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LawPublicus The Legal Portal

A Study of the Mines Act, 1952

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A Study of the Mines Act, 1952

By: Arunav Bhattacharjya

ABSTRACT

In India, laws relating to labour and employment comes under the broad category of industrial laws. For any country in the world, industrialization is primarily regarded as one of the key engines to economic growth and ensuing prosperity in the country. Commence of industrial processes and the ensuing growth process is not an individual venture or effort of the employer alone but it involves the cumulative hard work and hard-boiled grind of the stakeholders, which involves the employers, employees, supervisors, managers and the entrepreneurs.

With the advent of the modern concept of a welfare state, numerous legislative efforts have been carried out towards the regulation of industrial spaces, safeguards and the protection of their health, safety and welfare. These legislations were a step towards social justice, equitable participation and regulation of the workers to ensure parity among the different stakeholders. A surfeit of labour laws has been enacted since independence, to ensure sound health, safety, and welfare of the workers; in order to protect the workers against the oppressive terms as a worker is economically weak relatively and has midget bargaining power; to advance and alleviate the workers in the organization; powers to deal with industrial disputes; and to enforce social justice and labour welfare schemes. The Mines Act, 1952 was legislated with the intention of regulating the health and safety of the laborers engaged in working in the mine fields. The Mines Act, 1952 came into force on 1st of July, 1952. The Act extends to the whole of India. The Mines Act, 1952 is a piece of legislation that comprehensively and entirely deals with safety, welfare and the health of the workers employed in the mining activity, in furtherance of the notion of a welfare society.

1. A BRIEF HISTORY OF MINING LEGISLATION IN INDIA

In India, neither mining, nor the laws for regulation of mining is a new phenomenon. Since 19th century, various laws have been in place for the regulation of mining activities in India. Although mining activities were pre-dominant before the advent of the cotton industry, they were not subjected to any legislation until 1894.¹ The year 1890 saw the very first proposal for the regulation of mining in India, introduced by the then Secretary of State of India, Lord Cross. Subsequently in 1894, an Inspector of Mines was appointed for the first time, bestowed with supervisory and management responsibilities. The first Mines Act was enacted in the year 1901 which was made applicable only to the British Indian territories. This was accompanied by the establishment of the Bureau of Mines Inspection in Calcutta province. The Mines Act of 1901 was further re-enacted in 1923, 1928, 1935 and, in 1952, post-independence, it was finally made applicable throughout the Indian territory.²

Since then, the Mines Act, 1952, has been the guiding force of regulation of all activities relating to mining in India, and the Act has also been subjected to several amendments from time to time to keep pace with the changing nature of labour measures. The states, over the years, have also made several state amendments to keep the law in line with their state policy measures. It is also notable to mention that the Mines Act 1952, consolidated all previous regulations of labour and safety in mines, which otherwise varied from state to state, and brought them in line with the Factories Act of 1948.³

Post-1947, India witnessed a significant expansion of industrial activities due to the utmost priority given by the Union Government in its Five-year plans. Thus, there was a great regard given to establishment of a socialistic pattern in the society for the greater welfare of the laborers. With the changing nature of the Indian state to a more welfare state, there was a significant increase in labour welfare measures and schemes which was reflected in the policies, schemes and overt political intent.⁴

¹ CORRESPONDENT, *THE MINES ACT 1952*, EGYANKOSH (2016).
[HTTP://WWW.EGYANKOSH.AC.IN/BITSTREAM/123456789/6921/1/UNIT-8.PDF](http://www.egyankosh.ac.in/bitstream/123456789/6921/1/UNIT-8.PDF)

² IBID

³ STUDY MATERIAL, *LABOUR LAWS AND PRACTICES*, THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (JULY 2019) [HTTPS://WWW.ICSI.EDU/MEDIA/WEBMODULES/LABOUR_LAWS&_PRACTICE.PDF](https://www.icsi.edu/media/webmodules/labour_laws&_practice.pdf)

⁴ IBID.

In the Union List of the Indian Constitution, Entry No. 55 of the 7th Schedule deals with the regulation of labour and ensuring their safety in mines and oilfields; Entry No. 61 deals with the industrial disputes relating to the union employees and Entry No. 65 deals with the union agencies and institutions for – (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.

In the Concurrent List, Entry No. 22 of the 7th Schedule deals with trade unions; industrial and labour disputes; Entry No. 23 deals with social security/ insurance; employment and unemployment and Entry No. 24 deals with the welfare of labour including regulation of the conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

To say that the Mines Act, 1952, was a significant legislation for labour welfare and regulation of mines would be an overstatement if we do not mention the inclusive clauses the Act carries. The Act covers all bore and oil wells, shafts of a mine, all open cast work, provisions of health and safety of the workers employed in the mine fields, provisions on terms of employment, wages, appointment, due compliance of the regulations, and ensuring a safe and a healthy working environment.

1.1 OCCUPATIONAL HEALTH HAZARDS IN MINING

Mining is widely regarded as a very hazardous profession that carries in itself, a wide range of risks. Unsafe acts and working conditions in the mine field often leads to many untoward accidents, which can be otherwise prevented, provided that the rules and regulations enforced are strictly complied with.⁵

The life cycle of mining process begins with exploration, goes through production, and then ends with the closure and post mining land use. Adoption of new technologies can benefit the mining industry and consumers alike. Within this life cycle, comes in associated health hazards. When it comes to the occupational health hazards associated with mining industry, there is a wide range of facets associated to it. Many of the emerging issues are demotic to the

⁵ ALEX STEWART, *MINING IS BAD FOR HEALTH: A VOYAGE OF DISCOVERY*, SPRINGER (JULY 9, 2019) [HTTPS://LINK.SPRINGER.COM/ARTICLE/10.1007/S10653-019-00367-7](https://link.springer.com/article/10.1007/s10653-019-00367-7)

practice of occupational medicine in all industries.⁶ Effective health surveillance and biological monitoring require sophisticated information technology systems that are only now being adequately developed. This necessitates the need for more effective risk communication. The prevalent provisions of medical services at remote locations are problematic in the sense that it is equipped with difficulty in attracting and retaining appropriately trained staff. Few have the desired mix of occupational health and emergency medicine skills.⁷

Occupational hazard in the mining industry, therefore, is regarded as critical and serious proportions for the employers and the mining authorities. Provisions in the Indian Constitution makes the safety and welfare of all persons engaged in such industry, a subject, on which, only the Union government has the power to legislate upon.⁸ The concerns are regulated by the Mines Act, 1952 and managed by the Directorate General of Mines Safety, a scientific and technological organization under the Labour Ministry.

The Mines Act, 1952 has therefore, incorporated many sections which are required to ensure that the working conditions of the laborers in the mine fields are met with the seemingly safety and health guidelines, suited to their work environment, nonetheless, setting up a minimum benchmark for all the activities falling under the Act.

1.2 RULES FRAMED WITH RESPECT TO THE ACT

The Mines Act, 1952 contains various provisions for measures relating to the health, safety, and welfare of workers in the coal, metalliferous and oil mines. The Act lays out the various duties of the owner in the management of the mining operations and the health, safety in mines and related aspects such as the number of working hours in mines, the minimum wage rates and so on. Over the years, several rules have been made on the various facets associated with the mining industry, with the ulterior motive of the health, safety and the welfare of the workmen in the industry.⁹

The primary object of the most prominent rules with respect to the Mines Act, 1952, have been given as follows-

⁶ CORRESPONDENT, *THE 5 STAGES OF THE MINING LIFE CYCLE*, DECIPER (APR. 29, 2019)

[HTTPS://WWW.DECIPHER.COM.AU/BLOG/MINING-RESOURCES/THE-5-STAGES-OF-THE-MINING-LIFE-CYCLE](https://www.decipher.com.au/blog/mining-resources/the-5-stages-of-the-mining-life-cycle)

⁷ SUPRA NOTE 10

⁸ SUPRA NOTE 8

⁹ IBID.

- **The Mines Rescue Rules, 1985**

These rules were framed, laying out provisions for the rescue of work persons in the event of fire, explosion and any such unforeseen calamity. These rules were made applicable to metalliferous and coal underground mines.¹⁰

- **The Mines Rules, 1955**

These rules were made for further elaboration of welfare, medical surveillance, health, worker's participation in safety management in respect of coal, oil and metalliferous mines.¹¹

These rules were framed, invoking the powers given under Section 58 of the Mines Act, 1952. The rules present a very detailed manner, specific provisions for the upkeep of health, safety and the welfare of the mine workers, keeping in mind the schedules for necessary filings of the industry.¹²

- **The Mines Creche Rules, 1966 and The Coal Mines Pith Head Bath Rules, 1959**

These rules were made to provide shelter to the children of the women employees and bathing facilities for all workers in all mines and coal mines in the respective set of rules.¹³

- **The Maternity Benefit (Mines & Circus) Rules 1963**

These rules were framed to regulate the employment of women in mines, before and after child-birth and provide them other maternity benefits, subject to the provisions of the Act.¹⁴

- **The Mines Vocational Training Rules, 1966**

These rules were framed to equip the mine workers in all kinds of mines and necessary training to deal with any hazards.¹⁵

¹⁰ COMPENDIUM OF LAWS ON DISASTER MANAGEMENT, NATIONAL DISASTER MANAGEMENT AUTHORITY, GOVT. OF INDIA (JAN. 2015)
[HTTPS://CDN.S3WAAS.GOV.IN/S38757150DECB89B0F5442CA3DB4D0E0E/UPLOADS/2018/07/2018071024.PDF](https://cdn.s3waas.gov.in/s38757150DECB89B0F5442CA3DB4D0E0E/UPLOADS/2018/07/2018071024.PDF)

¹¹ IBID.

¹² IBID.

¹³ IBID.

¹⁴ IBID.

¹⁵ IBID.

2. A PERUSAL OF THE MINES ACT, 1952

2.1 AIMS AND OBJECTIVES

The Mines Act, 1952 applies to every 'mine' under Section 2(j) of the Act. The Preamble of the Mines Act of 1952 clearly states that the Act was enacted to amend and consolidate the existing laws relating to the regulation of the labour and their safety in the mines.¹⁶ The Act seeks to regulate the environment of the working conditions in the mines, by enunciating various measures that are needed to be carried for the safety and well-being of the workers working therein and providing them with various amenities for their overall welfare. This includes provisions relating to health and safety, regulating the hours of employment, provisions relating to the wages, provisions for efficient management of the mines which includes appointment of inspectors, certifying surgeons and other authorities.¹⁷

The Act seeks to provide provisions relating to the workers' health and safety providing them with a conducive environment by enunciating measures on drinking water, conservancy, for the medical appliances, the liability and the responsibility that lies on the owner to give out notices of accidents to the appropriate authority. The Act seeks to provide for provisions concerning the hours and limitation of the employment of the workers (which includes a weekly rest day, a compensatory rest day, regulating the hours of work above and below the ground), provisions relating to night shift, extra-wages for any sort of overtimes work, the daily hours of work, regulating the employment of women, and prohibiting anyone below 18 years. The Act seeks to lay down detailed provisions relating to the leave with wages and recovery of unpaid wages.¹⁸

Additionally, the Act seeks to promote fair and healthy working environment in the mines by the Inspecting staff. The Union Government, to ensure proper implementation of the provisions of the Act is authorized to appoint Chief Inspector and Inspectors. They are given numerous powers and responsibilities under the Act to achieve the primary objective of maintaining a conducive environment in the working fields. In case of any accidents, the Act has provided provisions for appointment of an Authority to enquire into the same, hear and decide the appeals arising from such accidents.¹⁹ In this regard, the Central Government can constitute

¹⁶ THE MINES ACT, 1952, NO. 35, ACTS OF PARLIAMENT (1952)

¹⁷ IBID.

¹⁸ SUPRA NOTE 8

¹⁹ IBID.

committees, having the power of that of a civil court. Lastly, the Act, to achieve due compliance of the law relating to mines, has provided for penalties and procedure, associated punishment which is in accordance to the nature of the offence.

2.2 ANALYSIS OF SOME RELEVANT DEFINITIONS UNDER THE ACT

2.2.1 DEFINITION OF MINE(S) [SECTION 2(1)(J)]

The term ‘mine’ has been defined in Section 2(1)(j) of the Act²⁰ and is very comprehensive definition having a very wide ambit and scope. It refers to any excavation in which there is an operation of searching for or obtaining minerals has been carried out.

It includes but is not limited to boring, oil wells and ancillary crude conditioning plants, including the pipe conveying mineral oil within the oilfields; all shafts, in or adjacent to and belonging to a mine, all opencast workings; conveyors provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom; planes, machinery works, railways, tramways and sidings in or adjacent to and belonging to a mine; cautionary works being carried out in or adjacent to a mine; all power stations, supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management; premises used for depositing sand or other material for use in a mine being premises exclusively occupied by the owner of the mine; and any premises in or adjacent to and belonging to a mine or which any process ancillary to the getting, dressing or operation for sale of minerals or of coke is being carried on.²¹

On the wide ambit of the definition of mine, the Supreme Court, in the case of *Tarkeshwar Sio Thakur Jiu v Bar Dass Dey & Co. and Ors*²², held that mining includes all kinds of operation that involved quarrying and the extraction of minerals. Subsequently, the Court also held that the right to carry on with mining operations on a piece of land in order to extract a specific raw mineral and then appropriate the same extracted mineral is a right of enjoyment of immovable property, which is granted by the Transfer of Property Act by virtue of Section 105.²³

²⁰ SUPRA NOTE 22

²¹ IBID.

²² (1979) 3 SCC 106

²³ IBID.

In *D.L.F. Power Ltd. v State of Jharkhand*²⁴, the Supreme Court held that all power, converter or rectifier stations, used for the supply of electricity to the mine fields, comes under the ambit of mining, under Section 2(1)(j)(ix) of the Mines Act, 1952.²⁵

In *Certain-teed Products Cor. v Comly*²⁶, the Supreme Court of State of Wyoming, USA, held that for any excavation to qualify as a mine, the substance extracted from it is a determining factor.²⁷

In *Bandhua Mukti Morcha v Union of India*²⁸, the Apex Court held that stone quarries qualifies as a mine under the definition provided in Section 2(1)(j) of the Act. The determining factor was that they are excavations where the operations are carried out for the purpose of searching for or obtaining stone by quarrying but they are not ‘**open cast working**’ as the excavations in these stone quarries extend below the superjacent ground.²⁹

2.2.2. OFFICE OF THE MINE [SECTION 2(1)(K)]

In *Serajuddin and Co. v Workmen*³⁰, the Supreme Court sought to explain the limited nature of the definition of ‘mine’ under Section 2(1)(j). The Court held that ‘mine’ under Section 2(1)(j) of the Act excludes **office of a mine**, which has a separate definition in itself under Section 2(1)(k)³¹ of the Act, which roughly defines office of the mine as an office at the surface of the concerned mine. Even though it is situated on the surface of the mine, it does not fall under the ambit of the definition of mine.³²

2.2.3 DEFINITION OF MINERALS [SECTION 2(1)(J)]³³

Under the Mines Act, 1952, the term ‘minerals’ is defined as all substances which is obtained from the earth surface by ways of mining, dredging, drilling, digging, quarrying, or any other

²⁴ AIR 2004 JHAR 85

²⁵ IBID.

²⁶ 87 P.2D 21 (WYO. 1939)

²⁷ IBID.

²⁸ (1997) 10 SCC 549

²⁹ IBID.

³⁰ A.I.R. 1966 SC 921

³¹ SUPRA NOTE 22

³² IBID.

³³ SUPRA NOTE 22

operation on the earth surface, and which includes mineral oils. Mineral oils as per this definition includes natural gas and petroleum products.³⁴

The Supreme Court in the landmark judgement of *Ichchapur Industrial Co-Operative Society Ltd. v The Competent Authority, Oil & Natural Gas Commission & Anr.*³⁵, decided upon several facets of the definition of minerals in relation to mining activity. The Apex Court held that the definition of minerals would imply minerals as substances which can be duly obtained from the earth surface by engaging different technical devices as indicated in the definition itself. The words in the definition are followed by the words ‘by any other operation’. Taking into account the section of these words with the words preceding it, they have to be contextualized in the same sense. Thus, if any mineral is obtained from the earth surface by any other operation other than that of mining, drilling, digging etc, such operation would be akin to the aforesaid processes.³⁶

In the same case, the Court also held that the use of the words “substances which can be obtained from the earth” would indicate that the minerals so extracted need not be necessarily embodied from deep down in the earth surface, and it may be available either on the surface or lie deep beneath the surface. They would be available either on the earth surface or own below. Thus, in the opinion of the Court, despite the wide connotation of the definition, not every substance obtained from the earth or can be obtained from the earth would be qualified as a mineral.³⁷

2.2.4 WHEN IS A PERSON SAID TO BE EMPLOYED [SECTION

2(1)(H)]³⁸

A person is said to be employed in mining, if he works as a manager or works under the appointment by the owner, agent/manager of the mine or with the knowledge of the manager, whether for wages or not-

³⁴ SUPRA NOTE 8

³⁵ 1997 (2) SCC 42

³⁶ IBID.

³⁷ SUPRA NOTE 8

³⁸ SUPRA NOTE 22

- i) in any kind of mining operation (which includes the related operations of handling and transportation of the minerals to the point of dispatch and gathering of sand and transport to the mine);
- ii) in operations/ services which relates to the development of the mine, including the construction of the plant therein but excluding the construction of buildings, roads, wells and any building work which does not directly connects to any existing or future mining operations;
- iii) in operating, servicing, maintaining or repairing any part of any machinery used in or about the mine;
- iv) in operating, within the premises of the mine, of loading for dispatch of minerals;
- v) in any office of the mine;
- vi) in any welfare, health, sanitary or conservancy services which is duly required to be provided under this Act, within the premises of the mine excluding residential area, or
- vii) in any kind of work, whatsoever which is preparatory or is incidental to, or connected with, the mining operations.³⁹

2.2.5 DEFINITION OF OWNER [SECTION 2(1)(L)]⁴⁰

The Act specifies that the usage of the term ‘owner’ in relation to a mine would be valid when it means any person who is the immediate lessee, proprietor or occupier of the mine or of any part thereof. When the terminology is used in case of a mine, it would denote the liquidator/receiver who is carrying out the business.

Owner does not include a person who simply receives a royalty rent or fine from the mine, which is subject to any lease grant or licence for the working thereof, or the person who is merely the owner of the soil and is not interested in the minerals;

In *Bharat Coking Coal Ltd v Madanlal Agarwal*⁴¹, the Supreme Court held that the term ‘owner’ in this Act would also include a lessee or an occupier apart from the immediate proprietor of the mine.

In *Industrial Supplies Pvt. Ltd. v Union of India*⁴², the Supreme Court of India observed that from the juxtaposition of the words ‘immediate proprietor/lessee/occupier of the mine’ makes it evident that a person whose occupation is of the same attribute by way of possession on his

³⁹ IBID.

⁴⁰ IBID.

⁴¹ (1996) 10 JT(SC) 584

⁴² 1980 AIR 1858

own behalf and not of someone else would mean occupier under this definition. The Court concluded that a trespasser who is in wrongful possession much to the exclusion of the rightful owner would mean an occupier of the mine, and thus, it would fall under the purview of the definition of 'owner' under this Act.

3. PROVISIONS RELATING TO HEALTH, SAFETY AND WELFARE

Section 19 to Section 27 of under Chapter V of the Mines Act, 1952 states mandatory provisions relating to drinking water, notice of accident, medical aid and other facets of leading a healthy life. Within this chapter, provisions are also made for the penalty in situations where provisions of this chapter are contravened.

In *Bandhua Mukti Morcha v Union of India*⁴³, the Apex Court held that the Haryana State, where the stone quarries having been vested by the reason of Haryana Mineral (Vesting of Rights) Act, 1973 are the owners of the mines. They cannot while giving its mines for stone quarrying operations, deny the workmen involved, the benefit of the diverse social welfare laws which have been enacted with a view to enable them to live a life of dignity, and deprive them their fundamental right to life.

Drinking Water-

In every operational mines, efficacious preparation shall be made to provide and maintain at suitable points handily situated, an adequate supply of drinking water for all workmen employed therein.⁴⁴ The Union Government is authorized to make rules in respect of all mines or any class of mines for guaranteeing compliance with respect to the provisions of supplying drinking water and for the investigation by prescribed authorities of the supply and distribution of drinking water as given under Section 19.⁴⁵

Conservancy-

Section 20 of the Act⁴⁶ makes it compulsory to provide adequate number of latrines and urinals of the ordained types separately for males and females in every mines, so situated as to be convenient and accessible to persons employed in the mine at all times. All the latrines and urinals provided shall be adequately and properly ventilated and at all times to be kept in a clean and hygienic condition. The Union Government is further authorized to condition the number of latrines and urinals to be provided in the mines, in proportion to the number of males and females so employed in the respective mine and provide for other service in respect of

⁴³ SUPRA NOTE 34

⁴⁴ SECTION 18, THE MINES ACT, 1952, NO. 35, ACTS OF PARLIAMENT (1952)

⁴⁵ SECTION 19, THE MINES ACT, 1952, NO. 35, ACTS OF PARLIAMENT (1952)

⁴⁶ SUPRA NOTE 22

sanitation in mines as it may consider essential in the interests of the health of the persons employed.⁴⁷

Medical Appliances-

Section 21 of the Act⁴⁸ deals with medical facilities to be compulsorily rendered and maintained in every mine. It states that medical facilities shall be provided and maintained with first-aid boxes equipped with such contents as it may be prescribed in every mine and they shall be readily approachable during all working hours. Such first-aid box or room shall not contain anything except the prescribed contents. The responsibility of maintaining these first-aid boxes or cupboards shall be given to an accountable person who is trained and equipped in handling such first-aid treatment as may be prescribed and the person shall always be available during the working hours of the mine.

Every mine shall have, these requirements, readily available as may be prescribed for the conveyance in the hospitals or dispensaries of persons who, while employed in the mine suffer from any bodily injury or fall ill.⁴⁹

In *Bandhua Mukti Morcha v Union of India*⁵⁰, the Supreme Court laid out few guidelines relating to health to be followed by the authorities. Some of these guidelines include the assurance that adequate medical and first-aid facilities be made available to the workmen, as provided under Section 21 of the Mines Act and Rules 40-45A of the Mines Rules of 1955. Among other guidelines, the Court instructed the authorities to ensure that the mine lessees and the owners of the stone crushers, facilitate proper medical facilities to the workmen and their families, and this is supposed to be given free of cost.⁵¹

Section 22 of the Act⁵² confers powers upon the Chief Inspector/Inspector to give notice in writing to the owner, agent or manager of the mine to redress the issue, thing or practice that appears to be unsafe or faulty to them. According to Section 22A of the Act, wherein with respect to any matter relating to safety for which express provisions are being made by or under this Act, if the owner, agent or manager of mine fails to comply with such provisions, the Chief

⁴⁷ IBID.

⁴⁸ IBID.

⁴⁹ SUPRA NOTE 8

⁵⁰ SUPRA NOTE 34

⁵¹ IBID.

⁵² SUPRA NOTE 22

Inspector may give notice in writing requiring the same to be complied with within the prescribed time as he, may specify in the notice or within such extended period of time as he may, from time to time, specify thereafter.

3.1 HOURS AND LIMITATION OF EMPLOYMENT

Chapter VI of the Mines Act, 1952⁵³ provides for weekly day of rest, compensatory days of rest, maximum hours of work above and below ground, night shift, overtime wages, notice regarding hours of work, special provisions for women etc., relating to the terms and limitation of employment from Sections 28 to 48 of the Act.

On the hours of work above ground

No adult, who is employed above ground in a mine shall be required or allowed to work for more than forty-eight hours in a week or for more than nine hours in a day.⁵⁴

On the hours of work below ground

No adult, who is employed. below ground in a mine shall be required or allowed to work for more than forty-eight hours in a week or for more than eight hours in a day.⁵⁵

On extra wages for working overtime

If in a mine, a person works above ground for more than nine hours in a day, or works below ground for more than eight hours in a day, or works for more than forty-eight hours in a week whether above ground/below ground, he shall in respect of such overtime work be eligible to extra wages at the rate of twice his ordinary rate of wages. In this regard, the period of overtime work shall be calculated on a daily basis or a weekly basis, whichever is more plausible to him.⁵⁶

On the prohibition of employment of certain persons

No person shall be required or allowed to work in a mine if he is already working in any other mine within the preceding twelve hours.⁵⁷

On limitation of daily hours of work including overtime work

⁵³ SUPRA NOTE 22

⁵⁴ SUPRA NOTE 6

⁵⁵ IBID.

⁵⁶ IBID.

⁵⁷ IBID.

Save in respect of cases falling within clause (a) and clause (e) of Section 39, no person employed in a mine shall be required or allowed to work in the mine for more than ten hours in any day inclusive of overtime.⁵⁸

On the employment of persons below eighteen years of age

No person below the age of 18, shall be allowed to work. in any mine or part thereof. However apprentices and other trainees, not below sixteen years of age, may be allowed to work, under proper supervision, with prior approval of the Chief Inspector/Inspector, which shall be obtained before they are allowed to work.⁵⁹

On the prohibition of the presence of persons below eighteen years of age in a mine

No person below eighteen years of age shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on.

On the employment of women

No woman shall, be employed; (a) in any part of a mine which is below ground; (b) in any mine above ground except between the hours of 6 a.m. and 7 p.m..

Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on, any one day and the commencement of the next period of employment.⁶⁰

3.2 LEAVE WITH WAGES

Chapter VII of the Mines Act, 1952⁶¹ from Section 49 to 56, contains provisions relating to leave, annual leave wages, wages during leave period and the power of the Central Government to exempt wages. Section 49 renders that the provisions of the Chapter shall not operate to the prejudice of any right to which a person who is employed in a mine may be entitled under any other law or under the terms of any award, agreement or contract of service.

But if such an award, agreement or contract of service, provides for a longer annual leave with wages than what is provided in this Chapter, the quantum of leave, to which the person employed is entitled to, shall be in accordance with such award, agreement or contract of

⁵⁸ IBID.

⁵⁹ IBID.

⁶⁰ IBID.

⁶¹ SUPRA NOTE 22

service but the leave shall be regulated in accordance with the provisions of Section 50 to 56 in relation to matters not provided for in such award, agreement or contract of service.

On annual leave with wages

Every person who is employed in a mine and who has completed a calendar year's service therein shall be allowed during the subsequent calendar year, leave with wages, calculated-

a) in the case of a person employed below ground, at the rate of one day for every fifteen days of work performed by him, and b) in any other case, at the rate of one day for every twenty days of work performed by him.⁶²

On advance payment in certain cases

Any person who is duly employed in a mine and who has been allowed leave for not less than four days, shall, before his leave begins, be paid the wages which is due for the period of the leave so allowed.⁶³

On mode of recovery of unpaid wages

Any sum which is required to be paid by the owner, agent or manager of a mine under this Chapter but not paid by him shall be recoverable as delayed wages under the provisions explicitly given in the Payment of Wages Act, 1936.⁶⁴

⁶² SUPRA NOTE 6

⁶³ IBID.

⁶⁴ IBID.

4. JUDICIAL DECISIONS RELEVANT TO THE STUDY

4.1 DEOKARAN NANSHI AND ANR. VS STATE OF BIHAR⁶⁵

Facts of the case-

In the given case, the respondents were the owners of a stone quarry, which was situated near Chandiwali in the Greater Bombay region. The respondents failed to furnish the annual returns for the year 1959, by January 21, 1960 to the Chief Inspector. Taking notice of the fact, the Chief Inspector expected them to furnish the same by April 11, 1960. Failure on the part of the respondents, led to initiation of judicial proceeding when the Chief Inspector filed a complaint to the District Magistrate in Dhanbad on April 12, 1961 against the respondents.⁶⁶

Issues before the Court-

Before the trial court, two important questions of law were raised, which went into the root of the matter. The questions so raised related to-

- 1) Whether the trial court in Dhanbad had the requisite jurisdiction to try the instant case?
- 2) Whether the complaint was barred by lapse of limitation period since the complaint was filed more than a year later of the lapse of default, since failure to furnish the annual returns is an offence punishable under Section 66 of the Mines Act 1952.
- 3) Whether the offence is covered under the substantive part of Section 79 or whether under the Explanation?

Judicial Decision of the Court-

The High Court held the complaint to be barred by the lapse of limitation period as specified in Section 79 of the Act and regarded the complaint to fall under the substantive part of Section 79. When appealed before the Supreme Court, the decision of the High Court was upheld. The Supreme Court in the ratio decidendi, distinguished between a continuing offence and an offence committed once and for all. Regulation 3 of the Metalliferous Mines Regulations 1926 read with Section 66 of the Mines Act, makes the offence of the non-disclosure of the annual returns within the specified date, an offence committed once and for all and it does not carries in itself, continued disobedience. Thus, it did not fall under the category of a continued offence and hence the complaint was dismissed on the lapse of limitation period of filing the same.⁶⁷

⁶⁵ (1972) 2 SCC 890

⁶⁶ IBID.

⁶⁷ IBID.

4.2 PRABHU DAYAL GUPTA VS STATE OF BIHAR⁶⁸

Facts of the case-

In this case, a petition was filed by the petitioner under Section 482 of the Code of Criminal Procedure to quash the criminal prosecution under Section 92 of the Factories Act, 1948 as well as the order, dated 7-1-1989 by which cognizance of the offence mentioned aforesaid was been taken against the petitioner. On 9-10-1988, the Factory Inspector, inspected the establishment of the petitioner which is under name of Gupta and Sons, situated in a double storied building. The organization of the petitioner functions on the ground-floor and whereas the petitioner resides on the first-floor along with his family members. During the course of the inspection, the attendance and payment registers were seized.⁶⁹

From the perusal of the seized registers, it was detected that a number of workers who were engaged in overtime work were aged 16 on the day of inspection but no prior permission as required under Section 52, of the Factory Act was taken by the petitioner.

At the time of inspection, it was found that the work of mica finishing by cutting and splitting of crude and semi-finished mica into required shapes and sizes as also the work of shelving by manually operated Jharna to separate the pieces of mica of difference sizes from the mixture of mica of odd shapes and sizes mixed with mica dust were being carried out. In course of the inspection, it also transpired that the building in which the factory was established was not given approval of the Chief Inspector of Factory nor a licence under the Rule 4 of the Factories Rules has been obtained by the petitioner before starting manufacturing process in the factory.⁷⁰

The aforesaid action of the petitioner was against the provision as contained in Section 6 of the Act and Rules 3 and 4 of the Factories Rules. Further case of the complainant is that he prepared inspection report and tried to hand over a copy of the same to Anil Kumar Gupta, he refused to receive the same. When the complainant wanted to go out of the factory along with the seized registers. Anil Kumar Gupta along with others, snatched the seized registers from the Opposite Party No. 2. The complainant, thereafter, went to the Town Police Station and lodged an FIR under Sections 143, 342, 353 and 506 of the Indian Penal Code, 1860.⁷¹

⁶⁸ (1993) 66 FLR398

⁶⁹ IBID.

⁷⁰ IBID.

⁷¹ IBID.

Issues before the Court-

The learned Chief Judicial Magistrate upon taking cognizance, dealt with the following issues-

- 1) Whether mines which is otherwise, a subject to the operation of the Mines Act comes within the purview of the definition of Factory as defined under the Factory Act?
- 2) Whether the establishment of the petitioner comes within the operation of the Mines Act?
- 3) Whether the establishment of the petitioner is adjacent to and belongs to a mine?

Judicial Decision of the Court-

The Patna High Court, on the basis of the facts and circumstances, dismissed the petition and held that the establishment of the petitioner the work of mica finishing by cutting and splitting of crude and semi finished mica into required shapes and sizes as also the work of sheiving by manually operated Jharna to separate the pieces of mica of different sizes from mixture of mica of odd shapes and sizes mixed with mica dust were being carried out, which prima facie comes within the definition of factory as defined in Section 2(m)(ii) of the Act. Furthermore, it held that the establishment of the petitioner which carries on mica work is clearly covered by the definition of mines.⁷²

4.3 STATE VS THAKUR ADITYA NARAIN SINGH AND ORS⁷³

Facts of the case-

The instant case was a reference by the learned Additional District Magistrate, Dhanbad, for enhancement of the sentence passed on Thakur Aditya Narain Singh and Ramnath Dubey. They were prosecuted under Section 69 of the Mines Act, 1952. The prosecution case was based on the fact Thakur Aditya Narain Singh, the owner of the colliery, and his agent Ramnath Dubey, had run the Madhudih Colliery, Dhanbad, without a qualified manager.⁷⁴

Issues before the Court-

- 1) Whether there is a justification for the imposition of higher penalty even in terms of Section 69 of the Mines Act?

⁷² IBID.

⁷³ (1973) 3 SCC524

⁷⁴ IBID.

2) Whether it was proper for the Mines authority to bring the matter to the notice of the court for imposition of the additional penalty laid down in Section 69?

Judicial Decision of the Court-

The Court, discharging the reference, held that in a fit case it is the duty of the Mines Department to put proper material before the trying Magistrate to convince him that the particular case is one where deterrent punishment should be given either by way of sentence of imprisonment or the maximum amount of fine laid down under Section 69 or whatever is deemed fit. Furthermore, the court also held that the enhancement of the penalty was justified as the offence was almost intentional and the owner of the mine ran the colliery without a manager to make larger profits out of it, which is in utter disregard of the safety of the miners and other persons who had to go down to the pit to raise coal out of the colliery.⁷⁵

**4.4 JOINT DIRECTOR OF MINES SAFETY VS TANDUR AND NAYANDGI
STONE QUARRIES (PVT.) LTD⁷⁶**

Facts of the case-

In this case, the Inspector of Mines, after an inspection, discovered that the respondents were engaged in working an open cast mine and that the number of persons employed on a day exceeded more than 50. As the respondents fell within the mischief of the proviso to clause (b) of Section 3(1) of the Mines Act, 1952, he served a notice to the respondents under Section 22 read with Section 17 of the Act calling upon the respondents to appoint a qualified Manager for the mine.⁷⁷

The respondents in response, filed a writ petition in the Andhra Pradesh High Court which allowed the petition and quashed the impugned notice on the ground that the use of the word 'and' occurring at the end of paragraph (b) of sub-clause (ii) of the proviso to clause (b) of sub-section (1) of Section 3 of the Mines Act made the three paragraphs conjunctive and unless the conditions specified in paragraphs (a), (b) and (c) co-existed, the Inspector had no authority to serve the impugned notice to the respondents.⁷⁸

⁷⁵ IBID.

⁷⁶ 1987 AIR 1253

⁷⁷ IBID.

⁷⁸ IBID.

Issues before the Court-

The primary that the Supreme Court dealt with in this appeal was whether the High Court was correct in its interpretation of the word 'and' used at the end of paragraph (b) of sub-clause. (ii) of the proviso to clause (b) of sub-section (1) of Section 3 of the Act, as being conjunctive.

Judicial Decision of the Court-

The Supreme Court held that the High Court was not right in its interpretation of the word 'and' used at the end of paragraph (b) of sub-clause (ii) of the proviso to clause (b) of sub-section (1) of Section 3 of the Mines Act, 1952, as being conjunctive. It overlooked the fact that the use of the negative language in each of the three clauses implied that the word 'and' used at the end of clause (b) had to be read disjunctively.⁷⁹

Such construction was made, keeping in mind the legislative intent manifested by the scheme of the Mines Act, 1952, which is primarily meant for ensuring the safety of workmen employed in the mines.

⁷⁹ IBID.

5. CONCLUSION

Having gone through a detailed study of the Mines Act, 1952, one can indeed say that the Act is very comprehensive in nature. This comprehensiveness can be seen in the meaning of the various definitions in the Act. It can be seen in the provisions provided for the health, safety and welfare of the workmen employed therein. The aims and objects of the Act clearly lays down what the act covers under its ambit, from the regulation of labour and ensuring their safety in the mines. The Act has integrated many sections which were otherwise required to guarantee that the working conditions of the miners are met with the proper safety and medical directions, which is apt to their work environment, whilst setting a minimum benchmark for all the activities falling under the provisions of the Act.

In the mines, the regulations on employment of women, children and adolescents have been made stringent. Every woman employed in a mine above ground shall be allowed an interval of rest which is not less than eleven hours between the termination of employment on a day and the commencement of the next period of employment. An adolescent, may, however, be permitted to work in a mine subject to certain restrictions and upon certification by the surgeon appointed under the Act. The Act clearly defines the powers and functions of the Inspectors in any operational mine, the duty and responsibilities of the agents, managers and owners, regulations, rules, bye-laws and its procedure and operation.

Mining jurisprudence in India has not seen much of a development in the 20th and the 21st century, and this has led to a dearth of literature relating to the Mines Act, and its varied interpretation of the provisions. Much of the cases that has been dealt with in this study, has been with reference to the procedural laws and the Constitution. Interpretation of the provisions in this Act has been done alongside the provisions of labour welfare in the Constitution. With the increase in the role of the state in the 21st century and with the advent of the liberalization policies, mining laws and regulations must keep pace with the changing times and in conformity to the international standards. At the end of the day, the growth of the nation, to a large extent depends upon the welfare and progress of the labour in the particular country, and their ensuing progress.

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