

Bill No. X of 2011

THE MINES (AMENDMENT) BILL, 2011

A

BILL

further to amend the Mines Act, 1952.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Mines (Amendment) Act, 2011.

Short title
and
commence-
ment.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

35 of 1952.

2. In the Mines Act, 1952 (hereinafter referred to as the principal Act), in the long title, for the words “regulation of labour and safety in mines”, the words “regulation of conditions of work and welfare of persons employed in mines and safety in mines and to provide for matters connected therewith or incidental thereto” shall be substituted.

Amendment
of long title.

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3. In section 1 of the principal Act, in sub-section (2), after the words “whole of India”, the words and figures “including the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India as defined under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976” shall be inserted.

Amendment
of section 1.

80 of 1976.

4. In section 2 of the principal Act, in sub-section (I),—

(i) in clause (c), for the words “every person”, the words “every person, being superior to the manager” shall be substituted;

(ii) after clause (g), the following clause shall be inserted, namely:—

‘(ga) “foreign company” means the company falling under section 591 of the Companies Act, 1956;’; 5 1 of 1956.

(iii) for clause (l), the following clause shall be substituted, namely:—

‘(l) “owner”, when used in relation to a mine, means a person or authority having ultimate control over the affairs of the mine:

Provided that where the mine belongs to,— 10

(i) a company incorporated in India, the managing director thereof, and if there is no managing director, all the whole-time directors of the board of directors of the company, as the case may be, shall be the owner;

(ii) a foreign company, the principal officer by whatever name called, including its director and secretary, shall be the owner; 15

(iii) a firm or other association of persons, all the individual partners or members thereof, shall be the owner:

Provided further that, in the case of a body corporate without a managing director, or in the case of a firm or other association of persons, where a specific nomination has been made, in favour of a whole-time director, managing partner or member, as the case may be, such whole-time director, managing partner and member shall be the owner: 20

Provided also that where a mine belongs to,—

(i) a local authority or body, the person having the ultimate control over such authority or body; 25

(ii) a person who has the prospecting licence, mining lease or mining right, such person;

(iii) a liquidator or receiver, such liquidator or receiver, as the case may be, shall be the owner:

Provided also that any contractor or sub-lessee for the working of a mine or any part thereof, shall also be the owner, but, not so as to exempt the owner from any liability. 30

Explanation.— For the purposes of this clause,—

(i) the expressions “body corporate”, “board of directors”, “company”, “director”, “firms” and “managing director” shall have the same meanings respectively assigned to them under the Companies Act, 1956; 35 1 of 1956.

(ii) the expressions “prospecting licence” and “mining lease” shall have the same meanings respectively assigned to them under the Mines and Minerals (Development and Regulation) Act, 1957;’. 40 67 of 1957.

5. After section 18 of the principal Act, the following section shall be inserted, namely:—
- Insertion of new section 18A.
- ‘18A. (1) Without prejudice to any of the provisions of this Act or any other law for the time being in force, the owner of every mine shall appoint,—
- Appointment of officials and agents in mines.
- 5 (a) sufficient number of his officials, as may be prescribed, for the effective supervision of all operations, equipment, installations and sites, in the mine of such owner to ensure compliance with the provisions of the Act and of the rules and regulations made and of any order issued, thereunder;
- (b) such number of his agents, as may be prescribed, specifying their functions, duties and responsibilities in respect of each of his mines.
- 10 *Explanation.*—For the purpose of this sub-section, the expression “official” means a person, having such qualifications, as may be prescribed and appointed by, or, on behalf of the owner, to perform the duties of supervision in mine of such owner or part thereof, in such capacity as may be prescribed.
- (2) Every agent referred to in clause (b) of sub-section (1), shall,—
- 15 (a) possess such qualifications and experience, as may be prescribed;
- (b) be resident in India for at least one hundred and eighty-two days during any year or such other period as may be prescribed.
- (3) The owner shall, in respect of every agent referred to in clause (b) of sub-section (1), forthwith send notice of appointment of such agent to the Chief Inspector and the Inspector, specifying the functions, duties and responsibilities of every such agent in respect of the mine for which he is appointed as such.’
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6. In section 58 of the principal Act, after clause (a), the following clauses shall be inserted, namely:—
- Amendment of section 58.
- 25 “(aa) number of officials to be appointed under clause (a) of sub-section (1) of section 18A;
- (ab) number of the agents to be appointed under clause (b) of sub-section (1) of section 18A;
- (ac) the qualifications of the officials to be appointed under sub-section (1) of section 18A;
- 30 (ad) the qualifications and experience of the agents under clause (a) of sub-section (2) of section 18A;
- (ae) the period during which the agent shall be resident in India under clause (b) of sub-section (2) of section 18A;”.
7. In section 63 of the principal Act,—
- Amendment of section 63.
- 35 (a) in sub-section (1), for the words “five hundred rupees”, the words “fifty thousand rupees” shall be substituted;
- (b) in sub-section (2), for the words “three hundred rupees”, the words “thirty thousand rupees” shall be substituted.
8. In section 64 of the principal Act, for the words “one thousand rupees”, the words
- 40 “one lakh rupees” shall be substituted. Amendment of section 64.
9. In section 65 of the principal Act, for the words “two hundred rupees”, the words
- “twenty thousand rupees” shall be substituted. Amendment of section 65.
10. In section 66 of the principal Act, for the words “one thousand rupees”, the words
- “one lakh rupees” shall be substituted. Amendment of section 66.
- 45 11. In section 67 of the principal Act, for the words “one thousand rupees”, the words
- “one lakh rupees” shall be substituted. Amendment of section 67.
12. In section 68 of the principal Act, for the words “five hundred rupees”, the words
- “fifty thousand rupees” shall be substituted. Amendment of section 68.

19. After section 74 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 74A.

5 “74A. Where any person is prosecuted, or proceeded against, for contravening any of the provisions of this Act or of any rule, or regulation, or bye-law or order made thereunder, it shall be for the person who is alleged to have failed to comply with such duty or requirement, to prove that it was not reasonably practicable, or, as the case may be, all practicable measures, were taken, to satisfy the safety requirements, duty or other requirements, as the case may be.”.

Burden of proof in certain cases.

20. In section 76 of the principal Act,—

Amendment of section 76.

10 (a) for the words “all or any of the directors thereof”, the words “managing director, all or any of the directors thereof or where the owner of a mine is a foreign company, all or any of its principal officers, by whatever name called, including its director or secretary” shall be substituted;

(b) in the proviso,—

15 (i) in clauses (a), (b) and (c), the words “or managers” occurring at the end, shall be omitted;

(ii) after clause (c), the following clause shall be inserted, namely:—

“(d) in the case of a foreign company, any of its principal officers, by whatever name called, including its director or secretary,”;

20 (iii) after clause (d) as so inserted, in the long line, the words “or manager” occurring at both the places, shall be omitted.

21. After section 76 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 76A.

25 “76A. Nothing contained in this Act shall absolve any person from his liability under this Act, if such person had or has ultimate control over the affairs of the business of the mines.”.

Continuance of liability.

STATEMENT OF OBJECTS AND REASONS

The Mines Act, 1952, was enacted with a view to amending and consolidating the law relating to the regulation of labour and safety in mines. The Act, *inter alia*, regulates the working conditions in mines by providing for measures to be taken for the safety of the workers employed therein and certain amenities for them. The said Act was amended in 1983 by the Mines (Amendment) Act, 1983, *inter alia*, to provide for the prohibition of the employment of persons below eighteen years of age, inspection of mines by workers representatives, safety committees and to regulate the use of machinery to take care of the hazards associated with the introduction of new types of machines.

2. Since the last amendment was made in 1983 there have been several developments in the area of technology, scale of operation, working environment and work practices in coal, non-coal and oil sector. Operations are getting more and more mechanised with introduction of heavy machines, shallow deposits are getting depleted and mines are becoming deeper and complicated and operators from other parts of the world have started acquiring mining rights and managing mining operations within our country. This has created a new safety and health risk scenario at the work places in these sectors. In view of such developments the amendments have been proposed to the Bill mainly to keep pace with the changes at work places in the mining sector and thereby attempting to effectively manage the safety and health risk to the work persons employed in these sectors.

3. The Mines (Amendment) Bill, 2011 proposes to amend the Mines Act, 1952, *inter alia*, to,—

(a) amend the “long title” of the Act so as to reflect therein the regulation of conditions of work and welfare of persons employed in mines;

(b) clarify that the applicability of the Act to whole of India includes up to the Exclusive Economic Zone and Maritime Zones of India as defined under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;

(c) substitute the definition of “owner” so as to provide that a person or authority having ultimate control over the affairs of the mine be the owner and specifically provide for the person who would be the owner in the case of (i) company incorporated in India; (ii) foreign company; (iii) firm and other association of persons;

(d) define “foreign company” with reference to the Companies Act, 1956;

(e) make provisions for appointment of sufficient number of “officials” having prescribed qualifications for the effective supervision of all operations, equipment, installation and sets to ensure compliance of the provisions of the Act and rules;

(f) increase the penalties,—

(i) in case of obstruction of Chief Inspector or an Inspector in the discharge of his duties under section 63, from “five hundred rupees” to “fifty thousand rupees”;

(ii) in case of falsification of records under section 64, from “one thousand rupees” to “one lakh rupees”;

(iii) in case of using false certificate of fitness under section 65, from “two hundred rupees” to “twenty thousand rupees”;

(iv) in case of omission to furnish plans, etc., under section 66, from “one thousand rupees” to “one lakh rupees”;

(v) in case of contravention of provisions regarding employment of labour under section 67, from “one thousand rupees” to “one lakh rupees”;

(vi) in case of employment of persons below eighteen years of age under section 68, from “five hundred rupees” to “fifty thousand rupees”;

(vii) in case of failure to appoint a manager of mines, in contravention of the provisions of section 17, under section 69, from “three months, or with fine which may extend to two thousand and five hundred rupees” to “one year, or with fine which may extend to two lakh and fifty thousand rupees”;

(viii) in case of failure to give notice of accident, in contravention of the provisions of sub-section (1) of section 23, under section 70, from “five hundred rupees” to “fifty thousand rupees”;

(ix) in case of contravention of certain regulations under section 72A, from, “six months, or with fine which may extend to two thousand rupees” to “one year, or with fine which may extend to two lakh rupees”;

(x) in case of contravention of the any order issued under section 22 relating to powers of inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous, under section 72B, from “two years imprisonment and fine which may extend to five thousand rupees” to “five years imprisonment and fine which may extend to five lakh rupees”;

(xi) provided in section 72C of the Act for contravention of law with dangerous results;

(xii) provided in section 73 of the Act for contravention of any provision of the Act or of any rule or regulation or bye-law or of any order made thereunder of which no penalty is specified in the Act;

(g) insert a new section 74A so as to shift the burden of proof upon the person who is being prosecuted or proceeded against to prove that it was not reasonably practicable, or, all practicable measures to satisfy the safety requirements were taken;

(h) amend section 76 so as to enlarge the scope to cover the foreign companies and to take away the “manager” out of the scope of the said section; and

(i) to insert a new section 76A to provide that the person who has actual ultimate control over the affairs of the mines would continue to be liable for the contravention of the provisions of the Act or of any rule or regulation or bye-law or order made thereunder.

4. With all the above amendments new mining legislation has become utmost necessary that should not only embrace the current needs of the prevailing environment but also address the future needs of the profession.

5. The bill seeks to achieve the above objectives.

MALLIKARJUN KHARGE

NEW DELHI;
The 9th March, 2011.

ANNEXURE

EXTRACTS FROM THE MINES ACT, 1952

(35 OF 1952)

An Act to amend and consolidate the law relating to the regulation of labour and safety in mines.

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CHAPTER I

PRELIMINARY

Short title, extent and commencement. **1. (1)** * * * * *

(2) It extends to the whole of India.

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Definitions. **2. (1)** In this Act, unless the context otherwise requires,—

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(c) "agent", when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine or of any part thereof;

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(d) "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver; but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor or sub-lessee for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;

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CHAPTER IX

PENALTIES AND PROCEDURE

Obstruction. **63. (1)** Whoever obstructs the Chief Inspector, an Inspector, or any person authorised under section 8 in the discharge of his duties under this Act, or refuses or wilfully neglects to afford the Chief Inspector, Inspector or such person any reasonable facility for making any entry, inspection examination or inquiry authorised by or under this Act in relation to any mine, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever refuses to produce on the demand of the Chief Inspector or Inspector any registers or other documents kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe to be likely to prevent any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act, shall be punishable with fine which may extend to three hundred rupees.

64. Whoever—

(a) counterfeits, or knowingly makes a false statement in, any certificate, or any official copy of a certificate, granted under this Act, or

(b) knowingly uses as true any such counterfeit or false certificate, or

(c) makes or produces or uses any false declaration, statement or evidence knowing the same to be false, for the purpose of obtaining for himself or for any other person a certificate, or the renewal of a certificate, under this Act, or any employment in a mine, or

(d) falsifies any plan, section, register or record, the maintenance of which is required by or under this Act or produces before any authority such false plan, section, register or record, knowing the same to be false, or

(e) makes, gives or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true,

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Falsification of records, etc.

65. Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under section 43 a certificate granted to another person under that section, or, having been granted a certificate of fitness to himself under that section, knowingly allows it to be used, or allows an attempt to use it to be made by another person, shall be punishable with imprisonment for a term which may extend to one months, or with fine which may extend to two hundred rupees, or with both.

Use of false certificates of fitness.

66. Any person who, without reasonable excuse the burden of proving which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, section, return, notice, register, record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to one thousand rupees.

Omission to furnish plans, etc.

67. Whoever, save as permitted by section 38, contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder prohibiting, restricting or regulating the employment or presence of persons in or about a mine shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both.

Contravention of provisions regarding employment of labour.

68. If a person below eighteen years of age is employed in a mine in contravention of section 40, the owner, agent or manager of such mine shall be punishable with fine which may extend to five hundred rupees.

Penalty for employment of persons below eighteen years of age.

69. Whoever in contravention of the provisions of section 17, fails to appoint a manager shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand and five hundred rupees, or with both.

Failure to appoint manager.

70. (1) Whoever in contravention of the provision of sub-section (1) of section 23 fails to give notice of any accidental occurrence or to post a copy of the notice on the special notice board referred to in that sub-section and to keep it there for the period specified shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Notice of accidents.

(2) Whoever in contravention of a direction made by the Central Government under sub-section (3) of section 23 fails to record in the prescribed register or to give notice of any accidental occurrence shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Special provision for contravention of certain regulations.

72A. Whoever contravenes any provision of any regulation or of any bye-law or of any order made thereunder, relating to matters specified in clauses (d), (i), (m), (n), (o), (p), (r), (s) and (u) of section 57 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

Special provision for contravention of orders under section 22

72B. Whoever continues to work in a mine in contravention of any order issued under sub-section (1A), sub-section (2) or sub-section (3) of section 22 for under sub-section (2) of section 22A shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgment of the court, such fine shall not be less than two thousand rupees.

Special provision for contravention of law with dangerous results.

72C. (1) Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder other than an order made under sub-section (1A) or sub-section (2) or sub-section (3) of section 22 or under sub-section (2) of section 22A shall be punishable—

(a) if such contravention results in loss of life, with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees, or with both; or

(b) if such contravention results in serious bodily injury, with imprisonment which may extend to one year, or with fine which may extend to three thousand rupees, or with both; or

(c) if such contravention otherwise causes injury or danger to persons employed in the mine or other persons in or about the mine, with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in writing in the judgment of the court, such fine, in the case of a contravention referred to in clause (a), shall not be less than three thousand rupees.

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General provision for disobedience of orders.

73. Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

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Determination of owner in certain cases.

76. Where the owner of a mine is a firm or other association of individuals, all, or any of the partners or members thereof or where the owner of a mine is a company, all or any of the directors thereof or where the owner of a mine is a Government or any local authority, all or any of the officers or persons authorised by such Government or local authority, as the case may be, to manage the affairs of the mine, may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable:

Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated,—

(a) in the case of a firm, any of its partners or managers;

(b) in the case of an association, any of its members or managers;

(c) in the case of a company, any of its directors or managers,

who is resident, in each case in any place to which this Act extends and who is in each case either in fact in charge of the management of, or holds the largest number of shares in such firm, association or company, to assume the responsibility of the owner of the mine for the purposes of this Act, such partner, member, director or manager, as the case may be, shall, so long as he continues to so reside and be in charge or hold the largest member of shares as aforesaid, be deemed to be the owner of the mine for the purposes of this Act unless a notice in writing cancelling his nomination or stating that he has ceased to be a partner, member, director or manager, as the case may be, is received by the Chief Inspector.

Explanation.—Where a firm, association or company has different establishments or branches of different units in any establishment or branch, different persons may be nominated under this proviso in relation to different establishments or branches or units and the person so nominated shall, with respect only to the establishment, branch or unit in relation to which he has been nominated, be deemed to be the owner of the mine.

RAJYA SABHA

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BILL

further to amend the Mines Act, 1952.

(Shri Mallikarjun Kharge, Minister of Labour and Employment)