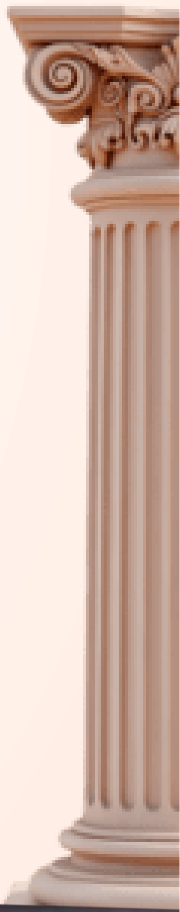
# VIDHIKIRAN 2026

An Initiative by Legal Department, WCL

**"A Testament of Academic Pursuit, Legal Acumen and Professional Excellence"**



For Academic Purpose and Guidance Only

# VIDHIKIRAN 2026

An Initiative by Legal Department, WCL

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बी. साईराम
अध्यक्ष–सह–प्रबंध निदेशक
B. Sairam
Chairman-Cum-Managing Director

(एक महारत्न कंपनी)

5 DECADES OF UNEARTHING ENERGY

कोल इण्डिया लिमिटेड
COAL INDIA LIMITED
(Govt. of India Enterprise)
Premises No. 04 MAR, Plot No. AF - III
Action Area - 1A, New Town, Rajarhat
Kolkata - 700 163
CIN : 123109WB1973GOI028844

(An ISO 9001 : 2015, ISO 14001 : 2015 & ISO 50001:2011 Certified Company)

## MESSAGE

The primary function of Legal Departments is to offer informed opinions against the queries they receive from various divisions, enabling them to understand the finer nuances of the legalities of an issue and adhere to lawful decision making. Over the years many such research based opinions have accumulated on a wide array of topics. And, such a repository of knowledge should not be wasted but rather compiled, collated and documented for the benefit of the posterity. Such legal research journals become vital not only for legal executives, but also to the executives of the other disciples forming a connecting pathway between theoretical legal concepts and practical application.

In this regard, I appreciate the initiative and efforts of the Legal Division of Western Coalfields Limited in bringing out a Legal Research Journal 'Vidhikiran 2026'. Originally, started as an e-edition it has now morphed into a physical document and this is the third edition encapsulating many interesting case studies. The Key functions ofthe journal include providing updated information on legal developments and in-depth analysis various legal matters.

I offer my Best Wishes to all those who persevered in bringing out such an informative journal. Keep up the good work for the ensuing years in spreading legal literacy and awareness.

(B. Sairam)

डॉ. विनय रंजन
निदेशक (मा. सं)

**Dr. Vinay Ranjan**
Director (H R)

**कोल इण्डिया लिमिटेड**
**COAL INDIA LIMITED**
(A MAHARATNA COMPANY)
A Govt. of India Enterprise
"COAL BHAWAN"
Premises No. 04 MAR, Plot No. AF - III
Action Area - 1A, New Town, Rajarhat
Kolkata - 700 156

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**MESSAGE**

It gives me immense pleasure to learn about the publication of the third edition of the legal journal "Vidhi Kiran-2026" by the Legal Department, WCL. I extend my sincere appreciation to the entire team for their continued efforts in bringing out this valuable compilation for the third consecutive year.

In an organization as vast and dynamic as CIL and its subsidiaries, legal awareness and clarity play a pivotal role in ensuring transparency, accountability, and smooth functioning of operations. A journal like Vidhi Kiran serves as an important platform for disseminating knowledge on contemporary legal issues, regulatory developments, and practical challenges encountered in day-to-day operations.

I am confident that this edition, like its predecessors, will provide meaningful insights and guidance to employees across departments, helping them better understand the legal framework governing their functions. Such initiatives not only enhance legal literacy but also contribute significantly to strengthening governance and compliance within the organization.

I commend the Legal Department, WCL for this commendable initiative and wish them continued success in their future endeavors. Best wishes for the success of Vidhi Kiran-2026.

(Dr. Vinay Ranjan)

डॉ. हेमंत शरद पांडे
अध्यक्ष–सह–प्रबंध निदेशक

**Dr. Hemant Sharad Pande**
Chairman-cum-Managing Director

**वेस्टर्न कोलफील्ड्स लिमिटेड**
(भारत सरकार का मिनी रत्न श्रेणी I उपक्रम

**WESTERN COALFIELDS LIMITED**
**(A Miniratna-Cat. I Government of India Undertaking)**
**कोल इस्टेट, सिविल लाइन्स, नागपूर – 440001**

Coal Estate, Civil Lines, Nagpur - 440001
Phone (O) : 0712-2510315, 2510440
E-mail : cmd.wcl.cil@coalindia.in
Website : http//westerncol.in

## FOREWORD

It is a with great pleasure that we unveil the 3rd edition of our Legal Research Journal - *Vidhikiran,* a platform that continues to shine through the dedication, intellect, and perseverance of our legal executives and contributors.

This year's edition includes articles on "*Legal Analysis of CBA Act, 1957 and its comparison with RFCTLARR Act, 2013*", *"Village rehabilitation and resettlement at WCL"– Provisions and Challenges*",", "*Empowered to Act: WCL's Authorized Officers Under the MMDR Act, 1957*", "*Recent Developments in Law for Increasing Production of Critical Minerals*" – highlight the unique challenges of coal mining sector and offer operational guidance.

Contemporary topics such as *"Judicial activism and its impact on Coal Industry*", and "*Natural Resources, Public Trust, and Insolvency Law: Re-examining the Classification of Natural Resource Suppliers*"- call for revisiting the existing legal framework.

Issues related to employee administration- "*Compassionate Employment: Overview Of The Coal India Scheme And The Supreme Court Principles*" , "*The Middle Path: Analyzing the Impact of New Labour Codes on Contractual Frameworks in Central Public Sector Enterprises*", "*Supreme Court On Application Of Amended Promotion Rules To Pre-Amended Vacancies*", "*Effect of Honourable Acquittal on Pending Departmental Enquiry*" ,"*Overlooked Provisions of the Industrial Disputes Act*, 1947",– examine the current jurisprudence and are helpful guides on issues covered in these articles.

Corporate law topics -"*Navigating the Disclosure Maze:Companies Act Imperatives in the Listing of Coal India Subsidiaries*", *"Admissibility of Partner Credentials in Evaluating Partnership Firm Eligibility"* , "*Judicial Review of the Public Tender Process*- add richness to this edition.In the field of alternate dispute resolution topics such as *Mediation – Need and Effectiveness and its impact on CIL*" and "*Arbitrability Of Fraud In India*: An Evolving Legal Position" , "*Scope of Section 34 of the Arbitration and Conciliation Act, 1996 (as amended by the Arbitration and Conciliation (Amendment) Act, 2015): A Critical Legal Analysis*" , and "*Exception to the rule of exhaustion of alternate remedy*" - provide readers a background on the emerging trends in the arena of corporate dispute resolution.

Articles like "*The Pollution Control Boards of India – An Assessment of Penal Powers with Specific Emphasis on MPCB*", "*Ex Postfacto Environment Clearance In The Context Of Vanashakti Judgment*" and "*Supreme Court Rulings on ESZs: Key Issues and Impacts*" highlight the regulatory framework and current Supreme Court rulings on environment law.

Contd...

*Vidhikiran* is not merely a collection of articles - it is a reflection of the collective commitment of professionals who tirelessly engage with the complexities of law, and share them for the benefit of the wider WCL's fraternity. Each contribution embodies rigorous research, thoughtful analysis, and a passion for advancing legal understanding.

I extend my heartfelt appreciation to all our executives who have contributed to this year's edition of *Vidhikiran*. These articles display the perseverance and commitment of our executives towards dissemination of legal knowledge. Wishing the entire *Vidhikiran* team good luck, and may you be the torchbearers of continual legal learning in WCL in the years to come.

**(Dr. Hemant Sharad Pande)**

श्री. बिक्रम घोष
निदेशक (वित्त) /
(मानव संसाधन –अतिरिक्त प्रभार)

**Shri. Bikram Ghosh**
Director (Finance) /
(HR-Additional Charge)

वेस्टर्नकोलफ़ील्ड्सलिमिटेड
(भारतसरकारकामिनीरत्न - श्रेणी- I उपक्रम)
**Western Coalfields Ltd**
(A Miniratna Cat-1 Govt. of India Undertaking)
Coal Estate, Civil Lines, Nagpur - 440001

# MESSAGE

I am pleased to know that the Legal Department, WCL is bringing out the third consecutive edition of the legal journal *Vidhi Kiran–2026*. My sincere compliments to the entire team for their dedicated efforts in continuing this valuable initiative.

In today's dynamic business environment, legal awareness and regulatory compliance are essential pillars of good governance and sustainable growth. A publication like *Vidhi Kiran* plays an important role in enhancing understanding of various legal issues connected with the day-to-day functioning of Coal India Limited and Western Coalfields Limited. It also serves as a useful knowledge resource for employees and executives across disciplines.

I am confident that this edition, with its insightful articles and practical perspectives, will further strengthen legal consciousness and support informed decision-making within the organization.

I extend my sincere appreciation to the Legal Department, the Editorial Team, and all contributors for their dedicated efforts in bringing out this edition. I am confident that *Vidhi Kiran–2026* will be both informative and inspiring for all readers.

**With best wishes,**

**Director (Finance)**
**Western Coalfields Limited**

आनंदजी प्रसाद
निदेशक (तकनीकी)
Anandji Prasad
Director (Technical)

वेस्टर्न कोलफील्ड्स लिमिटेड
Western Coalfields Limited
(भारत सरकार का उपक्रम)(Govt. of India Undertaking)
Coal Estate, Civil Lines, Nagpur (MH)-440001

## Message

"Legal knowledge is not just a shield against risk—it is a strategic asset that empowers organizations to act with confidence, integrity, and foresight."

It gives me immense pleasure to learn that the Legal Department of Western Coalfields Limited is launching the third edition of Legal Journal-VIDHIKIRAN. This initiative reflects, WCL's commitment in promoting legal awareness, intellectual growth, and a culture of compliance and excellence within the organization.

Legal knowledge plays a pivotal role in the coal industry, particularly for an organization like Western Coalfields Limited (WCL), which operates within a complex framework of environmental regulations, land acquisition laws, labour legislations, and contractual obligations. With evolving policies and judicial interventions shaping the energy sector, a deep understanding of legal provisions is essential for ensuring compliance, minimizing risks, and safeguarding the organization's interests. I extend my best wishes to Legal Department, WCL for this visionary step and for the continued success of this endeavour.

This journal will serve as a cornerstone for interdisciplinary dialogue, legal scholarship, and strategic foresight-propelling WCL toward a future marked by resilience, innovation, and legal empowerment.

**ANANDJI PRASAD**
**Director (Technical)**
**Western Coalfields Limited**

"Under Jurisdiction of Nagpur Court Only"
**वेस्टर्न कोलफील्ड्स लिमिटेड**
(भारत सरकार का मिनी रत्न – श्रेणी उपक्रम)
**Western Coalfields Limited**
(A Miniratna-Cat I Government of India Undertaking)
**CIN – U10100MH1975GO1018626**

**संदीप सु परांजपे**
**निदेशक(तकनीकी)(परि एवं यो) का कार्यालय**
**Sandeep S Paranjape**
**Office of the Director (Technical)(P&P)**
(O) : 0712-2510438
(Fax) : 0712-2510532
E-mail : dtpp@coalindia.in

**पंजीकृत कार्यालय : कोल इस्टेट, सिविल लाइन्स, नागपुर(महाराष्ट्र)-४४०००१**
**Regd. Office : Coal Estate, Civil Lines, Nagpur (M.S.) – 440001**

## संदेश

विधि किरण के तृतीय संस्करण के प्रकाशन पर मुझे बहुत खुशी हो रही है। यह पत्रिका कोल इंडिया लिमिटेड और वेस्टर्न कोलफील्ड्स लिमिटेड के दैनिक कार्यों से जुड़े विभिन्न कानूनी विषयों पर उपयोगी जानकारी प्रदान करती है।

वर्तमान समय में, नियमों एवं विधिक प्रावधानों का सही ज्ञान अत्यंत आवश्यक है। इस प्रकार की पत्रिका न केवल अधिकारियों एवं कर्मचारियों में विधिक जागरूकता बढ़ाती है, बल्कि उन्हें अपने कार्यों में कानूनी पहलुओं को समझने और उनका सही पालन करने में भी सहायता प्रदान करती है।

इस संस्करण में शामिल लेख व्यावहारिक अनुभव एवं विशेषज्ञता पर आधारित हैं, जो निश्चित रूप से संगठन के सभी स्तरों पर कार्यरत कर्मियों के लिए मार्गदर्शक सिद्ध होंगे।

मैं इस पत्रिका के सभी लेखकों, संपादकों और पूरी टीम को बधाई देता हूँ तथा उनके निरंतर प्रयासों के लिए शुभकामनाएं देता हूँ।

(संदीप सु परांजपे)
**निदेशक (तकनीकी/परियोजना एवं योजना)**
**वेस्टर्न कोलफील्ड्स लिमिटेड**

अजय मधुकर म्हेत्रे (भा.दु.से.)
मुख्य सतर्कता अधिकारी

AJAY MADHUKAR MHETRE, ITS
Chief Vigilance Officer

मुख्य सतर्कता अधिकारी कार्यालय
वेस्टर्न कोलफील्ड्स लिमिटेड
कोल एस्टेट सिविललाईन्स, नागपुर - ४४०००१

Office of CVO Western Coalfields Limited
WCL, Coal Estate, Civil Lines, Nagpur 440001
Phone (Off) 0712 - 2510300, 2512356
E-mail : cvo.wcl.cil@coalindia.in

## MESSAGE

It is a matter of appreciation that the Legal Department of WCL is bringing out the latest edition of ***"VIDHIKIRAN-2026",*** a meaningful initiative aimed at taking legal awareness closer to people. In today's environment, where laws and regulations influence every aspect of organizational and public life, simplifying complex legal concepts and presenting them in an accessible manner is essential. Such efforts help bridge the gap between legal provisions and their practical understanding.

Awareness of laws among employees and stakeholders plays a role similar to preventive vigilance. When individuals are well-informed about rules, procedures, and their implications, the chances of deviations, disputes, and irregularities are significantly reduced. Knowledge empowers individuals to act responsibly, enhances transparency, and builds institutional capacity. In this way, legal literacy becomes not only a tool for compliance but also a foundation for integrity and good governance.

I compliment the team of the Legal Department for their dedicated efforts in bringing out this publication and extending legal awareness in a simple and impactful form. I convey my best wishes for the continued success of *"VIDHIKIRAN-2026",* and I am confident that it will serve as a valuable guide for all its readers.

(Ajay Madhukar Mhetre)

Nagpur
April 28, 2026

**Tushar Mehta**
Solicitor General of India

**Supreme Court of India**
Office : SE-129, Law Officers Chamber,
2nd Floor, New Delhi- 110001
Ph. 011-20818155
Res. 10, Akbar Road, New Delhi- 110001
Ph. 011-21411446
E-mail : tusharmehta.sg@gmail.com

**New Delhi, the 25th November, 2025**

## SAMVIDHAN DIVAS

### TO WHOMSOVER IT MAY CONCERN

I extend sincere greetings to the entire Western Coalfields Ltd. community on the notable occasion of *Samvidhan Divas*.

The Preamble to our Constitution succinctly expresses its core values: **Justice, Liberty, Equality**, and **Fraternity**, which safeguard the unity and integrity of the Nation. These principles form the foundation of Indian democracy and should serve as guiding tenets for all institutions, including important public sector entities such as Western Coalfields Ltd.

The date of November 26, 1949, represents a significant milestone in Indian history. It marks a day when the people of India, through their representatives in the Constituent Assembly, adopted and enacted the Constitution of India. Therefore, *Samvidhan Diwas* serves as an opportunity to reflect on the wisdom and foresight of the framers of our Constitution, especially Dr. B.R. Ambedkar, and to reaffirm our collective commitment to the principles it upholds.

As a prominent organisation within India's energy sector, Western Coalfields Ltd. plays a vital role in fostering national development. Thus, it is imperative that Constitutional values should guide every part of your operations to promote social justice, fairness, and equality. I am confident that Western Coalfields Ltd. will continue to adhere to the avowed ideals enshrined in our Constitution and strengthen the link between economic advancement and the constitutional directives for the creation and maintenance of a just and inclusive society.

On this *Samvidhan Divas*, let us collectively pledge to uphold our responsibilities as citizens, fulfil our fundamental duties diligently, and contribute to building a more robust, dynamic, and inclusive Bharat, consistent with the spirit of our Constitution.

My best wishes for a meaningful and successful celebration.

[ Tushar Mehta ]

## ***PREFACE***

It is with an immense pleasure that Legal Department, WCL is publishing the HAT-TRICK edition of the legal journal –*Vidhikiran.* This exercise has been done keeping in mind the Upanishad Injunction ''स्वाध्यायान्मा प्रमदः'' *which means one should be keen in pursuing self- study only with constant practice and self study, a professional would evolve.*

This Department while defending the litigations or providing legal opinions is doing the research work on the law applicable to the particular issues. This broadens the thought-process and the researcher evolves some philosophy by this endeavour. This is valuable and to be preserved. With a view to preserve, share and motivate such thought-process and philosophy, it was thought to publish the same. All the articles published in this e-book are the results of the research done by the named executives. They are the views of the researchers and may not be construed as the view of Legal Department as a whole nor of WCL. This may not be even construed as admissions on behalf of WCL. These articles are catalysts for upgrading the knowledge of the legal executives in the relevant field. By publishing this, Legal Department contributes not only to the in-house legal community, but also empower our organisation with the insights needed to overcome challenges and optimise our process. We are confident that this publication will not only serve as a valuable resource for our professionals but will also inspire future generations to push the boundaries of what is known and explore the realms of what is possible.

We extend our wholehearted thanks to Shri. Hemant Sharad Pande, CMD, WCL, Shri. Bikram Ghosh, Director (Finance) / Director(HR), WCL, Shri. Anandji Prasad, Director (Technical / Operations), WCL and Shri. Sandeep Paranjape, Director (Technical / P&P), WCLfor the encouragement and motivation in publishing this project. The guidance given by them is precious.

This edition has, as many as, seven articles from Executives other-than legal discipline. The topics of their articles were the result of their research while encountering legal issues in their operations, which was discussed and shaped by interactions with Legal Department. Hence, it was thought that the light, which emanates from these researches, should be disseminated among other readers .We extend our sincere appreciation to the contributors, reviewers, and everyone involved in the creation of this research journal. Your dedication to advancing knowledge and contributing to the intellectual wealth of our organization is commendable.

**HOD (Legal)**
**Western Coalfields Limited, Nagpur**

# COMPASSIONATE EMPLOYMENT : OVERVIEW OF THE COAL INDIA SCHEME AND THE SUPREME COURT PRINCIPLES

**SARTHAK JAIN**
B.Com LLB (Hons.), Nirma University, Ahmedabad
Assistant Manager (Legal), Wani Area, WCL

## INTRODUCTION

When an employee working for a government or a public-sector organization dies while in service (often termed “dying in harness”), the family is suddenly left without its main bread-winner. To mitigate this distress, many public institutions in India including Coal India operate schemes that allow the dependent family members of such employees to seek employment on compassionate grounds. This is commonly called *compassionate appointment or compassionate employment scheme.* These schemes are designed not as a mode of regular recruitment but as a humanitarian measure to ensure immediate financial support for families facing acute economic crisis.

However, the Indian courts particularly the Supreme Court have repeatedly clarified the limited scope, purpose, and constitutional boundaries of compassionate employment. Through numerous landmark judgments, the judiciary has held that such appointments cannot be claimed as a matter of right, nor can they serve as an alternative channel to public employment. Instead, the dependent must satisfy strict criteria demonstrating financial indigence and eligibility as laid down in the governing schemes.

This article examines the compassionate employment scheme applicable in Coal India for executives and non-executives, explains the procedural and eligibility requirements under the Common Coal Cadre and the National Coal Wage Agreement (NCWA), and analyses the key principles articulated by the Supreme Court that guide when and why compassionate appointments may be granted.

## PURPOSE FOR GRANTING COMPASSIONATE EMPLOYMENT

Compassionate employment is granted when:

1) An employee dies while in service before his retirement, often unexpectedly; the family may be left without income Or
2) An employee becomes totally and permanently disabled and cannot continue working The rationale behind granting compassionate employment is to relieve the immediate financial distress to the family of the deceased or permanently disabled employee on satisfaction of following conditions:

- the family is in financial crisis,
- there exists no other earning member in the family,
- the dependant was financially dependent on the employee

Thus, the scheme of compassionate employment ensures that the dependent family members of the deceased or permanently disabled employee have financial support to survive the sudden penury and financial distress on humanitarian grounds.

## COAL INDIA'S COMPASSIONATE EMPLOYMENT SCHEME

The scheme of providing compassionate employment in Coal India is governed by the provisions of:

- Common Coal Cadre for Executives and
- National Coal Wage Agreement for Non-Executives

### *1. COMMON COAL CADRE- EXECUTIVES*

Coal India for the first time through its Office Memorandum dated 13.03.1981 decided to consider scheme of appointment of the dependants of executives on compassionate grounds and framed guidelines for the same[1]. The said guidelines have been amended time to time and new provisions have also been included in the scheme of compassionate employment for executives. These guidelines are as follows:

a. Death of the executive concerned should be while he is on the roll of the company.
b. Executives who are totally disabled due to accident or otherwise while in service.
c. Employment of dependants should only be in non-executive posts, according to job requirement of the post and qualification of the dependant. The suitability of candidate will be considered by a Selection Committee constituted for the same.
   Coal India through its circular dated 02.11.2015 had clarified that the *dependants of executives who are at least Matriculate shall be appointed as Clerk trainee in Clerical Grade-III for one year training subject to other conditions as provided in the OM. On successful completion of training, they will be regularized in the same grade[2].*
d. The candidate to be considered should have minimum qualification including educational qualification and age requirement for the job for which he is considered. Limits of age requirement may be relaxed in deserving cases, but minimum qualification required will not be relaxed.
e. Dependant for this purpose will mean spouse, children (including legally adopted children) who are wholly and fully dependent on the earnings of the concerned executive[3].
f. Only one job for each compassionate case will be considered.
g. In case a dependant is already in service, employment of additional dependant will be considered subject to following conditions in spirit with DoPT guideline OM No 14014/6/94-Estt.(D) dated 09.10.1998 (para 10). In deserving cases even where there is already an earning member in the family, a dependent family member may beconsidered for compassionate appointment with approval of CMD of the concerned subsidiary / Director (P&IR) in case of CIL/Director(Technical) in case of NEC. Before approving such appointment, concerned authority will satisfy themselves that the grant of compassionate appointment is justified considering number of dependents in the family vis-à-vis the earning members including the fact that:
   - The earning member is residing with the family of the deceased/permanently disabled executive and is not supporting the other members of the family.
   - The earning member of the family of the deceased/permanently disabled executive is neither supporting nor residing with the other members of the family[4].
h. The following provision has been included in the scheme of compassionate employment for executives by Office Memorandum dated 25.06.2024:If a dependant spouse of the deceased/permanently disabled executive is below the age of 45 years, he/she will have the option to either accept monetary compensation or employment.

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1. Office Memorandum no. C-5(B)/50800/381 dated 13.03.1981
2. Circular no. CIL/C5A (PC) MISC/702 dated 02.11.2015
3. Amended by OM no. CIL/C5A (PC)/2024/1208 dated 25.06.2024
4. Ibid

In case the dependant spouse is above 45 years of age, he/she will be entitled only to monetary compensation in lieu of employment, at the applicable rate (currently Rs. 40,000/- per month)[5]. This payment shall continue until dependant attains age of 60 years or death (whichever is before) subject to compliance of all other terms & conditions.

The age of the dependants seeking employment should be more than 18 years and less than 35 years, except spouse. (The age eligibility for dependant shall be reckoned as the age on date of death or permanent disablement of the executive)

In case no employment has been offered to dependant, child above 12 years of age will be kept on live roster until 18 years of age. On completion of 18 year age, child will be provided employment as per prevalent norms of the company. During the period child is on live roster, the spouse shall be paid monthly monetary compensation until the child attains age of 18 years.

If dependant spouse predeceases as per records of the deceased employee, eldest child shall be entitled to payment of 50% of monthly monetary compensation as applicable to the widow for the period dependent child is kept in live roster.

## *2. NATIONAL COAL WAGE AGREEMENT - NON-EXECUTIVES*

The scheme of providing compassionate employment to the dependant of a deceased/permanently disabled non-executive in Coal India was brought for the first time in NCWA-II under Chapter X (Social Security, Medical Faculties and Welfare). Since implementation, the provisions of scheme of compassionate employment to non-executives have been amended time to time in new NCWA or through Implementation Instruction.

NCWA-II was finalized by the Joint Bipartite Committee for the Coal Industry (JBCCI) on 11.08.1979 and came into operation on 01.01.1979. As per NCWA-XI which was finalized by the JBCCI-XI on 20.05.2023 and came into force from 01.07.2021 provides following provisions in respect of compassionate employment under the head Social Security in Chapter-IX of NCWA-XI:

**9.3.0** Employment to one dependent of an employee dying while in service, as being implemented in 10th Wage Agreement for CIL and SCCL shall continue on Basic Wage of Cat.-I as trainee for six months.

**Definition of dependent:** Spouse or son or daughter or transgender child or legally adopted son/ daughter/ transgender child, irrespective of marital status.

If no such direct dependent is available for employment, indirect dependent i.e. brother or sister or widowed daughter in law or son in law residing with the deceased and almost wholly dependent on the earnings of the deceased may be considered to be the dependent of the deceased.

**Age limit for employment:** The dependent should not be less than 18 years and not more than 35 years of age. However, the upper age limit in case of employment of spouse would be 45 years. Age of the dependent shall be reckoned on date of death of the employee. In case age of dependent child is less than 18 years but 12 years or above, the name shall be kept in live roster as per the extant provisions[6].

5. Office Order No. CIL / C-5B / JBCCI / Monthly Monetary Compensation / Executive / 252 dated 23.09.2020.
6. Implementation Instruction No. 16 dated 11.06.2024 under NCWA-XI

**9.4.0** On clause 9.4.0, a Sub-Committee shall be constituted which shall submit its report to the Standardization Committee of JBCCI-XI. Till then Status quo shall be maintained.

**9.5.0** (i) Provisions of monthly monetary compensation to eligible dependent in lieu of employment shall continue on minimum basic of Cat.-I as per the extant rule.

(ii) Eligible dependent will have the option either to opt for employment or for monthly monetary compensation in lieu of employment provided the dependent is otherwise eligible for employment.

(iii) However, spouse who is more than 45 years of age as on date of death of the ex-employee shall be entitled only for monetary compensation and not for employment other than death due to mine accidents.

**9.5.1** If the spouse is predeceased, as per records of the deceased employee, the eldest child of 12 years and above in age shall be entitled for payment of 50% of the admissible monthly monetary compensation up to the age of 18 years[7].

**9.5.2** The dependent of the deceased employee, irrespective of gender, if of 12 years and above in age shall be kept on a live roster and would be provided employment when she/he attains the age of 18 years.

**9.5.3** Generally the status of indirect dependent is reckoned at the date of death. However, in cases where daughter-in-law is widowed during the process of dependent employment of the son of the deceased employee, she can be considered for employment subject to fulfillment of all other rules applicable for dependent employment.

As per the duly approved Standard Operating Procedure on Dependent Employment and monthly monetary compensation under NCWA, the application for compassionate employment has to be submitted by the family members of the deceased within 1 year of death of the ex-employee to the concerned Unit/Establishment where ex-employee was working before his death[8].

## *PRINCIPLES LAID DOWN BY THE SUPREME COURT*

The Supreme Court of India has consistently held that compassionate employment cannot be claimed as a legal or vested right. It is recognized as a welfare measure to provide immediate support to families left destitute due to the employee's death, and not a substitute for competitive recruitment or a matter of inheritance

The Supreme Court in **Haryana State Electricity Board v. Hakim Singh**[9] has explained the reason behind granting compassionate appointment in the following words:

> *The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.*

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7. Ibid
8. Office Order No. CIL/C-5B/IR/ Dependent Employment / 33 dated 28.08.2023
9. Civil Appeal No. 6917 of 1997

Following are some of the settled principles laid down by the Supreme Court in its various judgments related to matters of compassionate employment:

**1. Union of India v. B. Kishore[10]:** Indigence of the dependents of the deceased employee is the first precondition to bring the case under the scheme of compassionate appointment.
If the element of indigence and the need to provide immediate assistance for relief from financial destitution is taken away from compassionate appointment, it would turn out to be a reservation in favour of the dependents of the employee who died while in service which would directly be in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution.

**2) Eastern Coalfields Ltd. v. Anil Badyakar[11]:** An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over.

**3) General Manager (D and PB) v. Kunti Tiwary[12]:** The retiral benefits received by the heirs of the deceased employee are to be taken into consideration to determine if the family of the deceased is left in penury. The court cannot dilute the criterion of penury to one of "not very well-to-do".

**4) State of Gujarat v. Arvindkumar T. Tiwari[13]:** Satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough; the dependent must fulfil the eligibility criteria for such appointment.

**5) Union of India v. Amrita Sinha[14]:** None can claim compassionate appointment, on the occurrence of death/medical incapacitation of the concerned employee (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible.

**6) Canara Bank v M Mahesh Kumar[15]:** Grant of family pension or payment of terminal benefits cannot be treated as substitute for providing employment assistance. Also, it is only in rare cases and that too if provided by the scheme for compassionate appointment and not otherwise, that a dependent who was a minor on the date of death / incapacitation, can be considered for appointment upon attaining majority

**7) Umesh Kumar Nagpal v. State of Haryana[16]:** The object of compassionate employment is not to give a member of a family of the deceased employee a post much less a post for post held by the deceased. Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Class III and IV is legally impermissible.

10. Civil Appeal No. 1045 of 2006
11. Civil Appeal No. 3597 of 2009
12. Civil Appeal No. 126 of 2004
13. Civil Appeal No. 6468 of 2012
14. Civil Appeal Nos 7640-7641 of 2021
15. Civil Appeal No. 260 of 2008
16. 1994 SCC (4) 138

**8) State Bank of India v Somveer Singh[17]:** The terminal benefits, investments, monthly family income including the family pension and income of family from other sources, viz. agricultural land were rightly taken into consideration by the authority to decide whether the family is living in penury.

**9) Canara Bank v. Ajithkumar G.K[18].:** The underlying idea behind compassionate appointment in death-in-harness cases appears to be that the premature and unexpected passing away of the employee, who was the only bread earner for the family, leaves the family members in such penurious condition that but for an appointment on compassionate ground, they may not survive.

There cannot be a straitjacket formula applicable uniformly to all cases of employees dying-in-harness which would warrant appointment on compassionate grounds. Each case has its own peculiar features and is required to be dealt with bearing in mind the financial condition of the family. It is only in "hand-to-mouth" cases that a claim for compassionate appointment ought to be considered and granted, if at all other conditions are satisfied. Such "hand-to-mouth" cases would include cases where the family of the deceased is 'below poverty line' and struggling to pay basic expenses such as food, rent, utilities, etc., arising out of lack of any steady source of sustenance. This has to be distinguished from a mere fall in standard of life arising out of the death of the bread- earner.

## CONCLUSION

Compassionate employment is a humanitarian concession aimed at providing immediate financial relief to families facing sudden financial crisis due to the death or disability of a government or public-sector employee. As reflected in the schemes of Coal India for both executives and non-executives, as well as in the judgments of the Supreme Court of India, such appointments are not a matter of right, inheritance, or routine employment. They are exceptional concessions granted only when stringent conditions particularly financial indigence is met. It is not a legal entitlement or a substitute for merit-based employment, but a welfare measure intended solely to alleviate penury and distress in exceptional "hand-to-mouth" situations. The Supreme Court has consistently held that compassionate appointment should be granted only when the family is truly indigent, without other means of support, and meets prescribed eligibility criteria. Each case must be individually assessed on its financial merits, and compassionate employment should not be seen as a right or routine alternative recruitment pathway. Ultimately, compassionate employment exists to prevent destitution, not to guarantee government service to every dependent, and must therefore be applied sparingly, consistently, and strictly in accordance with the governing rules and humanitarian purpose underlying the scheme.

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17. Civil Appeal No. 743 of 2007
18. Civil Appeal No. 255 of 2025

## EXCEPTION TO THE RULE OF EXHAUSTION OF ALTERNATE REMEDY

**NITEESH KUMAR MISHRA**
LL.B.(Hons.), B.H.U.
Assistant Manager (Legal), WCL HQ, Nagpur

In Indian administrative and constitutional law, the doctrine of "exhaustion of alternate remedy" plays a pivotal role in ensuring judicial discipline and preventing unnecessary interference by higher courts. It mandates that a person must first utilize all available statutory remedies before approaching the High Court or Supreme Court. This principle is primarily applied in writ jurisdiction under **Article 226 and Article 32 of the Constitution of India.**

Under normal circumstances, if a forum is provided under the law for redressal of grievances (like appellate tribunals, departmental appeals, etc.), the aggrieved party is expected to first exhaust those remedies. This prevents premature invocation of constitutional remedies and promotes efficiency and order in judicial processes.

However, like most legal doctrines, this rule is not absolute. There are well-recognized exceptions to it, which allow the courts to exercise its discretion and entertain a writ petition even when alternate remedies exist. **This doctrine is a rule of policy, convenience and discretion rather than a rule of law.**

The Hon'ble Supreme Court has taken the consistent view that although the high courts can entertain a petition under Article 226 of the Constitution, they must not do so when the aggrieved person has **an effective alternate remedy available in law.**

**In case of Union of India v. T.R. Varma (1957 AIR 882)** the Hon'ble Supreme Court observed that "At the very outset, we have to observe that a writ petition under Art. 226 is not the appropriate proceeding for adjudication of disputes like the present. Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights and in such an action, the Court will be competent to award all the relief to which he may be entitled, including some which would not be admissible in a writ petition. ***It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the Hight Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in Rashid Ahmed v. Municipal Board, Kairana, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs''***

However, at the same time it is also made clear that there are certain exceptions to this rule which includes the cases where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice.

In ***Whirlpool Corporation v Registrar of Trademarks, Mumbai (1998) 8 SCC 1,*** a two judge Bench of the Supreme Court after reviewing the case law on this point, noted:

*"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.* ***But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.*** *There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

Following the above dictum Hon'ble Supreme Court in **Harbanslal Sahnia v Indian Oil Corpn. Ltd. (2003) 2 SCC 107,** noted that:

*"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in* ***at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."***

Therefore, the principle of law which emerges from the above case laws and various other judgments of the Hon'ble Supreme Court is that in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdictionin the following cases:

1. Enforcement of fundamental rights.
2. Violation of principles of natural justice.
3. Where the proceedings are wholly without jurisdiction.
4. When the remedy available is not equally efficacious.
5. Where the vires of the Act is challenged.

When the impugned action violates fundamental rights enshrined in Part III of the Constitution, the Supreme Court under Article 32 and the High Courts under Article 226 may entertain a writ petition, notwithstanding the availability of an alternate remedy.

In case of **Rashid Ahmed v. The Municipal Board Kairana, (1950) SCR 566** the petitioner alleged the violation of its fundamental rights and approach the Supreme Court in spite of there being an alternate remedy of appeal. The court has observed as follows:

*"Learned Advocate-General of Uttar Pradesh appearing for the intervener drew our attention to section 318 of the U.P. Municipalties Act, 1916, and submitted that **the petitioner having adequate remedy by way of appeal, this Court should not grant any writ in the nature of the prerogative writ of mandamus or certiorari.** There can be no question that the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, but the powers given to this Court under article 32 are much wider and are not confined to issuing prerogative writs only. The respondent Board having admittedly put it out of its power to grant a license and having regard to the fact that there is no specific bye-law authorising the issue of a license, **we do not consider that the appeal under section 318 to the local Government which sanctioned the bye-laws is, in the circumstances of this case, an adequate legal remedy. We are satisfied that in this case the petitioner's fundamental rights have been infringed and he is entitled to have his grievance redressed."***

Similarly, in cases where there is violation of principle of natural justice, the courts have taken the consistent view that the jurisdiction should be exercise in such cases.

In **Harbanslal Sahnia v. Indian Oil Corporation Ltd. (2003) 2 SCC 107,** the Supreme Court set aside the High Court's decision, holding that the case fell within two well-recognized exceptions—namely, the enforcement of Fundamental Rights and the failure to adhere to the principles of natural justice. In such circumstances, the Court observed that the appellants ought to have been granted relief by the High Court itself, rather than being compelled to resort to arbitration proceedings.

In **Union of India v. State of Haryana2000 (10) SCC 482** the assessing authorities levied sales tax on rentals charged for the supply of telephones. Writ petitions were filed before the High Court challenging this levy; however, they were dismissed on the ground that an alternative statutory remedy by way of appeal was available. On appeal, the Supreme Court set aside the High Court's decision and remanded the matter for fresh consideration, as the issue involved a substantial question of law—namely, whether the supply of telephones constituted a "sale."In the present case, the appellant does not dispute the computation of duty or penalty. Instead, it challenges the very authority of the State Government to levy tax on the sale of electricity to BSEB. This contention goes to the root of jurisdiction. In light of the settled law on the rule of alternative remedy, the High Court may exercise its writ jurisdiction where the impugned action is challenged on the ground of lack of authority or jurisdiction, particularly when it raises a pure question of law.

In case of **Radha Krishan Industries v. State of H.P. (Civil Appeal No 1155 of 2021)** the Supreme Court summarized the principles of law and observed that the High Court's writ jurisdiction under Article 226 is wide and can be used not only for enforcing fundamental rights but for other purposes as well. However, it is discretionary and generally not exercised when an effective alternate statutory remedy exists, except in cases involving violation of fundamental rights, breach of natural justice, lack of jurisdiction, or challenge to the validity of a law. The existence of an alternate remedy does not bar jurisdiction but usually requires exhaustion of such remedies as a matter of policy and convenience. Additionally, the High Court may decline to entertain writs involving disputed facts, unless it finds that the situation justifies exercising its writ jurisdiction.

Therefore, it may be said that the doctrine of exhaustion of alternate remedies is a key component of judicial discipline and legal architecture. However, the exceptions to the rule are equally important to ensure that justice is not sacrificed at the altar of procedural rigidity. The judiciary, by interpreting these exceptions judiciously, maintains a fine balance between **efficiency of administrative redressal mechanisms and protection of individual rights and rule of law.**

# Scope of Section 34 of the Arbitration and Conciliation Act, 1996 (as amended by the Arbitration and Conciliation (Amendment) Act, 2015): A Critical Legal Analysis

**SHEJAL KHARE**
B.A. LL.B (Hons.), Chanakya National Law University, Patna
Assistant Manager (Legal), Nagpur Area, WCL

## *1. INTRODUCTION*

Arbitration has emerged as one of the most preferred modes of dispute resolution in commercial matters because of its speed, flexibility and party autonomy. The enactment of the **Arbitration and Conciliation Act, 1996** was intended to modernize Indian arbitration law in accordance with the **UNCITRAL Model Law on International Commercial Arbitration** and to minimize judicial intervention.

However, the finality of arbitral awards does not mean that such awards are beyond judicial scrutiny. Section 34 of the Act provides the **exclusive remedy for challenging an arbitral award** before a court. The provision allows a court to set aside an arbitral award only on specific and limited grounds.

The scope of Section 34 has been interpreted by courts as **narrow and supervisory rather than appellate,** ensuring that arbitration remains an effective alternative dispute resolution mechanism. This article examines the scope of Section 34, the grounds for setting aside an arbitral award, the impact of the **2015 amendment,** and important judicial precedents shaping its interpretation.

## 2. Legislative Framework of Section 34

Section 34 of the Arbitration and Conciliation Act, 1996 provides for 'Application for Setting Aside Arbitral Award.' It states that recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with the grounds specified under the provision.
The section provides three essential components:

1. **Grounds for setting aside an award** (Section 34(2) and 34(2A))
2. **Time limitation for filing the application** (Section 34(3))
3. **Power of the court to adjourn proceedings to allow correction of defects** (Section 34(4))
   The provision embodies the principle of minimal judicial interference, which is a cornerstone of modern arbitration law.

3. **Objective and Philosophy Behind Section 34**
   The main objective of Section 34 is to maintain a balance between two competing principles:

1. **Finality of arbitral awards**
2. **Judicial oversight to prevent injustice**

The Supreme Court in **Municipal Corporation of Greater Mumbai v. Prestress Products (India) (2003)** held that the 1996 Act was enacted with the clear objective of reducing court interference in arbitration proceedings and limiting the grounds for challenging arbitral awards.
Thus, Section 34 does not provide an appeal against the award but only allows the court to examine whether the award suffers from certain serious defects.

## 4. Grounds for Setting Aside an Arbitral Award

Section 34 provides specific grounds under which an arbitral award may be set aside. These grounds are broadly categorized into **procedural defects** and **substantive defects.**

### 4.1 Grounds Raised by a Party (Section 34(2)(a))

A party challenging the award must prove any of the following:

**(a) Incapacity of a Party:** If a party to the arbitration agreement was under legal incapacity, the award may be set aside.

**(b) Invalid Arbitration Agreement:** If the arbitration agreement is invalid under the law governing it.

**(c) Lack of Proper Notice:** If the party challenging the award was not given proper notice of:

- appointment of the arbitrator, or
- arbitral proceedings.

**(d) Inability to Present the Case:** If a party was otherwise unable to present its case due to procedural unfairness.

**(e) Award Beyond the Scope of Submission:** If the award deals with disputes not contemplated by the arbitration agreement.

**(f) Improper Composition of Arbitral Tribunal:** If the arbitral tribunal was constituted in violation of the agreement between the parties or the Act.

These grounds essentially protect natural justice and procedural fairness in arbitration proceedings.

### 4.2 Grounds Considered by Court Suo Motu (Section 34(2)(b))

The court may also set aside an award if:

1. The subject matter of dispute is not arbitrable, or
2. The award is in conflict with the public policy of India.

## 5. Public Policy as a Ground for Setting Aside Award

The concept of **"public policy of India"** has been one of the most litigated aspects of Section 34.

### 5.1 Early Interpretation

In **ONGC v. Saw Pipes Ltd. (2003),** the Supreme Court expanded the meaning of public policy to include patent illegality, violation of statutory provisions, and unfair or unreasonable awards. This broadened the scope of judicial interference.

### 5.2 Subsequent Clarification

In **ONGC v. Western Geco International Ltd. (2014),**

The Court further expanded public policy to include violation of fundamental policy of Indian law and irrational or perverse decisions. However, this expansion led to excessive judicial interference.

## 6. Impact of the Arbitration and Conciliation (Amendment) Act, 2015

To curb judicial interference, the **2015 Amendment Act** introduced important changes to Section 34.

The amendment clarified that an arbitral award would be in conflict with the public policy of India only if:

1. the award was induced by **fraud or corruption,**
2. it contravened the **fundamental policy of Indian law,** or
3. it conflicted with **basic notions of morality or justice.**

Additionally, **Section 34(2A)** was introduced for domestic arbitrations, allowing courts to set aside awards if there is **"patent illegality appearing on the face of the award."**

However, the amendment also clarified that **mere erroneous application of law or re-appreciation of evidence cannot be a ground for interference.**

**7. Judicial Interpretation of Section 34**

Indian courts have consistently interpreted Section 34 narrowly to preserve the autonomy of arbitration.

**7.1 Associate Builders v. Delhi Development Authority (2015)**

This landmark judgment clarified the scope of public policy and categorized it into:

1. Fundamental policy of Indian law
2. Interest of India
3. Justice or morality
4. Patent illegality

The Court held that **reappreciation of evidence by courts is not permissible under Section 34.**

**7.2 Ssangyong Engineering & Construction Co. Ltd. v. NHAI (2019)**

This judgment significantly narrowed the scope of judicial interference. The Supreme Court held that:

- courts cannot review the merits of the dispute, and
- "patent illegality" must appear **on the face of the award.**

This decision reaffirmed the objective of minimal judicial intervention.

**7.3 Renusagar Power Co. Ltd. v. General Electric Co. (1994)**

Although decided under the earlier law, this case established the classic definition of public policy in arbitration:

1. fundamental policy of Indian law
2. interests of India
3. justice or morality

This interpretation later influenced Section 34 jurisprudence.

**7.4 McDermott International Inc. v. Burn Standard Co. Ltd. (2006)**

The Supreme Court held that courts exercising jurisdiction under Section 34 **cannot correct errors of the arbitrator and can only set aside the award.** This judgment reinforced that courts do not sit as appellate authorities.

**7.5 Gayatri Balasamy v. ISG Novasoft Technologies Ltd. (2025)**

In a significant ruling, the Supreme Court clarified the issue of whether courts have the power to modify arbitral awards under Section 34. The Court emphasized the limited jurisdiction of courts under the provision and the importance of maintaining the finality of arbitral awards.

**8. Limitation Period under Section 34**

Section 34(3) prescribes a strict limitation period. An application for setting aside an arbitral award must be filed within **three months** from the date of receipt of the award. The court may allow a further **30 days** if sufficient cause is shown. However, **no application can be entertained after this extended period.** The Supreme Court in **Union of India v. Popular Construction Co. (2001)** held that this limitation period is mandatory and cannot be extended under the Limitation Act.

**10. Power of Court under Section 34(4)**

Section 34(4) allows the court to **adjourn proceedings and remit the award back to the arbitral tribunal** to eliminate defects.

This provision enables the tribunal to:

- clarify reasoning,
- correct errors, or
- reconsider certain aspects of the award.

However, this power can only be exercised **on request by a party,** not by the court suomotu.

**11. Nature of Proceedings under Section 34**

Proceedings under Section 34 are **not appellate in nature.** The court does not examine the correctness of the arbitral decision. Instead, the court only examines legality of the process, jurisdiction of the arbitrator, and compliance with principles of natural justice. This ensures that arbitration remains a final and binding dispute resolution mechanism.

Indian courts have gradually moved toward a pro-arbitration approach by limiting interference under Section 34. Recent judicial trends show that courts:

- respect the autonomy of arbitral tribunals,
- avoid re-evaluating evidence, and
- intervene only when there is a clear violation of statutory provisions.

This approach has enhanced India's reputation as a **global arbitration-friendly jurisdiction.**

**Conclusion**

Section 34 of the Arbitration and Conciliation Act, 1996 represents the **primary safeguard against defective arbitral awards while preserving the finality of arbitration proceedings.** The provision carefully balances judicial oversight with party autonomy by restricting interference to limited grounds such as incapacity, procedural unfairness, lack of jurisdiction, and violation of public policy. The 2015 amendment significantly narrowed the scope of judicial review and clarified the meaning of public policy and patent illegality. Subsequent judicial decisions, particularly **Associate Builders, Ssangyong Engineering,** and other Supreme Court rulings, have reinforced the principle that courts should not act as appellate bodies in arbitration matters.Consequently, the scope of Section 34 today is **supervisory rather than corrective,** ensuring that arbitral awards are respected unless they suffer from serious legal infirmities. This approach strengthens the credibility of arbitration as an efficient and reliable dispute resolution mechanism in India.

# LEGAL ANALYSIS OF CBA ACT, 1957 AND ITS COMPARISON WITH RFCTLARR ACT, 2013

**SHIVANI BISHT**
BA LLB (Hons.) Amity University Noida, LLM- IIT Kharagpur
Assistant Manager (Legal), Ballarpur Area, WCL

## I. INTRODUCTION

Similar to many other nations, India has considerable coal deposits, but a sizable amount of these reserves are yet untapped. Before 1993, only government-owned companies like Coal India Limited (CIL) and its subsidiaries could engage in coal mining. Acknowledging coal as a vital raw material for thermal power generation and important industries, the Indian government implemented policy changes that permitted private sector involvement through the distribution of captive coal blocks for sectors including power, iron and steel, cement, and aluminum. States like Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, West Bengal, and others contain the majority of India's coal deposits. The need for land acquisition for coal blocks has grown dramatically as open-pit mining has expanded. Private land holdings, non-forest government land, reserve forest land, or a mix of these types of land are typically needed for coal mining. Subject to adherence to processes including forest clearing and environmental permissions, the government may grant surface rights over both forest and non-forest government land.

In order to address this, the Indian government passed the Coal Bearing Areas (Acquisition and Development) Act, 1957 (CBA Act), which was based on the Land Acquisition Act, 1894. This act made it easier for government companies like CIL and its subsidiaries to acquire private land for coal mining. On the other hand, the property Acquisition Act of 1894 was used to acquire property for private firms running captive coal blocks. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, 2013), which creates a more transparent and equitable framework for land acquisition, compensation, and rehabilitation, now governs all such acquisitions—where the CBA Act does not apply.

## II. Procedure to be followed for Land Acquisition under the CBA Act, 1957

### 1. Requirements under Section 4(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957

The Government Company shall make sure that all requirements are met when filing an application for the issuing of a notification under Section 4(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957. Incomplete or inadequate proposals will not be processed.

The conditions and documentation listed below are necessary:

a) **Submission to the Ministry of Coal (MoC):** A formal request for the Ministry of Coal to publish a Gazette Notification regarding the project or block in question. Along with supporting documentation like Project permission, Prospecting Letter, Block Allotment Letter, or Chairman-cum-Managing Director (CMD) permission, this must provide comprehensive details regarding the project or coal block.

b) **Plans and Maps:** Five copies of the plan showing the coal block area, with the village schedule and boundaries clearly marked. The maps must be supplied on A3-sized paper with the proper scale (1" = 1 mile or 1" = 2 miles, depending on block size).

c) **Coal Availability Certificate (Format 1A):** A certificate attesting to the possibility of coal being present in the proposed location, backed up by pertinent research, reports, or documentation that serves as the foundation for this kind of evaluation.

d) **Non-Lease Status Certificate (Format 1B):** A document attesting to the fact that neither the State Government nor the Central Government has previously leased the proposed land to any person, business, or organization for any other reason.

e) **Survey Basis Certification (Format 1C):** A certificate attesting to the fact that the plans and village schedules were created using reliable sources, such as official revenue maps or Survey of India toposheets.

f) **Notification Draft (Format 1D):** For the relevant coal block or area, a draft notification under Section 4(1) of the CBA Act must be submitted in both Hindi and English. Both hard copy and soft copy versions of this should be supplied.

**2. Requirements under Section 7(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957**

The requirements listed below must be met:

a) **Submission to the Ministry of Coal (MoC):** A formal request for the issuing of a Gazette Notification under Section 7(1) must be sent to the Ministry of Coal, along with comprehensive information about the coal block in question.

b) **A copy of the notification under Section 4(1):** Enclosed must be a copy of the notification for the same block issued under Section 4(1) of the CBA Act. If the prospecting period has been extended, it is also necessary to make the appropriate notification.

c) **Detailed Timetables and Plans:** The schedule must be presented with five copies of a comprehensive plan developed in accordance with official income records. The entire region suggested for notice under Section 7(1) should be clearly shown in the design, with the area that was previously notified under Section 4(1) clearly indicated in a different color. A scale of RF 1:4000 (1 cm = 40 meters) must be used while drawing the plan.

d) **Notification Draft (Format 2D):** For the relevant coal block or area, a draft notification under Section 7(1) of the CBA Act must be produced and filed in both hard copy and soft copy versions in both Hindi and English.

e) **Non-Lease Status Certificate (Format 1B):** A document attesting to the fact that neither the federal nor state governments have leased the land for any other purpose to any person or organization.

f) **Record-Based Preparation Certification (Format 1C):** A certification attesting to the fact that the plans and schedules were created using official land data kept by the State Revenue Authorities.

g) **Coal Availability Certificate (Format 2A):** A certificate, backed by pertinent geological studies or exploratory reports, attesting to the presence of enough coal reserves in the targeted location.

h) **Area Consistency Certificate (Format 2B):** A certificate confirming that the area that is to be notified under Section 7(1) is either the same as or falls within the area that has previously been notified under Section 4(1).

**3. Requirements under Section 9(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957**

The requirements listed below must be met:

a) **Submission to the Ministry of Coal (MoC):** In order to request the issuing of a Gazette Notification under Section 9(1), the Ministry of Coal must receive a formal application that includes all relevant information about the coal block in question. Enclosed must be copies of the notifications for the same block issued under Sections 4(1) and 7(1).

b) **Notification Draft:** For the applicable coal block or area, a draft notification under Section 9(1) of the CBA Act must be created and filed in both Hindi and English. Both hard copy and soft copy copies must be included in the submission.

c) **Detailed Timetables and Plans:** The schedule must be accompanied by five copies of a comprehensive plan that was created using official revenue records. The entire area planned for notice under Section 9(1) should be clearly shown in the plan, with the region previously notified under Section 7(1) clearly indicated in a different color. A scale of RF 1:4000 (1 cm = 40 meters) must be used while drawing the plan.

d) **Certificate of No Objection (NOC):** The application must be submitted with a copy of the Coal Controller Organization's "No Objection Certificate."

4. **Requirements under Section 11(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957**

The requirements listed below must be met:

a) **Submission to the Ministry of Coal (MoC):** The Ministry of Coal must receive a formal application with comprehensive details regarding the relevant coal block in order to propose the issuing of a Gazette Notification under Section 11(1). Enclosed must be copies of the notifications issued for the same block under Sections 4(1), 7(1), and 9(1).

b) **Order Draft:** For the applicable coal block or area, a draft order under Section 11(1) of the CBA Act must be created and filed in both Hindi and English. Both hard copy and soft copy formats should be included in the submission.

## III. Comparison between the Coal Bearing Areas Act, 1957 and the RFCTLARR Act, 2013

Significant changes to India's land acquisition system were brought about by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, 2013), which went into effect on January 1, 2014. In contrast to the comparatively simplified method under the Coal Bearing Areas (Acquisition and Development) Act, 1957 (CBA Act, 1957), it places an emphasis on openness, justice, and the protection of those impacted.

1. **Pre-Notification Conditions:** Before providing a preliminary notification, the RFCTLARR Act requires three crucial prerequisites: Affected landowners' consent, a Social Impact Assessment (SIA) and related research, and food security and safety considerations. The CBA Act, on the other hand, does not mandate such lengthy processes before providing preliminary notices.

2. **Evaluation of Social Impact (SIA):** A summary of the SIA report must be included with the preliminary notification in accordance with the RFCTLARR Act. An overview of the Rehabilitation and Resettlement (R&R) Scheme must also be released at the declaration stage. At these levels, SIA and R&R-related disclosures are not required by the CBA Act.

3. **Resettlement and Rehabilitation (R&R):** R&R is highly valued under the RFCTLARR Act, which mandates: Specific rules and protections for Scheduled Castes and Scheduled Tribes (SC/ST), a comprehensive R&R plan, separate awards for land acquisition and R&R, and extra compensation in circumstances of multiple displacements. Such extensive R&R rules are not included in the CBA Act.

4. **Structure of Awards:** Two phases of compensation are granted under the RFCTLARR Act: Rehabilitation & Resettlement Award and Land Acquisition Award. This dual-award mechanism is not used under the CBA Act.

5. **Compensation:** Compared to previous frameworks like the CBA Act, compensation under the RFCTLARR Act is substantially higher—often up to four times.

| S. No. | Basis of Difference | CBA (A&D) Act, 1957 | RFCTLARR Act, 2013 |
|---|---|---|---|
| 1. | Social Impact Assessmen t | Does mot mandate Social Impact Assessment, which can result in negative consequences for vulnerable tribal communities. | It requires mandatory Social Impact Assessment which ensures that social consequences are thoroughly evaluated thereby safeguarding rights of affected communities. |
| 2. | Consent | Does not mandate any consultation or prior informed consent from indigeneous peoples. | Mandates atleast 80% of project-affected families must provide consent for land acquisition. Additionally, it also requires consultation with Gram Sabhas, reinfoecing community involvement and ensuring that voices of indigeneous peoples are heard. |
| 3. | Compensat ion | The compensation under this Act is purely monetary and determined by the market value at the time of acquisition declaration. | This Act ensures fair compensation which includes not just the market value but also solatium for emotional distress and additional rehabilitation benefits. |
| 4. | Protection for Displaced Persons | It offers no protections for individuals or families that have already been displaced, leaving them at risk of further vulnerability. | It ensures that previously displaced persons are protected through provisions that mandate no re-displacement and guarantee double compensation to those affected. |
| 5. | Gram Sabha Approval | It does not mandate Gram Sabha approval which results in many projects proceeding without local consent. | It mandates Gram Sabha approval for all plans and projects ensuring that local communities are involved in decision making process that affects that their lands. |

## IV. Conclusion

The Land Acquisition Act of 1894 served as the foundation for the Coal Bearing Areas (Acquisition and Development) Act of 1957, which was created to enable the effective acquisition of coal-bearing property in the greater economic benefit of the nation. It coexisted with the previous land purchase system for many years, preserving comparatively uniform pay and procedural elements. But the Right to Fair Compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which prioritized social impact assessment, improved compensation, openness, and rehabilitation measures, signaled a paradigm shift in land acquisition regulations. Despite the fact that some laws, such as the CBA Act, are not directly applicable under Section 105 of the RFCTLARR Act, this dual legal structure has led to serious practical and policy issues.

The coexistence of two different acquisition regimes presents a significant problem: adjacent lands needed for allied infrastructure must be acquired under the RFCTLARR Act with significantly higher compensation and more stringent procedural safeguards, while coal-bearing areas continue to be acquired under the CBA Act without the requirements of consent, SIA, or enhanced compensation. Disparities among impacted landowners come from this divergence,

which may cause discontent, opposition, and delays in the project's execution. These discrepancies raise questions about justice, fairness, and consistency in land acquisition procedures in addition to making the task of implementing agencies more difficult.

Therefore, in order to unify the terms of both Acts, policy action is urgently needed. A balanced strategy that ensures social justice and economic development would reduce disputes, expedite the purchase process, and encourage long-term growth in the coal industry.

# JUDICIAL REVIEW OF THE PUBLIC TENDER PROCESS

**SHIVANI JAIDEEP KARNIK**
B.A.LLB. (Hons.), HNLU, Raipur
Assistant Manager (Legal), WCL HQ, Nagpur

Government tenders hold a unique position due to the presence of the State and its instrumentalities in the sphere of commercial activity. The competence to contract for these commercial activities stems from Article 299 of the Indian Constitution, which states that all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State respectively. Although the judiciary has been clear in refusing to interfere with the merits of commercial decisions of the State, there have been some instances where the judiciary has duly exercised its power to review government tenders. This article examines such key judicial pronouncements and the principles they have set for future instances.

**General Disposition of the Court towards Government Tenders**

Though the Courts had been following common law precedents as well as decisions of privy council in cases of government tenders, the foundation of principles of judicial review of government tenders for the present times was laid by the very famous case of *Ramana Dayaram Shetty v. International Airport Authority [1979 AIR 1628].* It was held in this case that although the State is entitled to refuse to enter into a contract, wanton use of this right is kept in check by probing for any element of arbitrariness in that decision. The State ought not to discriminate between persons of similar circumstances. Further, the administrative action must be able to pass the test of reasonableness and non-discrimination. Any deviation from these principles must be supported or justified on some rational and non-discriminatory ground.

Building on the need for non-arbitrariness and reasonableness, the Supreme Court later passed a watershed judgment in *Tata Cellular v. Union of India [AIR 1996 SC 11].* The Supreme Court advised that in matters of judicial review of tenders, the concern of all Courts should be:

> *"1. Whether a decision-making authority exceeded its powers?*
> *2. committed an error of law*
> *3. committed a breach of the rules of natural justice*
> *4.Reached a decision which no reasonable tribunal would have reached or*
> *5. Abused its powers."*

The Court further cautioned that courts should not delve into the aspect of substantial fairness but rather procedural fairness. Therefore, the grounds that remain for a decision to be reviewed are:

> *"(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it.*
> *(ii) Irrationality, namely, Wednesbury unreasonableness,*
> *(iii) Procedural impropriety."*

Despite these principles, bidders still approached the Court for a review of the decision of the tender issuing authority on even matters such as the quantum of price offered. For resolving these matters, in *Raunaq International Ltd. v. IVR Construction Ltd. [(1999) 1 SCC 492]* the Court emphasised the requirement of public interest being involved and mala fide transactions when an award of contract is challenged. Where there is solely a difference in the prices offered by the two tenderers, it cannot be said decisively that public interest is involved as the tender issuing authority is State. The Court considered the heavy impact of delay in execution of a project which may lead to escalating costs and the counterintuitive effect of loss of more public money than intended by the petitioner.

Later on, the Court further ruled against any plea to challenge the commercial soundness of the tender simply because it is a government tender. In *Jagdish Mandal vs. State of Orissa and Others [(2007) 14 SCC 517]* the Court emphasised the purpose of judicial review: to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. To test a decision to be free from these elements, courts have to "check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound "".

The Court stated that especially in cases of tenders and contracts, the evaluation process is strictly a commercial function. Therefore, the principles of equity and natural justice need to "stay at a distance". Finally, it decided to maintain its own distance in interfering in case of even a "procedural aberration or error in assessment or prejudice to a tenderer" where the decision relating to award of contract is bona fide and is in public interest. This statement appeared to be slightly in deviation from the precedents earlier. However, to clarify, the Court laid down two guiding questions to be pondered upon by every Court faced with a matter of judicial review:

*''(I) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;*

*Or Whether the process adopted or decision made is so arbitrary and irrational that the Court can say: the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.*

*(ii) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226.''*

The very recent judgment of *BCCL v. AMR Dev Prabha [2020 INSC 307]* laid down principles to be followed by Courts especially if review is sought under Article 226 under a writ, as seen in the previous judgment. The Court enumerated three such instances where a writ against the outcome of a government tender is challenged:

I. When the constitutional right of a party is infringed.

II. Where a party wants accountability from the State for discrimination or, to prohibit the State from acting arbitrarily under Article 14.

III. When any executive actions or legislative instruments are in contravention to the freedom of carrying on trade and commerce under Article 19(1)(g).

IV. When it is demonstrated that public interest is involved.

Thus, writs are not permissible when there is solely an alleged instance of contractual violation or omission. Public interest needs to be demonstrated before any relief is sought. The threshold for this is not high, but it is necessary to evaluate so that the writ mechanism is not used to bypass civil courts for enforcement of contractual obligations.

**Power to adjudicate upon conditions of a tender**

As seen from the general attitude of the Court in the previous section, the Court is reluctant to interfere in the public procurement process. This however does not stop unsuccessful bidders from challenging the same, often

contending that one or more of the conditions of the tender were arbitrary. In such instances, once again the Court adopts a hands-off approach which is akin to its approach when evaluating stipulations in a contract.

Although predating the Tata Cellular judgment, the Court refused to interfere in the manner in which any tender issuing authority enforces or relaxes its tender conditions in *G.J. Fernandez vs. State of Karnataka and Ors. [MANU/SC/0175/1990].* The Court enumerated both these instances while reaching this verdict. In the first case, the tender issuing authority has the right to rigidly enforce them, and if a party does not comply, the Court will not grant any relief against this rigid enforcement. The second case, as decided by the Court in some of its earlier decisions, is when deviation from tender conditions does not result in arbitrariness or discrimination and the tender issuing authority chooses to deviate. In this case also the Court cannot ask the authority to strictly follow the conditions. It is irrelevant whether the tender issuing authority has rightly deemed conditions essential or ancillary and hence elects or relaxes the rigid enforcement of the tender conditions. In this case, the tender issuing authority has relaxed the time frame originally prescribed. The Court observed that "these changes affected all intending applicants alike and were not objectionable." As there was no substantial prejudice caused to any of the bidders, the Court did not interfere in the decision.

The decision of a tender issuing authority in following its own terms and conditions was also questioned in *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) [(2016)8 SCC 622].* The question before the Court was whether furnishing a bank guarantee in the format prescribed in the bid documents is an essential requirement in the bidding process and submission in incorrect format would amount to the bid being treated as non-responsive in view of Clause 15.2 of the General Terms and Conditions. The Court held that the decision of the employer. The Court cited the case of *Ramana Dayaram Shetty* and stated that even if a term is essential the employer can deviate from the same if the application is uniform to all bidders. In the event that a condition is deemed ancillary or subsidiary, the Court held that even that decision of the employer should be respected. To test the soundness of these decisions would amount to the Court assuming the functions of the tender issuing authority.

However, it cannot be perceived that the Court will be complacent to arbitrariness on part of the State. In *Monarch Infrastructure (P) Ltd. v. Commr, Ulhasnagar Municipal Corporation [2000 (5) SCC 287],* the Municipal Corporation has invited tenders for appointment of agents for collection of octroi. The tender was awarded to Monarch Infrastructure (P) Ltd. after some of the conditions were waived after offers had been received. The Court held the action to be arbitrary and directed for a fresh tender process. But this was the limit to the Court's power of judicial review. Subsequently, the Municipal Corporation prescribed new terms and conditions for the fresh tender process. These were also challenged before the Court. This time, the Court held that it cannot determine whether these new conditions were better than the ones prescribed earlier as the authority calling for the tender is the best judge of that.

This peculiar question also arose before the Supreme Court in *Directorate of Education v. Educomp Datamatics Ltd. [(2004) 4 SCC, 19]* - Whether the Court can modify conditions prescribed in a tender notice as they are inappropriate and there may be conditions better suited to fulfill the same objective. The Supreme Court observed that as the terms of tender are part of the contractual process, the same are not subject to judicial scrutiny. The Court can adjudicate on the award of the contract (albeit on the limited grounds as seen from the previous section of judgments) but not strike down the terms of tender because some other terms "would have been fair, wiser or logical".

Similarly, in *Monte Carlo Ltd. v. NTPC Ltd. [(2016)15 SCC 272],* the Court held that where the decision of the tender issuing authority is "manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint". Technical evaluation or comparison by the court would be impermissible.

The principles the Court adopts in attempting to understand ordinary instruments and contracts cannot be used to interpret and appreciate tender documents relating to technical works and projects requiring special skills. The tender issuing authority has the leeway it needs to carry out the purpose for which tender is issued.

The Court remained consistent in its disposition in the matter of *Afcons Infrastructure Ltd vs Nagpur Metro Rail Corporation Ltd., 2016 (16) SCC 818* also. The Court reiterated that the owner or the employer of a project is the best person to understand and appreciate its requirements and interpret its documents. Unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions, the Court must exercise restraint.

Even when there is an interpretation to the tender documents by the tender issuing authority that is not acceptable to the constitutional Courts, the Court cannot interfere with the interpretation given by that authority. The Court went to the extent that even if there was an ambiguity or doubt about the interpretation by the authority, unless that interpretation was perverse or mala fide or intended to favour one of the bidders the Court is restrained in giving its own interpretation.

Finally, in *Uflex Ltd. vs The Government Of Tamil Nadu [AIRONLINE 2021 SC 729],* the Court evaluated general principles applied by Courts in interpreting commercial contracts. The Court discouraged the endeavours of courts to give their own interpretation to terms of a tender when a third party competing in the same tender process has approached the Court.

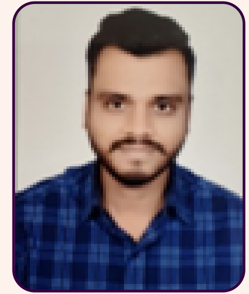
The process of judicial review cannot be used to fulfill the objective of disqualifying parties to a tender when tender issuing authority has no objection but solely because a party losing out has the opportunity to approach a constitutional court. This seemed to be a nail in the coffin discouraging challenge to decisions of the tender issuing authority unless the general principles of *Tata Cellular* and *Jagdish Mandal* are violated.

**Conclusion**

There has been a steady shift in the jurisprudence surrounding government tenders in India. While the original position of courts was non-interference, the current approach has developed by emphasising constitutional principles such as equality, non-arbitrariness, and fairness. However, the courts have consistently recognised the inherently commercial and technical nature of public procurement. Therefore, they have refrained from evaluating the merits or commercial wisdom of a tender decision, while ensuring that the decision-making process remains lawful, reasonable, and procedurally fair.

On similar lines, the judiciary has been consistently reluctant to interfere with tender conditions or their interpretation. This demonstrates a recognition of institutional competence. Therefore, the Court has refrained from substituting its judgment for that of the tender issuing authority, even where arguably better terms may exist. But this does not limit the Court from ensuring the constitutional mandate, especially that under Article 14. This difficult equilibrium ensures constitutional integrity of the tendering process while also safeguarding timely execution of giant public projects, which ultimately secures public interest.

# EFFECT OF HONOURABLE ACQUITTAL ON PENDING DEPARTMENTAL ENQUIRY



**DEEPAK AGARWAL**
B.B.A., LLB (Hons.), NLUO, Cuttack
Assistant Manager (Legal), WCL HQ, Nagpur

Public Sector Enterprises (PSEs) are among the largest employers in their respective industries, so a high volume of service- related disputes and litigation between PSEs and their employees is inevitable. As employees of PSEs generally qualify as public servants, any departmental proceedings initiated against them must withstand judicial scrutiny. This article examines a niche but important issue: the effect of an honourable acquittal in a criminal case on a pending departmental enquiry.

Public servants enjoy various constitutional and statutory protections, yet they are also subject to heightened scrutiny during service, particularly when they are alleged to have engaged in criminal conduct. Service rules, conduct rules and Certified Standing Orders usually contain a clause providing that an employee's conviction by a court of law may entail disciplinary action. When the alleged offence is connected with the course of employment, it is common for the employer to initiate departmental proceedings parallely against the delinquent employee.

The Supreme Court of India and various High Courts have consistently held that, even when a criminal case and a departmental enquiry arise from the same incident, they are independent proceedings because the standard of proof in each is different. In a criminal trial, the prosecution must prove the accused's guilt beyond reasonable doubt, whereas in departmental proceedings the employer only has to establish the charge on the basis of the preponderance of probabilities.

The preponderance of probability is a standard commonly applied in civil law and in disciplinary proceedings. A fact is treated as established if, on the evidence available, it appears more likely to be true than false; the inquiry is into which version of events is more probable, not into achieving absolute certainty. This standard, significantly lower than the “beyond reasonable doubt” threshold applicable to criminal trials, is typically used in disputes relating to property, contracts, tortious claims and service matters.

Consequently, if an employee is facing both a criminal trial and a departmental enquiry based on the same act, and a competent criminal court ultimately convicts the employee after a full trial, the employer is normally entitled to continue and conclude the departmental proceedings. In such cases, the disciplinary authority may independently evaluate the evidence, emphasize service- related aspects and aggravating or mitigating circumstances, and impose an appropriate penalty under the applicable rules.

The more complex question arises when the employee is acquitted in the criminal trial while a departmental enquiry on the same incident is still pending. In that situation, courts have drawn a distinction between different kinds of acquittals: a technical or benefit-of-doubt acquittal may not, by itself, bar or nullify departmental proceedings; however, an honourable acquittal, in which the employee is completely exonerated on the same charges and on substantially the same evidence, may persuade a court to hold that it is neither expedient nor fair to continue the departmental enquiry. The precise effect of such an honourable acquittal on the pending departmental proceedings, therefore, depends on the nature of the acquittal, the overlap between the charges and evidence in both forums, and the broader interests of justice that the court is called upon to balance

The word "Honorable Acquittal" is not defined in any statute, rather it has been interpreted through various judicial pronouncements. The Indian Evidence Act, 1872 and presently the BhartiyaSakshyaAdhiniyam, 2023 defines three situations - "proved", "not proved" and "disproved".

When the guilty is "proved", the result would be a conviction for sure. In case of "disproved", the acquittal is the definite consequence. In the case of "not proved", it may fall under 2 categories:

a) Where the prosecution has miserably failed to prove its case and the prosecution charges: and
b) Where the evidence is suspicious and there arise doubt as to the commission of offence.
We can safely say that in the case of "disproved", it will be an "honorable acquittal". Similarly in cases where the "prosecution miserably fails to prove their own case and their charge", then the resultant acquittal will fall under the heading of "honorable acquittal". However, when the prosecution evidence is "Insufficient to establish guilt of the accused", such acquittal which is on the benefit of doubt and will not qualify as "Honorable Acquittal",
Further, to support the aforementioned line of reasoning, the under signed has relied on the following precedents, the operative part of which is quoted along with the citations:

**1. Imtiyaz Ahmad Malla Vs.The State of Jammu and Kashmir and Ors. (AIR 2023 SC 1308)**

"24. The meaning of the expression "honourable acquittal" came up for for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v Bhopal Singh Panchal: MANU/SC/0117/1994: (1994) 1 SCC 541: 1994 SCC (L&S) 594]. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings, In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable.
The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" áry unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted", When the Accused is acquitted after full consideration of prosecution evidence arid that the prosecution had miserably failed to prove the charges levelled against the Accused, it can possibly be said that the Accused was honourably acquitted."

**2. Union of India (UOI) and Ors. Vs. Methu Meda {(2022)1SC C 1)**

In the case of *R.P. Kapur v. Union of India MANU/SC/0275/1963: AIR 1964 SC 787,* it is observed and held by Wanchoo, J., as thus: Even in case of acquittal, proceedings may follow where the acquittal is other than honourable. In view of the above, if the acquittal is directed by the court on consideration of facts and material evidence on record with the finding of false implication or the finding that the guilt had not been proved, accepting the explanation of Accused as just, it be treated as honourable acquittal. In other words, if prosecution could not prove the guilt for other reasons and not 'honourably' acquitted by the Court, it be treated other than 'honourable', and proceedings may follow".
Further, it is pertinent to note that the reasoning as mentioned above has been supported by Office Memorandum dated 21.07.2016 bearing ref no. F.No.11012/6/2007-Estt (A-III) issued by Ministry of Personnel, Public Grievances and Pensions. The relevant extracts of the aforementioned Office Memorandum are produced below for reference:

*6. The question as to what is to be done in the case of acquittal in a criminal case has been answered by the Hon'ble Supreme Court in R. P. Kapur vs. Union of India & Anr. AIR 1964 SC 787 (a five Judge bench judgement) as follows:*

*If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow where the acquittal is other than honourable.*

*7. The issue was explained in the following words by the Hon'ble Supreme Court in the following words in Ajit Kumar Nag u GM, (PJ), Indian Oil Corporation Ltd., (2005) 7 SCC 764:*

*Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives.*
*Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation.*

*8. The judgement of the Hon'ble Supreme Court in G.M. Tank vs State of Gujarat (2006) 5 SCC 446 has reaffirmed the principles laid down in R.P. Kapur (supra). In G.M. Tank case, Court observed that there was not an iota of evidence against the appellant to hold that he was guilty. As the criminal case and the departmental proceedings were based on identical set of facts and evidence, the Court set aside the penalty imposed in the departmental inquiry also.*

*9. Ratio in the G.M. Tank judgement should not be misconstrued to mean that no departmental proceedings are permissible in all cases of acquittal or that in such cases the penalty already imposed would have to be set aside. What the Hon'ble Court has held that is no departmental inquiry would be permissible when the evidence clearly establishes that no charge against the Government servant may be made out."*

Therefore, to sum up, while an honourable acquittal in a criminal trial does not automatically bar or terminate a pending departmental enquiry in Public Sector Enterprises, its effect hinges critically on the nature of the acquittal as discerned from judicial scrutiny. An honourable acquittal—characterized by the prosecution's miserable failure to prove its case or a clear "disproved" finding under the BharatiyaSakshyaAdhiniyam, 2023—signals a complete vindication of the employee, compelling the employer to drop the departmental proceedings or risk judicial invalidation, as affirmed in Imtiyaz Ahmad Malla v. State of Jammu and Kashmir (AIR 2023 SC 1308) and Union of India v. MethuMeda ((2022) 1 SCC 1). Conversely, acquittals based on insufficient evidence, benefit of doubt, or suspicious prosecution cases do not qualify as honourable and permit the enquiry to proceed independently under the lower "preponderance of probabilities" threshold.

This distinction underscores the dual-track autonomy of criminal and disciplinary proceedings, rooted in their divergent standards of proof, yet tempered by principles of natural justice and fairness. For PSEs, meticulous review of the acquittal order's operative findings is imperative before concluding enquiries, lest arbitrary actions invite High Court or Supreme Court intervention. Employees, in turn, must demonstrate the acquittal's honourable character to claim exoneration. Ultimately, these precedents ensure accountability without undermining due process, balancing organizational discipline with individual rights in the high-stakes realm of public service employment.

# ARBITRABILITY OF FRAUD IN INDIA: AN EVOLVING LEGAL POSITION

**YOGESHWARI SHEKHAWAT**
B.Com., LL.B, GNLU - Gandhinagar
Assistant Manager (Legal), Majri Area, WCL

## INTRODUCTION

Arbitration has become a central mechanism for resolving commercial disputes in India, primarily due to its flexibility, efficiency, and respect for party autonomy. Despite these advantages, the arbitrability of disputes involving allegations of fraud has remained a complex and debated issue. Traditionally, courts were reluctant to permit arbitration in such matters, largely because fraud often involves elements of criminality, public interest, and intricate evidentiary requirements. However, over the years, judicial thinking has undergone a significant transformation. Indian courts have gradually shifted from a restrictive stance to a more balanced and arbitration-supportive approach, wherein only limited categories of fraud are excluded from arbitration. This development reflects an effort to harmonize private dispute resolution with broader public law concerns.

## EARLY JUDICIAL POSITION: EXCLUSION OF FRAUD FROM ARBITRATION

In the earlier phase of Indian arbitration law, courts maintained that disputes involving serious allegations of fraud were unsuitable for arbitral adjudication. In *Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak (1962),* the Supreme Court emphasized that cases involving fraud require detailed scrutiny, which is better suited to judicial proceedings conducted in open courts. This reasoning was later echoed in *N. Radhakrishnan v. Maestro Engineers (2010),* where the Court declined to refer a dispute to arbitration on the ground that allegations of financial irregularities and manipulation demanded a thorough evidentiary process. The ruling effectively created a precedent whereby even the presence of fraud allegations could be used to bypass arbitration, often leading to strategic misuse.

## SHIFT IN LEGAL THINKING: NATURE OF RIGHTS INVOLVED

A more structured approach emerged with the decision in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. (2011).* The Supreme Court introduced a distinction between disputes relating to rights in rem and rights in personam. It clarified that disputes affecting rights against the public at large are generally not capable of arbitration, whereas disputes confined to private

parties can be resolved through arbitration. This judgment also outlined essential conditions for arbitrability, including the scope of the arbitration agreement and the intention of the parties. By doing so, the Court laid down a doctrinal foundation that guided subsequent decisions on the issue.

## REASSESSMENT OF FRAUD: MOVING AWAY FROM ABSOLUTE BAR

The rigid position adopted in earlier cases was reconsidered in Swiss Timing Ltd. v. Commonwealth Games Organising Committee (2014). In this case, the Supreme Court took a pragmatic view, holding that the mere existence of fraud allegations or criminal proceedings does not automatically exclude arbitration. The Court recognized that arbitration and criminal law operate in distinct spheres and can proceed simultaneously. It also stressed that denying arbitration solely on the basis of allegations would undermine the intent of the parties who

chose arbitration as their dispute resolution mechanism. This judgment marked an important shift towards a more arbitration-friendly approach.

### LEGISLATIVE INTERVENTION AND REDUCED JUDICIAL ROLE

The 2015 amendment to the Arbitration and Conciliation Act, 1996 significantly strengthened this evolving approach. By introducing Section 11(6-A), the legislature restricted the role of courts at the stage of appointing arbitrators to a limited inquiry into the existence of an arbitration agreement. This change reinforced the principle that arbitral tribunals are competent to determine their own jurisdiction, including issues relating to fraud. Consequently, courts are no longer expected to undertake a detailed examination of the merits or arbitrability of disputes at the threshold stage, thereby promoting efficiency and reducing delays.

### CLASSIFICATION OF FRAUD: SIMPLE VS SERIOUS

Further clarity was provided in *A. Ayyasamy v. A. Paramasivam (2016),* where the Supreme Court differentiated between ordinary fraud and serious fraud. The Court held that disputes involving routine allegations of fraud arising from contractual relationships could be resolved through arbitration. However, where allegations are of a grave nature—such as those involving criminal misconduct, forgery, or issues affecting public interest—courts may retain jurisdiction. This distinction helped refine the legal framework by ensuring that only exceptional cases are excluded from arbitration.

### DEVELOPMENT OF TESTS FOR ARBITRABILITY

The Supreme Court in Rashid *Raza v. Sadaf Akhtar (2019)* further refined the law by introducing a two-pronged test. The Court examined whether the alleged fraud affects the arbitration agreement itself and whether it extends beyond the parties to impact public rights or third-party interests. Only when these conditions are satisfied would the dispute be considered non-arbitrable. This reasoning was reinforced in *Avitel Post Studioz Ltd. v. HSBC PI Holdings (2021),* where the Court clarified that disputes involving commercial fraud between private parties remain arbitrable, even if the main contract is challenged, as the arbitration clause is treated as independent. These decisions strengthened the doctrine of separability and limited the scope of judicial interference.

### RESTRICTED JUDICIAL SCRUTINY AT REFERRAL STAGE

Subsequent judgments further emphasized the limited role of courts at the stage of referral. In *Duro Felguera v. Gangavaram Port Ltd. (2017)* and *Mayavati Trading Pvt. Ltd. v. Pradyuat Deb Burman (2019),* the Supreme Court held that courts should confine their inquiry to the existence of an arbitration agreement and avoid examining substantive issues. This position was elaborated in *Vidya Drolia v. Durga Trading Corporation (2021),* where the Court outlined specific categories of disputes that are non-arbitrable, such as those involving sovereign functions or rights in rem. Fraud-related disputes were generally held to be arbitrable unless they fell within these limited exceptions.

### RECENT JUDICIAL CONSOLIDATION

Recent decisions have firmly established a pro-arbitration framework in India. In *Interplay between Arbitration Agreements and the Stamp Act (2023),* a Constitution Bench clarified that courts at the referral stage should not engage in detailed analysis beyond confirming the existence of an arbitration agreement. This approach was reaffirmed in *SBI General Insurance Co. Ltd. v. Krish Spinning (2024),* which emphasized that issues of arbitrability must be left to the arbitral tribunal. In *Lata Yadav v. Shivakriti Agro (P) Ltd. (2025),* the Delhi High Court held that ongoing criminal or regulatory investigations do not preclude arbitration proceedings. The Supreme Court's decision in *Bihar State Food & Civil Supply Corpn. Ltd. v. Sanjay Kumar (2025)* represents the culmination of this evolution. The Court held that once a valid arbitration agreement is established, the dispute must be referred to arbitration, even if serious allegations of fraud or criminal proceedings are involved. All such issues are to be decided by the arbitral tribunal.

## CONCLUSION

The law governing the arbitrability of fraud in India has undergone a clear and progressive transformation. The earlier approach, which excluded fraud from arbitration almost entirely, has been replaced by a more nuanced framework that distinguishes between different categories of fraud. Today, most commercial disputes involving fraud are considered arbitrable, with only limited exceptions where public interest or the validity of the arbitration agreement itself is at stake. Courts now play a minimal role at the referral stage, leaving substantive issues to be determined by arbitral tribunals. This development not only strengthens party autonomy but also aligns Indian arbitration law with global standards, ensuring a balanced approach that accommodates both private dispute resolution and public policy considerations.

# EX POSTFACTO ENVIRONMENT CLEARANCE IN THE CONTEXT OF VANASHAKTI JUDGMENT

**B.M. ARAVIND**
BA LLB, WB NUJS, Kolkata
Dy. Mgr. (Legal), WCL HQ, Nagpur

## INTRODUCTION

In the contemporary era, Environmental governance has been witnessing an incredible evolution with notable changes. Indian Judiciary is emphasizing on striking balance between Environment and development. as well as Environment protection and Fundamental Rights. It has gained significant recognition that there cannot be unchecked development risking environment. Industrial expansion, urban development and climatic changes should not cost the ecological degradation. This contextual relationship kept the framework of Environment Impact Assessment (EIA) at the heart of environmental regulatory management.

The EIA mechanism has been developed with an aim to assess the potential harm to the Environment by a proposed project or development before granting permission for its commencement. The proposed developmental activity will be examined before occurrence of any catastrophic environmental consequences. EIA mandates the Project Proponents to seek prior approval/Environment Clearance before beginning the operations. However, the government started granting ex post facto Environmental Clearances with a 2017 Notification and was institutionalized further by a 2021 Standard Operating Procedure (SOP). The said instruments permitted the violators of EIA 2006 to continue operations after paying fines and conducting belated impact assessments. The Supreme Court's judgment in Vanashakti v. Union of India has addressed the exact issue whether the said instruments allowed violators to bypass the existing law and render the EIA process meaningless?

In this background, the paper aims to analyze the Vanashakti Judgment passed in March 2025 and Review Judgment passed in November 2025. The paper begins by explaining Environment Impact Assessment, Environment Clearance, prior and postfacto approvals for the same. During this process, the principles of Environment and certain legal provisions related to the Case will be explored. Thereafter, the facts, issues and reasoning given by Supreme Court for its original and Review Judgment will be scrutinized. At the end, the paper concludes with the concluding remarks on the subject matter.

### Understanding Environmental Impact Assessment

The Environmental Impact Assessment (EIA) is an extensive process which examine the potential environmental effects of a proposed project. The EIA evaluates environmental impacts by predicting the potential harm during the initial stages of a project. For such an assessment, various factors such as human health impacts, the interrelated socio-economic, cultural aspects will be taken into consideration during planning and design stages of a proposed project. The purpose of EIA is to reduce negative effects, bring the project in consistent with the existing environment, and place projections and possible options before the designated authorities.

This EIA process was initially conceptualized during the 1992 Rio Declaration, wherein it stressed the need for public participation in decisions related to the Environment. In India, the Environment Protection Act, 1986 validates EIA, and provides procedures as well as methodology for the same.

## What is Environmental Clearance

Environmental Clearance (EC) is a permission which is required to be obtained from the government for any activity that poses negative harm to the Environment. EC may be granted to a project or a proposed development activity once an Environment Impact Assessment ("EIA") is conducted.

## Environment Principles

<u>Precautionary Principle</u>

Precautionary Principle forms the fundamental basis for Environment Impact Assessment or Environment Clearance. This Precautionary Principle was initially recognized during the World Charter for Nature, 1982 and subsequently in the Rio Declaration, 1992. The precautionary principle is a guideline for the designated authorities to take a decision particularly when an activity is likely to cause a serious or irreversible harm to environment or public health hazard. When the stakes are high, lack of scientific evidence or certainty should not be a reason to defer cost-effective measures to prevent harm.

Scholars express different opinion on precautionary principle. Some argue that it is unscientific and a hurdle for development, whereas, it is an approach that safeguards environment and public health for the others. This approach appreciates the concerned authorities to take preventive action and shift the burden of proof on those who states that a proposed activity is not dangerous. It enables to undertake risk assessment, explore alternatives, balance interests and public participation particularly when the instances involve dealing with potentially catastrophic risks where scientific evidence is not certain. It encourages to exercise caution, pausing and review before embarking on potentially harmful developmental activities or innovations which may end up with devastating effects.

<u>Polluter Pays Principle</u>

Polluter Pays Principle states that those who cause pollution should pay the costs to restore the environment. The polluters will be made liable for mitigating the damage according to this Principle. The polluter is endowed with the responsibility of making right the wrong done to the environment for every damage caused to the environment due to pollution.

The Polluter Pays Principle is aptly consolidated by an idiom as you sow, so shall you reap. Therefore, the polluter is not only responsible for payment of restoration charges for the environment but also liable for compensating the victims of pollution. The public authorities will prescribe the measures to be adopted by the polluter for controlling the pollution and the costs for reversing the damaged ecology. The Supreme Court used this Polluter Pays Principle for the first time in Indian Council For Enviro-Legal Action V/s Union Of India &Ors (1996) wherein Hindustan Agro Chemical Limited which manufactures the chemicals was made liable for harm caused to humans and environment.

## Historical and Legal Background

The statutory and institutional mechanism which governs environment protection in India has undergone remarkable transformation in the recent times due to international conventions, Constitutional developments, Judicial intervention, public interest litigation and local environmental disasters. Environmental governance is a constitutional mandate which gives certain legal obligations that can be enforced in the Courts of Law.

<u>Constitutional Foundations</u>

The Constitution of India provides obligation for preserving and improving the Environment. Article 48A and 51(A) has been introduced in the Constitution through The 42nd Amendment Act, 1976. These provisions owes the responsibility on the State as well as the Citizens towards environment conservation. Article 48A is one of the Directive Principles of State Policy (DPSP) which obligates the State to protect and improve the environment and to safeguard the forests and India's wild life. Article 51A of the Constitution gives certain Fundamental duties to its Citizens. Article 51(A)(g) lays down a duty upon the citizens to safeguard and improve the natural environment including forests, rivers, lakes and wildlife.

Article 21 of the Constitution guarantees right to life and personal liberty. As an affirmative action, Indian Judiciary implanted environment rights into the right to life and personal liberty by expanding the scope of the Article. The apex Court in Subhash Kumar v/s State of Bihar (1991) emphatically held that “the right to live includes the right to enjoy pollution-free air and water.” Hence, the Constitution sets out responsibility on the State and its Citizens to improve the quality of environment apart from keeping it free from pollution.

<u>Statutory Framework</u>

the Environment (Protection) Act, 1986 is an Environment governing legislation resulted out of the Bhopal Gas Tragedy. On December 3 1984, methyl isocyanate gas leaked from Union Carbide Corporation's chemical plant in Bhopal. It killed thousands of people and resulted in morbidity, disability, premature death etc.

The Environment Protection Act, 1986 has been designed in compliance with International Conventions. The Act provides for a Centralized framework for the government to issue rules, directions, Orders or notifications. EPA Act, 1986 led to the formation of the Ministry of Environment and Forests (MoEF) thereby highlighting its commitment for the Environment protection regime. Section 3 of the Act gives powers to the Central government to protect and improve the Environment where as Rule 5 of the Environment Protection Rules gives the authority to restrict the polluting activities. This acts as a basis for the Environmental Impact Assessment (EIA) mechanism and enabled the government to codify the protective measures through delegated legislation.

**Purpose of Environmental impact assessment study**

The Environment Impact Assessment became a prerequisite study in 1978-1979 for river valley projects initially. Thereafter, it was extended to construction activities, thermal power plants, manufacturing industries, mining, etc. EIA notification 1994 was the first major legal framework introduced in India through the Environmental (Protection) Act, 1986. This Notification brought 29 categories of development projects with investments of more than □50 crores under its purview and made EIA study mandatory for the projects. This EIA notification 1994 was later replaced by EIA notification 2006. This new Notification of 2006, necessitated 39 types of industrial operations and projects to undergo EIA study prior to any establishment or expansion.

Although, many amendments were made to EIA notification 2006, but it is in operation till date. The proposed projects are differentiated into two categories depending on their potential impact. The proposals are managed by the central authority for Category A and State Environmental Impact Assessment Authorities (SEIAAs) for Category B projects. The EIA study includes various stages namely Screening, Scoping, Public Consultation and Appraisal. Ministry of Environment and Forest (MoEF) will issue Environment Clearance for a project after successful completion of EIA process.

<u>March 2017 notification</u>

In March 2017, MoEF&CC granted six months opportunity for the Industries which are in violation of EIA notification 2006 and allowed them to make an application for ex-post facto EC. In Puducherry Environment Protection Association v Union of India (2017), The Madras High Court did not strike down this EIA 2017 notification by holding that it is a one time relaxation given to the projects and was designed to make them compliant with the pollution rules, conditions and the "polluter pays".

This has been done with a view to address the violations of EIA notification 2006. This relaxation has been designed as a one time opportunity which was strictly limited to the violations happened on or before 14th March 2017. Initially, six months time was given to the violators for making applications. It was further extended by thirty days due to a Judgment passed by madras High Court in Appaswamy Real Estates Ltd. v. Puducherry Environment Protection Association (2018). The Projects can apply for post facto approval of EC where construction activities were already commenced, expanded or altered production more than permitted limits,

2021 office memorandum

The National Green Tribunal ("NGT") as a step towards streamlining the process directed the MoEFCC on 24 May 2021 to design a SOP to handle the Cases of violation. As a result, the the Office Memorandum dated 7 July 2021 was issued by the Ministry. This SOP provides a mechanism for closing down the projects which are running without prior EC, demolition of non-permissible projects, conditional processing of EC for the projects that are alive or completed.

Subsequently, the MoEF&CC in 2021 published an office memorandum detailing "Standard Operating Procedure (SOP) for identification and handling of violation cases". This SOP intends to handle the projects which are not in compliant with the existing environment legal framework particularly those are established or carrying out operations without obtaining prior EC as mandated by EIA notification 2006. The OM states that Terms of Reference (TOR) will be issued in addition to the mandate to complete the Environment Impact Assessment study if a project was found "otherwise permissible,". The said projects will get Clearance conditional upon ecological damage assessment, natural and community resource augmentation plan, remedial plan etc. Additionally, the projects will be subjected to pay the loss determined as per Polluter Pays principle and submission of bank guarantees. Upon completion of the same, the project will be considered as a fresh proposal.

ex post facto is a Latin term which mean "having retrospective effect or force". Even though, the term "ex post facto" has not been explicitly mentioned in EIA Notification 2017 or OM 2021, but these instruments were viewed as a scheme of dispensation to the violators of EC and the same was challenged in Vanashakti V/s Union of India.

## The Vanshakti Judgment of May 2025

Facts

Vanashakti is a non-governmental organization situated in Mumbai that advocates for Environment. This NGO In 2023 challenged two of the instruments issued by the Ministry of Environment, Forest and Climate Change (MoEFCC) namely Notification of 2017 and subsequent Office Memorandum of 2021. These documents provides ex post facto environmental clearances for industrial and infrastructure projects after the commencement of their operations, despite such practice is contrary to EIA notification 2006.

The NGO argued that these instruments will act as a legal shield for hundreds of the violators to regularize their non-compliance with the Environmental clearance process who has evaded it intentionally or otherwise. Further, the said documents will undermine the deeply rooted principles of Environment in India particularly the point that prevention, not cure, must steer regulatory framework. This situation led to the emergence of a basic question in environmental governance as to whether the violations occur at the time of establishing and operating industries can be forgiven through subsequent policy decissions or Environment Assessment should be carried out in advance as a part of mandatory requirement.

Hence, a writ petition was filed by Vanashakti under Article 32 of the Constitution stating that these measures are far beyond the statutory powers conferred on MoEFCC, contrary to the foundational environment principles and against Constitutional provisions.

In Supreme Court, two-judge bench heard the arguments at length and reserved the verdict in March 2024 and delivered its Judgment on 16th of May, 2025. The judgment was authored by Justice Abhay S. Oka and concurred by Justice Ujjal Bhuyan wherein both documents were struck down as ultra wires, upheld the importance of prior environmental clearance, fortify the rule of law in environment management and environmental dimension of Article 21 of the Constitution was reinforced.

Issues

The core issues which came into the consideration of the Supreme Court are: Whether the 2017 Notification and 2021 OM allowing ex post facto ECs are in violation of the Environment (Protection) Act, 1986 and the Supreme Court earlier Judgments prohibiting such practice? Whether the said instruments are in contravention to fundamental environment principles such as polluter pays and the precautionary principle? Whether the Environment (Protection) Act, 1986 provides for administrative flexibility to design such policy framework? Whether pollution free environment guaranteed under Article 21 of the Constitution be violated by permitting post-facto environmental clearance.

**A. Petitioner's Arguments**

The petitioner, argued that the 2017 Notification and the 2021 SOP were in violation of Environment law. The requirement of obtaining prior environmental clearance is not a mere procedural formality rather it is a protective measure taken against Environmental damage before its occurrence. Post- facto clearances poses threat to Environment and renders EIA process meaningless. It encourages for commencement of projects illegally. The said instruments created root for regularizing violations by undermining public trust, evading public consultation and diluting the deterrent effect of applicable environmental norms.

Vanashakti submitted that Article 21 of the Constitution provides for Right to clean Environment. This Fundamental Right will be compromised By allowing to seek clearance after environmental harm had already taken place. Further, the petitioner also contended that the impuned instruments were completely disregarding the precautionary and sustainable development principles which were duly upheld by Supreme Court through various landmark judgments.

**B. Respondents' Arguments**

the Union of India defended its actions by stating that there is a real world problem wherein 2017 Notification and the 2021 SOP were issued as a necessary regulatory framework. It was argued that several projects were inadvertently commenced without Environment clearance and it will not be feasible for shutting down the operations in a such a large scale. As a result, a mechanism has been designed to bring such violators into compliance which includes damage assessment, EIA study, and compensatory methods.

The government stressed that the instruments were a single time opportunity provided to the violators to be compliant with the Environmental norms. Such an attempt has been made to even out environmental concerns with infrastructural and economic realities. It was submitted that sufficient protective measures were inculcated into the SOP so as to prevent the abuse of process. Further, the government argued that regularizing the non-complying projects will enable the concerned authorities to have supervision over them rather than allowing them to operate beyond the purview of regulatory framework.

**Judgment and Reasoning**

The Supreme Court after hearing the contentions of both the parties struck down the impugned instruments. The Court stated that prior environmental clearance is a pre-requisite and non-negotiable condition mandated by 2006 EIA Notification. Taking reference of Clause 2 of the said notification , which prohibits any construction or operation of projects listed in the Schedule without prior EC, the Court mentioned that this requirement should be considered as a substantive protection against irreversible environmental damage rather than a mere procedural formality. The Court opined that giving retrospective clearance turns EIA as a mechanism mentfor damage control rather than acting as a preventive tool avoiding environmental harm prior to its occurrence.

In this background, the Court stated that "The concept of ex post facto environmental clearance is completely alien to environmental jurisprudence and contrary to both the precautionary principle and sustainable development." The Court was reluctant to consider postfacto clearance as a legitimate legal option by regularizing environmental violations.

The Court observed that the Ministry of Environment and Forest and Climate Change cannot supersede the parent notification of 2006 by issuing subsequent notifications or SOP. There is no statutory backing from EP Act, 1986 or any legislation for the government to formulate such impugned instruments which in effect makes the EIA Notification, 2006 ultra wires. The Court unequivocally observed that "Any dilation of the EIA framework, including through ex post facto clearances, poses a threat to the fundamental right to a clean environment under Article 21 of the Constitution. ". The Court while placing its reliance on Article 21 as well as its Judgments in Subhash Kumar v. State of Bihar (1991) and M. C. Mehta v. Union of India (1987-1988) noted that the right to a clean and healthy environment is part of the right to life, thereby placing the issue in the Constitutional environment protection rather than in a regulatory domain.

The apex Court placed its reliance on the precautionary principle and polluter pays principle, both of which are intrinsic to environmental jurisprudence as declared in Vellore Citizens Welfare Forum v. Union of India (1996).

The Court also referred to its earlier rulings where the post- facto environmental clearance framework was rejected. In such process, reference was made to Common Cause v. Union of India (2017), wherein the apex Court stated that ex post facto Environment Clearance is completely alien to environmental jurisprudence of India. In Alembic Pharmaceuticals v. Rohit Prajapati (2020), the apex Court invalidated 2002 circular that allowed post-facto grant of ECs to industrial units during the 1994 EIA regime. The Court further stated that post-facto clearances are "anathema" to precautionary principles. It was Re-emphasized by the apex Court in the case of Electrosteel Steels Ltd. v. Union of India (2023), that the requirement to obtain EC is non-negotiable and the need for institutional continuity is paramount. As the impugned instruments violated these binding precedents, the Court declared them ultra wires.

Even though, the Court pronounced that 2017 Notification and 2021 SOP as illegal, the Court did not quash the clearances granted through impugned documents. This prospective operation was given to ensure legal certainty and to evade disruption of projects where the operations have commenced.

**Supreme Court orders recall of Vanashakti judgement**

The Supreme Court on 18th of November, 2025 recalled its Judgment passed in Vanashakti V. Union of India (hereinafter referred to as JUR). A review petition was filed by Confederation of Real Estate Developers of India (CREDAI) that represents builders and construction firms seeking a recall of Vanashakti judgment. the Union of India extended its strong support for The Review along with other state governments on the ground inter alia that coordinate benches of the apex Court had previously held that post facto grant of Environment Clearance can be given in exceptional cases which had not been taken into account by the JUR and there will be irreversible damage to economic and public interest as a consequence of JUR.

This review petition was heard by a three Judge bench comprising of former Chief Justice of India, B R Gavai, Justice K Vinod Chandran and Justice Ujjal Bhuyan. While CJI Gavai and Justice Vinod Chandran formed the majority, Justice Bhuyan dissented. The Court allowed the review petition and recalled the Vanashakti Judgment of 16 May 2025 on various grounds.

The Court stated that Vanashakti Judgment was passed without taking consideration of Judgments passed by co-equal benches in D. Swamy v. Karnataka State Pollution Control Board (2022) and Pahwa Plastics Private Limited v. Dastak NGO (2022), in which validity of 2017 Notification and the 2021 OM was upheld. As the Jur was passed in ignorance of binding precedents, the Court rendered Vanashakti Judgment as Per Incuriam.

The CJI noted that a two judge bench in Alembic Pharmaceuticals Ltd., even while holding that retrospective clearances should not be generally granted, regularized the post facto Environment clearances with a directive for payment of penalties. CJI also reffered to the Cases such as D Swamy v Karnataka State Pollution Control Board, Electrosteel Steels Limited v Union of India and Others and Pahwa Plastics Private Limited and Another v Dastak NGO, wherein it was held that Environment clearance can be granted in exceptional cases on postfacto basis. Additionally, the CJI pointed that in the Common Cause Case (2017), The apex court allowed the mining leaseholders to commence their operations after adhearing to the Statutory clearances and necessary payments are made.

The CJI opined that the Jur selectively placed its reliance on environment rulings like Common Cause v. Union of India; Alembic Pharmaceuticals Ltd. v. Rohit Prajapati; and Electrosteel Steels Ltd. v. Union of India and arrived at a conclusion that post facto grant of Environment Clearance is impermissible. Nevertheless, The JUR failed to appreciate the other vital portions of the said Judgments where the Court had taken a balanced approach by condemning the acts of the violators. The Court ordered for continuation of projects upon obtaining requisite clearances and payment of penalties, rather than giving directives for outright demolition of projects.

CJI stated that The bench that delivered the verdict in Vanashakti case should have reffered the matter to a larger bench being of co-equal strength to the benches in Electrosteel, D. Swamy, and Pahwa Plastics in the instances of any disagreement with their findings, rather than choosing to deliver a contrary Judgment.

Furthermore, The CJI mentioned that if Environment clearance will be declared as invalid, then the only existing option will be demolishing the construction and make an application for fresh Environment Clearance. This demolition and reconstruction will result in more pollution which will be against the public interest. Such demolition activities of significant public infrastructure projects (like Greenfield airport, AIIMS hospital etc. costing around twenty thousand crores) will cause great loss to the public exchequer. Referring to BinduKapurea v Subhashish Panda (2025 ), the CJI stressed upon the need to keep the public interest in view and take a balanced approach in instances of flagrant violations rather than picking the option of giving directives for the demolition of already completed project.

Moreover, the CJI noted that Environment clearance can be granted to the projects which are otherwise permissible in law even in respect of 2017 Notification and 2021 OM. The said instruments have provided room for stricter penalties on the project proponents who are carrying out operations on the projects that are otherwise permissible.

In this background, the CJI passed the Order to recall the Vanashakti judgment and issued directions to be placed before the appropriate bench. Justice UjjalBhuyan on the other hand expressed his dissent as no case for Review has been made out according to him. Justice K. Vinod Chandran agreed with the CJI and stated that the Review is not only warranted but imperative and expedient. He also mentioned that when government mandated prior requirement of Environment clearance, the government itself has the power to relax such a pre-requisite.

In short, the Vanashakti Judgment passed in May 2025 stands recalled at present. Subsequently, the matter has been placed before Chief Justice of India on the administrative side for obtaining the directives on the possibility of matter being referred to a larger bench for adjudicating the core issue (i.e.) ex-post facto Environment Clearance.

In this context, A bench of Chief Justice Surya Kant, Justice VipulPancholi and Justice JoymalyaBagchiheared a batch of writ petitions on 16th February 2026, 25th February 2026, and thereafter on 1st April 2026, primarily focusing on whether to reinstate the ban on retrospective environmental approvals. After hearing the parties at length, the Supreme Court on 1st April 2026 reserved judgment.

## Implications

The Review Judgment provides a great relief for the real estate industry and infrastructure projects as it helps in getting rid of eminent danger posed to their projects in violation of Environment clearance facing the threat of mandatory demolition or closure. As the Supreme Court recalled its Order quashing 2017 Notification and 2021 OM, the applications made under 2021 OM can be processed now. The project proponents have gained an opportunity to make a request to grant Environment clearances for those projects for which Environment clearance approval was kept on hold at the final stage.

It is to be highlighted that the validity of 2017 Notification and 2021 OM were not upheld by the review Judgment. The matter has been referred to the larger bench for definite adjudication of issue pertaining to Expostfacto Clearance. Hence, the project proponents should keep in mind to apply for prior Environment Clearance under the EIA Notification, 2006 for the new projects. On the other hand, the projects where the operations have already commenced and without EC should pursue their applications with the designated authorities, comply with the stipulated conditions and get their Environment Clearance finalized from the authorities.

Critics state that the government should be firm with prior requirement of Environment Clearance. Otherwise, the retrospective Environment Clearance should be processed in accordance with 2017 notification and 2021 SOP. In such an instance, there should be strong mechanism to monitor the requisite compliances, assess the damage and to recover the stringent penalty without an exception.

## Conclusion

Speaking from the government prospective, the impugned instruments are not mere arbitrary inventions. They were brought into place to address the past violations and the role of the State to deal with them. Rather than shutting down hundreds of projects and face the economic crisis, it is viable to bring them under regulatory regime retrospectively. Viewing from this prospective, the impugned instruments are just a response to the practical governance problem rather than an intentional attempt to undermine the legal framework.

While asking for stringent legal accountability may not be unreasonable, but the chaotic real-world situations cannot be ignored, where the tussel between the both makes the implementation highly challenging. The violations are so vast due to which the Law has to bend to catch up. When the policy gaps are identified, concrete reforms should be brought in place to address them. Undoubtedly, the Judiciary is the guardian of environmental justice in India. On a wider panoramic view, The Judiciary also should be open to appreciate the institutional reforms when there is right intent to address the real world issues.

# OVERLOOKED PROVISIONS OF THE INDUSTRIAL DISPUTES ACT, 1947

**SUWEG K. PAWAR**
B.Com, MIRPM
Manager (HR), Legal Dept., WCL HQ, Nagpur

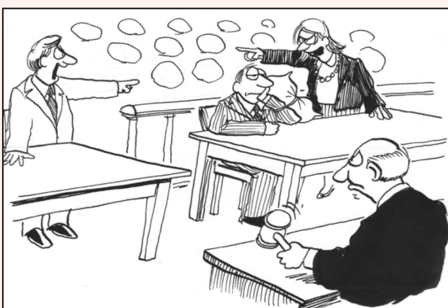
### Introduction: Where Most Cases Are Actually Lost

In The Industrial Disputes Act, 1947 is widely regarded as the backbone of industrial jurisprudence in India. Most HR professionals are familiar with its broad themes—retrenchment, strikes, dispute resolution machinery—but the real challenge lies elsewhere. In actual practice, cases are rarely lost because management lacked justification. They are lost because procedural safeguards were ignored, jurisdiction was misunderstood, or statutory requirements were not followed with precision.

The Act is not merely a statement of rights; it is a compliance-driven framework. Each stage—disciplinary action, termination, conciliation, adjudication—has embedded procedural conditions. Missing even one of these can render an otherwise valid action legally unsustainable. This becomes even more critical for Public Sector Undertakings, where additional considerations such as the identity of the "appropriate government" and forum jurisdiction play a decisive role.

The transition to the Industrial Relations Code, 2020 has not fundamentally altered these principles. Instead, it has reorganised them. Therefore, a deep understanding of these overlooked provisions remains essential for anyone involved in industrial relations management.

### The Foundational Error: Ignoring Jurisdiction (Central vs State)

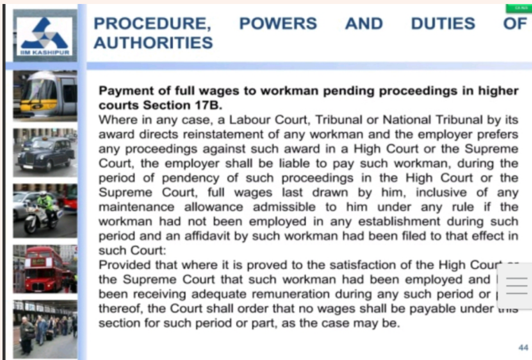


One of the most basic yet frequently neglected aspects of industrial adjudication is the determination of the ****appropriate government**,** which directly decides jurisdiction. For establishments run by or under the authority of the Central Government—such as PSUs—the Central Government is the appropriate authority. Consequently, disputes must be adjudicated by Central Labour Courts or Industrial Tribunals.

In practice, however, workmen often file applications before State Labour Courts. This may be due to convenience, lack of awareness, or tactical considerations. The real issue arises when management fails to raise an objection at the outset. Jurisdiction is not a procedural irregularity that can be cured later; it is a foundational issue. If the forum itself lacks authority, the entire proceeding is liable to be set aside.

For HR and legal departments, this means that the first response to any notice should include a jurisdictional assessment. If the organisation falls under the Central sphere, a preliminary objection must be raised immediately. Entering into the merits without challenging jurisdiction can weaken this defence and expose the organisation to prolonged litigation in an improper forum.

### Section 17B: Litigation Is Not Financially Neutral




A common misconception in management circles is that once an adverse award is challenged before the High Court or Supreme Court, the financial consequences are suspended. Section 17B corrects this assumption by imposing a continuing obligation to pay last drawn wages to the workman during the pendency of such proceedings.

This provision operates automatically when an award of reinstatement is under challenge. It does not depend on thestrength of the employer's case. The only meaningful defence available is to demonstrate that the workman is gainfully employed elsewhere. In the absence of credible evidence, courts generally rely on the workman's affidavit and grant wages.

From a strategic standpoint, Section 17B transforms litigation into a cost-bearing exercise. HR professionals must therefore evaluate not only the legal merits of an appeal but also its financial implications. In long-pending matters, the cumulative liability can become substantial, sometimes outweighing the benefits of continued litigation.

### Section 33: The Most Costly Procedural Mistake

Among all provisions of the Act, Section 33 is perhaps the most frequently violated and the most unforgiving. It restricts the employer's ability to alter service conditions or take disciplinary action against a workman during the pendency of conciliation or adjudication proceedings.

The provision draws a distinction between misconduct connected with the dispute and misconduct unrelated to it. In both cases, however, the employer must either obtain ****prior permission**** or seek ****post-action approval**,** depending on the circumstances. Additionally, in cases under Section 33(2)(b), the employer must pay one month's wages and file an approval application.

The critical point is that non-compliance renders the action void from the beginning. Courts do not examine the merits of the misconduct if the procedural requirement is violated. HR departments often proceed with dismissal without verifying whether any dispute involving the concerned workman is pending. This single oversight can nullify an otherwise justified action.

### Section 33C(2): When a Calculation Becomes a Dispute

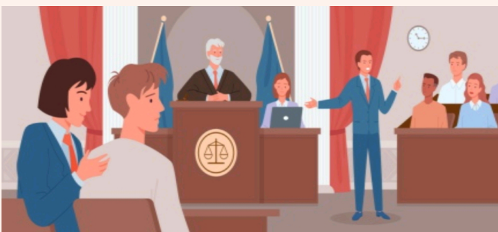
Section 33C(2) is often misunderstood as a general remedy for monetary claims. In reality, it is limited to the **computation of benefits arising from a pre-existing right**. It does not confer jurisdiction on the Labour Court to adjudicate disputes regarding entitlement.

In practice, workmen frequently file applications under this provision to claim benefits that are themselves disputed. HR departments sometimes respond by contesting the claim on merits, thereby inadvertently allowing the court to examine issues beyond its jurisdiction.

The correct approach is to raise a preliminary objection that the application is not maintainable because the right is not pre-existing and requires adjudication. This distinction between computation and adjudication is critical. Failure to assert it can lead to orders imposing liability without a full-fledged adjudicatory process.

Jurisdictional objections can also be combined here. If such an application is filed before a State Labour Court in respect of a Central PSU, the employer has dual grounds to challenge it—lack of jurisdiction and improper invocation of Section 33C(2).

### Section 36(4): Representation Is Not Automatic

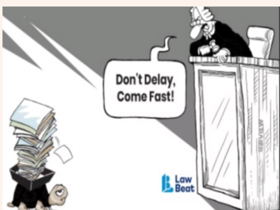


The Act envisages Labour Courts and Tribunals as relatively informal forums. Accordingly, Section 36(4) restricts the appearance of legal practitioners. An advocate can represent a party only if the opposite party consents and the adjudicating authority permits.

This requirement is often overlooked. HR departments routinely engage advocates without ensuring compliance. If the workman objects and is not represented by an advocate, the tribunal may refuse permission to the employer's counsel. This can significantly affect the quality of representation.

A more structured approach is required. Either consent should be obtained in advance, or the organisation should be prepared to be represented by a trained internal officer. Where the workman engages an advocate, the employer's right to representation becomes easier to establish.

### Section 2A: The End of the Conciliation Buffer




The evolution of Section 2A has empowered individual workmen to directly approach Labour Courts or Tribunals in cases of termination. This removes the earlier requirement of union espousal and reduces dependence on government reference.

For HR professionals, this means that termination decisions can be subjected to immediate judicial scrutiny. The conciliation stage, which earlier provided time to assess and prepare, is no longer a reliable buffer.

This development necessitates a shift in approach. Every termination must be treated as if it will be tested in court the next day. Documentation, reasoning, and procedural compliance must therefore be robust from the outset.

### Settlements: The Critical Difference Between Conciliation and Private Agreements

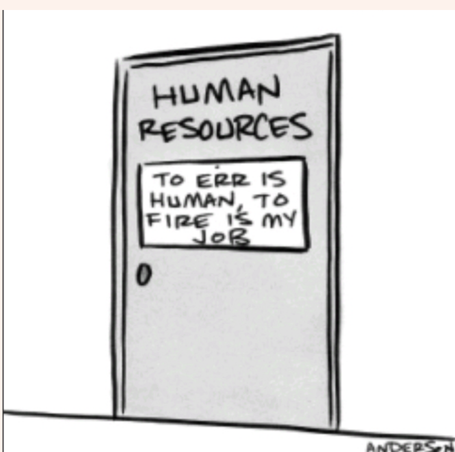
"No, no. The contract I signed was one of the non-binding kind."

One of the most significant yet misunderstood areas is the legal effect of settlements. The Act clearly distinguishes between settlements arrived at during conciliation proceedings and those executed otherwise.

A settlement reached during conciliation has a statutory binding effect on all workmen, including those who are not signatories. In contrast, a settlement entered into outside conciliation binds only the parties who have signed it.

For long-term stability, especially in large organisations, routing settlements through conciliation proceedings is a more reliable approach.Under the Industrial Disputes (Central) Rules, 1957, the requirement regarding communication of settlements is clearly articulated in Rule 58(4). It provides that where a settlement is arrived at otherwise than in the course of conciliation proceedings, the parties to the settlement shall jointly send a copy thereof to the appropriate Government and the Conciliation Officer concerned. This requirement assumes considerable legal significance, as it ensures that the settlement reflects mutual consent and is not a unilateral assertion by either side. The joint transmission creates an official record and enhances the evidentiary value of the settlement in subsequent proceedings. Failure to comply with this requirement may not automatically invalidate the settlement, but it can weaken its credibility and open the door for challenges regarding its execution and binding nature.

### Section 9A :Change in Service Conditions




Section 9A requires employers to give prior notice before effecting changes in service conditions listed in the Fourth Schedule. These include matters such as wages, working hours, and shift arrangements.

HR departments often implement such changes as administrative decisions without issuing the required notice. This exposes the organisation to legal challenges, where the focus shifts from the justification of the change to the absence of statutory notice.

The lesson here is clear: even legitimate managerial decisions must be implemented through legally compliant processes.

## Conclusion

The Industrial Disputes Act, 1947 is often viewed through the lens of its substantive provisions, but its real complexity lies in its procedural architecture. The provisions discussed in this article demonstrate that compliance is not a matter of formality; it is central to the outcome of disputes.

For HR and legal professionals, particularly in large organisations and PSUs, the key lies in anticipation rather than reaction. Each decision—whether disciplinary, administrative, or strategic—must be evaluated not only on its merits but also on its procedural soundness.

The shift towards the Industrial Relations Code, 2020 does not eliminate these challenges. It reinforces the need for a disciplined, legally informed approach to industrial relations. Organisations that internalise these principles will not only reduce litigation risk but also build a more stable and predictable industrial environment.

# THE POLLUTION CONTROL BOARDS OF INDIA – AN ASSESSMENT OF PENAL POWERS WITH SPECIFIC EMPHASIS ON MPCB

**BHASKAR TEWARI**
M. Tech (Environment), IIT KHARAGPUR
Dy Manager (Env), WCL HQ, Nagpur

*Pollution is a civil wrong. By its very nature, it is a Tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. (Supreme Court of IndiaM.C. Mehta vs Kamal Nath&Ors on 12 May, 2000)*

## 1. INTRODUCTION

The Parliament of India has enacted "The Water (Prevention and Control of Pollution) Act, 1974 (Hereinafter called as Water Act)", "The Air (Prevention and Control of Pollution) Act, 1981 (Hereinafter called as Air Act)", and Environment Protection Act – 1986" for providing a regulatory mechanism for control of pollution along with monitoring and enforcing environmental standards to safeguard Environment and Ecology. As a part of forming Institutional framework for Environmental Governance, The Pollution Control Boards (PCB's) / Pollution Control Committee (PCC's) have been constituted under section 4 of the Water Act and under section 4 and 5 of the Air Act with their powers and functions described in chapter IV of Water Act and chapter-III of Air Act respectively.

Over the years, with the expansion of Industrial might of India and rapid urbanization, there are increasing Environmental challenges and correspondingly evolving regulatory framework. The PCB's / PCC's often use the tools of directly imposing fines /penalties or levying the restitutionary / compensatory damages in the form of fixed money / bank guarantees as a measure to penalize /prevent environmental damage by the industries. This approach has always been debated due to the argument that "the power to levy penalties under both Acts has been vested in the Courts and only after proving the offence". This article aims at assessing the legitimacy of the power of PCB's to impose penalties and nuanced understanding of the regulatory scope through judicial interpretations and various landmark judgements of Hon'ble Supreme Court of India.

## 2. THE PRINCIPLES OF ENVIRONMENTAL JURISPRUDENCE IN INDIA

The evolution of environmental law in India is anchored in several key principles, largely shaped by the judiciary to fill legislative gaps.

**2.1 Sustainable Development:** Balances economic growth with ecological balance, ensuring that development meets current needs without compromising future generations' ability to meet theirs.

**2.2 Precautionary Principle:** Mandates proactive action to prevent environmental harm, shifting the burden of proof to the developer to show that a project is ecologically benign if there is a threat of irreversible damage. (Vellore Citizens Welfare Forum v. Union of India)

**2.3 Polluter Pays Principle:** Establishes that the absolute liability for harm to the environment rests with the polluter, who must compensate victims and restore environmental degradation. (Indian Council for Enviro-Legal Action v. Union of India)

**2.4 Public Trust Doctrine:** Defines the State as the trustee of all natural resources—like forests and rivers—intended for public use. The government cannot transfer public trust properties to private ownership. (MC Mehta v. Kamal Nath)

**2.5 Principle of Absolute Liability:** Developed in the Oleum Gas Leak case, this holds industries engaged in hazardous activities absolutely liable for compensation for any accident, without exceptions available under strict liability.

**2.6 Intergenerational Equity:** A component of sustainable development that obliges the present generation to bequeath a healthy environment to future generations.

## 3. THE POLLUTION CONTROL BOARDS: STATUTORY POWERS AND LIMITATIONS

The PCBs are the primary enforcement agencies for environmental laws in India. Their authority to issue directions is derived from two critical provisions:

a) Section 33A of the Water Act, 1974
b) Section 31A of the Air Act, 1981

These sections grant Boards the power to issue directions in writing to any person, officer, or authority. Such directions include the power to order:

a) The closure, prohibition, or regulation of any industry or process.
b) The stoppage or regulation of electricity, water, or any other service.

### The Penalty vs. Compensation Dilemma

Historically, a legal grey area existed regarding whether these "directions" included the power to impose financial penalties. *In Splendor Landbase Ltd. v. DPCC (2010), t*he Delhi High Court held that the power to levy penalty is **penal** in nature and requires specific statutory enablement. Since Chapter VII of the Water Act and Chapter VI of the Air Act vested the power to impose fines and imprisonment solely in the **Courts** (after a finding of guilt), the High Court concluded that PCBs could not unilaterally impose monetary penalties.

## 4. THE LANDMARK SHIFT: SUPREME COURT ON PENAL POWERS OOF PCB's (2025)

The discourse was fundamentally altered by the Hon'ble Supreme Court in the case of *Delhi Pollution Control Committee v. Lodhi Property Co. Ltd. (Civil Appeal No. 757-760 of 2013, Judgement dated 04.08.2025).*

Distinction Between Punitive and Compensatory Action

The Court clarified that Indian law distinguishes between:

1. **Punitive Action:** A fine or imprisonment imposed as punishment for an offence, which follows a determination of guilt by a Court or an Adjudicating Officer.
2. **Compensatory/Restitutionary Measures:** Costs imposed for the restoration of the environment or as an ex-ante (preventative) measure to ensure compliance.

The Supreme Court held that while PCBs cannot impose "penalties" in the traditional criminal sense, they do have the power under Sections 33A and 31A to collect "restitutionary or compensatory damages" and require "Bank Guarantees" (BG).

"Asking for a bank guarantee as an interim measure for due performance of the conditions of the consent order being compensatory in nature, is not punitive." — Supreme Court of India (August 2025)

## 5. DECRIMINALIZATION AND THE NEW REGULATORY REGIME

Recent amendments to the Water and Air Acts (Jan Vishwas Act - 2023) have introduced a **decriminalization** framework. This transition shifts many violations from criminal courts to an internal administrative mechanism involving **Adjudicating Officers** (not below the rank of Joint Secretary).

**Adjudicating Officers:** Empowered to inquiry and impose penalties under Sections 41 to 48 (Water) and 39A (Air Act amended through 2023 (Jan Vishwas Act)).

**Appeals:** Any person aggrieved by an order of the Adjudicating Officer may appeal to the **National Green Tribunal (NGT)** under Section 45C (Water) or 39B (Air).

The Court noted that there is no conflict between the Board's power to demand compensatory damages (Section 33A/31A) and the Adjudicating Officer's power to impose penalties. The former focuses on **restoration,** while the latter focuses on **punishment.**

## 6. SPECIFIC EMPHASIS: MAHARASHTRA POLLUTION CONTROL BOARD (MPCB)

The **Maharashtra Pollution Control Board (MPCB)** has been a frontrunner in utilizing Bank Guarantees (BG) as a tool for environmental governance. Through various Official Memorandums (OM) and circulars, MPCB mandates the submission of BGs against the compliance of statutory conditions in Consent to Establish (CTE) and Consent to Operate (CTO).

### MPCB's Bank Guarantee Regime

MPCB uses BGs as a performance security to ensure that industries implement the conditions imposed through the CTO / CTE on ground. If an industry fails to meet these conditions, MPCB reserves the right to forfeit the BG. Following the Lodhi Property judgement, this practice is legally fortified as long as it is exercised with transparency and non-arbitrariness. The MPCB guidelines provide a structured framework for the quantum of BGs, ensuring that the levy is proportionate to the potential environmental risk.

## 7. CONCLUSION: THE NEED FOR PROCEDURAL CERTAINTY

The Supreme Court's 2025 ruling has provided much-needed clarity. PCBs are not merely "complainants" but active regulators with the power to enforce financial accountability through compensatory levies. However, this power is not absolute. The Court emphasized two overarching principles:

1. **Transparency and Non-Arbitrariness:** Boards must follow the principles of natural justice (Show Cause Notices, opportunity of being heard).
2. **Subordinate Legislation:** The criteria for determining environmental damage and the quantum of compensation must be detailed in rules and regulations to ensure procedural certainty.

As India continues its journey toward becoming a global industrial hub, the MPCB and other State Boards must balance their role as facilitators of "Ease of Doing Business" with their "Affirmative Duty" to protect the environment. The shift from a purely punitive criminal model to a compensatory administrative model marks a mature phase in India's environmental jurisprudence.

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Legal References: Water Act 1974, Air Act 1981, DPCC v. Lodhi Property Co. Ltd (2025),
M.C. Mehta v. Kamal Nath (2000), Indian Council for Enviro-Legal Action v. Union of India(1996),
Vellore Citizens Welfare Forum v. Union of India (1996), The Oleum Gas Leak case M.C. Mehta v. Union of India, (1985)

# Supreme Court Rulings on ESZs : Key Issues and Impacts

**PRASHANT ASHWIN KUMAR THAKER**
M.Tech (Environmental Engineering)
Manager (Environment), WCL HQ, Nagpur

## INTRODUCTION

The **Supreme Court** in its landmark ruling in T.N. GodavarmanThirumulpad v. Union of India (2022) directed that every protected forest, national park and wildlife sanctuary across the country should have **a mandatory eco-sensitive zone (ESZ) of a minimum one kilometre** starting from their demarcated boundaries. This ruling was largely welcomed by conservationists and activists as a progressive step towards conservation jurisprudence.

The 2022 order emerged from the Court's desire to provide uniformity and clarity in implementing ESZs, which serve as buffer zones around national parks and wildlife sanctuaries under the Wildlife Protect Act, 1972. The directive to establish a mandatory one-kilometre buffer zone around all protected areas aimed to counter encroachments, pollution, and unregulated development[1]. However, the blanket nature of the order overlooked the geographical, demographic, and socio-economic diversity of the country. Hilly states like Kerala, Himachal Pradesh, and Uttarakhand cited that human habitation exists in close proximity to protected areas in these states. They raised concerns about displacement, loss of livelihoods, and restrictions on traditional activities. The rigidity of the order threatened to disrupt the lives of the people residing near forests, mostly tribal and forest-dwelling communities with constitutional and statutory protections under the *Forest Rights Act, 2006.* In the light of these representations, the Supreme Court agreed to review and recalibrate its order. The revised order permitted states to determine site-specific Eco-Sensitive Zone (ESZ) boundaries based on scientific evaluations, ecological carrying capacity, and local socio-economic conditions. It mandates the formation of state-level Expert Committees to demarcate these zones through participatory processes, including compulsory consultations with local communities. The Supreme Court of India further emphasized that while environmental conservation must remain a priority, it should not entirely restrict development or habitation, particularly in regions where human settlements and forest ecosystems are closely interconnected. Importantly, the Court specified that where eco-sensitive zones have already been notified under the 2011 MoEFCC Guidelines, the one-kilometre rule would not apply.

### Evolution of regulations of Eco-sensitive Zones

The idea of establishing an eco-sensitive zone (ESZ) around a wildlife protected area (PA) – national parks and wildlife sanctuaries – emerges from the need to secure the opportunity for biodiversity conservation in a PA in perpetuity, by not permitting human activities detrimental to it undertaken in its immediate vicinity. The ESZ policy is rooted in the Environment Protection Act of 1986 and prioritises wildlife and biodiversity conservation as its primary objective. This policy intervention enhances the overall sustainability of a human-influenced Protected Area landscape on the social-economic-environmental sustainability paradigm. A clear understanding of its intent, legal foundation, management, and governance is essential.

As of March 2025, there are 1014 PAs - 106 National Parks, 573 Wildlife sanctuaries, 115 Conservation Reserves and 220 Community Reserves - covering approximately 5.32% of the total geographical area of the country. The Ecosensitive Zone regulations were fist notified by Ministry of Environment Forests and Climate Change in the year 2011. Initially, ESZ was recommended as a 10 km wide strip abetting the boundary of a PA. The prescribed width of ESZ around a PA was later modified to be site-specific, and now it is a minimum one km wide strip abetting the boundary as per the order of the Honorable Supreme Court of India (SCI) dated 3 June 2022 in IA 1000 of 2003 in WP (C) 202/1995 (Reference 3). Such ESZ area is to be clearly described with geo-coordinates and maps in the gazette notification for the ESZ. As part of the ESZ notification, a Monitoring Committee is constituted with the mandate to ensure compliance with the regulatory provisions listed in the notification and with other environmental regulations, such as the Environmental Clearance notification and the Coastal Regulation Zone.

In accordance with the recommendation of the NBWL, ESZs around PAs are notified under section 3(v) of the Environment (Protection) Act 1986 and Rule 5(1) (viii) & (ix) of the Environment (Protection) Rules 1986. Section 3 (v) reads as follows:

*"3. Power of Central Government to take measures to protect and improve environment*
*(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.*

*(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely: (v)restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards"*

MOEF&CC subsequently issued circulars specifying the modalities for appraisal of projects falling within ESZ in August 2019. Commercial mining activity within areas notified as part of ESZ was banned vide the same notification.

**Mining, ESZs, and the Re: Corbett Ruling**

Mineral reserves find a great overlap with forest land and Protected Areas. As most mining operations, particularly opencast mining operations cause a change in land-use by way deforestation, excavation and overburden dumping, enhanced caution for permitting mining in near forest areas is found necessary. However, the need for economic development that mining operations bring to the society and allied benefits to local governments y way of royalty and other levies lead to conflict tensions between conservationists and industry proponents.. The mechanism of eco-sensitive zones and Protected Areas is an active attempt at managing the fallouts of mining and other industrial activities in these relatively fragile environments. The SC judgement of 2022 imposed a total ban on the mining activities in Areas notified in ESZ. As a consequence, several mines operating had to be shut across the country.

Further, Supreme Court of India vide its order dated 13.11.2025 in Re: Jim Corbett further ruled that :

> *"47.1.5. It is specifically clarified by way of this direction that these notified ESZs will be subject to all the same restrictions as per the Notification dated 09.02.2011, including the restriction that within a distance of 1 km from a Tiger Habitat or buffer area, or the notified ESZ (whichever is larger), there will be a complete ban on mining activities"*

The recent order effectively shifts the permissible distance for mining from Eco-sensitive zones or buffer zones of protected areas to atleast 1 kilometer from the ESZ boundary. In addition the judgement has clearly categorized activities into totally banned, regulated and permitted activities.

This ruling is likely to affect several coal mines operated by CIL and other coal producing countries. IT is therefore essential to immediately review mine operations in the vicinity of ESZs and Pas to comply with the ruling of Suprem Court. Further, there are several draft notifications of ESZs which are under finalization. Future planning of mines - both greenfield and brownfield expansion projects must be reviewed and modified accordingly. The Supreme Court ruling has put the onus on State Governments and their Forest Departments to implementation of the order. However, a proactive approach from mining companies to harmonize their present and future operations to the SC judgement is required to avoid legal issues arising out of non-compliance with the new ruling.

## Conclusion

The Supreme Court's ESZ rulings reflect an evolving attempt to reconcile environmental conservation with developmental imperatives. While the initial push for uniformity highlighted the urgency of protecting fragile ecosystems, subsequent refinements demonstrate a more nuanced understanding of India's socio-ecological complexity. The challenge ahead lies in ensuring that this flexible framework is implemented effectively, balancing ecological integrity with the rights and livelihoods of local communities.

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# VILLAGE REHABILITATION AND RESETTLEMENT ‘AT WCL – PROVISIONS AND CHALLENGES

**ROHIT RAMESH MESHRAM**
B.E. Mechanical, PGRDM, IRMA, Anand
Manager (Community Development), Nagpur Area, WCL

***“Saheb maza mulga marta marta vachala, pawsa mule mazh ghar padala, kadhi karnar tumhi amcha punarwasan”-*** Sir, my son just survived a roof fall, when will you resettle our village? – That is a heartbreaking account. Rukhmabai's plea highlights the severe human cost often hidden behind industrial and mining expansion.

The village rehabilitation bears the burnt of long-standing conflicts between the acquiring body and the residents. The village rehabilitation narrates the stories which are stark reminders of the "development vs. displacement" struggle, where local communities bear the brunt of industrial progress without receiving the timely resettlement. The plight of villagers awaiting resettlement following land acquisition is a recurring dilemma. While the circumstances vary, the core struggle remains remarkably consistent across the villages earmarked for relocation.

The resettlement and rehabilitation (R&R) process at WCL is frequently hampered by administrative complexities and a lack of consensus among diverse groups within the villages. These internal disagreements, coupled with bureaucratic hurdles, lead to protracted delays that leave communities in a state of precarious limbo. A particularly dangerous consequence of this uncertainty is the permanent dilapidated state of homes. Expecting to move at any moment, many villagers forgo essential repairs on their homes. This leaves their structures highly vulnerable to collapse, especially during the monsoon season. This systemic failure is not unique to WCL, it is a mirror, a broader pattern seen in acquisitions by other coal subsidiaries and various State Government projects across the country. To understand the multifaceted challenges of rehabilitation, one must first grasp the underlying legal frameworks and their provisions.

What does rehabilitation and resettlement mean?

Resettlement is the process of moving people to a different place to live, because they are no longer allowed to stay in the area where they used to live. Rehabilitation is restoring the former state after resettlement.
In India, the resettlement of villages is primarily governed by state-specific policies or the federal Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (commonly known as the RFCTLARR Act or LARR Act). Effectively implemented from 2014–2015, this legislation repealed the colonial-era Land Acquisition Act of 1894. The modern Act was designed to ensure fair compensation for Project Affected Persons (PAPs) while bringing much-needed transparency to the acquisition process. However, while the Act provides unprecedented benefits and protections to displaced communities, it also contains certain procedural lacunae. These gaps often create significant bottlenecks, making land acquisition a complex and protracted ordeal for acquiring bodies.

The RFCTLARR Act, 2013 (LARR Act) officially commenced on January 1, 2014. For coal companies, the Act's applicability began on January 1, 2015. Subsequent ministerial clarifications established that the Act governs projects where the Section 9 notification was issued after September 1, 2015, or where compensation had not been determined by that date. Designed to facilitate land acquisition for both public and private purposes, the Act introduces a rigorous consent mandate wherein private projects require the approval of 80% of affected families, while Public-Private Partnership (PPP) projects require 70%. In certain cases, direct government projects are exempted from this consent requirement. The Act significantly enhances financial benefits for landowners, offering compensation at twice the market rate in urban areas and four times the market rate in rural areas. It also includes a special provision, allowing land to be returned to original owners if it remains unutilised for five years. Unlike its predecessor, the 1894 Land Acquisition Act, the 2013 legislation mandates the disbursal of Employment as Rehabilitation and Resettlement (R&R) benefits, to all affected persons.

Regarding Coal India, Section 105 of the LARR Act initially exempts certain enactments listed in the Fourth Schedule including the Coal Bearing Areas (Acquisition & Development) Act, 1957 (CBA Act) from its general provisions. However, the beneficial provisions regarding compensation (First Schedule) and R&R (Second and Third Schedules) still apply to CBA Act acquisitions. These may be applied with specific modifications, provided they do not reduce the compensation or dilute the R&R protections afforded by the LARR Act. Furthermore, Section 108 grants affected families the option to choose between the state's R&R policy or the federal Act, ensuring they receive the most favourable benefits available.

Historically, village rehabilitation at Western Coalfields Limited (WCL) has been governed by the Coal India Limited's (CIL's) Rehabilitation and Resettlement Policy, 2012. The process follows a structured sequence of surveys and valuations to determine entitlements for Project Affected Persons (PAPs).

**The Rehabilitation Workflow**

1. Baseline Socio-Economic Survey (BLSES): An independent NGO, appointed via tender, conducts this survey to map the social and economic profile of each household (age, gender, education, skills, and income). This data forms the basis for determining specific R&R entitlements.
2. TILR Survey: The Taluka Inspector of Land Revenue (TILR) conducts a field survey to number each household and determine the approximate floor area of all structures.
3. Legal Benchmarking (GaonNamuna 8): Records are collected from the Gram Panchayat at the time of the Section 9 notification under the CBA Act, 1957. This fixed snapshot establishes the official number of houses eligible for compensation; no subsequent additions to the records are accepted after this date.
4. PWD Valuation: The TILR report is submitted to the Public Works Department (PWD), which calculates the monetary value of the houses based on rates applicable as of the Section 4 (preliminary) notification date.

**Entitlements for Displaced Families**

- Displaced families are eligible for a comprehensive package, which includes:
- Structural Compensation: Cash payment based on the PWD's valuation of the house.
- Housing Support: A 100 sq. mt. plot at a designated resettlement site or a one-time payment of Rs. 3 lakh in lieu of the plot.
- Subsistence Allowance: Monthly support calculated at 25 days of minimum agricultural wages for one year.
- Special Grants: An Artisan Grant of Rs. 25,000 for eligible families and a Shifting Allowance of Rs. 10,000 to cover relocation costs.
- Site Amenities: The resettlement colony is equipped with 18 mandatory civic amenities (such as roads, water, and electricity).

Once compensation is settled and families have moved, the resettlement site is formally handed over to the State Revenue Authority, which then officially designates it as a new Revenue Village.

Having detailed the formal provisions, we must now address the significant operational and social challenges that complicate the rehabilitation process:

**1. Data Integrity and Documentation Gaps**

The primary hurdle lies in the collection and verification of land records. In Maharashtra, the GaonNamuna 8 serves as the definitive document for identifying households and owners. These records must be "frozen" as of the Section 9(1) notification under the CBA Act. However, these records are frequently unavailable, outdated, or inaccurate. In cases of encroachment, documentation is non-existent, leading to disputes over the actual number of Project Affected Persons (PAPs) and creating significant census ambiguity.

**2. Emotional and Social Resistance**

Relocation is rarely just a physical move; it is a profound social disruption. Villagers often exhibit a deep emotional attachment to their ancestral homes and fear the loss of their established social status and community networks. This psychological barrier often leads to friction during negotiations, where frustrations can manifest as unruly behaviour or demands that the management perceives as illegitimate, stalling fruitful dialogue.

**3. Political Volatility**

Even small villages are often divided into competing political factions. Management frequently finds itself caught in the crossfire of local power struggles, where resettlement issues are leveraged for political gain. Navigating these dynamics requires extreme diplomacy, absolute transparency, and a neutral stance to maintain institutional credibility.

**4. The Vulnerability of Landless Labourers and Artisans**

The most critical and often overlooked challenge is the rehabilitation of landless labourers and rural artisans. As agricultural land is acquired for mining, these individuals lose their primary source of livelihood. Unlike landowners, the compensation they receive is often insufficient to build permanent (pucca) housing at a new site, as the funds are frequently consumed by immediate daily survival needs. Consequently, the most vulnerable members of the community are often the last to be effectively resettled.

**5. The Search for Viable Resettlement Sites**

Finalising a relocation site is increasingly difficult due to rapid urbanisation. Villagers typically demand sites near urban centres to secure better employment and high future land appreciation. However, such land is rarely available. While government land is prioritised, it is scarce near cities. Acquiring private land for resettlement is equally difficult due to prohibitive costs and owner resistance. Furthermore, much of the nearby land is designated as Coal Bearing, making it ineligible for permanent settlement due to future mining potential.

**6. Replicating similar social set up at new rehabilitation site**

One of the most important challenge or rather duty is to replicate a similar social set up at the new rehabilitation site. For the displaced villagers, it is important to establish village choupal, appropriate caste dynamics, places of worship, community spaces, etc. Absence of any of these might lead to future conflicts and dissatisfaction amongst the villagers. Further, the host community is to be sensitised for the arrival of new community in their locality.

## The Path Forward:

### A Flexible Approach

To overcome these bottlenecks, a more adaptive and flexible approach is essential. WCL should formulate a fresh Standard Operating Procedure (SOP) that integrates lessons learned from successful rehabilitations while addressing these modern complexities. This evolution in policy is necessary to transform rehabilitation from a bureaucratic hurdle into a genuine tool for community restoration.

# ADMISSIBILITY OF PARTNER CREDENTIALS IN EVALUATING PARTNERSHIP FIRM ELIGIBILITY

**MANIKAPPA**
B. Tech, NITK Surathkal
Senior Manager (Civil), WCL HQ, Nagpur

## Background

During tender evaluations, ambiguity often arises regarding whether the **work experience and financial turnover of individual partners** either earned personally or as part of another firm can be considered as that of a partnership firm. The Department of Expenditure (DoE), Government of India, issued the **Manual for Procurement of Works (MoPW)** in 2022, updated in 2025. While the Manual provides clear guidance for Joint Ventures (JVs), it remains silent on **partnership firms,** leading to inconsistent interpretations. Procurement manuals of **Central Public Sector Enterprises (CPSEs)** and other government organizations are often aligned with DoE guidelines, though the MoPW is not strictly applicable to them.

## Relevant Provisions

**MoPW Clause 3.9.1(4)(g) – Joint Ventures:**

*"JV members are jointly and severally responsible and liable in a contract. For pre-qualification, the JV should fulfil the criteria specified in the pre-qualification document. Certain parameters must be met collectively, some by the lead partner, and some by the other partner."*

**Indian Partnership Act, 1932 – Section 25 :**

"Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner."

Partners are jointly and severally liable for acts of the firm, reflecting the firm's dependence on **its partners** in case of JV and Partnership.

**A partnership** is directly governed by the Indian Partnership Act, 1932. This Act defines what a partnership is, the rights and duties of partners, dissolution, etc. A joint venture, however, is **not separately defined under the Act.** A joint venture is usually treated as a **special or temporary form of partnership.**

It is a settled proposition that a partnership firm is not a juristic person. It is an association of persons where individual identity of the individual partners is recognized. This means that a partnership firm is a collection of the partners and nothing else. It is not a legal entity and has no separate legal existence. It is a mere collective name for the individuals who are the members of the partnership. This is the reason, debarment actions in case of partnership firm/joint venture is being usually taken on partnership firm and its individual partners whenever debarment actions on partnership firm are taken.

## Work Experience of a Partner vs. Firm

Work experience is typically evaluated based on who executed the work. If a partner has prior experience in their individual capacity or as part of another firm or organization, that corresponding experience can be considered work experience of partnership firm because partnership acts through its partners and therefore experience is derived from its partners can be considered. Also, experience of partnership will also goes to its individual partners corresponding to its share in profit and share.

Supreme court in New Horizen New Horizons Ltd vs Union Of India on 9 November, 1994 observed that *"Even if it be assumed that the requirement regarding experience as set out in the advertisement dated 22-4-1993 inviting tenders is a condition about eligibility for consideration of the tender, though we find no basis for the same, the said requirement regarding experience cannot be construed to mean that the said experience should be of the tenderer in his name only. It is possible to visualise a situation where a person having past experience has entered into a partnership and the tender has been submitted in the name of the partnership firm which may not have any past experience in its own name. That does not mean that the earlier experience of one of the partners of the firm cannot be taken into consideration."*

## Financial Turnover of a Partner vs. Firm

Partnership firm is an association of persons where individual identity of the individual partners is recognized. This means that a partnership firm is a collection of the partners and nothing else. It is not a legal entity and has no separate legal existence. It is a mere collective name for the individuals who are the members of the partnership. Therefore, partnership derives financial turnover and financial strength of partners should be considered while assessing the financial eligibility of the firm in we consider in case of joint venture.

**Suggestion:**

**Presently, there is no explicit clarity in the procurement manuals issued by the Department of Expenditure, under the Ministry of Finance, GoI regarding whether the work experience and financial turnover of individual partners—either in their personal capacity or as part of another firm or organization—can be considered as that of a partnership firm .**However, the same manuals **clearly provide guidance in respect of Joint Ventures,** where Experience and financial capacity of constituent members are **expressly recognized.** Procurement manuals of Central Public Sector Enterprises and other government organizations are being **aligned or updated** based on the DoE Manuals/guidelines. If the same is clarified in the manual/guidelines of DoE, it is bring uniformity in tender evaluation, **Discretionary decision-making by** authorities can be avoided and there will be less potential litigation and disputes.

## Conclusion

In view of the above, it is evident that a partnership firm derives both its technical and financial capacity from its partners, since it is not a separate legal entity. While Joint Ventures are explicitly recognized in the MoPW for considering constituent members' experience and financial strength, no such clarity exists for partnership firms. Providing an explicit guideline that allows the work experience and financial turnover of partners to be treated as that of the partnership firm would bring **uniformity, reduce discretionary interpretations, and minimize potential disputes** during tender evaluation, while aligning the treatment of partnership firms with the principles applicable to Joint Ventures.

# THE MIDDLE PATH: ANALYZING THE IMPACT OF NEW LABOUR CODES ON CONTRACTUAL FRAMEWORKS IN CENTRAL PUBLIC SECTOR ENTERPRISES

**SP SARAVANAN**
B.E.,(CSE)., MBA., PGDBA (HR)
Senior Manager (HR), Saoner Sub Area, Nagpur Area, WCL

**Abstract**

The amalgamation of 29 central labour laws into four comprehensive Codes marks a watershed moment in Indian employment jurisprudence. For Central Public Sector Enterprises (CPSEs), which have historically navigated a complex dichotomy between "model employer" obligations and operational efficiency, these Codes introduce a paradigm shift. This article examines the statutory introduction of Fixed Term Employment (FTE), the reclassification of "core" activities and the universalization of social security, analyzing how they collectively reshape the legal risk and operational strategy for CPSEs.

## I. Introduction

CPSEs have long relied on contract labour to maintain cost competitiveness and operational flexibility. However, this reliance has been fraught with litigation, largely centering on the sham contract doctrine, where contract workers claim permanent status due to the perennial nature of their duties.

The introduction of the Industrial Relations Code, 2020 (IR Code), the Code on Social Security, 2020 (SS Code), and the Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code) fundamentally alters this landscape. The new regime offers CPSEs a legislative "middle path"—reducing the legal precariousness of contract labour while mandating higher statutory protections for the workforce.

## II. Fixed Term Employment (FTE)

Perhaps the most significant legal innovation for CPSEs is the statutory recognition of Fixed Term Employment under Section 2(o) of the IR Code.

Historically, CPSEs engaged contract labour via third-party intermediaries to avoid accrual of permanent tenure rights. The IR Code now allows CPSEs to hire workers directly for a fixed tenure without the mediation of a contractor.

Statutory Parity: The Code mandates that FTEs must receive hours of work, wages, allowances and other benefits equal to that of a permanent workman doing the same or similar work.

**Mitigation of Litigation Risk:** By formalizing FTE, the Codes dismantle the primary incentive for "regularization" litigation. Since the tenure is explicitly fixed by contract, the
expectation of permanent employment is legally negated, provided the statutory parity in benefits is maintained.

**The Gratuity:** A critical amendment in the SS Code is the eligibility for gratuity. Unlike regular employees who require five years of continuous service, FTEs are entitled to gratuity on a pro-rata basis if they render service for a period of one year.

**III. The 'Core' Activity Prohibition under OSH Code**

The OSH Code (Section 57) codifies the prohibition of employing contract labour in "core activities" of an establishment. This is a significant compliance checkpoint for CPSEs.

**Defining the Core:** The Code defines "core activity" as any activity for which the establishment is set up and includes any activity that is essential or necessary to such activity.

**The Statutory Exceptions:** While this appears restrictive, the OSH Code provides specific carve-outs where contract labour is permissible in core activities:

a) If the activity is ordinarily done through contractors in the normal course of business.
b) If the activity is of a strictly intermittent nature (non-perennial).
c) If there is a sudden, temporary increase in the volume of work.

**Implication:** CPSEs must conduct a rigorous "Activity Audit." Roles previously outsourced (e.g., maintenance in a power plant or data entry in a backend office) must be scrutinized. If a role is perennial and core, continuing with third-party contract labour exposes the CPSE to immediate statutory non-compliance. The shift to FTE is the likely legal remedy here.

**IV. Universal Social Security and Principal Employer Liability**

The Code on Social Security, 2020 expands the definition of "employee" to cover contract labour, inter-state migrant workers and platform workers, ensuring a universal safety net.

**Electronic Registration:** The requirement for Aadhaar-based registration of all unorganized and contract workers creates a digital trail, making evasion of PF/ ESI contributions nearly impossible.

**The Compliance Burden:** For CPSEs acting as Principal Employers, the liability remains absolute. If a contractor fails to effect contributions, the CPSE is liable to pay and recover the amount. The transparency brought by the proposed unified web portal implies that CPSEs will require robust digital integration with their vendors to ensure real-time compliance monitoring.

**V. The Threshold Revisions**

The OSH Code raises the threshold for the applicability of contract labour provisions from 20 to 50 contract workers.

**Legal Impact:** This deregulation exempts smaller contractors from the licensing regime.

**Operational Impact:** For CPSEs, this may encourage the fragmentation of contracts to stay below compliance thresholds, though such a strategy carries reputational risks. Conversely, the introduction of a single all-India license for contractors engaging in work across multiple states will significantly streamline vendor management for mega-CPSEs with pan-India operations like Coal India Ltd.

**VI. Conclusion: The Way Forward**

The new Labour Codes transition the Indian labour market from a "protection of job" model to a "protection of worker" model.

For CPSEs, the era of using low-paid contract labour for perennial core work is effectively over. The legal strategy must shift toward:

a) Adopting FTE for project-based or time-bound core activities.

b) Rationalizing the Contractor Base to ensure only compliant, large-scale agencies with single licenses are engaged.

c) Auditing Job Roles to clearly demarcate "Core" vs. "Support" functions to align with the OSH Code mandates.

Ultimately, while the immediate wage bill for CPSEs may rise due to benefit parity, the reduction in long-term litigation costs and the flexibility of workforce planning offers a distinct commercial advantage.

# NAVIGATING THE DISCLOSURE MAZE: COMPANIES ACT IMPERATIVES IN THE LISTING OF COAL INDIA SUBSIDIARIES

**PANDURANGAN B**
Senior Manager (Legal), WCL, Pench Area

''सत्यवंदन, धर्मचर''

*Speak the truth, uphold righteousness.*
*— Taittiriya Upanishad*

### Introduction: When Coal Meets the Capital Markets

In classical Indian thought, Dharma is not merely a moral abstraction; it is the principle that sustains order, trust, and legitimacy in society. The same idea finds its modern institutional expression in corporate governance. When companies seek capital from the public, they enter into an implicit covenant with investors—a covenant founded on transparency, accountability, and truthful disclosure. In this sense, corporate law becomes the modern instrument through which corporate dharma is articulated and enforced. The successful listing of Bharat Coking Coal Limited (BCCL) on 15 January 2026, accompanied by an extraordinary market response and a listing gain of nearly 95 percent, represents more than a financial milestone. It marks a decisive transformation in how public sector coal companies engage with capital markets and public shareholders. The transition from wholly owned government enterprises to publicly traded companies brings with it a new discipline: the discipline of disclosure. Investor confidence, in modern capital markets, is not granted by ownership but earned through transparency.

For decades, India's coal industry operated within the secure confines of government ownership. Coal India Limited (CIL) and its subsidiaries functioned as public sector enterprises where accountability flowed primarily upward—to the Government of India—rather than outward to dispersed investors.

The gradual move toward listing of subsidiaries marks a profound structural shift. Once a government company enters the capital market, it steps into a far more demanding arena governed by statutory disclosures, investor scrutiny and regulatory oversight.

In this transition, the Companies Act, 2013 assumes foundational importance. While the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) provide the operational framework for listed entities, the Companies Act establishes the legal architecture of transparency, governance, and shareholder protection.

For coal companies, the implications are particularly significant. Mining enterprises carry operational complexities rarely seen in other industries. They have long project cycles, environmental liabilities, mine closure obligations, large capital expenditure programs, extensive government and regulatory oversight.

Consequently, disclosure obligations under company law are not merely compliance formalities; they become essential instruments for building investor confidence.

As classical Indian wisdom reminds us, *"Satyam bruyat priyam bruyat...esa dharmah sanatanah"*--Truth must be spoken with responsibility. In the modern corporate context, statutory disclosures under company law represent the institutional embodiment of this timeless principle.

This article examines five critical provisions of the Companies Act, 2013 that assume special importance when coal subsidiaries transition from wholly owned government entities to publicly listed companies:

1. Section 129 – Financial Statements
2. Section 134 – Board's Report
3. Section 177 – Audit Committee
4. Section 92 – Annual Return and Shareholding Disclosure
5. Section 135 – Corporate Social Responsibility

Together these provisions create a comprehensive disclosure ecosystem that governs how companies communicate their financial position, governance practices, ownership structure, and social obligations to investors.

**Section 129: Financial Statements – The Bedrock of Corporate Transparency**

The most fundamental disclosure obligation of any company lies in the preparation of financial statements.

Section 129 of the Companies Act, 2013 mandates that financial statements must present a true and fair view of the state of affairs of the company and comply with accounting standards notified under Section 133 and SEBI LODR Regulation 33 (Financial Results).

Financial statements must be prepared in accordance with Schedule III of the Companies Act, which prescribes a standardized format for presentation.

**Special Accounting Challenges in Coal Companies**
Mining enterprises present accounting complexities rarely encountered in conventional industries.
Important disclosures include:

**1. Overburden Removal and Stripping Activity**

Opencast mining involves large-scale removal of overburden before coal extraction. Accounting standards require clear disclosure of:

- capitalisation of stripping costs
- amortisation methodology
- impact on cost of production

Such disclosures influence profitability and asset valuation.

**2. Mine Closure Liabilities**

Coal mining operations must eventually restore mined land and rehabilitate affected areas. These future obligations are accounted for as provisions under Ind AS 37.

Companies must disclose:

- · estimated closure costs
- · discount rate assumptions
- · escrow account balances
- · revisions to closure estimates

For investors, these provisions represent long-term environmental liabilities.

**3. Contingent Liabilities**

Coal companies often face litigation relating to:

- · land acquisition disputes
- · environmental regulation
- · labour claims
- · taxation matters

Disclosure of contingent liabilities allows investors to assess potential financial exposure.

**Section 134: Board's Report – Management's Narrative to Investors**

If financial statements represent numbers, the Board's Report under Section 134 represents the story behind those numbers.

The report must be approved by the Board and placed before shareholders at the Annual General Meeting in compliance with Companies (Accounts) Rules, 2014 – Rule 8.

The report must include:

- · state of company affairs
- · capital expenditure
- · material changes affecting operations
- · risk management policies
- · conservation of energy and technology absorption
- · details of CSR activities
- · related party transactions

**Relevance to Coal Companies**

For mining companies operating across multiple mines and geological conditions, operational disclosures are essential.

Investors rely on the Board's Report to understand:

- · production performance
- · mine development status
- · operational risks
- · regulatory developments

For example, disclosure of environmental clearances, mine expansions, and production disruptions can significantly affect investor perception.

**Director Responsibility Statement**

Section 134(5) introduces the Director Responsibility Statement, where directors affirm that:

- · accounting standards have been followed
- · internal financial controls are adequate
- · financial statements present a true and fair view

This provision establishes personal accountability of directors, reinforcing governance standards.

**Section 177: Audit Committee – The Guardian of Financial Integrity**

Corporate governance in listed companies revolves around an effective Audit Committee.

Under Section 177 of the Companies Act and SEBI LODR Regulation 18, listed companies must constitute an Audit Committee comprising:

- minimum three directors
- majority independent directors
- financially literate members

**Key Functions**

The Audit Committee performs critical oversight functions including:

- review of financial statements
- monitoring internal financial controls
- interaction with statutory auditors
- scrutiny of audit observations

In large mining companies where operations span multiple units and involve significant capital expenditure, the Audit Committee acts as a governance sentinel.

**Investor Confidence**

For investors, the presence of a strong Audit Committee signals:

- independent oversight
- reliable financial reporting
- effective internal control systems

**Section 92: Annual Return – Transparency in Ownership Structure**

Public investors are deeply concerned about who owns the company and how control is exercised.

This is addressed through Section 92 of the Companies Act, which mandates filing of an Annual Return containing detailed information about the company. Companies (Management and Administration) Rules, 2014 and SEBI LODR Regulation 31 (Shareholding Pattern) also provide elaborate guidelines in this regard.

Key disclosures include:

- shareholding pattern
- promoters and institutional shareholders
- directors and key managerial personnel
- indebtedness of the company

For listed companies, this information is made publicly available through stock exchanges.

**Importance for Coal Subsidiaries**

When a government company lists its shares, the ownership structure changes significantly. Investors closely monitor:

- government shareholding
- institutional investor participation
- promoter control

Transparent disclosure of shareholding builds market confidence and prevents uncertainty regarding ownership structure.

**Section 135: Corporate Social Responsibility – The Social Compact of Mining**

Mining companies operate in regions where their activities directly affect local communities.

Recognizing this responsibility, the Companies Act introduced Section 135 and the Companies (CSR Policy) Rules, 2014, which mandate Corporate Social Responsibility (CSR) spending.

Applicable to companies meeting specified thresholds of:

- net worth
- turnover
- net profit

**CSR in Coal Companies**

Coal companies are among the largest CSR contributors in the Indian public sector.

CSR initiatives often include:

- rural infrastructure
- healthcare facilities
- education programs
- environmental restoration
- skill development

Detailed CSR disclosures are required in:

- Board's Report
- CSR policy statement
- Annual CSR Report

For investors, these disclosures demonstrate the company's social licence to operate, which is particularly important in extractive industries.

The ancient strategist Chanakya observed: *"Praja sukhe sukham rajñah"*—the ruler's welfare lies in the welfare of the people. In the corporate context, shareholder confidence becomes the equivalent of public welfare. Transparent governance therefore serves not merely regulatory compliance but institutional legitimacy.

**Case Illustration: Disclosure Lessons from BCCL's Listing**

When Bharat Coking Coal Limited (BCCL) approached the capital markets, its offer documents highlighted several disclosure practices typical of public sector listings.

Key disclosures included:

**1. Operational Risk Factors**

The prospectus outlined risks relating to:

- geological uncertainty
- regulatory approvals
- environmental compliance

**2. Mine Closure Obligations**

Future liabilities associated with mine rehabilitation were clearly disclosed, providing investors with a realistic view of long-term costs.

**3. Government Ownership**

The shareholding structure highlighted the continued majority ownership of Coal India Limited and the Government of India.

**4. Litigation and Regulatory Matters**

Pending legal proceedings and tax disputes were disclosed to enable investors to assess potential liabilities.
Such comprehensive disclosure helps ensure that investors make decisions based on complete and transparent information.

**The Integrated Disclosure Framework**

The five statutory provisions examined in this article form an interconnected system of transparency.

- **Section 129** ensures financial accuracy
- **Section 134** communicates management's perspective
- **Section 177** strengthens oversight through independent directors
- **Section 92** provides transparency in ownership
- **Section 135** reflects corporate responsibility toward society

These provisions operate alongside SEBI LODR regulations, which impose additional disclosure requirements for listed companies.

Together they create a framework where corporate activity is documented, reviewed, and disclosed in the public domain.

**Conclusion: Transparency as the New Currency of the Coal Sector**

The evolution of coal subsidiaries toward capital market participation represents more than a financial restructuring. It marks a shift toward greater transparency, stronger governance, and broader accountability.

Historically, public sector coal companies derived legitimacy from government ownership. In the capital market era, legitimacy increasingly flows from **investor trust.** The Companies Act, 2013 provides the legal foundation for this trust by embedding disclosure obligations within corporate governance structures.

Sections 129, 134, 177, 92, and 135 collectively ensure that investors receive reliable financial information, clarity regarding corporate ownership, effective oversight of management, and assurance that companies act responsibly toward society. For coal companies entering the public markets, compliance with these provisions should not be viewed merely as regulatory obligation. Rather, it represents an opportunity to demonstrate governance maturity and institutional credibility.

The experience of BCCL's market debut illustrates a simple truth of capital markets: transparency invites confidence. When disclosures are comprehensive and governance structures credible, investors respond with trust.

In this sense, the modern corporation rediscovers an ancient principle of Indian jurisprudence:

"धर्मो रक्षति रक्षितः — *Dharma protects those who uphold it.*"

In the corporate realm, transparency is that dharma. When companies uphold it faithfully, the reward is not merely regulatory compliance but enduring credibility in the eyes of the market.

## EMPOWERED TO ACT:WCL'S AUTHORIZED OFFICERS UNDER THE MMDR ACT, 1957

**LT. CDR. (DR.) VIKRANT MALHAN,**
HOD (Security) / CSO, WCL, Nagpur

Western Coalfields Limited is institutionalizing statutory enforcement authority within its Security apparatus — redefining the role of its officers from site guardians to legally mandated investigators.

| Designated Area Nodel Officers | MMDR Sections (Sec 22, 23B & 24) | Office Orders issued | Empowered CISF Officers |
|---|---|---|---|
| **11** | **03** | **02** | **04** |

**SETTING THE STAGE :**

Coal theft in India is not a petty crime. It is an organized, multi-crore rupee operation that bleeds public sector enterprises, distorts market integrity, and in some cases, funds criminal networks operating in the heart of coalfield regions. For Western Coalfields Limited (WCL), a Coal India Limited subsidiary operating across Maharashtra and Madhya Pradesh, the threat is not abstract — it plays out daily across pits, haul roads, railway sidings, and peripheral villages.

For years, WCL's security officers patrolled these frontiers with limited legal teeth. Their authority was administrative — they could observe, report, and escalate, but lacked the statutory standing to independently act as complainants in a court of law or formally inspect a mine on behalf of the government. That changed in January 2026.

Through a set of Office Orders issued by WCL's Security Department — backed by Central Government gazette notifications — WCL's Area Security Officers (ASOs) have been formally re-designated as Area Nodal Officers (Security), empowered under Sections 22, 23B, and 24 of the Mines and Minerals (Development & Regulation) Act, 1957. This is not a cosmetic title change. It is a structural shift in how WCL approaches mineral law enforcement.

*"Statutory authority is not a designation on paper. It is a responsibility carried every day — in the pit, on the haul road, and in the courtroom if necessary."*

**- Security Department, WCL**

## THE LEGAL ARCHITECTURE

To appreciate the significance of these orders, one must understand what the MMDR Act, 1957 actually grants to authorized officers — and what remained inaccessible without that formal designation.

**Section 22 — The Right to Complain :**

Under ordinary circumstances, a court in India cannot take cognizance of an MMDR offence unless a written complaint is filed by a specifically authorized person. This provision — Section 22 — is the legal gateway. Without an authorized officer from WCL holding this power, every illegal mining incident detected by its security teams had to be routed through external agencies before any judicial action could commence. The new designation resolves this dependency. WCL's own Nodal Officers can now directly trigger the judicial process.

**Section 23B — Power to Search :**

Illegal mining operations often involve concealment of minerals, documents, or evidence across locations and vehicles. Section 23B empowers authorized officers to conduct searches where there is reason to believe that violations have occurred, with procedures aligned to the Code of Criminal Procedure. For field enforcement teams, this marks a critical shift — enabling proactive, legally backed search operations that strengthen detection, evidence collection, and overall control over mineral theft.

**Section 24 — Entry, Inspection and Evidence :**

This section grants the power to enter any mine or mining area, inspect operations, examine persons employed there, review records and accounts, and collect mineral samples. For a security officer conducting intelligence-based operations or responding to a coal theft alert, this is transformative. What was previously a trespass risk is now a statutory right. Evidence gathered under Section 24 carries legal weight that administrative inspection reports do not.

> *These designations transform our Security Officers from witnesses to legal actors. They can now file complaints, inspect mines, and build cases — independently and with full statutory backing.*
>
> **- Dr. Hemant Sharad Pande, CMD, WCL**

## STATUTORY POWERS AT GLANCE

| MMDR Section | Power Conferred | Designated Authority |
|---|---|---|
| Section 22 | File written complaint in court; initiate cognizance of offences | WCL Area Nodal Officers (Security) — all 11 areas |
| Section 23B | Authorizes designated officers to search premises or vehicles and seize illegally mined minerals or related evidence. | CISF Officers — Pench&Kanhan Areas |
| Section 24 | Entry & inspection of mines; examine staff; collect samples; review records | WCL Area Nodal Officers (Security) — all 11 areas |

**THE DESIGNATED OFFICERs:**

Office Order No. MMDR/2026-125-134, issued on 20 January 2026, formally names Area Nodal Officers across WCL's entire operational geography. The list spans coalfields from Chandrapur in Maharashtra to Betul and Chhindwara in Madhya Pradesh — covering some of the country's most active and vulnerability-prone coal producing zones.

| S.No | Area | *Nodal Officer (Security)* | Jurisdiction |
|---|---|---|---|
| 1 | WCL HQ / All Areas | Lt Cdr (Dr) Vikrant Malhan | All Command Areas |
| 2 | Ballarpur Area | Shri Ajit Haldar | Dist. Chandrapur (MS) |
| 3 | Chandrapur Area | Shri Neelabh Kumar | Dist. Chandrapur (MS) |
| 4 | Kanhan Area | Shri D.K. Wahane | Chhindwara (MP) |
| 5 | Majri Area | Shri S.K. Bairwa | Dist. Yavatmal (MS) |
| 6 | Nagpur Area | Major Hemant Bhakuni | Nagpur (MS) |
| 7 | Pathakhera Area | Shri Rituraj Moukhedle | Dist. Betul (MP) |
| 8 | Pench Area | Shri RG Sharma | Dist. Chhindwara (MP) |
| 9 | Umrer Area | Shri Amarjeet Singh | Dist. Nagpur (MS) |
| 10 | Wani Area | Shri Ramakrishna Singh | Dist. Chandrapur (MS) |
| 11 | Wani North Area | Shri Saket Saran | Dist. Yavatmal (MS) |

***Subject to Periodical Changes**

## CISF Officers — Section 23B Powers

| Area | *CISF Officer* | Designation |
|---|---|---|
| Pench Area, Parasia, Chhindwara | Shri Dinesh P Dahiwadkar | Commandant/CISF |
| Pench Area | Shri V P Singh | Dy Commandant/CISF |
| Kanhan Area, Dungurai, Chhindwara | Shri Ganesh Balooni | Asstt. Commandant/CISF |
| Kanhan Area | Shri S K Tiwari | Asstt. Commandant/CISF |

**OPERATIONAL SIGNIFICANCE:**

The practical implications of these designations are far-reaching. What follows is not theory — it is the changed reality on the ground for every Area Nodal Officer (Security) in the WCL system

**Independent filing** — no dependency on external agencies to trigger court proceedings

**Statutory inspection rights** — legally valid entry into any mine or mining area under Section 24

**Evidence admissibility** — samples and records collected under Section 24 carry judicial weight

**Corporate prosecution** — CISF empowered to proceed against company officials under Section 23

**Unified protocol** — all liaison with Police, State & Civil authorities routed through Nodal Officers

**24-hour reporting** — any change in officer list must be reported to HOD(Security)/CSO within 24 hrs

**OPERATIONAL ENFORCEMENT FRAMEWORK:**

- Authorized officers, under Section 22 of the MMDR Act, ensure legally robust action by filing detailed complaints supported with accurate facts, identification details, and evidentiary backing.
- The Security Department plays a vital role in detection and prevention of illegal mining through surveillance, intelligence inputs, and coordinated field operations.
- During search and seizure, security personnel ensure law & order, operational safety, and regulatory compliance, including deployment of female staff as per statutory requirements.
- Security teams support evidence integrity by securing sites, preventing tampering, and maintaining proper chain of custody, along with assisting in documentation and videography.
- Effective coordination between authorized officers and security units enhances enforcement, strengthens prosecution through digital evidence (CCTV, drones, GPS), and ensures smooth judicial proceedings.

**WHAT CHANGED AND WHY IT MATTERS:**

Before January 2026, WCL's security personnel — despite being highly trained and operationally capable — occupied a legally ambiguous position when confronting MMDR violations. They could detain, alert local police, and coordinate. But they could not, in their own name and authority, walk into a suspected illegal quarry, conduct a formal inspection, and file a complaint that a sessions court would act upon. That gap has been closed.

This matters for several reasons. First, speed. Legal action on coal theft cases previously involved multi-agency coordination before a complaint could be lodged. Nodal Officers can now compress that timeline significantly. Second, credibility. A complaint filed by a designated government-backed officer carries more institutional weight than a general citizen complaint. Third, deterrence. Thieves and networks operating around WCL's coalfields now face officers who are not just security personnel — they are statutory enforcement authorities.

**COORDINATION, PROTOCOL AND ACCOUNTABILITY:**

The Office Orders are deliberate in building accountability into the system. All correspondences with State Governments, Civil Authorities, and Police are to be channelled through the designated Nodal Officers— eliminating informal or ad-hoc communication. Any change in the list of officers must be intimated to HOD(Security)/CSO within 24 hours, ensuring the directory remains current and operational.

Notably, the list explicitly excludes CWS Tadali's officer from MMDR powers — a deliberate and correct exclusion since a workshop and stores facility does not constitute a mining area under the Act. This precision reflects the seriousness with which the designation has been approached.

**THE ROAD AHEAD:**

The January 2026 Orders mark a significant institutional step, but the work does not end at gazette notification. Going forward, WCL's Security function must prioritize formal training for designated Nodal Officers on MMDR procedures and court complaint processes, integrate Nodal Officer authority into the KhananPrahari App workflow, and evaluate delegation of additional powers under Sections 21(4) and 23B for a stronger enforcement architecture.

WCL's Security Officers are now recognized as statutory enforcement authorities under the law — empowered, accountable, and positioned at the forefront of mineral regulation and operational security. That authority demands both vigilance and integrity.

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This article has been compiled, and conceptualized in contribution with Shri Swapnil Medar, Security Guard (SG), Security Deptt., WCL HQ.

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# MEDIATION - NEED AND EFFECTIVENESS AND ITS IMPACT ON CIL

**PRATISHTHA SAXENA**
B.A.LL.B (Hons.), NLIU-Bhopal
Senior Manager (Legal),CIL

## INTRODUCTION

Mediation is a structured and active process which requires the involvement of an impartial third party (who is not a participant in the conflict) who uses specialized communication and negotiation techniques to assist the parties in arriving at an amicable settlement of their disputes. Mediation is essentially a "party-centered process" as it prioritizes the legitimate needs, entitlements, and concerns of the involved disputants.

Section 89(1) of the Code of Civil Procedure, 1908 permits courts to suggest arbitration, conciliation, judicial settlement, or mediation for dispute resolution. This is well accepted and implemented by the courts. Mediation centers have been set up across India. Despite this, private mediation lacked structure and legal recognition, discouraging participation. To address this, the "Mediation Act 2023" ("Mediation Act") has been enacted to enhance the effectiveness of mediation and provide a comprehensive legal framework for it. The Act addresses the limitations of earlier frameworks like Section 89 of the Code of Civil Procedure, 1908, and the judicial guidelines. It seeks to mainstream mediation in both domestic and international disputes by establishing a robust institutional framework, mandating pre-litigation mediation, and promoting innovative methods like online mediation.

This article aims to explain the salient features of the Mediation Act, 2023 while examining the timeline of jurisprudence which largely shaped the mediation landscape in the country and outlines the scope, applicability, key features, procedure, and possible challenges of the Mediation Act with specific reference to the amendments introduced in the Settlement of Disputes Clause by CIL in March, 2025.

**A Look Back - Historical Context:**

Mediation in India is not new. The practice of mediation boasts a rich and enduring history in India, predating the influence of British colonial rule. Historical use of mediation through Panchayats for community conflict resolution is well-known and still preferred. Its origins are deeply woven into the fabric of Indian society, reflecting a long-standing preference for amicable and collaborative conflict resolution.

Prior to the introduction of the British legal system, village elders, possessing wisdom and experience, and respected businessmen, known as Mahajans, served as informal mediators in commercial disputes. Their guidance and expertise proved invaluable in facilitating mutually acceptable solutions, fostering trust, and maintaining harmonious business relationships. The Panchayat system, a traditional model of local governance, played a pivotal role in resolving conflicts within communities[1]. These councils of elders, deeply rooted in local customs and traditions, acted as mediators, facilitating dialogue and compromise to address grievances and bridge divides.

1. The Mediation Act, 2023: Understanding Key features", Authored by Kavita Sarin and Vishal Bharadwaj, Kochhar & Co.

This traditional approach to conflict resolution offered distinct advantages:

a) Ensured quick and cost-effective resolutions, avoiding the complexities and expenses associated with formal litigation.

b) Promoted social harmony by emphasizing reconciliation and preserving relationships within the community.

However, the arrival of British rule marked a turning point in the history of mediation in India. The British introduced the adversarial legal system, which placed greater emphasis on litigation and court-based dispute resolution. This system gradually eclipsed mediation, relegating it to the sidelines. As a consequence, mediation lost its prominence and was largely neglected for many years, despite its proven effectiveness and historical significance.

**The Legal Framework for Mediation in India:**

For an extended period, mediation's adoption was gradual; however, several legal provisions began to lay the groundwork for its eventual embrace as a legitimate dispute resolution method.

A significant initial step was **Section 89(1) of the Code of Civil Procedure, 1908[2].** This provision empowered courts to actively suggest alternative dispute resolution (ADR) methods, including arbitration, conciliation, judicial settlement, and, importantly, mediation to parties involved in legal disputes. This marked a pivotal moment in legitimizing mediation within the formal judicial system. Under Section 89, CPC, consent of the parties is mandatory for referring a case for arbitration in the absence of an arbitration agreement and conciliation. However, for reference to judicial settlement, LokAdalat or mediation, consent of the parties is not mandatory. The referral judge has the power to refer compulsorily.

The **Civil Procedure-Mediation Rules, 2003[3]** and the **Mediation Rules of High Courts** contain provision for mandatory mediation under certain situations. The situation of mandatory reference arises as per Rule 5(f)(iii) of the Model Mediation Rules. As per this Rule, when one party applies to the court for mediation or conciliation, the court after hearing all the parties, can refer the matter for mediation without the consent of the parties. However, this reference can be made only when the court is satisfied that there is a relationship between the parties which has to be preserved and there is an element of settlement which may be acceptable to the parties.

The **Arbitration and Conciliation Act, 1996** - Part III (Sections 61-81) - Sections 61-81 (Part III) of the Arbitration and Conciliation Act, 1996, dedicated to "Conciliation," played a crucial role in strengthening India's Alternative Dispute Resolution (ADR) system. This portion of the Act created a well-defined legal structure for commercial conciliation, offering parties a recognized and organized way to settle disputes outside of court. The legal framework clarified the conciliation process, including initiation, execution, and conclusion, thus bolstering trust in its application. By formally incorporating conciliation into law, the Act also informed and educated the legal profession, businesses, and the judiciary about the advantages and practicalities of resolving disputes without litigation.

Section 12A of the **Commercial Courts Act, 2015,** fundamentally transformed the landscape of commercial dispute resolution in India, significantly elevating the status of mediation. By mandating pre-institution mediation for specified commercial disputes, this provision effectively positioned mediation as a critical and often obligatory first step. This legislative move recognized the inherent advantages of mediation within the commercial sphere, particularly its efficiency in reaching resolutions and its ability to significantly reduce costs compared to traditional litigation.

Despite these encouraging legal provisions, private mediation faced a crucial hurdle. It lacked explicit legal recognition, which meant that participation in private mediation remained entirely voluntary, and any agreements reached through it were not legally binding. This absence of legal backing hindered the wider adoption of private mediation.

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2. Inserted by the Code of Civil Procedure (Amendment) Act, 1999
3. When the constitutionality of the Civil procedure amendment Act,1999 was challenged before the Supreme Court in the case of Salem Advocate Bar Association vs UoI(2005) 6 SCC 344, the court appointed a committee to draft rules dealing with the procedure to be followed under Section 89 CPC under the Chairmanship of Justice Jagannadh Rao. The Committee submitted the Civil Procedure – Alternative Dispute Resolution and Mediation Rules, 2003, to the Supreme Court and the Supreme Court approved the rules and directed all the High Courts to frame rules according to the Civil Procedure-Mediation Rules.

To address this deficiency and to fully harness the potential of mediation, the Mediation Bill 2021, was introduced. This bill aims to provide a comprehensive and robust legal framework for mediation, effectively giving it the legal recognition and enforceability necessary to enhance its effectiveness as an alternative dispute resolution mechanism.

**Role of Judiciary in reviving Mediation – Paving the way for Mediation Act, 2023**

A dedicated law specifically addressing mediation remained absent until 2023. Instead, mediation was promoted through various means, including guidance from the judiciary and the incorporation of relevant clauses within broader legal statutes. This piecemeal approach sought to encourage the adoption of mediation practices without a comprehensive legal foundation.

A pivotal moment in the advancement of mediation came with the Supreme Court of India's intervention in the *Vikram Bakshi v. Ms. Sonia Khosla (Dead)*[4]. This landmark case brought forth the critical need for structured mediation mechanisms, highlighting their potential to reshape the legal system. The Supreme Court's emphasis in the VikramBakshi case underscored the multifaceted benefits of mediation. The Honble Court at Para 16 observed as follows:

*"16. Thus, mediation being a form of Alternative Dispute Resolution is a shift from adversarial litigation. When the parties desire an on-going relationship, mediation can build and improve their relationships. To preserve, develop and improve communication, build bridges of understanding, find out options for settlement for mutual gains, search unobvious from obvious, dive underneath a problem and dig out underlying interests of the disputing parties, preserve and maintain relationships and collaborative problem solving are some of the fundamental advantages of mediation. Even in those cases where relationships have turned bitter, mediation has been able to produce positive outcomes, restoring the peace and amity between the parties."*

Ultimately, the Supreme Court's pronouncements in the VikramBakshi case served as a clarion call for the formalization and expansion of mediation within the Indian legal system. This judicial endorsement paved the way for the eventual enactment of a dedicated law for Mediation in the form of the Mediation Act, 2023, solidifying mediation's place as a vital component of dispute resolution. A timeline of jurisprudence in this regard is tabulated as follows:

**Phase 1: Early Recognition (2000–2005)**

| Year | Case/Event | Significance |
|---|---|---|
| **2000** | **HareshDayaram Thakur v. State of Maharashtra**[5] | First major SC ruling upholding mediated settlements has the status and effect of legal sanctity of an arbitral award |
| **2005** | **Salem Advocate Bar Association v. UOI**[6] | Reinforced that ADR is a mandatory first step; laid foundation for court -annexed mediation; High Courts were directed to frame ADR rules, and the Central Government was asked to consider funding mediation services |

4. Contempt Petition (Crl.) No. 4/2013 in SLP (Crl.) No. 6873 of 2010: Judgment dated 8th May, 2014
5. AIR 2000 SUPREME COURT 2281
6. 2003 (1) SCC 49 and (2005) 6 SCC 344. Supreme Court upheld the constitutional validity and practical implications of the amendments made to the Code of Civil Procedure (CPL), 1908, by the Amendment Acts of 1999 and 2002 (Introducing mandatory reference to ADR under Section 89 CPC).

**Phase 2: Expansion & Formalization (2010–2018)**

| Year | Case/Event | Significance |
|---|---|---|
| **2010** | **Afcons Infrastructure v. Cherian Varkey**[7] | Clarified that most civil/commercial disputes are fit for media tion and summarized the procedure to be adopted by a court under section 89 of the Code |
| **2011** | **B.S. Krishnamurthy v. B.S. Nagaraj**[8] | Emphasized mediation in matrimonial disputes with absolute confidentiality in mediation proceedings. |
| **2018** | **KSEB v. Kurien E. Kalathil**[9] | Mediated settlements declared executable as court decrees. |

**Phase 3: Consolidation & Legislative Push (2019–2023)**

| Year | Case/Event | Significance |
|---|---|---|
| **2019** | **M.R. Krishna Murthi v. UOI**[10] | SC recommended a standalone mediation law; led to Mediation Bill, 2021. |
| **2022** | **Mediation Bill passed by Parliament** | Legislative recognition of mediation as a formal dispute resolution mechanism. |
| **2023** | **Mediation Act enacted** | Comprehensive legal framework for mediation; statutory enforcement of settlements. |

7. [(2010) & SCC 24]
8. (2011) 15 SCC 464)
9. 2018 (4) SCC 793
10. AIR 2019 SC 5625

***The Mediation Act: Key Provisions***

India has significantly bolstered its commitment to mediation with the passage of the Mediation Act, 2023, marking a pivotal moment in the country's alternative dispute resolution landscape aligned with the Singapore Convention on Mediation, 2019[11].

In essence, the Mediation Act, 2023 aims *"to promote and facilitate mediation"* with a special focus on institutional mediation, online mediation, and community mediation, in order to facilitate resolution of disputes in a time bound manner. The Mediation Act also provides for enforcement of mediated settlement agreements and establishment of a regulatory body called Mediation Council of India, dedicated to overseeing mediation practices throughout India. This body will be responsible for setting standards, accrediting mediators, and ensuring ethical conduct within the profession, fostering trust and confidence in the mediation process and for registration of mediators and institutions.

To further promote the accessibility and utilization of mediation, the Act emphasizes the establishment of institutional mediation centers across the country. These centers will serve as hubs for providing mediation services, training mediators, and raising awareness about the benefits of this alternative dispute resolution mechanism.
A key objective of the Act is to grant legal recognition and enforceability to mediated settlement agreements, thereby enhancing their credibility and encouraging wider adoption of mediation as a viable dispute resolution method. By codifying these agreements, the Act assures parties that their mutually agreed-upon resolutions will be legally binding and upheld by the courts.

***Key Provisions of the Mediation Act, 2023***

The Act caters to both domestic and cross-border disputes, making it comprehensive and inclusive. A hallmark of the Mediation Act, 2023, is its emphasis on pre-litigation mediation **(Section 5)** for resolving disputes before initiating formal legal proceedings. The salient features of this provision include:

- ✔ **Voluntary Participation:** While mediation itself is voluntary, mutual consent of the parties is essential for initiating the process.
- ✔ **Time-Bound Resolution:** Pre-litigation mediation must be concluded within 120 days, extendable by an additional 60 days upon mutual agreement.
- ✔ **Exemptions:** Urgent matters requiring interim relief are excluded from mandatory pre-litigation mediation.

This provision is particularly significant for commercial disputes, as mandated under Section 12A of the Commercial Courts Act, 2015, encouraging efficient and cost-effective resolutions. Mediated Settlement Agreements (Sections 19, 20, and 27) The Act ensures that mediated settlement agreements are binding, final, and enforceable. Key provisions include:

The Act also limits challenges to settlement agreements to specific grounds, such as fraud, corruption, impersonation, or disputes deemed unfit for mediation and the agreements can be challenged within 90 days before a competent court.

Establishment of the Mediation Council of India (Sections 31-39) to regulate and promote mediation practices. Recognizing the transformative role of technology, the Act introduces provisions for online mediation (Section 30). This provision enhances accessibility and convenience, particularly for cross-border disputes or parties in remote locations[12].
Exclusions from Mediation (Section 6 and First Schedule) The Act identifies certain categories of disputes that are unsuitable for mediation, including: Criminal offences, Claims involving minors, persons with mental incapacity, or

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11. The Singapore Convention on Mediation (2019) is a landmark international agreement that establishes a framework for the recognition and enforcement of mediated settlement agreements in cross-border commercial disputes. It addresses the challenges faced by parties in enforcing such agreements across borders, by enabling direct enforcement in signatory states.
12. In the case of State of Maharashtra v. Praful Desai [(2003) 4 SCC 601], the Supreme Court upheld the validity of virtual court proceedings, emphasizing the role of technology in modern legal processes.

unsound mind. Disputes impacting third-party rights (except in matrimonial matters involving child welfare) and Matters under specific statutory frameworks, such as land acquisition or taxation laws.
If the mediation does not lead to a settlement within the time period stipulated under the Mediation Act, the mediator is required to prepare a non-settlement report without disclosing the cause of non-settlement and share signed copy with the parties and, in case of institutional mediation, submit the same in writing with the Mediation Service Provider.

***Amendment in CIL Manuals incorporating Mediation***

CIL's new Dispute Resolution Clause[13] establishes a structured, multi-tiered process to resolve contractual disputes efficiently while minimizing litigation. CFDs of CIL in their 373rd meeting held on 08.03.2025 had approved the modification of the provision of Settlement of Dispute in the Manuals of CIL including the Consultancy and Non-consultancy service Tenders in CIL and subsidiaries. The newly inserted Dispute Resolution Clause mandates sequential stages: internal resolution, adjudication by a senior officer, and mediation under the Mediation Act 2023, with court action only as a last resort.

The clause strongly favors mediation over arbitration, especially for disputes under Rs. 10 crore, and excludes "Excepted Matters" such as government policy terms, fraud, and issues under investigation from challenge. Key features include strict timelines, confidentiality in mediation, and a legally enforceable Mediated Settlement Agreement (MSA) that requires prior approval of Competent Authority and can only be challenged on limited grounds like fraud or corruption.

**Dispute Resolution Stages[14]**

The clause establishes a three-stage sequential process:

1. Internal Resolution (Engineer-in-Charge → escalation to higher authorities)
2. Adjudication (by a senior CIL officer)
3. Mediation (under the Mediation Act 2023)

Only if all these approaches fail, then only can parties resort to court

| Stage | Key Steps | Timeline |
|---|---|---|
| Internal Resolution | Notice to Engineer-in-Charge → Escalation to Area GM/HOD/Director-nominated officer | 30 days notice + 60 days (extendable by 30) |
| Adjudication | Notice to Concerned Director → Adjudicator (serving officer ≥ HOD/E8) issues decision | 60 days (extendable by 30) |
| Mediation | Notice to CMD → Mediator appointed → Mediation under Mediation Act 2023 | 120 days (extendable by 60) |
| Court Litigation | Only if mediation fails | As per court process |

***NOTE:** Excepted Matters (Non-Disputable)-Third-party claims, Pre-award tender issues, Fraud/corruption-related actions, Matters under investigation (CBI/Vigilance), Government policy clauses (local content, border restrictions, MSE preference)

13. Introduced vide letter dated 20.03.2025
14. A simplified table of the dispute resolution mechanism under the newly inserted dispute settlement clause is provided.

**Contemporary Challenges in Mediation**

Despite the progress made, mediation in India faces several challenges like:

- **Lack of Awareness and Acceptance:** Persistent lack of awareness and cultural resistance among litigants, legal professionals, and even some judges, stemming from a deeply ingrained reliance on traditional adversarial litigation.
- **Institutional Weaknesses and Inconsistent Implementation:** Inadequate and unevenly developed institutional infrastructure, leading to significant variations in the quality and availability of mediation services across different states and judicial districts.
- **Judicial Overload and Inconsistent Referral Practices:** Systemic judicial backlogs and a lack of consistent judicial encouragement and referral to mediation, often due to time constraints and a perceived lack of judicial control over the process.
- **Shortage of Qualified and Accredited Mediators:** A significant deficit of adequately trained, accredited, and experienced mediators, particularly in specialized areas, impacting the quality and credibility of the mediation process.
- **Funding and Accessibility:** Limited funding and resources for mediation initiatives, resulting in restricted access for economically disadvantaged parties and a lack of investment in infrastructure and training.
- **Enforcement of Mediated Settlements within India:** Even though the Mediation Act, 2023 provides for the enforcement of mediated settlements, there could be challenges in the enforcement of mediated settlements if the parties do not adhere to the agreed terms.
- **Online Mediation Challenges:** With the rise of online mediation, challenges such as digital literacy, technological infrastructure limitations, and concerns regarding confidentiality and security need to be addressed.
- **Lack of Data and Research:** The lack of robust data and empirical research on mediation's efficacy and impact in India impedes the ability to accurately gauge progress and formulate evidence-driven strategies for improvement.

**Conclusion and the Path Forward:**

Mediation offers a transformative approach to resolving disputes in India, promising to alleviate the burden ofextensive litigation backlogs and foster mutually agreeable solutions. The passage of the Mediation Act, 2023, marks a significant advancement in formalizing mediation as a recognized process within the legal system. The Mediation Act is a welcome step towards transforming the landscape of dispute resolution by offering parties an effective and efficient avenue to resolve conflicts voluntarily and without any form of adjudication.

The Meditation Council is yet to be set up by the Central Government. However, requisite steps are underway for establishment of the Mediation Council of India (MCI) under section 31 of the Mediation Act, 2023 which inter-alia is to deal with the framework of institutionalization of the conduct of mediation in the country and to bring uniformity in the process. The Government is further continuously engaging with various stakeholders including High Courts and National Legal Services Authority for raising awareness and preparing for effective implementation of the provisions of the Mediation Act, 2023, aimed at institutionalizing the mediation ecosystem[15].

In order to fully unlock the potential of mediation in India, several key initiatives are essential. This includes expanding awareness campaigns and providing comprehensive training programs for both mediators and legal professionals. Furthermore, the establishment of strong and well- supported institutional mediation centers is crucial for providing accessible and reliable mediation services.

15. Answer of Minister of Law and Justice to the RAJYA SABHA UNSTARRED QUESTION NO.3792 ANSWERED ON 03.04.2025 regarding "Formation and operational status of MCI"

As regards, the amendments in the Contract Manuals of Coal India Limited reflect its intent to balance fairness with control, streamline dispute management, reduce judicial backlog of litigation, and uphold public interest in government contracting. However, the amendment prioritizes Mediation over Arbitration which is clear from the advisory issued which provides that Arbitration may be avoided as far a possible. Even if it is resorted to then it may be restricted to disputes with a value less than 10 Crores. The notable shift and trust posed by CIL in Mediation over Arbitration is a welcome step. It will go a long way in enhancing the dispute resolution rate in commercial contracts and reduction of pending litigation in Courts, which ultimately will boost the commercial interests of the Company.

# RECENT DEVELOPMENTS IN LAW FOR INCREASING PRODUCTION OF CRITICAL MINERALS

**SAMBHAV JAIN**
B.A.LL.B (Hons.), NLIU-Bhopal
Chief Manager (Legal), CIL

The Indian Economic Survey 2025-26 [1] states that "The global energy transition is no longer solely determined by technology; it is increasingly constrained by who controls critical minerals. Metals like Lithium, cobalt, nickel, copper, and rare earth elements have become the new strategic chokepoints in shaping the contours of a low-carbon economy, influencing energy security, industrial competitiveness, and geopolitical power, as observed through several trade restrictions on export of critical minerals by source countries".

The Indian Economic Survey 2022-23 [2] quotes the experts terming the availability of rare earth elements and critical minerals as the possible next "geopolitical battleground", as crude oil has been over the last fifty years. Some experts say the critical minerals are new oil and gas and some equate the efforts amongst the countries to secure supply of critical minerals as new 'arms race'. All these epithets clearly indicate the importance of critical minerals like lithium, copper, cobalt, nickel, graphite, rare earth elements (REE) and others in the modern economic development.

The Ministry of Mines in a 2023 report on identification of critical minerals[3] defined critical minerals as those minerals that are essential for economic development and national security. The lack of availability of these minerals or concentration of their extraction or processing in a few geographical locations may lead to supply chain vulnerabilities and even disruption of supplies. The future global economy will be underpinned by technologies that depend on minerals such as lithium, graphite, cobalt, titanium and rare earth elements (REE).

The rise of demand for electric cars, wind and solar energy projects and battery storage systems has generated a massive demand for these critical minerals. The demand of critical minerals is increasing not only because electric cars are replacing conventional fuels cars or renewable sources are given more importance over fossil fuels, but also because these new technologies requires more minerals as compared to their conventional counterparts. A report of International Energy Agency (IEA) [4]states that building solar photovoltaic (PV) plants, wind farms and electric vehicles (EVs) generally requires more minerals than their fossil fuel based counterparts. A typical electric car requires six times the mineral inputs of a conventional car, and an onshore wind plant requires nine times more mineral resources than a gas-fired power plant. Since 2010, the average amount of minerals needed for a new unit of power generation capacity has increased by 50% as the share of renewables has risen.

The shift to a clean energy system is set to drive a huge increase in the requirements for these minerals. In a scenario that meets the Paris Agreement goals, as per the estimates of IEA, clean energy technologies' share of total demand will rise significantly over the next two decades to over 40% for copper and rare earth elements, 60-70% for nickel and cobalt, and almost 90% for lithium.

1. Ministry of Finance, Government of India, Economic Survey 2025-26; Report can be accessed at https://www.indiabudget.gov.in/economicsurvey/doc/echapter.pdf
2. Ministry of Finance, Government of India, Economic Survey 2022-23; Report can be accessed at https://www.indiabudget.gov.in/budget2023-24/economicsurvey/doc/echapter.pdf
3. Ministry of Mines, Government of India, Report of the Committee on Identification of Critical Minerals (2023); Report can be accessed at https://mines.gov.in/admin/download/649d4212cceb01688027666.pdf
4. International Energy Agency (IEA), World Energy Outlook Special Report, The Role of Critical Minerals in Clean Energy Transitions(May 2021), https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf

As per Indian Economic Survey 2022-23, domestic Electric Vehicle (EV) market is expected to grow at CAGR of 49% between 2022 to 2030 and is expected to hit 1 crore annual sale by 2030. Consequently demand of ACC (advanced chemistry cell) battery is expected to grow at CAGR of 50%.

Although the lion's share of critical minerals will go into meeting the requirement of energy transition, but critical minerals also play crucial role in other sectors like defence, telecom, agriculture, pharmaceutical, electrification, etc.

**Concentration of sources and processing facilities and vulnerabilities in supply chain**

One of the biggest challenge faced by most countries in meeting their net zero emission targets is securing a resilient supply of critical minerals. China produces more than 60% of world's rare earth elements and 65% of graphite. DR Congo produces more than 70% of cobalt and Indonesia is leader in Nickel production with share of more than 48% of total world output. Since last decade, Australia has emerged as top producer of lithium (around 48% share) followed by Chile (30%) and China (15%).

In the processing and refining capacity of these critical minerals, the dominance of China is unchallenged. China processes almost 98% of world's graphite, more than 60% of lithium, more than 85% of rare earths, around 80% of cobalt and 40% of nickel in the world. There has been limited progress in terms of diversification of production and processing facilities of critical minerals in last decade despite metaphoric rise of demand of these minerals. In fact, in case of many critical minerals, the share of top three producing countries has increased in past three years.

Recent geopolitical events such as Covid-19 pandemic, trade disputes, tariffs, wars, etc. have further complicated global supply chains.

**Increasing requirement in India**

As an emerging global economic powerhouse, India is also taking strides in increasing the pace of exploration and production of critical minerals locally, making efforts to development of local technologies for processing and refining critical minerals and engaging in mineral security partnerships with other countries.

Under the Nationally Determined Contribution (2031-2035)[5], India has committed to reduce Emissions Intensity of its GDP by 47 percent by 2035 from 2005 level.India to achieve 60 percent cumulative electric power installed capacity from non-fossil fuel-based energy resources by 2035. India has been periodically raising its ambition towards mitigating greenhouse gas emissions and after the update in 2022, has now announced its targets for 2031-35 marking a significant step towards the goal of achieving net-zero by 2070.

India is also focussing on manufacturing of key equipments and technologies locally under its Atmanirbhar Bharat vision. The country is giving financial incentives like Production Linked Incentive (PLI) Scheme Advanced Automotive Products, PLI Scheme for Advanced Chemistry Cell (ACC) Battery Storage, Faster Adoption and Manufacturing of (Hybrid &) Electric Vehicles in India (FAME India), etc.

For realisation of these NDC targets as well as mega local manufacturing plans, resilient supply of critical minerals will play a crucial role.

**Efforts made by India**

In June 2023, the Ministry of Mines released a report on identification of critical minerals[6], which for the first time identified 30 minerals critical for the country based on their economic importance and supply risks. The identification of critical minerals for the country is required to empower policymakers, researchers and industry stakeholders in making informed decisions and shaping India's critical mineral strategy.

5. https://www.pib.gov.in/PressReleasePage.aspx?PRID=2245209®=3&lang=1
6. Ministry of Mines, Government of India, Report of the Committee on Identification of Critical Minerals (2023). Report can be accessed at https://mines.gov.in/admin/download/649d4212cceb01688027666.pdf

Traditionally, Government agencies such as Geological Survey of India (GSI) have focused its exploration efforts on bulk mineral commodities like coal, limestone, iron ore and bauxite. Now these agencies have shifted their focus to exploration and enhancing resource mapping of critical and deep seated minerals. During Field Season 2025–26, GSI significantly intensified its efforts towards ensuring mineral security and supporting the clean energy transition. A total of 458 mineral exploration projects were undertaken during the year, including 230 projects focused on critical minerals, of which 92 targeted rare earth elements essential for advanced technologies. Looking ahead to Field Season 2026–27, GSI plans to undertake approximately 500 mineral exploration projects, including around 300 focused on critical and strategic minerals[7]. Recently, the Government has brought a number of reforms to enhance exploration in the country. The amendment in the Mines and Minerals (Development and Regulation) Act (MMDR Act) in 2015 established National Mineral Exploration Trust (NMET) which is playing a crucial rule in enhancing exploration in the country with focus on critical minerals. Further amendment in the MMDR Act in 2021 allowed notified private exploration agencies (NPEAs) and these agencies are receiving support from NMET.

**Recent changes in law with focus on critical minerals**

**The MMDR Amendment Act, 2023**

The MMDR Amendment Act, 2023 which came into effect on 17th August, 2023 focused on critical minerals. The Act introduced a new mineral concession of exploration licence in the Act for deep-seated and critical minerals. Exploration licence is granted through auction and it allows the licencee to undertake reconnaissance and prospecting operations for critical and deep-seated minerals listed in the new Seventh Schedule to the Act. Prior to introduction of exploration licence, the Act only allowed grant of mining lease and composite licence. Both mining lease and composite licence required a minimum level of exploration to be completed before their auction which was usually done by a government agency. The exploration licence fills a gap in this regard. Now, a private exploration agency can start exploration from baseline survey level, explore the block and bring it to the exploration level required for grant of mining lease. The private exploration agency shall get a share in revenue payable by the mining lease holder which will be fixed through auction.

The provision was aimed to attract expert exploration agencies, also known as junior mining companies, having expertise in exploration of minerals, especially of deep seated and critical minerals such as gold, platinum group of minerals, rare earth elements, lithium, etc.Involvement of private agencies in exploration would bring advanced technology, finance and expertise in exploration for deep-seated and critical minerals. Already, 7 exploration licence blocks were successfully auctioned by the Ministry of Mines in 1st tranche of auction in 2025. Now, 11 exploration licence blocks put up in 2nd tranche of auction in February, 2026.

The Amendment Act also removed six critical minerals from list of atomic minerals, viz., minerals of lithium, beryllium, titanium, niobium, tantalum and zirconium and placed them in the schedule of 24 critical and strategic minerals which also includes cadmium, cobalt, graphite, nickel, phosphate, PGM, potash, REE, tin, vanadium, etc. Now, the mining lease and composite licence in respect of these 24 minerals shall be auctioned by the Central Government.

Due to their inclusion in the list of atomic minerals, the exploration and mining of these critical minerals were limited to government entities. Removal of these minerals from the list of atomic minerals opened door to private sector for exploration and mining of these minerals. Since the amendment in the Act in 2023, the Central Government has successfully auctioned 46 blocks of critical minerals.

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7. Press Information Bureau, https://www.pib.gov.in/PressReleasePage.aspx?PRID=2248494®=3&lang=1

For auction of blocks for critical minerals, royalty rate of these minerals should be known to bidders as it is one of the major financial factors to be kept in mind while bidding. In case royalty rate of a mineral is not specifically provided in the Second Schedule to the MMDR Act, the residual provision provides the royalty rate of 12% of Average Sale Price (ASP). This rate is very high in comparison to royalty rate in other countries for these minerals. There was a need to provide a reasonable rate of royalty to encourage more participation in auctions.

Accordingly, in March, 2022 the Government had specified royalty rates for Platinum Group of Metals (PGM) at 4%, Molybdenum at 7.5%, Glauconite and Potash at 2.5%. Then on 12th October, 2023 the Government has specified royalty rates for Lithium at 3%, Niobium at 3% and Rare Earth Elements at 1%. Further, on 1st March, 2024, rate of royalty in respect of 12 critical and strategic minerals, viz., Beryllium, Cadmium, Cobalt, Gallium, Indium, Rhenium, Selenium, Tantalum, Tellurium, Titanium, Tungsten and Vanadium was notified. Again, in 20th November, 2025 royalty rates of minerals Graphite and Zirconium were notified.

**The MMDR Amendment Act, 2025**

Union Cabinet approved setting up of the National Critical Mineral Mission (NCMM) on 29th January, 2025 for a period of 7 years from FY 2024-25 to 2030-31 with a financial outlay of Rs. 16,300 crores and expected investments of Rs. 18,000 crores from PSUs & others. The objectives of the Mission is to secure long-term, sustainable supply of critical minerals and strengthen India's value chains across all stages - exploration, mining to beneficiation, processing, and recovery from end-of-life products.

In order to increase the mining activities and supply of mineral for the industries leading to strengthening the Atmanirbhar Bharat, the MMDR Act was further amended through the MMDR Amendment Act, 2025 which came into effect on 1st September, 2025.

The amendment enhanced the scope and territorial domain of the National Mineral Exploration Trust to enable use of the funds accrued to the Trust within India, including the offshore areas, and outside India for the purposes of exploration and development of mines and minerals. Accordingly, to reflect is enlarged scope, the National Mineral Exploration Trust was re-named as 'National Mineral Exploration and Development Trust'. The amount of payment to the Trust by the lessees was slightly increased from present 2% of the royalty payable to 3% of the royalty payable. The amendment allowed funds of the Trust to be used to carry out the activities envisaged under NCMM.

The amendment enabled inclusion of any new mineral in a mining lease. Any major mineral may also be included in a minor mineral mining lease, subject to the conditions prescribed by the Central Government. For inclusion of minerals, additional amount payable is specified in new eight Schedule to the Act. No additional amount and auction premium is applicable on inclusion of critical and strategic mineral or minerals specified in the Seventh Schedule to the Act to incentivise production of these minerals which are found in small quantity and are difficult to mine and process.

Another amendment that was made in the Act was to allow one-time extension of the area under a mining lease (ML) or composite licence (CL) to include therein a contiguous area on additional payment prescribed by the Central Government. In case of ML, the contiguous area shall not exceed 10% and in case of CL, the contiguous area shall not exceed 30% of the existing area under the lease or licence. This will promote optimal mining of deep-seated minerals, which are locked up in contiguous areas and may not be economically viable to be extracted under a separate lease or licence.

In order to implement the amendment made in the Act, the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 was notified on 30th March, 2026.

**Coking Coal added to the list of critical and strategic minerals**

Considering the strategic role of coking coal in ensuring mineral security and meeting the requirements of the domestic steel sector, it was added to the list of critical and strategic minerals in Part D of the First Schedule of the MMDR Act through notification dated 27th January, 2026. Now, there are total 25 minerals in the list of critical and strategic minerals.

Mining projects of critical minerals gets benefit in the process of obtaining forest and environment clearances. Ministry of Environment, Forest and Climate Change (MoEFCC) has amended the Van (SanrakshanEvamSamvardhan) Rules, 2023 on 31st August, 2025 specifying that compensatory afforestation (CA) shall be allowed on degraded forest land twice in forest area being diverted for mining of critical and strategic minerals. This addressed delays in identification of land for undertaking CA, leading to faster grant of forest clearance and enables early commencement of production of these minerals.

Similarly, considering the vital role of critical mineral towards meeting the 'Net Zero commitment of India by 2070', the MoEFCC through office memorandum dated 8th September, 2025allowed exemption of mining projects of critical and strategic minerals from public consultation under the Environment Impact Assessment (EIA), 2006 notification for the purpose of grant of environment clearance. This will expedite operationalization of mines of critical and strategic minerals.

# SUPREME COURT ON APPLICATION OF AMENDED PROMOTION RULES TO PRE-AMENDED VACANCIES

**PRIYANKA TIWARI**
BA.LL.B (Hons.), NLIU-BHOPAL
Chief Manager (Legal), WCL HQ, Nagpur

## INTRODUCTION

Promotion is understood to mean advancement in rank, grade or both. It is a crucial tool in ensuring administrative efficiency by motivating employees, providing incentives for better performance, and ensuring that capable individuals fill higher-level positions. Promotion bridges the gap between individual career aspirations and organizational goals, leading to improved productivity and organizational continuity.

Over the years , Courts have adjudicated and tried to balance the interests of employers and employees . In the parlance of promotion policy matters, disputes often arise when rules governing promotion eligibility are amended, particularly regarding retrospective or prospective application, whether such amendments apply to pre-existing vacancies, and whether employees have a “right” to promotion.

This article focuses on whether amended promotion rules can be retrospectively applied, especially in cases where vacancies arose prior to such amendment. Further, whether employees have a vested right to be considered under the earlier rules? These key issues were the key points in the leading Supreme Court judgment of the year 2011 in *Deepak Agarwal And Another v. State Of Uttar Pradesh And Others* [1].

An effort has been made to touch upon briefly the judgments of Supreme Court of India in *Y.V Rangaiah*[2] *and Dr.K. Ramulu*[3], and move on to the decision in Deepak Agarwal's case. An endeavour has been made to capture the journey as to how the courts have moved forward post -Deepak Agarwal judgment, and the current legal position as enunciated by the Apex Court in the 2022 judgment of *State of Himachal Pradesh v. Raj Kumar*[4], wherein the ratio in Deepak Agarwal was fortified, and the judgment in Y.V. Rangaiah was overruled.

**"Old Rules Will Be Applicable To Vacancies Arising Prior To Amendments In Rules": Y.V.Rangaiah v. J. Sreenivasa Rao[5]**

The issue in Rangaiah 's case revolved around the interpretation of a service rule according to which, a panel for the eligible candidates was required to be prepared every year in the month of September. Promotion orders were then issued. However, no panel had been prepared for the year 1976 pending amendment of rules. Subsequently, after the amendment, the Petitioners became ineligible to be considered for promotion.

The question that arose in Rangaiah's case related to the mandatory obligation under the old Rules to prepare an approved list of candidates and also the number of persons to be placed in the list as per the vacancies available. It is in this context that the Court held that the vacancies would be governed by the old rules.

1. (2011) 6 SCC 725
2. (1983) 3 SCC 284
3. 1997 (3) SCC 59
4. 2022 SCC OnLine SC 68
5. (1983) 3 SCC 284

## Dr. K. Ramulu v. Dr. S. Suryaprakash Rao [6]

In the instant case , the State Government did not fill up any of the pending vacancy under un-amended rules. The question here was whether the omission on the part of the Government in preparing and finalising the panel for promotion of the Assistant Veterinary Surgeons to the post of Assistant Director was vitiated by any inaction on the part of the Government, and whether it was in violation of the relevant service rules.

Aggrieved by the State's alleged inaction, respondents approached the Administrative Tribunal whereby the State Government was directed to prepare and operate panel for promotion in accordance with un-amended/repealed rules. The appellants challenged this order of the Administrative.

Before the Supreme Court, it was contended on behalf of the appellant that the respondents had no right to be considered for promotion under the un-amended rule. Even assuming he had such a right to appointment to the post, it was argued that the Government has the power to revise its policy of appointment and such appointment is to be made in accordance with the revised policy.

The Supreme Court, while allowing the appeal, distinguished this case from Rangaiah's as the Government therein had merely amended the rules and applied it without taking any conscious decision not to fill up the existing vacancies, which were pending amendment of the rules on the date when the new rules came into force.

It was held that the first respondent had not acquired any vested right for being considered for promotion in accordance with the repealed rules, in view of the policy decision taken by the Government, so as to amend the rules. While observing that the Government's decision of not preparing the panel should be backed by valid and relevant considerations, and should not be arbitrary. As per relevant service rule, all eligible candidates should be considered, in accordance with such rules, followed by finalization and operation of a panel , so as to give an opportunity to the approved candidates to scale higher echelons of service . However, here, the proviso to the relevant rules provided the State Government, the power not to prepare the panel and to consider the cases though the vacancies were available, pending amendment of the Rules or recasting the Rules afresh. The Government had taken conscious decision not to fill up any of the pending vacancy until the process was completed which they had started stating administrative grounds. The Supreme Court found this decision to be justifiable , and allowed the appeal.

**Deepak Agarwal v. State of U.P. [7]**

The judgment in *Deepak Agarwal v. State of U.P.* is a landmark ruling by the Supreme Court of India that clarifies the legal position on promotion eligibility when service rules are amended. The issues in this case revolved around whether the amendments could retrospectively affect vacancies that arose before the changes and whether the appellants had a vested right to be considered under the old rules.

The appellants, Deepak Agarwal and Jogendra Singh, Technical Officers and Statistical Officers, challenged the State Government's amendments to the U.P. Excise Group `A' Service Rules, 1983 (referred as "1983 Rules") , which rendered them ineligible for promotion to the post of Deputy Excise Commissioner (DEC). Initially, under Rule 5(2) only Assistant Excise Commissioners and Technical Officers were eligible for promotion. Subsequently, by amendment of the 1983 Rules in June, 1998, Statistical Officers were also made eligible for promotion to the post of DEC.

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6. (1983) 3 SCC 284
7. 1997 (3) SCC 59

The 1983 Rules were amended again, in May ,1999 by way of a Notification, by which the posts of Technical Officers and Statistical Officers were excluded from the feeder cadre for promotion to the post of DEC. This amendment came just two days before the Department Promotion Committee (DPC) was scheduled to meet. As a consequence of the amendment, the Department Promotion Committee did not consider the appellants for promotion. The Appellants case was that they were entitled to be considered for the vacancies under Rule 5(2) that arose prior to the amendment of rules. On the other hand, the justification given for the aforesaid amendment was that the State Government had taken a "conscious decision" to exclude the Technical Officers and Statistical Officers as they were not fit for the post of DEC because of their peculiar qualifications, duties, responsibilities and work experience. However, to compensate for loss of promotion, the pay scale of these two posts was upgraded to the level of DEC .

Few days after the amendment of the rules, promotions were granted to 10 persons ,including respondents , to the post of DEC. Aggrieved by this, the appellants filed a writ petition before the Allahabad High Court challenging the action of State Government in issuing promotion orders and the amendment made to the service rules in May 1999. It was their case that they should also be considered for the posts of DEC. The High Court dismissed their petition.

**Summary of Contentions**

On behalf of the appellants, it was contended that the right to be considered for promotion is a valuable right and the issue in the instant case fell within the ambit of the judgment of Apex Court in the case of *Y.V. Rangaiah v. J. Sreenivasa Rao ;* hence, the Appellants were entitled to be considered for promotion against the vacancies that occurred prior to the amendment. It was also contended that the rule of prospective application requiring the pre-amendment vacancies to be considered under the un-amended rule is firmly embedded in the law. Further, as per applicable service rules , the Government had to determine the number of vacancies to be filled during the course of the year. Although, the normal rule of prospectively will apply, a subsidiary rule has come into existence since 1997 that if the Government takes a conscious decision not to apply the rule to pre-amendment vacancies under the old rules, it has the power to do so. On facts , it was submitted that there was no legally binding conscious decision taken in this case. It was argued, that "conscious decision" has to satisfy the test of reasonableness and relevancy of criteria. However, in the present case, there was no evidence of a conscious decision being taken by the State. The criteria laid down in the case of Dr. K. Ramulu and Anr. v. Dr. S. Suryaprakash Rao and Ors., had not been satisfied. The attempt by the State without amendment in this rule to introduce comparative merit on irrelevant considerations to exclude the Appellants from the feeder cadre was ex facie illegal and arbitrary.

On the other hand, the respondent contended that the amendment in the rules was based on a conscious decision taken by the Government upon consideration of the representations of both the sides. The ratio in Y.V.Rangaiah's case will not be applicable in the facts of this case. The right of the candidate is to be considered under the Rules in force on the date the consideration takes place. The Officers have only a right of consideration under the Rules in force. In this case, there was no acquired or vested right of the Appellants which has been taken away. The issue herein is squarely covered by the judgment in Dr. K. Ramulu's case.

**The Judgment**

The Supreme Court affirmed that the State Government's amendment to exclude Technical Officers and Statistical Officers from the feeder cadre for promotion to DEC was valid.

The Hon'ble Court reasoned that the promotion considerations are governed by the rules in force at the time of consideration, not necessarily at the time vacancies arose. Consequently, since the amendment was enacted before the Departmental Promotion Committee (DPC) reviewed the vacancies, the appellants were rightfully excluded from consideration under the amended rules.

The Apex Court while examining the issues in the context of the Y.V. Rangaiah judgment, was of the view that the judgment in Y.V. Rangaiah case would not be applicable in the facts and circumstances of this case. It was observed that in that case, there was a statutory duty cast upon the State, and the exercise of preparing panel of eligible candidates was required to be conducted each year and only thereafter, promotion orders were to be issued. However, no panel had been prepared for the year 1976. Subsequently, the Rule was amended, due to which the Petitioners therein became ineligible to be considered for promotion. It was observed that it was in this factual matrix that the amendment was not applicable to the vacancies which had arisen prior to the amendment. Hence, in Rangaiah, the Apex Court , held that the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not the amended Rules.

The Supreme Court distinguished the instant case from *Y.V. Ramaiah* by noting that , there was no statutory duty cast upon the Respondents to either prepare a year wise panel of the eligible candidates or of the selected candidates for promotion. In fact, the proviso to Rule 2 enabled the State to keep any post unfilled. Therefore, clearly there was no statutory duty which the State could be mandated to perform under the applicable Rules. The requirement , to identify the vacancies in a year or to take a decision as to how many posts are to be filled under relevant service rule ,cannot be equated with not issuing promotion orders to the candidates duly selected for promotion. It was held that the Appellants had not acquired any right to be considered for promotion. Therefore, the contention that the pre-amendment vacancies, had to be filled under the un-amended Rules was rejected by the Supreme Court.

The Court iterated the settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no Rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old Rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the Appellants has been taken away by the amendment.

It was held that the matter was squarely covered by the ratio of the judgment of this in Dr. K. Ramulu. In the aforesaid case, Supreme Court held that Rangaiah case would not be applicable in the facts and circumstances of this case. As here, the justification given by the State Government for the amendment in rules was that they had taken a "conscious decision" to exclude the Technical Officers and Statistical Officers as they were not fit for the post of DEC because of their peculiar qualifications, duties, responsibilities and work experience. It was observed that for reasons germane to the decision, the Government was entitled to take a decision not to fill up the existing vacancies as on the relevant date. It was also held that when the Government takes a conscious decision and amends the rules, the promotion have to be made in accordance with the Rules prevalent at the time when the consideration takes place.

**Current Legal Position: State of Himachal Pradesh v. Raj Kumar [8]**

A number of decisions have followed the Y.V. Rangaiah's judgment, on the question of whether appointments to the public posts that fell vacant prior to the amendment of the Rules would be governed by the old Rules or the new Rules. However, recently the Apex Court , in a three-judge bench decision in the case of *State of Himachal Pradesh v. Raj Kumar,* decided on 20.05.2022, has overruled the Rangaiah judgment.

8. 2022 SCC OnLine SC 68

The issue before the Hon'ble Supreme Court in case of *Raj Kumar* was whether the vacancies which arose prior to the promulgation of New Rules were to be filled only as per the un-amended Rules and not as per the New Rules; whether the High Court was correct in allowing the writ petition on the ground that the issue was covered by the decision of Supreme Court in *Y.V. Rangaiah v. J. Sreenivasa Rao.*

While referring to Deepak Agarwal 's judgment, the court observed as under:

> ***"This is a very important case which recognises many points of distinction. (a) The Court found that there is no statutory duty cast on the Government to prepare panels as in the case of Rangaiah, (b) a candidate has a right to be consiadered only as per the existing rules, i.e., "the rule in force", (c) the rule applicable is the rule in force as on the date of consideration, (d) the principle in Rangaiah has no universal application, (e) for reasons germane to its decision, the Government is entitled to take a conscious decision about the filling of the vacancies and the rules applicable. This decision made deep inroads into the principle laid down in Rangaiah's case."***

The Court examined fifteen cases placed before it that had distinguished Rangaiah and noted that the wide principle enunciated in the *Rangaiah judgment* is substantially watered-down. Almost all the decisions that distinguished *Rangaiah* held that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in Rangaiah is confined to the facts of that case. It is relevant to quote here the extract to capture the concluding view of the Apex Court :

> ***"The consistent findings in these fifteen decisions that Rangaiah's case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in Rangaiah is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;***
>
> ***(a) The statement in Y.V. Rangaiah v. J. Sreenivasa Rao that, "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules", does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.***
>
> ***(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services."***

**Conclusion**

The Supreme Court's decision in *Deepak Agarwal And Another v. State Of Uttar Pradesh And Others* has affirmed that promotions are governed by the rules in force at the time of consideration. Further, the Hon'ble Supreme Court has reinforced the State's authority to amend administrative procedures to better fit contemporary requirements and exigencies. While this provides necessary flexibility to the administration, it also highlights the importance for government bodies to manage rule changes transparently and equitably to maintain employee morale and trust. The judgment has served as a crucial reference for future cases involving service rule amendments and employee promotions, balancing administrative efficiency with individual rights. This is evident from the 2022 judgment of Apex Court in State of HP V. Raj Kumar , which in detail examined subsequent judgments post Deepak Agarwal , and concluded that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of the law that existed on the date when they arose, instead the right is to be considered for promotion in accordance with rules as they exist when the exercise is carried out for promotion.

# JUDICIAL ACTIVISM AND ITS IMPACT ON COAL INDUSTRY

**MEDHA HARDAS**
B.Sc, LL.M, PGDLS
General Manager (Legal), WCL HQ, Nagpur

Judicial activism in India has emerged as a significant force challenging the coal industry, driven primarily by environmental concerns, public health impacts, and the need for sustainable development. Through Public Interest Litigation (PIL) and proactive interpretation of Article 21 (Right to Life), the Supreme Court and the National Green Tribunal (NGT) have frequently intervened to regulate, restrict, or halt mining activities, shifting the focus towards environmental accountability

The coal industries have been associated with significant fiscal and developmental challenges.

The High Courts and Supreme Court heard the different types of litigations in respect of the activities of the Coal industries and ordered the detailed directions for the records, and separated the issue of the legal validity of the action taken and method of working and was pleased to give its decisions, consequential orders, based on the policy, Tender matters and contracts too. It looks at the constitutional changes in the law related to equality, arbitrariness, and the public trust, examines the coal decisions in comparison with the judgements passed in the recent past 15 years.

All the disputes, fights against any kind of state action that is arbitrary, and it also require a rational link between the classification and the purpose as well as a fair and transparent process of distribution of public benefits or scarce resources.

The courts in the coal litigation did the same exercise. It did not constitutionalize actions. It invalidated a system and then channelled the consequences consistent with the statutory design and administrative feasibility.

It is rightly said in the case of **(Lord Scarman in Nottinghamshire County Council v Secretary of State for the Environment [1986] AC 240, 251)**

**'Judicial review'** is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power while exercising powers of judicial review, the Court is not concerned with the ultimate decision but the decision-making process."

The Court can investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or conversely, have refused to take into account or neglected to take into account matter which they ought to take into account.

The proportionality doctrine is being seen as a surer basis to test legislative and executive acts, primarily in cases involving violation of fundamental rights.

In K. S. Puttaswamy (Aadhaar 5-J) v. Union of India, (2019) 1 SCC 1, 313 at p.152) Court rightly said as-

**Proportionality and its four stages**

**Legitimate goal stage:** A measure restricting a right must serve a legitimate goal.

**Suitability or rational connection stage:** The measure must be a suitable means of furthering the identified legitimate goal.

**Necessity stage:** There must not be any less restrictive but equally effective alternative.

**Balancing stage:** The measure must not have a disproportionate impact on the right holder.

Any goal that is legitimate is accepted.

Even a marginal contribution to achievement of the goal suffices to meet the suitability test. Rarely, if ever, an alternative measure is found which is equally effective and does not suffer from some disadvantage Most of the important issues are pushed into the 'balancing stage' Objective must be of sufficient importance to warrant overriding a constitutionally protected right or freedom.

The means must impair the right 'as little as possible'.

Effects of the measure must be proportionate to the sufficiently important objective.

No requirement that less restrictive measure is equally effective.

Thus, more issues are dealt with in earlier stages of the test.

In **K. S. Puttaswamy (Aadhaar 5-J) (supra), at p.155 and 158, Sikri J** endorses the following approach to the necessity stage,:

1. Identify a range of possible alternatives to the measure employed by the Government.

2. Determine the effectiveness of these measures individually - each alternative must realise the objective in a 'real and substantial manner'.

3. Determine impact of the respective measures on the right at stake.

4. Determine whether there is a 'preferable' alternative.

**Examples of the various Court decisions – Validating Statutes.**

Law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution.

**Economic cases decisions (ex. Gratuity cases, Applicability of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 )**

Laws relating to economic activities should be viewed with greater latitude than laws touching civil rights. In case of legislation dealing with economic matters, where, having regard to the nature of the demands/claims required to be dealt with, greater play in the joints has to be allowed to the legislature.

Every legislation, particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore, it cannot provide for all possible situations or anticipate all possible abuses. The Court must therefore, adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions.

**Tender cases**

The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that, it is intended to prevent arbitrariness, irrationality, unreasonableness, and bias and mala fides. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.

For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1 The question is should the judicial process be resorted to for downplaying the freedom which a tendering party has, merely because it is a State or a public authority, making the said process even more cumbersome. The objective is not to make the Court an appellate authority for scrutinising as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them.

There is a general perception that Hon'ble Courts will intervene, scrutinize the terms & conditions, interpret the tender, and review bidders' eligibility or ineligibility. This article highlights the jurisdiction of public authorities and Hon'ble Courts in tender matters, as elaborated in various judgments by the Hon'ble Supreme Court of India.

**1. Caretel Infotech Ltd. Vs Hindustan Petroleum Corporation Limited :** 2019 (6) SCALE 70 : 2019 Legal Eagle (SC) 426
The Court observed, "Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under Article 226 of the Constitution of India. Given that Government and public sector enterprises venture into economic activities, the Court found it appropriate to build in certain checks and balances of fairness in procedure. However, the window for scrutiny of tenders in writ proceedings under Article 226 has been opened too wide, resulting in almost every tender, big or small, being challenged. This affects the efficacy of commercial activities of public sectors, making the awarding of contracts a cumbersome exercise with long litigation processes. The private sector, often competing in the same field, enjoys promptness and efficiency levels that make public sector tenders non-competitive. This outcome could hardly have been the intended objective."

**In the case of Airport Authority of India Vs Centre for Aviation Policy, Safety & Research (CAPSR):** 2022 SCC online SC 1334 : 2022 Legal Eagle (SC) 1130

The Court noted, "Tender terms are within the domain of the tenderer and not open to judicial scrutiny unless arbitrary, discriminatory, or mala fide. The government must have a free hand in setting terms."
In summary, the following principles can be drawn from the decisions of the **Hon'ble Supreme Court:**

1. **The tender inviting authority is free to set eligibility criteria and conditions unless they are arbitrary, discriminatory, or mala fide.**
2. **The author of the tender document is best suited to understand and interpret its requirements.**
3. **If two interpretations are possible, the author's interpretation must be accepted.**
4. **If the tender authority follows healthy standards and norms, court interference is limited.**

**Environmental matters**

The various activities of the coal mining industries are of environmental concern. Hence it is necessary that every mine managers keep check list giving information on environmental controls, as envisaged in various mining conditions of the Government of India and Environment management plan. Frequent review of this information may enable identification of the site-specific environmental issues at the mine. Poor environmental performance may accelerate the demands for mere stringent regulatory conditions. Therefore, the task is to make continuous efforts towards environmental improvement by each mine authority.

The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. **In recent past environmental governance that is founded on the rule of law emerges from the values of our Constitution.** The health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution.

**Role of NGT:** The National Green Tribunal has been proactive in banning illegal mining, setting strict standards for waste management, and fining polluting entities.

Mainly in the matters related to excavation of coal and transportation work of the coal industry. This Court through its various decisions has already given new dimensions, meaning and purpose to many of the fundamental rights especially the Right to Freedom and Liberty and Right to Life, which lead to the increase in the PIL against the Coal Company and issuance of the directions to the local authorities and statutory authorities too.

**PIL :** PIL is a tool to safeguard the socially disadvantaged communities who cannot represent themselves and claim justice in a court of law. People who are not directly affected can now file and fight cases on behalf of these people, the only condition being that the issue should pertain to the general welfare of the people and should not be just a private interest of the petitioner.

**Public Interest Litigation** refers to such legal action, which is initiated in a court of law in order to enforce public interest or general interest in which the common people have some interest, pecuniary or general by which their legal right or liability is affected. Many occasions it is observed that, the PILs are filed for Publicity. It is seen that, recent years have seen a flood of PILs being filed by law students, lawyers, and other stakeholders. With the increasing number of PILs filed, a trend has emerged of filing frivolous petitions which is contrary to the soul of the concept of PILs.

Public Interest Litigation is an important component of judicial activism. It strengthens the judiciary to come to the rescue of its people. Hence, it is pertinent that the concept is widely used and is not abused to make personal gains. Recent years have seen examples of such abuse and exploitation of the PIL, which should serve as a deterrent to prevent similar incidents in the future. If used in the correct manner and for the right causes, PIL can prove to be an asset to the people.

The cost of litigation being quite high, when litigant, moves to court often misuses their rights; the active action by the judiciary is very much needed, though some amount of judicial restraint should be exercised from time to time to prevent vexatious and frivolous cases in order to save the financial impact, burden on the coal company.

In such cases sometimes judicial activism has negative impact on the coal industries. The judiciary often mixes personal bias, External influences and undue misuse of the powers with the law. The theory of separation of powers between the three arms of the State goes for a toss with judicial activism. Many times, the judiciary, in the name of activism, interferes in an administrative domain, and ventures into judicial adventurism/overreach. In many cases, no fundamental rights of any group are involved.

While aiming for judicial activism, proactive judicial interventions have often resulted in significant negative impacts on the coal industry, including operational shutdowns, massive economic losses, and investment uncertainty.

***''Extreme justice is often injustice.''***

***-- Jean Racin***


References:

· Thoughts by Judiciary

· Important Judicial Decisions

# NATURAL RESOURCES, PUBLIC TRUST, AND INSOLVENCY LAW: RE-EXAMINING THE CLASSIFICATION OF NATURAL RESOURCE SUPPLIERS UNDER THE IBC

**SREERAM R**
HOD (Legal), WCL, Nagpur

## I. INTRODUCTION

The **Insolvency and Bankruptcy Code, 2016 (IBC)** represents a paradigm shift in India's approach to corporate insolvency by prioritizing resolution, value maximization and creditor- driven decision-making[1]. The salient feature of this framework is the statutory distinction between ***financial creditorsand operational creditors,*** a distinction that determines control over the Corporate Insolvency Resolution Process (CIRP) and the ultimate distribution of insolvency proceeds.

Inspite of its success in ordinary commercial insolvency processes, this bifurcation has proved inadequate for claims arising from transaction of and relating to natural resources. Notably, natural resources such as spectrum, coal, and minerals are not mere goods or services[2]. Indian Constitutional jurisprudence consistently recognizes them as public assets held by the State in trust for the people. Yet, under the IBC, Public Sector Undertakings (PSUs) dealing with these resources are relegated to the status of operational creditors, receiving minimal protection and virtually no say in insolvency proceedings[3].

This article argues that natural resource suppliers, particularly State instrumentalities falling under **Article 12 of the Constitution**[4] of India must be treated as financial creditors, or at minimum accorded equivalent rights, under the IBC. Such reclassification is necessary to align insolvency law with constitutional principles, public trust doctrine, and distributive justice.

## II. NATURAL RESOURCES AND THE PUBLIC TRUST DOCTRINE

The constitutional status of natural resources has been authoritatively settled by the Supreme Court. In Centre for Public Interest Litigation v. Union of India, popularly known as the 2G Spectrum Case, the Court held that “spectrum” is a scarce natural resource vested in the State as a trustee on behalf of the people. The Court emphasized that allocation of such resources must satisfy constitutional mandates of equality, transparency, and public interest[5].

This reasoning was extended to coal in Manohar Lal Sharma v. Principal Secretary, where the Supreme Court invalidated discretionary coal block allocations. The Court categorically held that coal is a natural resource whose distribution must sub serve the common good, reinforcing that the State's role is not that of an owner, but of a trustee[6].

1. Insolvency and Bankruptcy Code, No. 31of 2016, §5(8), INDIA CODE (2016)
2. Centre for Pub. Int. Litig. v. Union of India, (2012) 3 SCC1(India)
3. Swiss Ribbons (P) Ltd. v. Union of India,(2019) 4 SCC17
4. INDIA CONST. Art. 12.
5. Centre for Pub. Int. Litig. v. Union of India, (2012) 3 SCC1(India)
6. Manohar Lal Sharma v. Principal Sec'y, (2014) 9 SCC516 (India)

Lastly, in **M.C. Mehta v. Kamal Nath**[7], the apex court, while propounding the public trust doctrine, held that certain natural resources are so closely connected to public welfare that the State must hold them as a trustee and prevent their use in a manner detrimental to larger public interest.

Together, these decisions establish that natural resources are not commodities subject to ordinary market logic. Any legal regime governing their allocation, use, or monetization must account for their constitutional character, and the "Public Trust" Doctrine.

### III. THE IBC FRAMEWORK: FINANCIAL VS OPERATIONAL CREDITORS

Under **Section 5(8) of the IBC**[8], a Financial creditor is one to whom a financial debt is owed, typically involving disbursement against the consideration for the time value of money. Financial creditors form the Committee of Creditors (CoC), exercise decisive voting power, and control the resolution process[9]. Operational creditors, defined under **Section 5(20)**[10] include suppliers of goods and services. Their role in CIRP is marginal, wherein they have no voting rights in the CoC and often receive negligible recoveries, especially in liquidation.

The Supreme Court has justified this distinction on the premise that financial creditors are better placed to assess viability and restructure debt[11]. However, this justification assumes a purely commercial eco system, an assumption that fails when the creditor is a PSU supplying a constitutionally protected natural resource.

The decision in ***Union of India v.Vijaykumar V.Iyer,*** [12] strongly affirmed that rights to the use of spectrum territory were a natural resource constitute financeable intangible assets that are commonly relied upon as collateral. Consequently, this challenges the status of spectrum dues as being operational debt[11]. Where natural resources are required to be accessed by the debtor as sustaining his going concern status, this allows for deemed payment to be seen as a form of accommodation rather than as a trade creditor. Therefore, the basis of this decision can be seen to indicate that natural resource suppliers hold a status analogous to holding rights as financial creditors.

## IV. THE CONSTITUTIONAL INCONGRUITY IN TREATING NATURAL RESOURCE SUPPLIERS AS OPERATIONAL CREDITORS

When PSUs dealing with natural resources are treated as operational creditors, a constitutional anomaly emerges.

At the foremost, these PSUs fall within the definition of **"State"** under **Article 12 of the Constitution** [13]**.** They do not act as ordinary market players but as trustees of public property. Dues owed to them are not merely contractual payments; they represent compensation for the exploitation of public assets. The amount due to them has an impact on Public exchequer as well.

7. M.C. Mehta v. Kamal Nath, (1997)1 SCC388
8. Insolvency and Bankruptcy Code ,No.31of 2016,§5(8),INDIACODE(2016)
9. Swiss Ribbons (P) Ltd. v. Union of India,(2019)4 SCC17
10. Insolvency and Bankruptcy Code, 2016, No.31 of 2016, §5(20),India Code.
11. Swiss, Ribbons Pvt. Ltd. v. Union of India,(2019) 4 SCC17.
12. Union of India v.Vijay kumar V. Iyer, 2021 SCC OnLine NCL AT 355
13. INDIA CONST. Art. 12

*Secondly,* relegating such entities to operational creditor status undermines the public trust doctrine. Insolvency proceedings routinely permit deep haircuts of operational debt[14]. When such haircuts apply to natural resource dues, the result is an indirect transfer of public wealth to private financial creditors, a consequence constitutionally impermissible considering Articles 38 [15]and 39(b) [16.]

*Thirdly,* the IBC's creditor hierarchy paradoxically privileges private banks, purely because they are financial creditors, over State instrumentalities entrusted with public resources. This inversion of priorities is normatively indefensible.

## V. FUNCTIONAL REALITY:NATURAL RESOURCE SUPPLY AS FINANCIAL ACCOMMODATION

Beyond constitutional doctrine, the economic substance of natural resource supply supports its classification as financial debt.

Natural resource supply often involves deferred payments, long-term usage rights, and tolerance of arrears. In sectors such as telecom, coal, and mining, continued access to the resource is essential for the corporate debtor's existence as a going concern [17]. Allowing such access despite non-payment effectively amount to financial accommodation.

In insolvency jurisprudence concerning spectrum, tribunals have acknowledged that spectrum rights are intangible assets, financeable and routinely relied upon by lenders for extending credit. If natural resources can form the basis of financial lending, the consideration for their use cannot logically be treated as mere operational dues.

Thus, applying the IBC's own substance-over-form logic, natural resource suppliers satisfy the functional characteristics of financial creditors, even if the transaction is not styled as a loan.

## VI. DISADVANTAGES FACED BY NATURAL RESOURCE PSUS AS OPERATIONAL CREDITORS

The current frame work imposes concreted is advantages on PSUs dealing with natural resources:

1. **Exclusion from the Committee of Creditors,** despite their claims having systemic public impact.
2. **Severe haircuts or extinguishment of dues,** resulting in loss to the public exchequer.
3. **Lack of influence over resolution plans,** which may prioritise short-term recovery for banks over long-term public interest.

This creates a perverse outcome where private financial creditors are fully protected; while State entities entrusted with public wealth are left remediless.

14. Swiss Ribbons Pvt. Ltd. v. Union of India,(2019) 4 SCC17.
15. INDIA CONST. Art. 38
16. INDIA CONST. Art. 39 (b)
17. Centre for Pub. Int. Litig. v. Union of India,(2012) 3 SCC 1

## VII. CONSTITUTIONALITY OF THE IBC AND THE NEED FOR HARMONIOUS INTERPRETATION

The IBC must be interpreted in a manner consistent with constitutional principles. While the Code is constitutionally valid, its application cannot negate settled doctrines such as public trust.

A harmonious interpretation requires recognizing that not all operational creditors are similarly situated. Where the operational creditor is a PSU under Article 12[18], dealing with natural resources, equal treatment with ordinary suppliers violates the equality principle under **Article 14 [19].**

Thus, reclassification or differential treatment is not only permissible but constitutionally mandated.

## VIII. THE CASE FOR LEGISLATIVE AND DOCTRINAL REFORM

To correct this imbalance, the law must evolve in one or more of the following ways:

1. **Judicial Interpretation:** Courts may purposively interpret "financial debt" to include dues arising from natural resource usage, recognizing their economic and constitutional substance.
2. **Statutory Amendment:** The IBC may introduce a special category of creditors-public resource PSU creditors-granting CoC participation and priority akin to financial creditors.
3. **Conditional CoC Inclusion:** Where the creditor is a PSU under Article 12 dealing with natural resources, operational creditor disadvantages should not apply.

Such reforms would ensure that the advantages currently accruing to financial creditors also extend to public sector entities safeguarding national resources

## CONCLUSION

The Supreme Court has repeatedly underscored the constitutional significance of natural resources and the State's trusteeship over them. Yet, insolvency law currently treats the consideration for these resources as ordinary operational debt, permitting erosion of public wealth through private insolvency processes.

This doctrinal disconnect must be addressed. Natural resource suppliers are not ordinary operational creditors. They are custodians of public trustassets, and insolvency law must reflect this reality.

Reclassifying them as financial creditors-or conferring equivalent rights-is not a concession but a constitutional necessity. Without such reform, the IBC risks becoming an instrument that subordinates public interest to private finance, a result neither intended by Parliament nor permissible under the Constitution.

**...END OF THE ARTICLES...**

18. INDIA CONST. Art. 12
19. INDIA CONST. Art. 14

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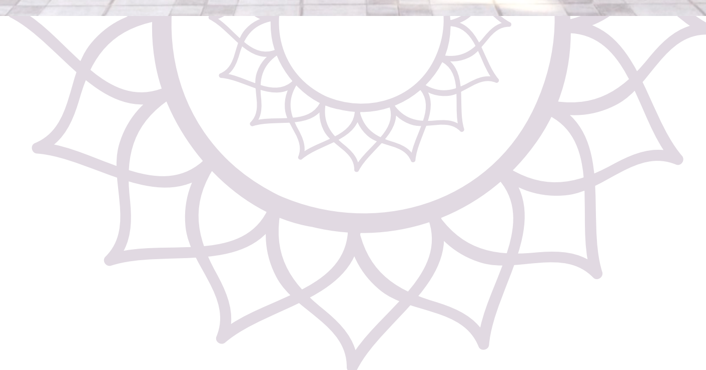
*Western Coalfields Limited, Nagpur*



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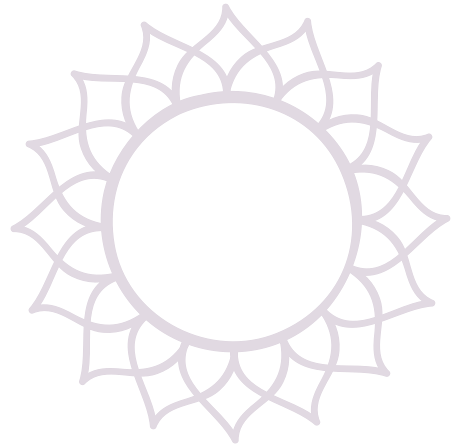
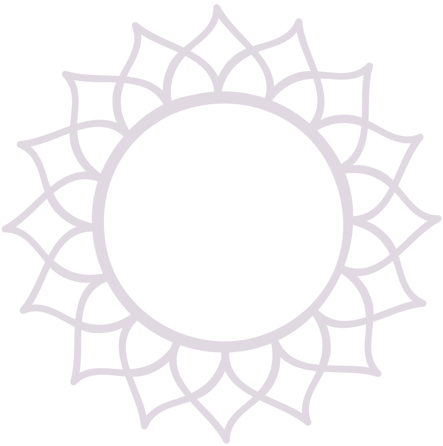

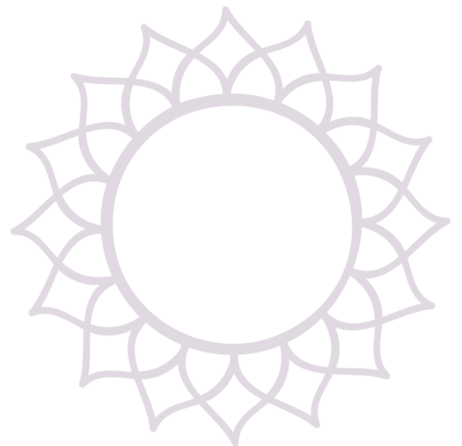

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