

Memorandum of Action taken
on the
Interim Report of
Justice M.B. Shah Commission of Inquiry for
Illegal Mining of Iron Ore and Manganese

Ministry of Mines

**Memorandum of Action taken on the interim Report of the Justice MB Shah
Commission of Inquiry for Illegal Mining of Iron Ore and Manganese**

1. The Government of India has set up Shri Justice M. B. Shah Commission of Inquiry for Illegal Mining of Iron Ore and Manganese vide Notification No. S.O. 2817(E) dated 22nd November, 2010. The Shah Commission has been setup with following terms of reference:

- i. to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses resulting there from; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;
- ii. to inquire into and determine the extent to which the management, regulatory and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;
- iii. to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and to identify, as far as possible, the persons responsible for such tampering; and
- iv. to inquire into the overall impact of such mining, trade, transportation and export, done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and State Governments.

The Commission has also been empowered to recommend remedial measures to prevent such mining, trade, transportation and export done illegally or without lawful authority, and to this purpose the Commission may, if it deems fit, submit interim reports to the Central Government on any of the matters specified in the notification and shall also recommend specific steps that may be required to be taken to urgently curb the menace of such illegal mining, trade and transportation.

2. In terms of its powers, the Commission, has submitted its first Interim Report on 14.7.2011 recommending some urgent remedial measures to prevent further illegal mining, its trade, transportation and export, which include amendments proposed in the MMDR Act, 1957, amendments to Mineral Concession Rules, 1960, amendments in Guidelines issued by the Indian Bureau of Mines (IBM), and policy changes and measures for strengthening the State Government machinery.

3. In terms of sub-section (4) of section 3 of the Commission of Inquiry Act, 1952, the appropriate Government shall cause to be laid before each House of Parliament the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a Memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.

4. The recommendations of the Shah Commission have been considered in the Ministry of Mines and actions taken in respect of the recommendations of the Shah Commission are given below:

Action taken report

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1	The Commission has recommended that Rule 24A(1) of the Mineral Concession Rules, 1960 may be amended to include two new sub-clauses (b) and (c) on making it mandatory for an applicant to simultaneously apply for Forest clearance and State Pollution Control Board clearance with concerned authorities, at the time of applying for renewal of mining lease with the State Government	Agreed. However, as both the intended procedures for application does not pertain to the MMDR Act or Rules framed there under, but rather to the Forest (Conservation) Act 1980 and possibly the Air (Prevention and control of pollution) Act, 1981 and the Water (Prevention and control of pollution) Act, 1974, the recommendations of the Commission for simultaneous application for Forest clearance and State Pollution Control Board clearance with concerned authorities at the time of applying for renewal of mining lease with the State Government, i.e. 12 months prior to the expiry of the lease, has been forwarded to the Ministry of Environment and Forests in the Government of India for incorporating in

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		the Rules or Guidelines to the Forest (Conservation) Act 1980, the Air (Prevention and control of pollution) Act, 1981, and the Water (Prevention and control of pollution) Act, 1974.
2	The Commission has recommended that with respect to deemed extension of mining leases under Rule 24A(6) of Mineral Concession Rules, 1960, the period of deemed extension in case of failure of State Government to dispose the application for renewal of mining lease, the period of such deemed extension should be limited to a period of only one year or till the State Government passes any orders in the matter.	<p>Not agreed.</p> <p>Rule 24 A (6) was first introduced in the Mineral Concession Rules, 1960, vide amendments on 10.2.1987 and laid down that if an application for first renewal was not disposed with in the time limit of six months then it would stand deemed extended for a period of one year or the date of State Government orders, which ever is earlier. This provision was not available for any subsequent renewals. With subsequent amendment in Rule 24A(6) on 20.2.1991 the provision for deemed extension for one year was allowed for all renewal applications (without limiting to first renewal cases) where State failed to pass orders within time limits. Then with further amendments on 27.9.1994, Rule 24A(6) allowed deemed extension (without defining period) till the State Government passed orders. The present recommendation of the Commission seeks to revert back to the provisions existing in Rule 24A(6) post 20.2.1991 amendments whereby in such cases where the State Government fails to take a decision on renewal for mining leases with in the specified time limit, such applications shall be deemed extended for a period of only one year.</p> <p>The Ministry is of the opinion that such a move would encourage corruption enabling the use of threat of delay to gain undue pecuniary advantages. For a miner the cost of shutting down a mining operation and restarting it would be a major disincentive, and will push him to corruption. Not only that the impact on raw material availability would also be detrimental. The deemed extension provision is only to facilitate State Governments to take a decision so that a miner is not unduly penalised by the</p>

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		<p>State Governments inability to take a decision. However, during this period the State Governments are free to take a decision on granting or rejecting renewals depending upon the merits of the case. For this reason, the Ministry of Mines does not accept the recommendation of the Commission as it is not a practical solution, and it may lead to impacting mineral production in the country.</p>
3	<p>The Commission has held that several instances of illegal mining have come to the notice of various Committees where. In order to improve regulation for proper boundary demarcation and prevent mining beyond lease area or mining without lease, the Commission has recommended making it mandatory for Central and State Government officers authorized under Section 24 of the MMDR Act, 1957, to verify whether the boundary pillars are properly structured and are easily visible, and ensure that reports are properly recorded, by adding a new clause in sub-section (1) of section 24 of the MMDR Act, 1957.</p>	<p>No action required as provisions already exists at present. Under the existing clause (b) of section 24(1) of the MMDR Act, 1957, authorized persons (Central and State Government officers) are already empowered to conduct survey and take measurements, which include verification of the structure of the boundary pillars, and its visibility. However, as the IBM or the State Directorate of Mining and Geology do not have a legal mandate to approve the veracity of a boundary pillars since this subject lies entirely in the domain of Revenue Department of the State Government which manages the cadastral maps/records, the survey activities mandated under the MMDR Act then would largely pertain to the mining lease area only and include merely a physical verification of the presence of boundary pillars etc. as per lease deed/ mining plan and not its veracity with respect to land records. Further, the existing Rule 27(1)(g) of Mineral Concession Rules (MCR) 1960 and the covenants for the lessee/lessees in PART VII of the model lease deed in Form K cover the aspects of boundary pillars and demarcation as follows.</p> <p>Rule 27(1)(g) of MCR 1960: <i>“the lessee shall at his own expenses erect and at all times maintain and keep in good repair boundary marks and pillars necessary to indicate the demarcation shown in the plan annexed to the lease”</i>.</p> <p>Covenants of the lessee/lessees in item 2 under Part VII of the lease deed: <i>“The lessee/lessees shall at his/their own expense</i></p>

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		<p><i>erect and at all times maintain and keep in repair boundary marks and pillars according to the demarcation to be shown in the plan annexed to this lease. Such marks and pillars shall be sufficiently clear of the shrubs and other obstructions as to allow easy identification”.</i></p> <p>Considering the fact that section 24(1) (b) already provides powers to the IBM and the State Government to authorize officers to conduct survey and take measurements, which could include verification of the structure of the boundary pillars, and its visibility, and mandates on the mining lease holder to maintain accurate boundary pillars, the Ministry of Mines is of the opinion that amendment to section 24(1) by addition of a new clause is not necessary.</p>
4	<p>The Commission has recommended amendment in Rule 27 of the Mineral Concession Rules, 1960, by adding a new clause to allow State Government to determine mining lease of such persons convicted of illegal mining and also amend Rule 26 of Mineral Concession Rules, 1960, by adding a new provision for the State Government to reject application for renewal of mining lease by a person convicted of illegal mining</p>	<p>Agreed. In consultation with the Indian Bureau of Mines, a suitable proposal for amendment of the Mineral Concession Rules, 1960, is presently under process in the Ministry of Mines. The amended Rule would be notified after following due process of vetting of the draft amendment by the Ministry of Law and Justice.</p> <p>It is further stated that this recommendation of the Commission is line with the new draft MMDR Bill, 2011, approved by the Government on 30.9.2011, which provides that any person convicted of illegal mining would stand to lose not only his existing mineral concessions but also be debarred from obtaining any concessions in the future.</p>
5	<p>The Commission has observed that the boundary pillars need to be properly spaced out and visible, and for this purpose has recommended that distance between two pillars should not be more than 20 meters and that the pillars should be made of concrete. To ensure this, the Commission has recommended amendment in Circular No. 2 of 2010 dated 06.04.2010 issued by the IBM by adding clause 9 as</p>	<p>Agreed, subject to practical applicability as per the topography of the lease. Since mining leases are situated in different topography and types of lands e.g. thickly forest, rugged hilly terrain and plain waste land as well as arable land, in various shapes, it is not always possible to ensure a regular distance between the boundaries pillars. The Department of Forest is following an existing criteria for erecting boundary pillars in forest areas which</p>

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	<p>under. “(9) The distance between two pillars should not be more than 20 mtrs. and that the pillars should be of concrete”.</p>	<p>specify that: (i) the first pillar should be visible from the third pillar as these are in the thickly vegetated area. (ii) the boundary pillars should not be more than 100 meters apart (iii) on curves, distance between two pillars should not be more than 15 meters depending on the vegetation and the curvature. (iv) corner pillars should be Pyramid shaped with a base of 1 meter.</p> <p>Considering the fact that a large part of the mining lease areas can occur in forest areas, and for the sake of uniformity in law, in line with the guidelines issued by the Department of Forest, the Indian Bureau of Mines has issued an addendum to its circular dated no. 2/10 dated 23rd September 2011, which is also applicable for non-forest areas as follows: (a) The maximum distance between any two successive pillars should not be more than 100 meters, (b) All corner pillars should be pyramid shaped with base of 1 meter and height of 2 meter and should be placed 1 meter above the ground and 1 meter below the ground (c) Distance and bearing to the forward and backward pillars and latitudes and longitudes should be marked on all the corner pillars.</p> <p>While the additional guidelines of Indian Bureau of Mines dated 23.9.2011 seem to be sufficiently stringent, IBM has also been directed to consider the feasibility of ensuring that mining lease holders install boundary pillars at 20 meters interval.</p>
6	<p>To ensure that the IBM performs its duties assiduously, the Commission has recommended further amendment in the Guidelines No. 2 of 2010 dated 06.04.2010 issued by the IBM, by adding clause 10 as follows: (10) It should be mandatory for the concerned officer/s to visit the mine/s</p>	<p>Agreed, subject to practical applicability. Considering the limited staff strength of inspecting officers in IBM (as the number of inspecting officers in Indian Bureau of Mines are 50 where as number of iron and manganese mines are about 1000 spread all over the country), it may not be a feasible for inspecting officers to visit every mine</p>

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	<p><i>at least once a month, verify whether the boundary pillars are properly affixed and are easily visible, and the report/s thereof should be kept on record.</i></p> <p><i>AND</i></p> <p><i>If the report is incorrect, the explanation of the concerned officer who visited last should be sought for and if not found satisfactory, departmental action should be taken.”</i></p>	<p>monthly once. However, taking into account the need for including sufficient check by IBM officers for ensuring maintenance of boundary pillars during routine inspection, the aspect of checking boundary pillars shall be strictly followed and recorded. Further, the accountability on the part of the inspecting officer of IBM to ensure whether the mining operations are within the ML area demarcated by boundary pillars and keeping the data on record, alongwith the recommendation of the Commission for initiating departmental action against IBM officers in case of incorrect reporting has been accepted in toto. IBM has been directed to issue suitable guidelines for scheduling checks for IBM’s inspection officers to ensure installation of boundary pillars by the lessee alongwith regular inspections, and take necessary action under Mineral Conservation and Development Rules, 1988.</p>
7	<p>The Shah Commission has pointed out that for controlling illegal mining and for recovery of royalty, it is necessary to have effective functioning check posts and computerized weigh bridges, since the Commission feels it is not proper to rely only on the reporting by mine owner or the transporters. Recognizing the importance of framing rules under Section 23 C of MMDR Act, 1957, it has desired systemic solutions such as :</p> <p>(a) that the Central Government may frame model rules for State to adopt.</p> <p>(b) establishment of computerized weigh bridges at exit point for mining clusters or within radius of 15 to 20 Kms from mining areas.</p> <p>(c) developing online system to regulate transportation of minerals using GPS and RFID devices.</p> <p>(d) modernization of check posts</p> <p>(e) encouraging maintenance of</p>	<p>Agreed. The action, as sought by the Shah Commission, pertains to State Governments, which the Ministry of Mines has been following up with the State Governments on regular basis through a systemic mechanism of Central Coordination-cum-Empowered Committee, set up in the Ministry of Mines with important mineral producing State Governments and concerned Ministries/Departments as members (action taken so far is given at Annexure). The Ministry of Mines intends to periodically review the action taken on this recommendation of the Shah Commission with the State Governments in quarterly meetings of the said Central Coordination-cum-Empowered Committee.</p>

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	roads by lease holders, and (f) increased use of Information Technology by the State Directorates of Mining and Geology	
8	The Commission in its interim report has stated that the main cause and incentive for illegal mining of iron and manganese ore is the huge profit possible due to exports. For this reason, the Commission has recommended a total ban on export of iron ore and manganese ore.	<p>Export of minerals, including iron ore and manganese ore is guided by Export- Import Policy, which is administered by the Department of Commerce in the Ministry of Commerce and Industry in the Government of India, and the MMDR Act and Rules framed there under do not bar export of mineral. The issue has been referred to the Department of Commerce.</p> <p>The Ministry of Mines is of the opinion that while demand for iron ore due to exports is a reality it cannot be held that exports are the reason for illegal mining rather it is lack of governance at State Government levels which has largely contributed to illegal mining. The Ministry is of the view that a ban on export of iron ore may not be feasible.</p>

ANNEXURE

ACTION TAKEN BY THE CENTRAL GOVERNMENT TO CURB ILLEGAL MINING IN THE COUNTRY IN TERMS OF THE ACTION POINTS RECOMMENDED BY THE SHAH COMMISSION

In respect of the issues on which action has been recommended by the Shah Commission, the Ministry has taken the following action:

- (a) State Governments were asked to frame rules to control illegal mining as per Section 23 C of MMDR Act.
- (b) State Governments were requested to set up Task Forces at State and District level to control illegal mining since the year 2005.
- (c) To reinforce mechanism to control illegal mining, the State Governments were advised to:-
 - Set up State Coordination-cum-Empowered Committee (SCEC) to coordinate efforts to control illegal mining by including representatives of Railways, Customs and Port authorities.
 - Frame State Mineral Policy on the basis of model Mineral Policy drafted by the Ministry of Mines and to adopt transparent concession grant policies to reduce scope for illegal mining.
 - To adopt an Action Plan with specific measures to detect and control illegal mining including, use of remote sensing, control on traffic, gather market intelligence, registration of end-users and setting up of special cells etc.
 - Ministry of Mines has so far held five meetings with the State Governments to specifically review the action taken by the State Governments on illegal mining on 3.8.2009, 27.11.2009, 22.2.2010, 16.4.2010 and on 21.9.2010. Subsequently the issue has been included as a regular item of the Central Coordination-cum-Empowered Committee.
 - In a meeting of all State Mining Secretaries convened on 21.09.2010, action taken by State Governments to curb illegal mining were reviewed and the following important decisions were taken to tighten regulation of mining activities:-

- (i) State governments to immediately start the process of strengthening their Directorate of Mining and Geology, which has been made a part of the action plan to be monitored by Central Government,
 - (ii) Coordination and information sharing with Railways, Customs and Port Authorities to be activated immediately through State Coordination-cum-Empowered Committees at the highest level,
 - (iii) Yearly targets for inspection of endemic areas of illegal mining by Special Task Force constituted in coordination with IBM,
 - (iv) Best practices followed by a State Government to curb illegal mining to be adopted by all State Governments,
 - (v) Standardization of maps for the purpose of grant of mineral concessions, use of GPS based technologies and speeding up digitization of cadastral maps,
 - (vi) To ensure compulsory registration and reporting by miners, Traders/stockiest for better accounting of minerals.
- A Central Coordination-cum-Empowered Committee has been set up under Secretary (Mines) on 4.3.2009. This Committee has held six meetings (on six monthly basis), on 24.7.2009, 22.12.2009, 18.6.2010, 22.12.2010, 3.5.2011 and 20.9.2011 to consider all mining related issues, including specifically, matters relating to coordination of activities to combat illegal mining. Members include important mineral producing State Governments, Ministry of Environment and Forests, and Ministry of Steel. Railways, Customs, and Ministry of Shipping have also been included as special invitees.
 - Some of the important outcome of the meeting pertaining to illegal mining are given below:
 - All State Governments were requested to computerize the system for collection of royalty and issue of transport permits on similar basis as the Online Royalty Pass System implemented by (n)Code Solutions, a Division of Gujarat Narmada Valley Fertilizers Company (GNFC) Ltd.
 - All State Governments were requested to include representatives of Railways, Customs, Ports and in case of iron ore producing States, representative of Ministry of Steel in the State Coordination-cum-

Empowered Committees set up in the State, for better monitoring of the transportation and export of ore.

- All State Governments were asked to send list of mineral concession cases pending with Ministry of Environment and Forests for clearances.
- All State Governments were asked to impose the special condition under Rule 27(3) of Mineral Concession rules, 1960 for ensuring that all the mining lease holders assess the resources in their leases as per the UNFC.
- The State Governments were requested to be more actively engaged in improving the quality of mineral administration, by taking the following steps:-
 - increasing personnel at railway sidings ;
 - removal of restrictions on loading of ores in sidings not used optimally;
 - improving security features of the transit passes (for this purpose, the system of a single permit per rake would need to be implemented);
 - take action against overloading of trucks which is a substantial factor in royalty evasion besides being responsible for deteriorating road quality in mining areas and increasing transport inefficiency;
 - putting in place in-motion weigh-bridges and modernization of checkgates;
 - registration of loading contractors and transporters;
 - better enforcement through intelligence sharing, enforcement squads, joint inspection, mining cell in police organization etc.
- Mainly because of the proactive stance taken by the Central Government on the issue, the following developments have been reported:
 - Eighteen States (Andhra Pradesh, Bihar, Chattisgarh, Gujarat, Goa, Haryana, Himachal Pradesh, Jharkhand, Jammu and Kashmir, Karnataka, Madhya Pradesh, Maharashtra, Nagaland, Orissa, Rajasthan, Uttrakhand, Uttar Pradesh and West Bengal) have framed

Rules under Section 23C of the MMDR Act, 1957 for controlling illegal mining, transportation and storage of minerals.

- Twenty one States (Andhra Pradesh, Assam, Bihar, Chattisgarh, Gujarat, Goa, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Manipur, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Tamilnadu, Uttrakhand, Uttar Pradesh and West Bengal) have set up Task Force at State and/or District level to check illegal mining.
- Ten State Governments (Andhra Pradesh, Chhattisgarh, Gujarat, Goa, Haryana, Karnataka, Maharashtra, Orissa, Rajasthan and West Bengal) have set up a Coordination-cum-Empowered Committee to monitor action taken on illegal mining at the apex State level body.
- States like Andhra Pradesh, Gujarat, Maharashtra, Rajasthan, Karnataka, Jharkhand and Tamil Nadu have undertaken digitization of the mining area to varying extent to prevent mining beyond lease areas.
- State Governments of Rajasthan and Orissa have reported to have commenced using satellite imagery to identify the correct lease boundaries.
- State Governments of Gujarat, Jharkhand, Karnataka, Orissa have reported to have started use of holograms/ bar codes in the transport permits to detect illegal transportation of minerals.