes in 2016-17.

FIMI suggested that the rates be revised to rationalize the increase in cost of production owing to imposition of DMF, NMET etc. The Government of Andhra Pradesh suggested to increase the rate of royalty for sillimanite from 2.5% to 4% on ad valorem basis. The state also suggested that a concession of 1% of royalty may also be provided for value addition done within the country.

In view of the above, the Study Group recommends that royalty rates may be adjusted to 2% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

SILVER

Existing rate:

(i) **By Product** : 7% of London Metal Exchange price Chargeable on by-product silver metal actually produced.

(ii) **Primary silver**: 5% of London Metal Exchange Silver metal price chargeable on the contained silver metal in ore produced.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

(i) **By Product** : 6.5% of London Metal Exchange price chargeable on by-product silver metal actually produced.

(iii) **Primary silver**: 4.5% of London Metal Exchange Silver metal price chargeable on the contained silver metal in ore produced.

Justification:

At present, silver is recovered as a by-product of gold refining as well as smelting and refining of lead, zinc and copper concentrates. There are no native silver deposits except the small and unique Bharak deposit in Rajasthan.

Analysis of production of by-product silver in the country shows a fluctuating trend from 349.7 tonnes in 2013-14, 327.6 tonnes in 2014-15, 426.4 tonnes in 2015-16 and 460.8 tonnes in 2016-17. India is among the top 5 silver consumers in the world. India is largely dependent of import of silver. Import of silver in 2016-17 was 3,363 tonnes compared to a negligible export of 37 tonnes.

FIMI suggested that owing to the Government's focussed initiative for electrification, housing projects, etc. there will be huge demand for silver and thus royalty on by-product silver should be reduced from 7% to 5% so as to incentivize more production of silver and to counter the need for increased imports. No comments were received from any state government.

The Study Group, after taking into consideration the fact that silver is recovered as by product and needs encouragement, recommends that royalty rates of by-product silver should be adjusted to 5% from 7% of LME silver price so that the impact of DMF and NMET gets cushioned and absorbed.

On similar lines, the Study Group recommended that royalty rate for primary silver be adjusted to 3.8% of London price chargeable on the contained silver metal in ore produced for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

TIN

Existing rate : 7.5% of London Metal Exchange Tin metal price chargeable on the contained tin metal in ore produced

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

6.7% of London Metal Exchange Tin metal price chargeable on the contained tin metal in ore produced

Justification:

Production of tin is reported from Chhattisgarh only. 6 mines. in Chattisgarh produced 12,120 kgs of tin concentrates in 2016-17. Analysis of tin concentrate production in the country suggests that the production has been continuously declining from 34,862 kg in 2013-14, 24,685 kg in 2014-15, 13,541 kg in 2015-16 to 12,120 kg in 2016-17. Significant quantities of tin ores and concentrates was being imported to the tune of 1,000 kgs in 2013-14, nil in 2014-15, 82,000 kgs in 2015-16 and 68,000 kgs in 2016-17, with almost nil exports.

FIMI suggested that the royalty rates for tin may be lowered to 5% to encourage domestic exploration and production. No comments were received from any state government.

Considering the small scale operation of tin mining and the diminishing domestic production year-on-year, the Study Group recommends that royalty rate of tin should be adjusted to 6% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

TUNGSTEN:

Existing rate : Rs.20/- per unit percent of contained WO_3 per tonne of ore and on pro rata basis.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
Rs.18/- per unit percent of contained WO_3 per tonne of ore and on pro rata basis.

Justification:

There is no production of tungsten ore/concentrate in the country and the entire domestic requirement of tungsten ore/ concentrates is met by imports. India imported 283 tonnes of tungsten ores and concentrates in 2016-17.

Degana in Rajasthan and Chendapathar in West Bengal were the only mines of tungsten in India that produced meagre quantities of concentrate. These mines, owing to economic non-viability, had to be closed down.

FIMI has suggested that no royalty should be charged on tungsten to encourage further exploration and reduce dependent on imports.

In view of the above, the Study Group recommends that royalty rates on tungsten be reduced to Rs. 10 per unit percent of contained WO_3 per tonne of ore and on pro rata basis for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

URANIUM

Existing rate : 2% of annual compensation amount received by M/s. Uranium Corporation of India Limited, to be apportioned among the States on the basis of data provided by the Department of Atomic Energy.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

1.8% of annual compensation amount received by M/s. Uranium Corporation of India Limited, to be apportioned among the States on the basis of data provided by the Department of Atomic Energy.

Justification:

Uranium is a highly strategic mineral under the Atomic Energy Act, 1962. The Study Group noted that there are no details available regarding production and pricing of uranium. The mining of uranium is done by public sector and pricing of the uranium is administratively fixed.

Department of Atomic Energy suggested that there should not be any increase in royalty rate of uranium as India is deficient in uranium and there has been increased financial burden due to imposition of DMF and NMET.

The Government of Jharkhand suggested to increase the royalty rate of uranium.

In view of the strategic nature of uranium and its role in energy and defence sectors, the Study Group therefore, recommends that royalty rate be adjusted to 1.5% so that net impact including DMF and NMET remains same as 2% of annual compensation amount received by M/s. Uranium Corporation of India Limited, to be apportioned among the States on the basis of data provided by the Department of Atomic Energy for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

VANADIUM:

Existing rate : 20% of average sale price on ad valorem basis.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
18% of average sale price on ad valorem basis.

Justification:

Vanadium is used primarily as an alloying element in Iron & Steel Industry as well as aerospace and green technology applications, especially in battery technology. In recent years, vanadium pentoxide is produced only at Vedanta's Lanjigarh alumina plant in Odisha, which produced 1124.6 tonnes in 2016-17. Most of the raw material to make ferro-vanadium is being imported.

Consumption of ferro-vanadium has remained stable from 1,110 tonnes in 2013-14, 1,131 tonnes in 2014-15 to 1,106 tonnes in 2015-16. However, Imports of vanadium ores and concentrates have been increasing from 61 tonnes in 2013-14 to 268 tonnes in 2016-17.

No comments were received from any state government. FIMI did not offer any comments.

The Study Group recommends that the royalty rate to be adjusted to 15% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

VERMICULITE

Existing rate : 5% of average sale price on ad valorem basis.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
4.5% of average sale price on ad valorem basis.

Justification:

Vermiculite is a term applied commercially to micaceous minerals (essentially hydrated silicates of Al, Mg and Fe). There were 6 reporting mines in 2016-17, with Andhra Pradesh leading its production (72%), followed by Tamil Nadu (26%) and Rajasthan (2%). Analysis of production of vermiculite showed a fluctuating trend with a production of 11,851 tonnes in 2013-14, 19,336 tonnes in 2014-15, 23,279 tonnes in 2015-16 and 6,534 tonnes in 2016-17.

No comments were received from FIMI or any state government.

In view of the small number of producing mines, the Study Group recommends royalty rate to be adjusted to 3.8% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

WOLLASTONITE

Existing rate : 15% of average sale price on ad valorem basis.

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:
13.5% of average sale price on ad valorem basis.

Justification:

Wollastonite is metasilicate of calcium ($CaSiO3$) occurring as aggregates of bladed or needle like crystals. It is primarily used in the ceramic industry. India is the 2nd largest producer of wollastonite in the world, next only to China.

Production of wollastonite is reported only from 6 mines in Rajasthan. Production of wollastonite has been declining continuously from 192,712 tonnes in 2013-14, 186,519 tonnes in 2014-15, 175,348 tonnes in 2015-16 and 166,186 tonnes in 2016-17, registering a 14% decline during the period.

Owing to additional financial burden such as DMF, NMET and increasing cost of mining inputs such as diesel, manpower etc., FIMI suggested to reduce the royalty rate to 5% so as to revive production of wollastonite in the country.

No comments were received from any state government.

Based on the diminishing production and the demand for wollastonite, the Study Group recommends that the royalty rate on wollastonite be adjusted to 11.4% so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

ZINC

Existing rate	:	9.5% of London Metal Exchange Zinc metal price chargeable on the contained zinc metal in ore produced
		10% of London Metal Exchange Zinc metal price chargeable on the contained zinc metal in concentrate produced

Existing rate of royalty will remain applicable to mines allotted without auction.

Recommended rate for mines allotted through Auction:

8.49% of London Metal Exchange Zinc metal price chargeable on the contained zinc metal in ore produced

8.93% of London Metal Exchange Zinc metal price chargeable on the contained zinc metal in concentrate produced

Justification:

About 50% of the zinc produced in the world is used in the galvanising industry. India is self-sufficient in zinc production.

HZL based in Rajasthan is the only producer of primary lead and primary zinc in India. During 2016-17, production of lead and zinc ore in 2016-17 was 11.88 million tonnes, an increase of 13.7% over the previous year. The production of zinc concentrates was 14,84,245 tonnes in 2016-17, whereas production of zinc ingot metal was 6,72,010 tonnes.

Analysis of production of zinc concentrates shows a continuously declining trend from 1.490 million tonnes in 2013-14, 1.489 million tonnes in 2014-15, 1.473 million tonnes in 2015-16 to 1.484 million tonnes in 2016-17.

Apparent consumption of zinc during 2016-17 was 6,47,047 tonnes (calculated on the basis of production of zinc, imports and exports of un-alloyed zinc). It was primarily used in galvanising industry (57%), followed by coatings (16%), die-casting alloys (14%), oxides & chemicals (7%) and extruded products (6%).

Analysis of royalty rate for zinc shows that it has been increasing from 6.6% in 2000, 6.6% in 2004, 8% in 2009 and 9.5% in 2014 charged on LME zinc metal price chargeable on the contained zinc metal in ore produced. Since 2009, royalty on zinc concentrate has been charged at 8.4% in 2009 and 10% in 2014 on LME zinc price.

In India, royalty rates on zinc in ore and concentrate are 9.5% and 10% of LME zinc price, whereas the royalty rate in other major zinc producing countries such as Australia is 2.5% in metallic form and 5% in concentrate form on ad valorem basis, China is 2%-6% on ad valorem basis, Indonesia is 3% on ad valorem basis, Peru is 3% on ad valorem basis and Thailand is 2.5% on ad valorem basis. It is evident that the royalty rates for zinc in India are much higher compared to other major producers in the world.

GSI suggested lowering the royalty rates of zinc, since the average grade of lead-zinc ore has been lowering as mining is going deeper and beneficiation costs are going up.

HZL submitted that the royalty regime for lead and zinc is the highest not only globally, but also in comparison to other metals in India which are linked to LME price. Hence, royalty for zinc needs to be rationalized at par with the rates of copper, bauxite, etc. which are linked to LME. It emphasized that cost of lead/zinc production has gone up substantially at HZL owing to its shift to underground method and falling ore grades as a consequence. A reduction in royalty will help greatly in promoting further investment and increasing productivity in lead/zinc mines, which will definitely enhance the state revenues.

FIMI highlighted that the cost of production of lead/zinc ore and concentrates has gone up owing to leaner grades and increased depth of mining operations, imposition of DMF, NMET etc, increase in mining input costs such as electricity, diesel, manpower and logistics costs. In addition to the high royalty rates, the exorbitantly high effective tax rate on mining in India also discourages domestic production of lead/zinc ore and makes the final products less competitive vis-à-vis imports. In view of the above, FIMI suggested to rationalize the royalty rate at par with mineral-rich countries and reduce the royalty rate of zinc in ore and concentrate to 7.2% and 7.5% respectively of LME zinc price so that including the impact of royalty, DMF and NMET does not exceed the existing royalty rate. It further suggested that no royalty should be charged from auctioned mines, as such mines are already paying significant auction-premium amount which satisfies the basic concept of royalty payment. FIMI also suggested 10% reduction in royalty to incentivize R&D, exploration, upgradation of mining/beneficiation technologies, etc.

The State of Rajasthan pointed out that there is ambiguity in provision of royalty for base metals in Section 9 and IInd schedule of the MMDR Act, 1957. The state suggested that in the IInd schedule of the MMDR Act, 1957, the word "Ore produced" should be replaced by words "removed or consumed".

GLOBAL ANALYSIS

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Consumption

- The largest consumer of zinc is the Galvanising Industry. The world consumption of refined zinc was 13.93 million tonnes in the year 2016. China is the largest refined zinc consuming country with 6.69 million tonnes and accounted for 48% of world zinc consumption, followed by USA (6%), India (5%), South Korea and Germany (4% each) and Japan (3%).

- Global demand for refined zinc metal is forecast to rise by 2.0% to 13.97 million tonnes in 2018, after remaining stable over the past three years.

- Apparent demand in China is forecast to increase by 2.2% after declining by 0.8% in 2017. Elsewhere, usage is expected to rise in India and the Republic of Korea, and to remain stable in Japan.

- Zinc usage in both Europe and the United States is anticipated to rise by 2.1% in 2018. In Europe the rise will be influenced by increases in Belgium and Italy.

- It is anticipated that global demand for refined zinc metal will comfortably exceed supply in 2018 with the extent of the deficit forecast at 263,000 tonnes.

- Recovery of secondary zinc and lead is economically more attractive because of certain advantages. Besides, lower energy consumption, it also entails low capital cost, less environmental hazards and high metal contents.

Production

- World mine production of zinc ore was 12.91 million tonnes in terms of zinc content in the year 2016. China is at top position with 5.27 million tonnes thus contributed 41% followed by Peru (10%), Australia (7%), USA (6%), India and Mexico (5% each), Kazakhstan (3%) and Canada (2%), etc.

- As per the International Lead and Zinc Study Group (*ILZSG*), global zinc mine production is forecast to rise by 5.1% to 13.62 million tonnes in 2018. This will be driven mainly by an expected 2.3% rise in China and a further 3.9% increase in Peru.

- In Australia, additional tonnage is forecast to be generated in 2018 mainly a consequence of the recent opening of Dugald River mine and the expected commissioning of New Century Resources' 262,000 tonnes per year tailings project in Queensland.

- In South Africa, the opening of Vedanta's Gamsberg mine during the second half of the year will result in an increase global zinc production. Increases are also forecast in Canada, Cuba, Greece, Namibia and the United States.

- World refined zinc production was 13.73 million tonnes in the year 2016 and is 1% less than the previous year. China is the largest producer of refined zinc with 6.27 million tonnes in the year 2016 which contributed 46% of world refined zinc production followed by Korea Rep. of (7%), India (4%), Canada (5%), Japan and Spain (4% each), Australia (3%), Peru (3%), Kazakhstan (2%), etc.

- ILZSG anticipates an increase in world refined zinc metal output of 3.6% to 13.71 million tonnes in 2018. This will be mainly influenced by a further rise in Chinese output of 3.4% and a recovery in Canadian production, where output in 2017 was negatively impacted by a strike at Noranda Income Fund's Valleyfield refinery.

- Production in Europe is forecast to increase by 5.2%, primarily as a consequence of higher output in Belgium, Italy, the Netherlands and Norway. Australian refined zinc production is also expected to rise in 2018, benefiting from an increase in the availability of domestic concentrates. In the United States, output is forecast to decrease by 5.3%.

- In India, zinc mine output is predicted to be marginally lower due to a fall in output at Hindustan Zinc's Rampura Agucha operation.

- Owing to India's focus on power generation requiring galvanised transmission towers, higher investment in infrastructure, railways, etc.. zinc consumption in India has trebled over the past decade. Zinc demand in India is expected to grow at the rate of 8 to 9% annually, with domestic demand reaching 9 lakh tonnes by 2020.

Keeping in view, the global consumption-production trend, analysis of global royalty rates, increase in production costs and future domestic demand, the Study group recommends that royalty rate for zinc ore and concentrate be reduced to 7.2% and 7.5% respectively of LME zinc price so that the impact of DMF and NMET gets cushioned and absorbed for auctioned mines only. For mines allotted not through auction, the existing rates will continue.

IMPACT ON STATE REVENUE

7.8 Since the rates of royalty for non-auctioned mines remains the same, there is no adverse impact on the state revenues. Not many auctioned mines have started production across country. Under such circumstances it is not possible to measure any impact on state revenues by way of recommendations.

Furthermore, the lower rates of royalty have been recommended for auctioned mines but the auctioned mines provide states with upfront premiums. Hence, there is overall positive impact on state revenue for auctioned mines despite lowering the royalty for auctioned mines.

CHAPTER-8

ADMINISTRATION OF ROYATY

As far as the computation of royalty on unit of production basis (tonnage basis) is concerned, the methodology adopted by the State Governments for computation of royalty and administration of royalty regime is well established and it is felt that there is no need for any fresh guidelines.

8.1 For computation of royalty on ad valorem basis, guidelines have been provided in Rule 38 to Rule 46 of The Mineral (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016. The responsibility of computing average sale prices of minerals for which international benchmark prices are not available, has been entrusted with Indian Bureau of Mines. Indian Bureau of Mines computes the average sale prices grade-wise and state-wise and host these on its website.

8.2 Presently the average sale prices of minerals / grades are calculated using the prices reported in the monthly returns of that month and the same is applicable for computation of royalty for that month. However, it was pointed out by the States as well as industry association that the average sale price are published with a time lag of 2-3 months after the due date of submission of returns. This in turn delays the process of reconciliation of royalty amount which is paid in advance by the lessee to the District Administration and audit issues also get cropped up at state level. It is expected that with the implementation of online submission of returns, the system will improve to a great extent.

8.3 Majority of the State Governments excepting Jharkhand have expressed satisfaction with the methodology adopted by IBM for computing of average sale price. However, the emphasize for reducing the time lag by IBM for publishing the average sale price.

8.4 Government of Jharkhand suggested for charging the advalorem royalty based on the individual sales invoice raised by the concerned miner on the similar system as being adopted for sale of coal.

8.5 FIMI highlighted that in the current system of arriving at royalty amount based on the advalorem mode, the average sale price includes the components of royalty, DMF and NMET and suggested that the ex-mine price / sales value should be considered net of these components to avoid double taxation for which necessary amendments in MCR, 2016 and MCDR, 2017 can be effected.

8.6 One of the fundamental and systemic challenges in mineral administration today is the lack of adequate capacity and expertise at the state-level, which is thwarting serious and timely implementation of reforms initiated by Central Government. While earlier the Directorate of Mines and Geology (DMG) in states used to be a very technically qualified department, its capacity in recent decades has drastically reduced. It is therefore very necessary to improve skills and institutional capacity of state DMGs.

FIMI suggested introduction of a specialized cadre for mineral administration under the All India Services similar to Indian Forest Service, Indian Railway Traffic Service, Indian Postal Service, etc. Such a system will ensure that bright young officers are groomed particularly for mineral sector development in the country, including administration of royalty. It will ensure that these officers gain in-depth experience of the mining sector dynamics and develop strong insights necessary for ensuring an attractive legal and fiscal regime for mining in India.

Now, since auction is the policy for grant of ML as well as PL-cum-ML, such an exclusive cadre will facilitate in developing expertise pertaining to exploration and mining and will greatly help in capacity-building of the DMGs over the years. It will greatly help in unlocking the potential of the Indian mineral sector and improve the mining sector's contribution to India's holistic growth.

Considering the role of states in mineral administration in the country and the present capacity of state DMGs, the Study Group recommended that mineral administration cadre be strengthened in states with regular as well as promotions as a part of the regular state civil service.

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CHAPTER-9

DEAD RENT

The concept of dead rent was introduced as a deterrent against the tendency of leaseholders in cornering the mining lease and keeping the mineral resources idle.

9.1 At present, the rate of dead rent varies according to grouping of minerals as well as time period from the grant of mining lease as given below :

1. Low value minerals

(in Rs. per hect. Per annum)

From 2nd Year of Lease	3rd & 4th Year of Lease	5th Year onwards
400	1000	2000

2. Two times the rate specified at Sr. No. 1 above in case of medium value minerals.

3. Three times the rate specified at Sr. No. 1 above in case of lease granted for high value minerals.

4. Four times the rate specified at Sr. No. 1 above in case of lease granted for precious metals and stone.

9.2 Most of the States were of the view that the current rates and system of Dead Rent should continue. However, State of Telangana suggested that Dead Rent can be fixed as percentage of total royalty.

9.3 FIMI suggested that considering the change in regulatory regime, dead rent be dispensed with. Since in case of auctioned mines, lessee required to be signed Mine Development and Production Agreement (MDPA) and is committed for the stipulated production, hence there is no rationale for any dead rent for such auctioned mines.

9.4 Further it was suggested that generally 2-3 years timeframe is required for mine development after the execution of mining lease, hence the charging of dead rent should be applicable from the fourth year of lease.

9.5 Considering the changed regulatory scenario with regard to mechanism for grant of mineral concession and after analyzing the response received from State Governments and industries, the Study Group makes the following recommendations :

Since for the auctioned mines, mandated MDPA has to be signed by the allottee and stipulated quantum of production of mineral is committed, the Study Group recommends that charging of dead rent should not be applicable in cases of mines which are granted through auction mechanism .

Study Group recommends for the mines which are granted other than auction route, the following rates and structure for dead rent :

1. Low value minerals

(in Rs. per hect. Per annum)

From 4th Year of Lease	5th & 6th Year of Lease	7th Year of lease
800	2000	4000

2. Two times the rate specified at Sr. No. 1 above in case of medium value minerals.

3. Three times the rate specified at Sr. No. 1 above in case of lease granted for high value minerals.

4. Four times the rate specified at Sr. No. 1 above in case of lease granted for precious metals and stone.

CHAPTER-10

Recommendations

Principles used in recommendations

- One of the basic principles while making recommendations has been that the stability of royalty regime should be there. Towards this effect the competing claims of miners versus state governments were considered and it was decided that the existing rates of royalty should continue for mines not allotted through auctions.

- For mines allotted through auctions, it was imperative that the new regime of performance security and upfront premiums should be taken into account. The study group used the principle that as far as possible the impact of introducing DMF and NMET for auctioned mines should be cushioned in new royalty rates.

- The study group also recognized that for any ore, the beneficiation and investments in technology for concentrate making and utilization of low grade of that ore should be encouraged through a relaxed royalty regime.

After taking into account the changed legislation effected through MMDR Amendment Act, 2015, the responses received from various stakeholders, the Study Group makes the following recommendations based on the principles detailed above:

10.1 For royalty of all mines, Study Group recommends the rates in the form of a draft notification as at Annexure 7.

10.2 The Study Group received representations from industry regarding royalty being charged on royalty due to calculation of Average Sale Price (ASP). ASSOCHAM also represented that in case of mines being auctioned, the bidding parameters lead to confusion and leads to double taxation. These matters were deliberated in detail by the committee with state representatives and with IBM. It was found that the ASP calculation is being done as per rules and rule 38 of

Mineral Concession Rules 2016 specifically provides for including Royalty DMF and NMET in calculation of ASP.

These issues are matters of policy and have multiple legal, administrative and financial implications in the mineral administration. The study group recommends that this issue be brought before the policy division of the Ministry of Mines for comprehensive evaluation and examination of all implications and take appropriate action, keeping in view the new National Mineral Policy 2019.

10.3 No royalty be levied on the overburden, tailings and rejects from which metal/ore is not recoverable.

10.4 The Study Group recommends that the periodicity of revision of royalty should be increased to 5 years from the existing 3 years period. Accordingly, proviso of Sub-Section 3 of Section 9 of MMDR Act, 1957 can be amended.

10.5 The study group also recognized that for Iron ore, the beneficiation and investments in technology for concentrate making and utilization of low grade iron ore should be encouraged through a relaxed royalty regime and accordingly recommendation has been made.

10.5 In respect of dead rent the Study Group recommends the following :

(a) Since for the auctioned mines, mandated MDPA as to be signed by the allottee and stipulated quantum of production of mineral is committed, the Study Group recommends that charging of dead rent should not be applicable in cases of mines which are granted through auction mechanism under the MMDR Amendment Act, 2015, by appropriate amendments in the MMDR Act 1957.

(b) Study Group recommends for the mines which are granted other than auction route, the following rates and structure for dead rent be made applicable:

1. Low value minerals

(in Rs. per hect. Per annum)

From 4th Year of Lease	5th & 6th Year of Lease	7th Year of lease
800	2000	4000

2. Two times the rate specified at Sr. No. 1 above in case of medium value minerals.

3. Three times the rate specified at Sr. No. 1 above in case of lease granted for high value minerals.

4. Four times the rate specified at Sr. No. 1 above in case of lease granted for precious metals and stone.

(b) Categorization of minerals for the purpose of levy of dead rent

Category-1: Precious metals and stones

Gold, silver, diamond, ruby, sapphire and emerald

Category-2: High value minerals

Semi-precious stones (agate, gem garnet), corundum, copper, lead, zinc, and asbestos (chrysotile variety)

Category-3: Medium value Minerals

Chromite, manganese ore, kyanite, sillimanite, vermiculite, magnesite, wollastonite, apatite, rock phosphate, fluorite (fluorspar) and iron ore

Category-4: Low value minerals

Minerals other than precious metals and stone, high value minerals and medium value minerals

Annexure-7

MINISTRY OF MINES

NOTIFICATION

New Delhi, the ...., 2019

G.S.R.......- In exercise of the powers conferred under sub-section (3) of Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby makes the following further amendments to the Second Schedule of the said Act, namely:-

2. In the Mines and Minerals (Development and Regulation) Act, 1957, for the "Second Schedule", the following Schedule shall be substituted, namely:-

"SECOND SCHEDULE (See Section 9)

RATES OF ROYALTY IN RESPECT OF MINERALS AT ITEMS ....

S. No.	Name of mineral with grade	In Rs. per tonne (where applicable for auctioned mines)	Advalorem in percentage of average sale price except where otherwise stated (for auctioned mines)	In Rs. per tonne (where applicable for mines allotted without auction)	Advalorem in percentage of average sale price except where otherwise stated (for mines allotted without auction).
1	Apatite and Rock Phosphate i) Apatite ii) Rock Phosphate a) Above 25% P2O5 b) Upto 25% P2O5		4.5% 11.5% 5.5%		5% 12.5% 6%

2	Asbestos a) Chrysotile	Rs. 786/- per tonne		Rs 880/= per tonne	
	b) Amphibole		13.5%		15%
3	Bauxite i) Bauxite dispatched for use in alumina and aluminium metal extraction		0.54% of London Metal Exchange Aluminium metal price chargeable on the contained aluminium metal in ore		0.60% of London Metal Exchange Aluminium metal price chargeable on the contained aluminium metal in ore
	ii) Bauxite dispatched for use other than alumina and aluminium metal extraction		22.5%		25%
4	Brown Ilmenite (Leucoxene) Ilmenite, Rutile and Zircon		2.0%		2.0%
5	Cadmium		13.5%		15%
6	Chromite		13.5%		15%
7	Columbite-tantalite		9.0%		10%
8	Copper		4.13% of London Metal Exchange Copper metal price chargeable on the contained copper metal in ore produced		4.62% of London Metal Exchange Copper metal price chargeable on the contained copper metal in ore produced
9	Diamond				

	A) Gem variety Industrial Variety		10.5% of Average sale price on ad valorem basis 10.5% of the average sale price on ad valorem basis		11.5% of Average sale price on ad valorem basis 11.5% of the average sale price on ad valorem basis
10	Fluorspar (also called fluorite)		7.5%		8%
11	Garnet a) Abrasive b) Gem		4% 9.0%		4% 10%
12	Gold a) Primary b) By-product gold		3.58 % of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the gold metal in ore produced. 2.95% of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the by-		4% of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the gold metal in ore produced. 3.3% of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the by-

			product gold metal actually produced		product gold metal actually produced
13	Graphite a) With 80% or more fixed carbon b) With 40% or more fixed carbon but less than 80% fixed carbon c) With 20% or more fixed carbon but less than 40% fixed carbon d) With less than 20% fixed carbon	Rs. 201 per tonne Rs. 134 per tonne Rs. 59 per tonne Rs. 23 per tonne		Rs. 225 per tonne Rs. 150 per tonne Rs. 65per tonne Rs. 25 per tonne	
14	Iron Ore i. Hametite Ore-45% Fe(Min.) ii. Hematite Siliceous Ore-35% Fe (Min.) iii Magnetite Ore – 15% Fe (Min.) iv Concentrate prepared by beneficiation and /or concentration of low grade ore containing 40% Fe or less		13.5% 9 % 9 % 3%		15% 9 % 9% 3%
15	Kyanite		11%		12%
16	**Lead:** Contained		7.59% of		8.5% of

	lead metal in ore produced		London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced		London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced
	Contained lead metal in concentrate produced		12.95% of London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced		14.5% of London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced
17	Limestone a) L.D. Grade (less than 1.5 percent silica content) b) Others	Rs. 81 per tonne Rs.72 per tonne		Rs. 90 per tonne Rs.80 per tonne	
18	Limeshell	Rs. 72 per tonne		Rs 80 per tonne	
19	Magnesite		3%		3%
20	Manganese Ore a) Ore of all grade b) Concentrates		4.5% 1.55%		5.0% 1.7%
21	Marl	Rs. 54 per tonne		Rs 60 per tonne	
22	Monazite	Rs. 112 per tonne		Rs 125 per tonne	
23	Nickel		0.11 % of London Metal		0.12 % of London Metal

			Exchange Nickel metal price chargeable on the contained nickel metal in ore produced		Exchange Nickel metal price chargeable on the contained nickel metal in ore produced
24	Perlite		11 %		12%
25	Pyrites		2%		2%
26	Ruby		9%		10%
27	Selenite		11%		12%
28	Sillimanite		2.5%		2.5%
29	Silver: By-product		6.5% of London Metal Exchange price chargeable on by-product silver metal actually produced.		7% of London Metal Exchange price chargeable on by-product silver metal actually produced.
	Primary Silver		4.5% of London Metal Exchange Silver metal price chargeable on the contained silver metal in ore produced.		5.0% of London Metal Exchange Silver metal price chargeable on the contained silver metal in ore produced
30	Tin		6.7% of London Metal Exchange Tin metal price chargeable on the contained tin metal in ore produced		7.5% of London Metal Exchange Tin metal price chargeable on the contained tin metal in ore produced

31	Tungsten	Rs.18/- per unit percent of contained WO3 per tonne of ore and on pro rata basis.		Rs.20/- per unit percent of contained WO3 per tonne of ore and on pro rata basis.	
32	Uranium		1.8% of annual compensation amount received by M/s. Uranium Corporation of India Limited, to be apportioned among the States on the basis of data provided by the Department of Atomic Energy		2.0% of annual compensation amount received by M/s. Uranium Corporation of India Limited, to be apportioned among the States on the basis of data provided by the Department of Atomic
33	Vanadium		18%		20%
34	Vermiculite		4.5%		5%
35	Wollastonite		13.5%		15%
36	Zinc		8.49% of London Metal Exchange Zinc metal price on ad valorem basis chargeable on contained zinc metal in ore produced 8.93 % of London Metal Exchange Zinc metal price on ad		9.5% of London Metal Exchange Zinc metal price on ad valorem basis chargeable on contained zinc metal in ore produced 10% of London Metal Exchange Zinc metal price on ad

			valorem basis chargeable on contained zinc metal in concentrate produced		valorem basis chargeable on contained zinc metal in concentrate produced
37	All other minerals not herein before specified		11% of the sale price on ad valorem basis		12% of the sale price on ad valorem basis
38	Coal including lignite	*	*	*	*
39	Sand for stowing	**	**	**	**

1.* Rates of royalty in respect of item no.38 as revised vide notification number G.S.R. 349(E), dated the 10th May, 2012 read with corrigendum G.S.R. 525(E), dated the 14th June, 2012 of the Government of India in the Ministry of Coal shall remain in force until revised through a separate notification by the Ministry of Coal.

2.** Rates of royalty in respect of item No.39 relating to Sand for stowing revised *vide* notification number G.S.R. 214(E), dated the 11th April, 1997, will remain in force until revised through a separate notification by the Ministry of Coal."

(.....)

Joint Secretary

Note: The Second Schedule to the Mines and Minerals (Development and Regulation) Act, 1957 was amended earlier *vide* notification numbers:

1.No. G.S.R. 175(E), dated the 31st March, 1975

2.No. G.S.R. 407(E), dated the 14th July, 1975

3.No. G.S.R. 584(E), dated the 13th December, 1975

4.No. G.S.R. 321(E), dated the 12th June, 1978

5.No. G.S.R. 2(E), dated the 1st January, 1979

6.No. G.S.R. 67(E), dated the 13th February, 1979

7.No. G.S.R. 63(E), dated the 12th February, 1981

8.No. G.S.R. 449(E), dated the 23rd July, 1981

9.No. G.S.R. 458(E), dated the 5th May, 1987

10. No. G.S.R. 856(E), dated the 14th October, 1987

11. No. G.S.R. 516(E), dated the 1st August, 1991

12. No. G.S.R. 100(E), dated the 17th February, 1992

13. No. G.S.R. 748(E), dated the 11th October, 1994

14. No. G.S.R. 27(E), dated the 13th January, 1995

15. No. G.S.R. 214(E), dated the11th April, 1997

16. No. G.S.R. 713(E), dated the 12th September, 2000

17. No. G.S.R. 187(E), dated the 15th March, 2001

18. No. G.S.R. 572(E), dated the 16th August, 2002

19. No. G.S.R. 677(E), dated the 14th October, 2004

20. No. G.S.R. 522(E), dated the 1st August, 2007

21. No. G.S.R. 96(E), dated the 13th February, 2009

22. No. G.S.R. 574(E), dated the 13th August, 2009

23. No. G.S.R. 349(E), dated the 10th May, 2012

24. No. G.S.R.630(E), dated the 1st September ,2014

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4. No. G.S.R. 321(E), dated the 12th June, 1978

5. No. G.S.R. 2(E), dated the 1st January, 1979

6. No. G.S.R. 67(E), dated the 13th February, 1979

7. No. G.S.R. 63(E), dated the 12th February, 1981

8. No. G.S.R. 449(E), dated the 23rd July, 1981

9. No. G.S.R. 458(E), dated the 5th May, 1987

10. No. G.S.R. 856(E), dated the 14th October, 1987

11. No. G.S.R. 516(E), dated the 1st August, 1991

12. No. G.S.R. 100(E), dated the 17th February, 1992

13. No. G.S.R. 748(E), dated the 11th October, 1994

14. No. G.S.R. 27(E), dated the 13th January, 1995

15. No. G.S.R. 214(E), dated the11th April, 1997

16. No. G.S.R. 713(E), dated the 12th September, 2000

17. No. G.S.R. 187(E), dated the 15th March, 2001

18. No. G.S.R. 572(E), dated the 16th August, 2002

19. No. G.S.R. 677(E), dated the 14th October, 2004

20. No. G.S.R. 522(E), dated the 1st August, 2007

21. No. G.S.R. 96(E), dated the 13th February, 2009

22. No. G.S.R. 574(E), dated the 13th August, 2009

23. No. G.S.R. 349(E), dated the 10th May, 2012

24. No. G.S.R.630(E), dated the 1- September ,2014

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Annexure-7

MINISTRY OF MINES

NOTIFICATION

New Delhi, the …………, 2019

G.S.R…….- In exercise of the powers conferred under sub-section (3) of Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby makes the following further amendments to the Second Schedule of the said Act, namely:-

2. In the Mines and Minerals (Development and Regulation) Act, 1957, for the "Second Schedule", the following Schedule shall be substituted, namely:-

"SECOND SCHEDULE (See Section 9)

RATES OF ROYALTY IN RESPECT OF MINERALS AT ITEMS …………

S. No.	Name of mineral with grade	In Rs. per tonne (where applicable for auctioned mines)	Advalorem in percentage of average sale price except where otherwise stated (for auctioned mines)	In Rs. per tonne (where applicable for mines allotted without auction)	Advalorem in percentage of average sale price except where otherwise stated (for mines allotted without auction).
1	Apatite and Rock Phosphate i) Apatite ii) Rock Phosphate a) Above 25% P2O5 b) Upto 25% P2O5		4.5% 11.5% 5.5%		5% 12.5% 6%

2	Asbestos a) Chrysotile b) Amphibole	Rs. 786/- per tonne	13.5%	Rs 880/= per tonne	15%
3	Bauxite i) Bauxite dispatched for use in alumina and aluminium metal extraction		0.54% of London Metal Exchange Aluminium metal price chargeable on the contained aluminium metal in ore		0.60% of London Metal Exchange Aluminium metal price chargeable on the contained aluminium metal in ore
	ii) Bauxite dispatched for use other than alumina and aluminium metal extraction		22.5%		25%
4	Brown Ilmenite (Leucoxene) Ilmenite, Rutile and Zircon		2.0%		2.0%
5	Cadmium		13.5%		15%
6	Chromite		13.5%		15%
7	Columbite-tantalite		9.0%		10%
8	Copper		4.13% of London Metal Exchange Copper metal price chargeable on the contained copper metal in ore produced		4.62% of London Metal Exchange Copper metal price chargeable on the contained copper metal in ore produced
9	Diamond				

	A) Gem variety Industrial Variety		10.5% of Average sale price on ad valorem basis 10.5% of the average sale price on ad valorem basis		11.5% of Average sale price on ad valorem basis 11.5% of the average sale price on ad valorem basis
10	Fluorspar (also called fluorite)		7.5%		8%
11	Garnet a) Abrasive b) Gem		4% 9.0%		4% 10%
12	Gold a) Primary b) By-product gold		3.58 % of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the gold metal in ore produced. 2.95% of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the by-		4% of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the gold metal in ore produced. 3.3% of London Bullion Market Association Price (commonly referred to as London Price) chargeable on the by-

			product gold metal actually produced		product gold metal actually produced
13	Graphite				
	a) With 80% or more fixed carbon	Rs. 201 per tonne		Rs. 225 per tonne	
	b) With 40% or more fixed carbon but less than 80% fixed carbon	Rs. 134 per tonne		Rs. 150 per tonne	
	c) With 20% or more fixed carbon but less than 40% fixed carbon	Rs. 59 per tonne		Rs. 65per tonne	
	d) With less than 20% fixed carbon	Rs. 23 per tonne		Rs. 25 per tonne	
14	Iron Ore				
	i. Hametite Ore-45% Fe(Min.)		13.5%		15%
	ii. Hematite Siliceous Ore-35% Fe (Min.)		9 %		9 %
	iii Magnetite Ore – 15% Fe (Min.)		9 %		9%
	iv Concentrate prepared by beneficiation and /or concentration of low grade ore containing 40% Fe or less		3%		3%
15	Kyanite		11%		12%
16	**Lead:** Contained		7.59% of		8.5% of

	lead metal in ore produced		London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced		London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced
	Contained lead metal in concentrate produced		12.95% of London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced		14.5% of London Metal Exchange Lead metal price chargeable on the contained lead metal in ore produced
17	Limestone a) L.D. Grade (less than 1.5 percent silica content) b) Others	Rs. 81 per tonne Rs.72 per tonne		Rs. 90 per tonne Rs.80 per tonne	
18	Limeshell	Rs. 72 per tonne		Rs 80 per tonne	
19	Magnesite		3%		3%
20	Manganese Ore a) Ore of all grade b) Concentrates		4.5% 1.55%		5.0% 1.7%
21	Marl	Rs. 54 per tonne		Rs 60 per tonne	
22	Monazite	Rs. 112 per tonne		Rs 125 per tonne	
23	Nickel		0.11 % of London Metal		0.12 % of London Metal

			Exchange Nickel metal price chargeable on the contained nickel metal in ore produced		Exchange Nickel metal price chargeable on the contained nickel metal in ore produced
24	Perlite		11 %		12%
25	Pyrites		2%		2%
26	Ruby		9%		10%
27	Selenite		11%		12%
28	Sillimanite		2.5%		2.5%
29	Silver: By-product		6.5% of London Metal Exchange price chargeable on by-product silver metal actually produced.		7% of London Metal Exchange price chargeable on by-product silver metal actually produced.
	Primary Silver		4.5% of London Metal Exchange Silver metal price chargeable on the contained silver metal in ore produced.		5.0% of London Metal Exchange Silver metal price chargeable on the contained silver metal in ore produced
30	Tin		6.7% of London Metal Exchange Tin metal price chargeable on the contained tin metal in ore produced		7.5% of London Metal Exchange Tin metal price chargeable on the contained tin metal in ore produced

31	Tungsten	Rs.18/- per unit percent of contained WO3 per tonne of ore and on pro rata basis.		Rs.20/- per unit percent of contained WO3 per tonne of ore and on pro rata basis.	
32	Uranium		1.8% of annual compensation amount received by M/s. Uranium Corporation of India Limited, to be apportioned among the States on the basis of data provided by the Department of Atomic Energy		2.0% of annual compensation amount received by M/s. Uranium Corporation of India Limited, to be apportioned among the States on the basis of data provided by the Department of Atomic
33	Vanadium		18%		20%
34	Vermiculite		4.5%		5%
35	Wollastonite		13.5%		15%
36	Zinc		8.49% of London Metal Exchange Zinc metal price on ad valorem basis chargeable on contained zinc metal in ore produced 8.93 % of London Metal Exchange Zinc metal price on ad		9.5% of London Metal Exchange Zinc metal price on ad valorem basis chargeable on contained zinc metal in ore produced 10% of London Metal Exchange Zinc metal price on ad	

			valorem basis chargeable on contained zinc metal in concentrate produced		valorem basis chargeable on contained zinc metal in concentrate produced
37	All other minerals not herein before specified		11% of the sale price on ad valorem basis		12% of the sale price on ad valorem basis
38	Coal including lignite	*	*	*	*
39	Sand for stowing	**	**	**	**

1.* Rates of royalty in respect of item no.38 as revised vide notification number G.S.R. 349(E), dated the 10th May, 2012 read with corrigendum G.S.R. 525(E), dated the 14th June, 2012 of the Government of India in the Ministry of Coal shall remain in force until revised through a separate notification by the Ministry of Coal.

2.** Rates of royalty in respect of item No.39 relating to Sand for stowing revised *vide* notification number G.S.R. 214(E), dated the 11th April, 1997, will remain in force until revised through a separate notification by the Ministry of Coal."

(.....)

Joint Secretary

Note: The Second Schedule to the Mines and Minerals (Development and Regulation) Act, 1957 was amended earlier *vide* notification numbers:

1.No. G.S.R. 175(E), dated the 31st March, 1975

2.No. G.S.R. 407(E), dated the 14th July, 1975

3.No. G.S.R. 584(E), dated the 13th December, 1975