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Comparison of Responsible Mining Law and Policy in India and Canada

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ABSTRACT

This paper provides a comparative analysis of responsible mining laws and policies in India and Canada, two leading mineral-producing nations. Responsible mining, defined as mining practices that respect human rights, protect the environment, and contribute to economic development, is crucial in mitigating the adverse social and environmental impacts of mining activities. The study examines the legal frameworks in both countries; highlighting India's comprehensive but often inadequately enforced mining laws, which prioritize sustainability over responsibility. In contrast, Canada is lauded for its effective implementation of responsible mining practices, driven by stringent regulations, transparency measures, and initiatives like the Towards Sustainable Mining (TSM) framework. The paper argues that while India has made strides in sustainable mining, it can learn from Canada's transparency and enforcement strategies. Conversely, Canada could enhance its approach by extending mandatory social services to all mining-affected communities, not just indigenous groups. The paper concludes that both nations have room for improvement and emphasizes the need for robust legal enforcement and genuine corporate responsibility to achieve truly responsible mining practices.

Keywords: India, Canada, sustainable, development.

I. INTRODUCTION

“If we remove metals from the service of man, all methods of protecting and sustaining health and more carefully preserving the course of life are done away with. If there were no metals, men would pass a horrible and wretched existence amid wild beasts...”

--- Georgius Agricola, 1556

Minerals play a significant role in our day-to-day lives. Be it our phones which we use, the houses we stay in, the automobiles we use, the jewellery we wear, the tiles or luxury stones like granite and marble that adorn the floor we walk in, the blue metals in roads, the weapons used by our military, in everything is the presence of minerals. The minerals have such a significant history throughout the world that various periods are known by the names of the minerals,

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starting from the Stone Age to the Copper Age, Iron Age to Atomic Age.³ Minerals are the bedrock of the industrial sector due to their use as raw materials in the manufacturing industries.⁴ Mining of minerals is so interwoven with mankind and money, that without mining there won't be any minerals and without minerals, industrial progress is not possible and without progress, mankind has no meaning worth the name.⁵ Thus, the development of mines and minerals is integral not just to the progress of the industrial sector and mankind but also to the economic workings of our country. It is well well-known fact that mining causes destruction to both the physical and social environment despite its positive impacts like employment, utility, economy etc and that is precisely why we need responsible mining that respects the human rights of the stakeholders and the environment.

The focus of this paper is to understand the meaning of the term 'responsible mining' and its need in today's world. The paper also discusses the objectives and principles of responsible mining. This paper takes a comparative angle by comparing the legal position of responsible mining practices in India and Canada as Canada is known for setting standards for other countries in its approach towards responsible mining.⁶

The methodological approach adopted in this is the functional method of comparison. The paper shows the micro level of comparison and research. The *tritium comparison* in this paper is that the social and environmental impact of mining is universal in the world and the paper tries to evaluate if the responsible mining-related laws in India and Canada are adequate.

II. RESPONSIBLE MINING: NEED AND PRINCIPLES

Responsible mining is defined as “responsible mining demonstrably respects and protects the interests of all stakeholders, human health and the environment and contributes discernably and fairly to the broad economic development of the producing country and to benefit local communities, while embracing best international practices and upholding the rule of law”.⁷

(A) Need for Responsible Mining

Mining impacts not just the physical natural environment but also the social environment to a very great extent. Major impacts of mining include environmental and health degradation,

³ D.D. SETH, ENCYCLOPAEDIA OF MINING LAWS (7th ed. 2020).

⁴TERI, *Overview of Mining and Mineral Industry in India*, TATA Energy Research Institute, (2001) <https://pubs.iied.org/pdfs/G00615.pdf> (last visited on Jan 11, 2021).

⁵*supra* note 1.

⁶ Government of Canada, *Canada sets a world standard for sustainable mining*, <https://www.tradecommissioner.gc.ca/canadexport/0003604.aspx?lang=eng> (last visited on Jan.15, 2021).

⁷The Asia Foundation, *Responsible Mining Definition*, (2007) <https://asiafoundation.org/resources/pdfs/MGMultistakeholderIV.pdf> (last visited on Jan.17, 2021).

displacement of communities, pollution, acquisition of lands, lack of social services, and loss of ecology and wildlife. The awareness of the effects that mining has on the social and natural environment and dealing with such impacts and effects is how responsible mining is being considered.⁸ This is in tune with the sustainable development definition. Sustainable development is not achieved by refusing to undertake mining operations⁹ due to its significance in the everyday life of the present generation as everything and anything we use requires minerals. The only alternative to completely stop mining is to adopt responsible mining practices. Many international agencies, the World Bank and mining companies are at present promoting “sustainable mining”. However, the term responsible mining is often considered an oxymoron and sustainable mining is considered an impossibility by many. Nevertheless, the concept of responsible mining is that there are less destructive ways to conduct mining operations.¹⁰

(B) Principles of Responsible Mining

There are no set principles of responsible mining. Similarly, an opinion by Robert Goodland discusses eight basic principles of responsible mining for mining corporations who want to become responsible. These eight principles of responsible mining are as follows:

“ (i) Social and environmental assessment, (ii) Transparency (iii) Acceptance by stakeholders, (iv) Food production trumps questionable mining, (v) Compliance with international standards, (vi) Corporate prequalification, (vii) Insurance and performance bonds and (viii) Royalties”¹¹

Similarly, Sara Bice, a renowned Australian author on responsible mining and corporate social responsibility has laid down five key principles of responsible mining for industry integrity. They are:

- (i) Holistic Assessment,
- (ii) Community-Based Agreement Making,
- (iii) Ethical Decision Making,
- (iv) Appropriate Boundaries, and
- (v) Good Governance.¹²

⁸ Prof.Dr.Oliver Langefeld, *Responsible Mining*, MINING REPORT, <https://mining-report.de/english/responsible-mining/> (last visited on Jan.19, 2021).

⁹ *Id.*

¹⁰ JEFF CONANT AND PAM FADEM, *A COMMUNITY GUIDE TO ENVIRONMENTAL HEALTH*, (2012).

¹¹ Robert Goodland, *Responsible Mining: the Key to Profitable Resource Development*, Sustainability (Aug.31, 2012) <https://www.mdpi.com/2071-1050/4/9/2099/htm> (last visited on Jan.20, 2021).

¹² SARA BICE, *RESPONSIBLE MINING: KEY PRINCIPLES FOR INDUSTRY INTEGRITY*, (2016).

This paper will show how much of the laws and policies of India and Canada have incorporated these principles of responsible mining.

III. INDIA'S LEGAL FRAMEWORK ON RESPONSIBLE MINING

India is one of the top mineral-producing countries in the world, next to China, Australia, the United States of America and Russia with 77 Billion Dollars in mineral production value.¹³ India is a mineral-rich country and is the home to abundant mineral wealth producing 84 minerals including 4 fuel, 11 metallic, 49 non-metallic industrial and 20 minor minerals.¹⁴ India has the 5th largest coal reserves in the world. It is the 4th largest producer of iron ore and 3rd in rank in producing aluminium. It ranks 5th in its bauxite and zinc production and 3rd in producing limestone and chromite. It is the 2nd largest producer of steel. India has such a vast history of mining that it has extensive and comprehensive mining legislation in place, starting from the Mines Act, of 1952 to the recent Draft Environmental Impact Assessment Notification, 2020. In the past two decades in India, there has been a rise in the evolution of environmental justice and people are more environmentally aware and conscious. The question is whether these mining legislations and statutes cater to the requirement of responsible mining.

In India, mining is predominantly linked with sustainability rather than responsibility and responsible mining is now more and more equated with sustainable mining. The sustainable development of a mine is mandated to have the following components i.e., mining should be financially or economically viable, and socially responsible; it must have technical, scientific and environmental soundness of mine and there should be optimal utilisation of mineral resources;¹⁵ Sustainable mine closure and subsequent land use and long term partnership with government and miners and communities that is mutually beneficial and that which is operated on principles of integrity, cooperation and transparency are also its core essentials.¹⁶

Therefore, to conduct mines less destructively, the mining operations are to be regulated according to a plan. A responsible plan shall consist of the following:¹⁷

1. An impact assessment on the environment with the participation of communities that were affected.

¹³ Staista, (2020), *Leading mining countries worldwide in 2016, based on mineral production value (in billion U.S.Dollars)* (Bar Graph/Chart) <https://www.statista.com/statistics/1114898/leading-mining-countries-worldwide-based-mineral-production-value/> (last visited on Dec.15, 2020).

¹⁴ TERI, *supra* note 4.

¹⁵ Ministry of Mines, *Sustainable Development framework for the Mining Sector*, https://mines.gov.in/writereaddata/UploadFile/SDF_Overview_more.pdf (last visited on Jan.21, 20210).

¹⁶ *Id.*

¹⁷ Conant, *supra* note 10.

2. Social service or social impact assessment
3. Health and safety of the miners, their families and affected communities
4. Mine Closure Plan for reclamation, restoration and rehabilitation of mines.

All these are provided for in the Indian Mining Laws. The environmental impact assessment has to be conducted on every project or mine that comes within the schedule before a project can commence. A part of this assessment is to have a public hearing with the members of surrounding communities. The social services required in a mine site or a mining area include educational and medical needs, housing for people and power and telecommunication to meet the needs of people in those habitations.¹⁸ Social service in Indian mining laws is provided through the concept of the District Mineral Foundation introduced in the MMDR Act, 1957 in the year 2015. Accordingly, section 9B of the MMDR Act, 1957 provides that the state government shall establish a non-profit fund called DMF in districts affected by mining operations to work for the benefit and interest of those persons and areas affected by the operations of the mine. The concept of DMF is such that the holders of a mining lease or prospecting license must pay towards the DMF Fund in addition to the royalty paid by them but not exceeding the amount of royalty prescribed in the Second Schedule.¹⁹ The state government provides for social services in mining-affected areas through its DMF Rules, for instance, the Tamil Nadu District Mineral Foundation Rules, 2017 provides for the establishment of trust, composition and powers of members of trust etc. It also provides for the form in which expenses can be made from the trust for the development works leading to social infrastructure and also states where it must be spent, such as drinking water supply, health care, education, welfare of women and children, aged and disabled, skill development, physical infrastructure, environment preservation and pollution control measures, energy and watershed development etc.²⁰ The health, safety and welfare of miners are provided under the Mines Act, of 1952.

Rules 31 to 41 of Mineral Conservation and Development Rules, 1988 provide for the restoration, rehabilitation and reclamation of the lands and areas affected by the operation of mines. In 2003, the Mineral Conservation and Development Rules, 1988 was amended to incorporate Mining Closure Plans and Financial Assurance within its rules. Mining or Mine Closure Plan refers to the plan that accompanies the notice of intention to abandon the mine given by the mine owner or operator to the Controller General and Regional Controller. According to the guidelines provided by the Indian Bureau of Mines, a Mine closure plan should

¹⁸ K.NARINDAR JETLI, MINERAL RESOURCES AND POLICY IN INDIA (2011)

¹⁹ The Mines and Minerals (Development and Regulation) Act (1957), §9B (v) & (vi).

²⁰ The Tamil Nadu District Mineral Foundation Rules, 2017, Rule 13.

contain a brief introduction of the mine, mine and mining description, a review of the implementation of the mining plan, SOM, Pre-Mine Closure Plan etc., closure plan, economic repercussions of closure of mine and manpower cutbacks, schedule for abandonment, abandonment cost, financial assurance, certificates, relevant Plans and sections.²¹ Financial assurance, on the other hand, refers to the assurance given by the mine owner, agent or operator in terms of bank guarantee to the Controller General by which they undertake to fulfil the condition of restoration and rehabilitation of abandoned mines. In 2015, the MMDR Act, of 1957 was amended to include the Sustainable Development Fund under section 20A. In 2016, the Sustainable Development Fund was rolled out and the Star Rating System was introduced. In 2019 the National Mineral Policy, 2019 stressed the basic need for the scientific closure of mines which would not only rejuvenate biodiversity and reinstate ecology but also take into consideration the socioeconomic aspects related to such mine closure. It is the role and responsibility of the government to ensure that the fundamental part of the mine development process i.e., post-production mine decommissioning and land reclamation has been accomplished.

According to the MMDR Act, 1957, the state government provides mineral rights to the person applying for a prospecting licence or mining lease after due scrutiny has been made by the government about the nationality of the person applying, the existence of mineral content, mining plan by the system established for the preparation, certification and monitoring of the mining plan. The state government may also make a premature termination of the prospecting licence of the mining lease on the account of avoiding danger to public health, controlling flood, ensuring the safety of monuments and other structures etc. By way of granting a lease of licence, the mineral rights are transferred to the lessee and the lessee is liable to pay royalty or tax to the government for the ownership and commercial trade or business of minerals transferred to the person, entity, association or company.

For a mine to be operated in India, it has to complete preliminary work of getting the required approvals and permits from the government agencies from environmental clearances, mining permits, mining leases, forest clearance, wildlife certificates, to mine commencement certificates and has to pay SDF Fund, DMF fund etc. It would be much more efficient to have a single window clearance which would promote the objective of National Mineral Policy, 2019 i.e., ease of doing business and reduce the red tape and bureaucracy. The question that would arise is whether such a change would make the government and mining companies look

²¹ *Id.*

irresponsible. The answer is no. It would only make the process simpler by reducing the number of agencies the companies have to apply for approvals, permits and clearances. It would no way diminish the amount of scrutiny the government officials have to give an application before approving or disapproving it.

IV. CANADA'S LEGAL FRAMEWORK ON RESPONSIBLE MINING

Canada has a parliamentary democracy and is a federation of states like India. Like India, Canada is also leading the world's production of minerals. It is the third-largest producer of diamond and nickel and fourth-largest in producing the platinum group of metals.²² It takes the fifth position in the production of gold globally and dominates the world production in uranium by being in the second place. The destructive effects of mining on the natural and social environment are common all over the world. It is been reported that Canada has set a new standard for the world in moving towards sustainable and responsible mining. It also has comprehensive and extensive laws on mining. It has mining legislations and statutes for every aspect and stage of mining operation from prospecting to closure of mines including disposal of tailings, waste and residue.

Canada's Mining Act, of 1996 provides for prospecting licenses, leases for mining claims, exploration plans and permits, surface rights compensation, leases for mine production, administrative issues, rehabilitation and restoration of mines. The statute Occupational Health and Safety Act, of 1990 governs the healthcare and safety standards that benefits the workmen working the mines and the standards to be maintained by the mine owners to prevent accidents in the mining site. Unlike India Canada does not have a separate extensive legislation governing and regulating the health, safety and welfare of the miners working in the mining site. About compliance of the principle of providing social services in a move towards responsible mining, Canada makes agreements between the mining companies and the Indigenous community or the provincial government setting out commitments to provide jobs, education, training, financial payments and helps in the development of business in complying with the Memorandum of Understanding signed between the First Nations and Mining Association of Canada (MAC).²³ Around 490 such commitments have been made between indigenous people and the Canadian government.²⁴ This approach to providing social services to the indigenous

²² Christopher Galbraith, *Mining by the Numbers – Canada in 2020*, (Feb.26, 2020) <https://www.spglobal.com/marketintelligence/en/news-insights/blog/mining-by-the-numbers-canada-in-2020>. (last visited on Jan.25, 2020).

²³ Mining Association of Canada, *Indigenous Affairs*, <https://mining.ca/our-focus/indigenous-affairs/> (last visited on Jan.23, 2021).

²⁴ *Id.*

people is unique in Canada. However, these social services are being provided only to Indigenous people whereas in India DMF Fund is collected to provide much more social services to all mine-affected people and development has been carried out in those mine-affected areas. Moreover, Canada has an agreement system which is not a mandatory obligation but a more of moral duty whereas, in India, every mine owner has to pay towards the DMF Fund and SDF Fund in addition to the royalties paid to the government.

Environmental responsibility is majorly governed by the Canadian Environmental Protection Act, of 1999 and the Environmental Impact Assessment Act is governed by the Impact Assessment Act, 2019 where the public and the Indigenous group also participate in the assessment. EIA legislation is more or less similar to India. The Mining Act, 1996 governs the reclamation of mine closure and it states that a financial guarantee is to be given which can be redeemed if the mine is closed satisfactorily.²⁵ The provisions governing mine closure and its rehabilitation are very similar to India's law relating to mine closure. The financial guarantee that the mine owners have to give to the Canadian government is the same as the financial assurance that the Indian mine owners provide to the Regional Controller of Mines. Canada as a part of its Towards Sustainable Mining initiative has given a protocol governing tailings named TSM Tailings Management Protocol, 2004 laying down five performance indicators, namely, (i) policy and commitment towards corporate tailing management, (ii) emergency preparedness measures in cases of disasters and executing a system for site-specific tailings management, (iii) responsibility and accountability in tailings management, (iv) annual reviewing of tailings management, and (v) executing site-specific OMS Manuals.²⁶

Canada has a unique legislation for complying with the transparency in mining principle in its move towards sustainable mining, namely, the Extractive Sector Transparency Measures Act, 2014 which provides for detailed provisions for record keeping, reporting payments, information and independent audit and corrective measures. The Act also makes provisions for penalties \$250,000. This Canadian statute for transparency exclusively for mining is very unique. India has no such legislation which extensively deals with the principle of transparency in the mining sector. This transparency provided by Canada is very much a necessity in India to keep track of the minerals extracted and the number of legal and illegal mines in India. Canada also gives standards for reporting mineral resources, mineral reserves and exploration

²⁵ Fasken, *Mining in Canada*, Lexology (Jul.18, 2018) <https://www.lexology.com/library/detail.aspx?g=6f1c99c0-6c5e-4529-8257-8337f9961406> (last visited on Jan.15, 2021).

²⁶ Mining Association of Canada, *Tailings management Protocol*, <https://mining.ca/towards-sustainable-mining/protocols-frameworks/tailings-management-protocol/> (last visited on Jan.13, 2021).

called CIM definition standards for Mineral resources and Minerals Reserves.²⁷

V. CONCLUSION

Both India and Canada have law and policy which provides for responsible mining. However, Canada seems to do better in achieving the objective of responsible and sustainable mining. This is because the laws are implemented and executed properly according to the procedure laid down by the law. In India, responsibility is written on paper and is forgotten in reality. Strict implementation of laws by government enforcement officials is the need of the hour. It is not enough just to strictly implement the laws but also for the mining companies to have responsibility and integrity ingrained in them. India is not completely hopeless. Our people are now environmentally aware and conscious and it is just a matter of time before we reach the responsibility we desire in mining. Let's just hope it is soon. One thing that India can learn from Canadian laws is to have a transparency law exclusively for mining. On the other hand, Canada though doing well in sustainable mining could give more social relief to the people and areas affected by mining activities by making such services mandatory for the mining companies instead of it being a moral duty and must include other peoples also and not just indigenous groups. To conclude, "*Don't let your imperfections conveniently excuse you from having discipline. Have the courage to work through your imperfections*"---Matthew Donnelly. Likewise, let's not give excuses and find loopholes to exploit and achieve responsible and sustainable standards in mining.

²⁷ CIM Standing Committee, *CIM Definition Standards for Mineral resources and Mineral resources*, (May.19, 2014) https://mrmr.cim.org/media/1128/cim-definition-standards_2014.pdf (last visited on Jan.17, 2021).