Vol. 1, Issue 1, August 2024 Subject-Law ISSN 3049-3099 (Print)

VIPS JOURNAL OF LAW & DEVELOPMENT

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES-TC (VIPS-TC)
Affiliated to GGSIP University, Delhi & Approved by Bar Council of India & AICTE
Grade 'A++' Accredited Institution by NAAC &
Recognized by UGC under Section 2 (f) & NBA Accredited for MCA Programme
ISO 9001:2015 Certified Institution

About Vivekananda Institute of Professional Studies – TC (VIPS-TC)

Vivekananda Institute of Professional Studies - TC (VIPS-TC) was established in the year 2000. Even as a sapling, its roots were firm, for they were energized by Swamiji's teachings. Today, VIPS – TC has progressed and is nestling sixteen courses under seven different Schools. It continues to stand with determination, moral sight and strength of mind to create capable and ethical human beings with infinite power, infinite knowledge and indomitable positive energy. Under the aegis of VIPS – TC, Vivekananda School of Law and Legal Studies (VSLLS) is committed to realizing the words of Swami Vivekananda: "Man Making, Character Building and Nation Building" and is well known for its robust efforts in legal education. Research is integral to academics as it forms the foundation for knowledge creation and intellectual growth. It enables students, scholars, and professionals to explore new concepts, test theories, and contribute to the existing body of knowledge in their respective fields. VSLLS works towards development oriented research in the Legal domain.

About the VIPS Journal of Law & Development

VIPS Journal of Law & Development is an annual double blinded peer reviewed journal accepting submissions in English language. The inception year of the Journal is 2024 and it is further envisioned to promote global development of Law as it provides a platform for scholarly research dedicated to exploring the intersection of legal frameworks and socio-legal development with an inter disciplinary approach. The research articles are selected for publication after a rigorous double blind review by subject experts. The mode of citation for the journal is VIPS VSLLS VOL I VJLD (2024). As a policy of the Journal the contributing authors are regularly updated about the status of their submission.

Table of Contents

Title of the Paper / Author	Page No.
From State Control to Market Forces: Reformation of Indian Coal Sector *Dr. Manoj Kumar Singh & Dr. Priya Bhatnagar*	1
Global Economic Interdependence: Evaluating the UNCITRAL Model Law and Adaptive Frameworks for Cross Border Bankruptcy *Dr. Parineeta Goswami & Arushi Goswami*	11
Tokenization of Digital Collectibles: Analysing Regulatory Framework and Legal Challenges Related to Non-Fungible Tokens *Purva Kaushik*	33
Plastic Politics and Need for Maintaining Sustainability: Initiatives by Nilkamal Limited a Leading Company in India's Plastic Industry *Adv. Rajat Jain & Dr. Nipun Gupta Jain*	48
The Sabarimala Matter: A Way Forward *Adv. R. Karthik & Dr. J Ravindran*	61
Gender neutrality in boardrooms of Indian Companies: An Analysis *Adv. Abhishek Grover & Dr. Honey Sharma*	76
Sexual Offences Against Transgenders: An Unresolved Puzzle *Priyansha Badoni & Sonali Sharma*	90
Innovation Barriers and Poverty: Analysing the Socioeconomic Implications of Patent Systems *Aaditya Bajpai & Shreya Bajpai*	101
Beyond Morphing - Unravelling Deepfake Technology and Its Legal Analysis *Priyal Bansal & Chandra Kant Singh*	114
Cryptocurrency Regulation in India *Arman Sheikh*	132

From State Control to Market Forces: Reformation of the Indian Coal Sector

Dr. Manoj Kumar Singh*
Dr. Priya Bhatnagar**

VIPS Journal of Law & Development
Subject - Law
August 2024, Vol. 1, Issue 1, 01-10
ISSN 3049-3099 (Print)
©Vivekananda Institute of Professional Studies-TC (VIPS-TC)
https://vips.edu/vslls/Publications/VJLD

Abstract

Energy is vital for meeting the development objectives of any nation and India is no exception. The energy sector of India is at crossroads at present. On one hand accessibility, feasibility and availability were the parameters which have historically modulated the energy policy framework and on the other hand sustainability has emerged as a parameter which cannot be ignored for future energy policy matrix. In this context it becomes imperative to examine the transition witnessed in coal one of the biggest sources of energy in India. The paper attempts to examine the evolution of the coal sector from nationalisation as a post-independence phenomenon to complete reversal towards commercialization at present. Another aspect which will be addressed in the present paper is potential muddling of the transition due to international commitments for phasing down of coal. The paper concludes with the importance of right price signals and development of an appropriate regulatory framework for managing this transition.

Keywords: *Coal Sector, Regulatory Framework, Sustainability*

I. Introduction

Energy is vital for meeting the development objectives of any nation. Coal has been one the primary sources of energy globally for the last three centuries. It played a vital role in the initiation and sustenance of the industrial revolution. India is

* Associate Professor, National Law University Jodhpur
** Associate Professor, Vivekananda School of Law and Legal Studies, Vivekananda Institute of Professional Studies - TC (VIPS-TC)

no exception, with coal contributing more than fifty percent of the total energy consumption in India[1] fulfilling the burgeoning development needs.

India is fortunately endowed with huge deposits of coal, representing a tenth of the total proved reserves globally. Geological survey of India estimates the total explored geologic reserves at nearly 350 billion tonnes with nearly ninety percent of it being the non-coking type.[2] These huge reserves though are non-uniformly distributed in India, with Jharkhand, Odisha, Chhattisgarh and West Bengal being the major coal bearing areas.[3] Despite being so well endowed with ample coal reserves, the energy sector of India is at crossroads at present. On one hand accessibility, feasibility and availability were the parameters which have historically modulated the energy policy framework and on the other hand sustainability has emerged as a parameter which cannot be ignored for future energy policy matrix. In this context it becomes imperative to examine the transition witnessed in the coal which is one of the biggest sources of energy in India. The paper attempts to examine the evolution of the coal sector starting from the nationalisation as a post-independence phenomenon to a complete reversal towards commercialization post liberalization of the economy in 1991, and now towards a transition stage with the sector being in a state of flux having contradictory and competing forces pulling it in different directions.

The paper is categorised into four sections with the first section discussing the nationalisation imperatives. The second section focuses on the sectors evolution towards commercialization. The third section is devoted to analysis of the transition through which the sector is undergoing at present and which would likely gain momentum going forward in light of international obligations. The fourth section discusses the present regulatory landscape of the coal sector. The paper concludes arguing for the development of an appropriate governance framework for managing the transition while meeting the development needs of India.

1.1 Towards Nationalisation

Coal is mined from the surface and sub-surface area of earth. Coal mining has been one the most important economic activity and can be traced back to pre-independent

1 It met 18.82 exajoules out of total consumption of 34.06 exajoules that is nearly 55 percent. Source BP statistical review of world energy 2020.

2 Ministry of Coal, Government of India, Provisional Coal Statistics 2019-20 (2020), http://coalcontroller.gov.in/writereaddata/files/download/provisionalcoalstat/ProvisionalCoalStatistics2019-20.pdf (last visited May 8,2024)

3 *Id.*

India. Coal mining started as a private commercial activity in India and the first coal mine was set up in Raniganj, West Bengal in 1774. It was primarily controlled by English managing agencies[4] in the pre-independence period. Coal being a bulky commodity needed transport which also led to the complimentary development of railway networks.

The state of the coal industry which was inherited by India at independence consisted of managing agency houses and unorganised mines. It was a system catering mainly to the needs and requirements of a colonial system and was hardly positioned to address the insatiable hunger of a nation poised to start its development. Railways, steel industry and power generation utilities were the major consumers.[5] The mining industry was geographically concentrated in Damodar basin whereas the consumers especially the power companies and railways were geographically dispersed. There was chronic demand-supply mismatch, characterised by fragmented industry comprising of several hundred small mines and nearly two hundred coal companies, operating locally, employing unproductive and seasonal workforce and engaged in non-scientific mining.[6] There was hardly any innovation, technical competency or employment of specialised methods depending on the structure, nature and depth of coal seams. It was a continuation of the colonial mind-set of rent seeking and official patronage for profit rather than a systematic approach depending on demand conditions or scientific evacuation. Neither was the true cost of production known nor was the true price for coal determinable. The reason was that the few organised sector firms were undercut by the dubious cost-cutting methods employed by the unorganised entities. It restrained any further green-field investment. Feeble regulatory attempts for amalgamation failed to take off due to lack of incentive or reason to do so on a voluntary basis.[7]

Coal being cheap and abundant was primary for development and energy needs of India. The Industrial policy resolution of 1948 focussed on setting up and development of new mines and increased prospecting and exploration. The economic model followed in the initial decades promoted public sector led development. Going forward NCDC (National Coal Development Corporation) was formed 1956. Its mandate was coal bearing areas exploration and mine development. Initially it comprised of the existing collieries of railways. The second reform was

4 Blair B. Kling , *The Origin of The Managing Agency System In India,* Vol. 26(1) JAS ,37-47(1996).

5 Rajiv Kumar, *Nationalisation by Default: The Case of Coal in India*, Vol. 16(17) EPW 757 (1981).

6 *Id.*

7 *Id.*

the constitution of Coal Price Revision Committee and calculation of costs head-wise for an average colliery. This price fixation method suffered from a serious lacuna that it ignored the grade differentiation in calculation of costs thus reducing profitability of specific collieries reducing production. The situation was addressed by again decontrolling of prices in 1967. The first oil supply shock in 1970s put further focus on chronic shortages on the energy front. Repeated failure of the coal sector to meet the production or expansion targets, non-scientific, fragmented and hazardous working of mines prompted the government to go for nationalization. Coking Coal Mines (Emergency Provisions) Act of 1971[8] led to takeover of more than two hundred coking coal mines. These were nationalised into a single entity Bharat Coking Coal Ltd. in 1972. Further more than seven hundred non-coking coal mines were taken over under Coal Mines (Taking over of Management) Ordinance 1973 and nationalised into Coal Mines Authority Ltd. under the Coal Mines (Nationalisation) Act 1973. Bharat Coking Coal Ltd. and Coal Mines Authority Ltd. were put under a holding company Coal India Ltd. in 1975. Eastern Coal Ltd Western Coalfields Ltd. and Central Coalfields Ltd. were made its subsidiaries.[9] The existing captive mines with iron, steel and power entities were allowed to continue by amending the Coal Mines (Nationalisation) Act 1976.

1.2 Towards Commercialization

The next major reform push came in the reform oriented nineties with the economy being liberalised and globalized. Privatisation became the order of the day and no longer was a theme which was abhorred. Consequently, there was also a major spurt in the energy needs of the nation which were not being fulfilled. The stated objectives of nationalization, that is 'rational', 'co-ordinated and scientific development' and 'utilization consistent with growing requirements' had hardly been met.[10]

The New Mineral Policy 1993 recommended mining for own consumption and prohibition of third party selling in select focus sectors such as cement industry. The Coal Mines (Nationalisation) Act 1973 was amended to allow for captive mining allocations of coal blocks. Coal gasification and liquefaction was also subsequently allowed in order to tap the vast reserves and reduce imported energy bill.

8 The Coking Coal Mines (Emergency Provisions) Act, No. 64 of 1971 (Ind.)

9 Coal India Limited, History, https://archive.coalindia.in/en-us/company/history.aspx (last visited on May 8, 2024).

10 Sun-Joo Ahn and Dagmar Graczyk, *Understanding Energy Challenges in India, Policies, Players and Issues*, OECD/IEA (2012). https://iea.blob.core.windows.net/assets/470f50fe-0815-4a8e-924d-ab4eac32465a/India_study_FINAL_WEB.pdf (last visited May 7, 2024).

These allocations were examined by Supreme Court of India in 2014 and cancelled on ground of legal infirmities. The Court found the allocation to be arbitrary, non-transparent following no objective criterion, non-uniform, non-verification of end use requirements. It led to cancellation of 208 coal block allocations. The indirect privatization and quasi-commercialization through allocations was abandoned due to the apex court judgement. The auction method was adopted under the Coal Mines (Special Provision) Act, 2015 for minimizing the impact on steel, cement and power utilities. It was passed 'to provide for allocation of coal mines' and 'to ensure continuity in coal mining operations and production of coal' in light of the directions of the court. In 2018 the auction-methodology was finalised thus opening commercial coal mining for private sector. It was a reversal from the nationalization of the sector in 1970s and movement from monopoly to competition. The stated objective was to 'bring transparency' and promote 'ease of doing business' and ensure 'natural resources are used for national development'. The expectation is that it will lead to infusion of technical expertise and financial investment from the private sector.[11] The coal bearing states will be entitled to all revenue from the 'ascending forward auction' and provide significant funding for development of their backward areas. The outcomes of the commercialization are energy Security, assured coal supply due to ramping up of production, affordability and accountability in allocation. Further reforms include a new policy on linkage of coal i.e SHAKTI (Scheme to Harness and Allocate Koyla (Coal) Transparently in India) providing guidelines for coal allocation. The thermal power plants are allocated coal by reverse auction method and bidding basis is decided on coal location, quantity, power generation capacity and power delivery point. Also a Single Window Online Coal Clearances System for all the permissions / clearances and approvals has been set up. Furthermore, coal has been put under the Open General License (OGL) which enables easier coal imports as per requirements.

1.3 Towards Transition

Coal provides for more than 50 percent of the energy needs in India. However, it is termed as a dirty fuel as there are environmental impacts in production and consumption of coal. Its burning generates greenhouse gases accumulated historically in a short span period. One of the major causes of global warming has

11 Anurag Sehgal and Rahul Tongia, *Commercial Coal Mining in India: A Possible but Not Irrefutable Game Changer*, The Brookings Institution (2018), https://www.brookings.edu/blog/planetpolicy/2018/03/01/commercial-coal-mining-in-india-a-possible-but-not-irrefutable-game-changer/ (last visited May 10,2024).

been attributed to coal. It also leads environmental pollution increasing particulate matter in the air, producing acid rain and causing damage to health and property. Not only does it harm the environment, it is not limited to borders and all nations get affected irrespective of whether they have contributed to greenhouse gas emissions.

The price paid for coal by consumers does not include the price society pays in the form of harm and damage caused. Developed nations have historically been the biggest consumers of coal thus imposing significant costs on the rest of the world due to their coal consumption. The primary energy consumption per capita for India is less than a tenth as compared to United States.[12]Now developing nations are being forced to curtail or reduce their carbon emissions because of the limited capacity of earth to absorb carbon being released without causing significant long term damage.

International focus on environmental concerns can be sketched out from the United Nations Conference on the Human Environment in 1972. The declaration put into spotlight need to balance economic growth with environmental concerns. The United Nations Framework Convention on Climate Change (UNFCCC) signed at The United Nations Conference on Environment and Development (UNCED) 1992 focuses on moving to fossil fuel alternatives for countering and reversing the effects of human interference on climate and regulating greenhouse gas emissions through international cooperation. Kyoto Protocol of 1997 was the first serious step to implement the UNFCCC measures, providing for differentiated responsibilities on the basis of level of economic development. In that light India formulated its National Environment Policy 2006 with the objective of sustainable development and a need to conserve critical environmental resources and ensuring intra-generational and inter-generational equity. Additionally, India declared its National Action Plan on Climate Change (NAPCC) in 2008.

The next major step was signing of Paris Agreement in 2015 for reducing the rising temperatures and global warming by maintain the temperature to 2 degree Celsius above pre- industrial levels. It required nations to halve their emissions by 2030 and submission of Nationally Determined Contributions.

It was a document incorporating progressively ambitious targets for achieving the objectives and reducing their emissions. India committed to scale up non-fossil sources in power generation to 40%, reducing emission intensity by 33% of 2005

12 BP Statistical Review of World Energy 2020, https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2020-full-report.pdf (last visited May 8,2024).

levels. In Conference of Parties (COP 26) Glasgow 2021, India pledged to phase down coal usage, increase non-fossil energy capacity to 500GW by 2030, source half of its energy from renewable energy by 2030, reduce total projected carbon emissions by one billion tonne till 2030, reduce Carbon intensity by 45% by 2030 and achieve net zero by 2070.

The usage of coal has led to potential muddling of the probable transition[13] due to international commitments for phasing down of coal. It has emerged as a major factor, modulating the future growth of the coal sector. The international commitments put into question the rationale of further investments in a sector having long gestation periods where it takes several years from conceptualization to even break-even.

II. Regulatory Landscape of the Coal sector in India

In this light it is important to examine the evolution of the coal sector from nationalization to commercialization and now transition and address how to manage this inevitable transition. This makes it imperative for us to examine the present regulatory framework.

The market structure of the coal sector on the supply side is monopolistic dominated by Coal India Limited (CIL) and Singareni Collieries Company Limited (SCCL).[14] Coal India Limited accounts for almost four-fifth of India's coal production.[15] The market structure on the demand side is oligopolistic dominated by power companies on the demand side. Constitution of India provides for regulation of mines and mineral development to be under Union List.[16] Further it provides under the State list regulation of mines and mineral development subject to the provisions of Union list.[17] The government in exercise of it's executive power administers the sector through its various ministries. The primary regulatory roles on the supply side are played by Ministry of Coal with CIL and SCCL under the direct control of Ministry of

13 S. Byravan, S, et al, *Quality of life for all: A sustainable development framework for India's climate policy reduces greenhouse gas emissions*, 39 Energy Sustain. Dev Energy for Sustainable Development, 48-58 (2017). https://doi.org/10.1016/j.esd.2017.04.003 (last visited on May 10,2024).

14 Arunachalam et al, *India's Energy Security: Challenges, Policies and Opportunities*, Conference Proceedings of BRIDGES (2015).

15 India Coal Controller Organization, Ministry of Coal, Provisional Coal Statistics 2020-21(2021), http://coalcontroller.gov.in/pages/display/20-provisional-coal-statistics (last visited May 10,2024).

16 INDIA CONST. art.246.

17 *Id.*

Coal. The ministry formulates policies and plans regarding production and price of coal. The technical regulatory activities related to quality assessment, inspection and approvals are the responsibility of the Coal Controller's Organization under Ministry of Coal. Ministry of Power on the supply side (power plants being the primary and priority consumer) is responsible for policy formulation, implementation and review of the energy policy including conservation of energy and energy efficiency in the short, medium and long-term for thermal and hydro-electric power. Regulatory role regarding policies, planning and review related to environment and forests is the responsibility of Ministry of Environment, Forest and Climate Change (MoEFCC). It includes under its regulatory ambit conservation of forests and wildlife, prevention and control of pollution, afforestation and regeneration of degraded areas, protection of the environment, thus indirectly regulating the coal sector under these domains.

III. Some of The Important Legislation Governing The Coal Sector

The parliament in exercise of its legislative powers has passed several laws for regulating the coal sector. The major one's being

i. Mines and Minerals (Development and Regulation) Act, 1957 Regulation of mines and the development of minerals in public interest.

ii. Coal Bearing Areas (Acquisition and Development) Act 1957
Established greater public control over the coal mining industry and its development by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits or of rights in or over such land and for the extinguishment or modification of such rights.

iii. Coal Mines (Nationalisation) Act 1973
Provided for the acquisition and transfer, of right, title and interest (in the specified coal mines) to the State. The objective was to re-organise the coal mines for their rational, co-ordinated and scientific development.

iv. Coal Mines (Special Provision) Act, 2015
Implementing the Supreme Court judgment in 2014 cancelling the allocation of coal blocks which provided for allocation of coal mines and vesting of the right, title and interest in and over the land and mine infrastructure together with mining leases to successful bidders in auction and allottees for ensuring continuity in coal mining operations and production of coal.

v. The Mineral Laws (Amendment) Act, 2020

vi. Amendment of the Mines and Minerals (Development and Regulation) Act, 1957 and the Coal Mines (Special Provisions) Act, 2015.:This latest piece of legislation enacted to facilitate the entry of private players by amending the principle MMDRA Act and Coal Mines (Special Provision) Act, 2015

There are a plethora of other laws, rules regulations, policies regulating environment and land acquisition such as The Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013, Environment (Protection) Act 1986, Forest (Conservation) Act 1980, Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981, The Mineral Conservation and Development Rules 2017 (MCDR),Environment Impact Assessment (EIA) Notification 2006. Some of the policies affecting the sector are National conservation strategy and policy statement on Environment and Development (1992), National Forest Policy (1988) and National Environment Policy (2006). Judiciary also has indirectly regulated coal by periodically reviewing the laws and working of the sector.

IV. Conclusion

As we move forward it becomes very important to price the coal right which not only incorporates the cost of production but also reflects the 'true cost'. It should include the harm caused to the community in its production and consumption. The true price signals to the society the scarcity value and opportunity cost as well. Coal being abundant in India is always preferable from a national perspective as compared to other fossil fuels like crude oil or natural gas as the former does not involve loss of precious foreign exchange as the compared to the latter. It is a more assured and secured source which will be comparatively insulated from the global price swings and availability concerns from national security perspective. This has been made amply clear in the recent time where the price of imported crude has nearly doubled leading to increased current account deficit and the government has scrambled back to increasing the domestic production of coal without having to worry about fiscal implications. This positive bias should also ideally be reflected in the pricing of coal. It requires the development of an appropriate governance framework for India to meet its development needs along-with fulfilling its international obligations. It is amply clear that coal cannot be abandoned as it plays a vital role in meeting the energy needs of India. But transition away from coal is also inevitable. This will be

exacerbated with the turn towards renewables.[18] The transition is complex involving increasing coal production in the immediate short term to meet the growing demand while reducing import dependence for an '*Atmanirbhar Bharat*', reforming a monopoly dominated sector to a competitive globally focused sector, addressing transport concerns particularly the dependence on railways[19] while developing and adopting new technologies[20] which reduce the carbon footprint, mitigate harmful environmental effects and increase production and recovery from coal mines and hitherto inaccessible coal beds while focussing on end user requirements.

It requires the development of an appropriate regulatory framework for managing this transition has become crucial. Any future governance mechanism should not only have the mandate of regulating the coal sector but should encompass a holistic view of the energy sector outlining all the parameters. Such a regulatory landscape should enable seameless and syergistic integration and better correlation between development needs of India and its international commitments.

18 Rahul Tongia and Samantha Gross, *The Politics and Economics of India's Turn to Renewable Power*, The Brookings Institution, (June 24, 2022), https://www.brookings.edu/research/working-to-turn-ambition-into-reality/ (last visited on May 8,202).

19 Puneet Kamboj & Rahul Tongia, *Indian Railways and Coal: An Unsustainable Interdependency*, The Brookings Institution, (2022), https://www.brookings.edu/research/indian-railways-and-coal/ (last visited on May 8,2024).

20 S. Srinivasan et.al.,*Benefit Cost Analysis of Emission Standards for Coal-based Thermal Power Plants in India*, Centre for Study of Science, Technology and Policy (2018). https://shaktifoundation.in/wp-content/uploads/2018/07/Benefit-cost-analysis-of-emission-standards-for-coal-based-thermal-power-plants-in-India-1.pdf (last visited May 8,2024).



VIPS
योगः कर्मसु कौशलम्
IN PURSUIT OF PERFECTION

NAAC Accredited A++ Grade 3.58/4

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES-TC (VIPS-TC)

AU Block (Outer Ring Road), Pitampura, Delhi-110034
Nearest Metro Station – Pitampura (2 KM) & Haiderpur (0.5 KM)
Website : www.vips.edu, www.dsb.edu.in
Tel.: +91 11 27343401 / 02 / 03, Fax : +91 11 27343404
E-mail : vslls.clrd@vips.edu