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The Regulatory Paradox: - India's Coal Story

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Abstract

Energy sector of any nation plays a very important role in the economic development of the country. In the energy mix of India, coal is indispensably placed. With Coal India limited (CIL), a public sector monopoly as the world's largest coal producing company, the quest for the most viable but most polluting fuel, feeding the population of 1.4 billion seems never ending.

The coal sector of our country at present is undergoing a transition and is in an ironical situation where the nation has promised the world to phase down coal but at the same time has opened the sector for commercial mining and requires more investment. At present the coal sector is regulated by the Office of Coal Controller, Ministry of Coal which is in a very close nexus with CIL which has been dominating the sector including the coal production, supply and price. The sector is plagued with a number of regulatory and competition issues which requires immediate attention for a fair play of both public as well as private sector. Reformation in the regulatory regime is the need of the hour in order to smoothly execute the commercialization policy along with the transition from a coal based economy to green economy.

I Introduction

After the Indian economy took its first baby steps toward the implementation of the New Economic Policy in 1991, India's regulatory framework has gone through a number of iterations over the course of the intervening years. Despite this, the government has not been successful in improving the quality of its regulatory framework.

In the lack of a clear, consistent, and uniform administrative structure for the regulation of the economy and its sectors, a number of expert bodies with varying degrees of autonomy have been introduced. These groups are responsible for overseeing particular aspects of the economy.

Even though our nation has a significant number of laws and policies in place to regulate the economy, the government has not been able to smooth out the wrinkles in its regulatory infrastructure in a manner that is satisfying. This is despite the fact that the country has a lot on its plate. The regulatory apparatus in India is governed by the Constitution's antiquated principles and doctrines because there is no fundamental administrative law in India (unlike in the United States, which has the Administrative Procedure Act of 1946), despite the fact that we are now living in the 21st century, in which the requirements, preferences, and interests of the people have undergone significant transformations.

The New Economic Policy of 1991 was put into effect in India, and shortly after that, the country's economy started moving in the direction of liberalization. As a direct consequence of this, India's regulatory structure has matured over the course of a number of years. Since that time, the three tenets of the New Economic Policy, namely privatisation, liberalisation, and globalisation, have become firmly interwoven in the structure of the commercial and financial sectors of the country. The goal of the National Economic Plan was to broaden the scope of participation from the private sector while simultaneously reducing the degree to which the government maintained a monopoly on some industries. It was adopted as a corrective policy with the intention of regulating inflation and lowering declining rates of the Balance of payment deficit. The goal of this policy was to reduce declining rates of the deficit. It was an effort to correct the economic instability that the country was facing at the time when this attempt was made. The goals of this programme include the implementation of a three-tiered policy, which includes the liberalization of banking, the reduction of tariffs and customs charges, the

denationalization of banks, and the integration of the Indian market with international trade. The following are some of the items that do not adhere to this rule: explosives, narcotics, dangerous chemicals, and alcohol are just a few. Additionally, the programme intends to dereserve specific industries and then put them up to competition from the private sector.

Since then a number of regulators have been introduced in the administrative set up of different sectors with the objective of its smooth functioning.

But even today one of the most dynamic and important energy sector of the country remains unaddressed as far as the question a regulator is concerned, especially when there are a plethora of competitive and governance issues and the sector is entering a phase of transition.

Though in 2013, Coal Regulatory Authority Bill (CRAI) was proposed by the then coal minister by Sri Prakash Jaiswal to address the challenges of lack of transparency, arbitrary allocation of coal blocks, monopoly market etc.

The main objective of this bill was to set up an autonomous body in the form of an independent regulator for an efficient re

This bill mainly aimed at setting up of an independent regulatory body for robust administration of the coal sector which is controlled by giant public sector undertaking forming a natural monopoly. However, this bill was passed due to the reasons of the regulator not being really independent in nature

After the approval of the proficient authority CRAI was introduced in Lok Sabha in December 2013, but lapsed in 2014 for having a number of lacunas in the same. It was alleged that the proposed CRAI was not really independent in nature, actually defeating the very basic purpose behind the entire exercise.

Since then the proposal of having a coal regulator is under consideration. Even though, at present the sector is undergoing major reformatory phase, yet the government is silent is in this regard. The objective to introduce CRAI was to set up an independent regulator to look after the Indian coal sector that seemed drowning in the sea of multiple governance challenges some of which are dealt in the further sections of the chapter while analyzing the existing legislative and governance regime of the coal sector in India.

Regulatory Reform in India and Emergence of Sector Specific Regulators

Over the past 2 decades a number of initiatives to reform the regulatory environment has been taken as India transitions to a market economy. The government's regulatory stance has precluded India from developing a comprehensive and coherent regulatory framework.

Since 1991, the process of economic reform in India has been gradual and progressive throughout the entire country.It should not come as a surprise that India's advancement toward becoming a genuine, fully-fledged market economy like the majority of industrialised economies has been sluggish, reluctant, and uneven. The interplay of populist politics, the necessity of forming coalition governments that find it difficult to agree on the trajectory and pace of reform, and powerful vested interests – political, administrative, and private – have all contributed to a number of setbacks and reversals. This has resulted in a number of delays and reversals. In spite of this, since 1991, six different political parties have held power in India, and each of these governments has continued the process of economic reform. This reform is centered on market liberalization and giving private enterprise a larger role.

After 25 years, the Indian people have settled on the idea that the market and the state should each play to their strengths in a mixed economy. While state-owned enterprises (SoEs) continue to play a key role in commercial activity, the role of the state has dwindled relative to their former prominence. As a result, it now has a less direct, but more significant and influential, regulatory part in shaping national economy. For example, it confers property rights in land, intellectual property, and the use of natural resources, such as mineral or spectral, as well. Directly, and indirectly, it is responsible for the development and pricing of infrastructure. Property values are influenced, subsidies are granted, tax breaks are provided, and so forth.

There are a number of industries that are open to the private sector, including: telecoms, power, mining, hydrocarbons; banking; insurance; capital markets; airlines; and so forth. State operated enterprises are still active, albeit in a smaller capacity than they were before to 1991, in each of these fields. As private companies have steadily displaced public ones in many industries, the state has had to rethink its role as regulator in order to keep things competitive. This new position necessitates a new approach to regulatory governance as well.

Many independent regulatory agencies have been established up by the Indian government since 1991, including the Central Board of Direct Taxes (CBDT), the Reserve Bank of India (RBI), The Securities Exchange Board of India(SEBI), the Reserve Bank of India (RBI) ,Telecom Regulatory Authority of India (TRAI), Insurance Regulatory and Development Authority(IRDA) and Central Electricity Regulatory Commission (CERC).

Independent authorities help to keep the contemporary economy running smoothly while also trying to defend larger public interest goals at the same time. Wider stakeholder interests, greater health and safety requirements, and the protection of public commons are all included in these measures (like the environment including air, water quality standards).

To maintain their neutrality and independence, both internal and external governance is critical.

The objective of economic reform has been to palletize government owned and managed enterprises, promote private participation, provide competition among newly created firms (public and private), and establish independent regulatory authorities.

Comparative Public Administration/Comparative Politics has just recently seen the extraordinary ascent of the regulatory state, if not its incipient inception. This is particularly relevant in India. However, its theory and practice have yet to solidify. Regulatory state seems to be elbowing out the classical Weberian bureaucracy state and the Neoclassical welfare-state idea in today's discourse on state institutions.

As a result, the regulatory state is hailed as a policy tool that not only promotes market efficiency but also lays the groundwork for economic growth and the realization of net social gains.

The goal of regulation is to get the public what it wants, which the market may not be able to do. So, it is seen as a replacement for market competition and a way for the government to protect the public from the service provider's monopoly power being used in an arbitrary way. In this way, regulation can be seen as a new form of "regulatory capitalism," which includes new ways for the state and society to interact, changes in the roles of politicians and experts in making public policy, and new ways to regulate, such as self-regulation or the increasing responsibility of networks of experts.

Despite the fact that economic liberalisation required a new group of regulators, India already had a very competent regulator in the form of the Reserve Bank of India (RBI), which had been created in 1935. The Reserve Bank of India (RBI) was respected among the other central banks of developing countries around the world due to the fact that it operated independently. The Securities and Exchange Board of India (SEBI) went through a very eventful process to become the regulatory body that it is today. It was founded in 1988, but it wasn't until 12 April 1992 that it was given regulatory powers under the SEBI Act, 1992. This was just a few days before the scam that occurred on the Bombay Stock Exchange. The Securities and Exchange Board of India (SEBI) has the responsibility of advancing the securities market while also defending the rights of people who invest in the stock market.

The Insurance Regulatory and Development Authority is yet another significant regulatory body that was established prior to the year 1999. It came into existence during the previous century. In spite of the fact that the primary responsibility of the Authority under the Insurance Regulatory and Development Authority Act, 1999, is to protect the interests of policy holders including settlement of insurance claim and so on, its duties under the Act have been extended to various other functions including the regulation of investment of funds by insurance companies, the maintenance of margin of solvency, as well as the adjudication of disputes between insurers and intermediaries or insurance agents and brokers.

The Telecom Regulatory Authority established in 1997 is another such egample where an independent body was introduced to regulate the telecom sector which was dominated by the natural monopoly: the Mahanagar

Telephone Nigam Limited (MTNL).With the power of resolving disputes between telecom players, TRAI also had power to lay down regulations for effective governance of the sector.

These are few sectors in the Indian Economy where regulatory reform has taken place for bringing in fairer interplay of demand and supply factors and protect the interest of various stakeholders.

A Case of Coal Sector in India: -

The history and evolution of Coal sector

The history of coal mining could be divided into two phases. The first phase begins in pre-independence era when the Britishers found the coal embedded in the banks of river Damodar in West Bengal. Soon coal became a source of fuel in running the Indian railways built by them for smoother transit of goods. Soon after the independence, when the country was witnessing industrial revolution, it was realized that steel is going to lead it and coal was very much required to smelt the same. Dr. Shyam Prasad Mookherjee, who was the then minister of industry and supply pen down the first ever industrial policy in 1948 supporting the government intervention in the matters of coal and oil. The strategy was to keep these two sources of energy within the monopolistic control of the government which was reinstated in 1954 with the adoption "Socialistic Pattern of Society" in the Second Fiver Year Plan which advocated the state ownership of country's resources with the objective of reducing the economic inequalities and prevention of concentration of wealth. India's coal industry at the time had a dual structure, with small miners classified as unorganised and public sector corporations as planned and organised. Rail, electricity, and steel were the three key factors that influenced coal prices. The issue was caused by the little miners' inability to mine the lower layers, which resulted in the loss of coal in those layers indefinitely. These miners worked without the use of technical or scientific equipment. As they recruited seasonal workers and sometimes escaped paying wages, incurring minimum amount of expense. In the end, the organised industry was unable to negotiate for better pricing since these tiny miners were required to sell coal at a lesser price, limiting further investment and sector advancement.

The government created a commission on the voluntary merging of these tiny groups with this circumstance in mind. However, the plan was a failure since they had no motive to merge because it was harming their bottom line.

Talking about the price scheme prior to nationalisation, there was no specific method to fix coal prices and the sector had become a monopsony one, being governed majorly by the three main consumers (railways, power and steel). It was only in 1957 when the then government set up the Coal Price Revision Committee (CPRC) that the prices were decontrolled but the drawback of this policy was that it did not differentiated between various grades of coal and fixed prices on the basis of different heads of costs which was same for all miners .Therefore the problem was the homogeneity in the prices which led to organised sector paying higher prices than small miners as the later did not incur costs of few heads laid down by the committee specifically the administrative cost, stores cost or fixed capital cost which again to the detriment of the organised miners was arbitrarily lowered by CPRC again resulting in higher profits to the small miners as compared to the other entities. So, finally in 1967 the prices were decontrolled by the government due to which railways again appeared as a monopsony. Other factors like diminishing profits of many public sector coal companies, rises in the prices of steel and power shortage in the country resulting in shutting down of multiple collieries during 1967-71 and large debts in the industry. All this led to a stronger case for nationalisation of the sector. However post nationalization it became imperative to look over the price of coal time and again due to a massive investment in the sector.

The epoch of nationalization of various industries in India began with the execution of Industrial Policy Resolution in 1956 by placing 17 industries including coal in the Schedule A, whereby only government had the authority to run them and not the private players.

The nationalization of coal happened in phases. Initially the government brought within its control ,the coking coal mines in 1971 through the Coking Coal Mines (Emergency Provisions) Act of 1971.

.This was followed by nationalization of non-coking coal by passing of Coal Mines (Nationalization) Act 1973.

The Coking Coal Mines (Emergency Provisions) Act 1971 which nationalized all the mines except the captive mines that of IISCO, TISCO, and DVC. The government took over all 226 mines in 1972, after which Bharat Coking Coal Limited (BCCL) was formed. In 1973 Coal Mines (Taking Over of Management) Ordinance was promulgated which brought under the control of the government 711 non cooking coal mines and nationalised them by forming another company Coal Mines Authority Limited (CMAL) to manage non-cooking coal mines. Finally the giant, Coal India limited, a wholly owned government company came into being in 1975 in order to take hold of BCCL and CMAL. So whether nationalisation in the coal sector was the right step or not should be discussed in light of other instances of nationalization in various sector.

Just prior to coal, banks in India were nationalized in 1969. Available literature shows that it has benefited the banking industry and so did we expect in the case of coal industry in India. It has largely been a positive policy change in the banking sector of our country but the author of paper discussing the impact of nationalization on the banks concludes by saying, that "*the main aim of nationalization is to control the heights of the economy and to meet progressively and serve better the needs of development of the economy, this has not been achieved yet"*.[1], which clearly showcase the failure of banks to attain the anticipated result. The growth rates worked out in case of nationalization of banks, indicated that on the average in case of a majority of operational variables, the performance of nationalized banks as compared to private banks was found higher.

Even though the sector was taken over by the government, it was already known that the government company alone wouldn't be able to meet the rising demand for coal or the output crisis the market is already facing. So, even though private mining leases were cancelled, some of them, like those of iron, steel, and power, were kept in reserve and given the green light to continue captive mining through an amendment to the Coal Mines (Nationalisation) Act of 1976. Another change was made to this act in 1993 when the New Mineral Policy was made. This made it possible for private investors, including foreign ones, to do captive mining in cement and coal washing. In 2007, this was expanded to include coal gasification and liquefaction.

Regulatory Evolution of the Coal Sector

Under List I of the Seventh Schedule, Entry no.54 of the Indian Constitution, the Central Government has the authority to make laws governing mines and minerals, including coal, insofar as such regulation and development under the control of the Union are declared by law to be in the public interest. In addition, the state has been granted this authority subject to Lists I through 23 of List II of the Constitution.

Some of the important legislations enacted by the Union government for governing the coal sector in India are briefed below :-

- **Coal Mines (Nationalisation) Act 1973 and Coal Mines (Nationalisation) Amendmend Act 1976**

This Act was intended to place the whole coal industry under government control. The primary objective of nationalization was to reorganize and reconstruct the industry in an effort to combat unscientific mining.

The justifications for nationalizing the sector have been examined previously. There are opposing viewpoints regarding the causes behind the same. Some argue that it was necessary due to the negative consequences of privatization on the sector at large. The other was of the opinion that nationalization was not a choice but was forced upon the then-government due to a complete breakdown of the profitability of the sector government, for which some government should be blamed due to non-implementation of comprehensively stated labour laws, impractical output targets given to the private and unorganised sector, and lack of uniform authority. Since 1944, the government and PSUs have managed and regulated the majority of this industry's elements. Therefore, the void and cause of the decline must have been inherent in government policy, with coal pricing being one of the key issues. Section 3 of the Coal Mines (Nationalisation) Amendment Act, 1976 gives the government corporation (Coal India Ltd.) and its subsidiaries the exclusive authority to manufacture, distribute, and sell coal, as well as conduct any mining-related activity in the coal industry. Also, this portion acts as a barrier and restricts the number of companies in the sector, limiting market competition and reinforcing the monopoly position of the sole

[1] Alka Mittal, "An Analysis of the Impact of Nationalisation on the functioning of the Commercial Banks," *International Journal of Commerce, Business and Management,* 4 (2016).

government-owned coal producer in India (Coal India Limited). Preferential treatment accorded to government firms and their subsidiaries hinders market competition.

- **The Coal Bearing Areas (Acquisition and Development) Act, 1957**

The Coal Bearing Areas Act was enacted in favour of the government in order to acquire undeveloped coal-bearing areas and related rights. It allows the government the authority to publish a notice in the Official Gazette announcing its intention to conduct coal exploration on land. Once such an announcement is issued by the government, any other business or individual wishing to receive a licence for that area is disqualified, and the land in question becomes the government's exclusive mining property. Even if a lessee is in custody of unworked land containing or anticipated to contain coal resources through a mining lease, it will be rendered inoperable due to the government's intention to mine the area. Section 7 of the legislation grants the central government the authority to acquire the land in question within two or three years of the notification date. This means that the government or a public sector enterprise (since the government, upon acquiring such land, will assign it to PSU) is not obligated to wait in line to get a mining lease for a coal-bearing area in which it has an interest. Under the new land purchase statute, private entities are not granted this right and must go through the entire laborious property acquisition process.

These are few provisions of CBAA which shows that it was enacted specially to benefit the PSUs through the government , which needs to be amended in order to create a level playing field for the private players, otherwise even though commercialization has set in, the sector shall not be benefited in the absence of equal opportunities and a fair play for both the sectors.

- **Coal Mines Nationalisation (Amendment) Bill 2000**

The Coal Mines Nationalisation Amendment Bill 2000 which was brought into picture to increase the private players in the sector and changes in captive mining policy which could have triggered the competition in the sector and helped in augmenting the capabilities of CIL thereby meeting the demand levels, was not enacted.

It is claimed that the executive, as a branch of the government, failed to enact the CMN Amendment Bill 2000. The situation of the Indian coal business today may be very different if it had been implemented when it was first proposed in June 1997, under the Janta government. Less coal might have been imported and the nation had instead turned to exporting coal, competing on a global scale and boosting the level of competitiveness in the coal industry. Under the leadership of Sh. KSR Chari, a committee on integrated coal policy was established in 1995. This group foresaw the current state of the industry as being caused by a significant mismatch between supply and demand. Additionally, it advocated for the distribution of coal blocks through open competition, with participation from commercial coal mining firms. Unfortunately, trade resistance prevented the law from being passed, despite the support of other interested parties such as the Ministry of Coal and Power, power corporations, NTPC, Department of Heavy Industries, state governments, etc. The trade unions cited the following justifications for their opposition. In actuality, stakeholders believed that Coal India Ltd.'s poor performance was due to the absence of competitors and the sector's monopoly.

- **Mines and Minerals (Development and Regulation) Act, 1957 (Along with amendments in 2010 and 2015)**

The majority of mining-related activities that are governed by the government are covered by this general piece of legislation. The act's goal is to control and advance India's mining and mineral resources. Coal and lignite are covered under the title "Hydro Carbons/Energy Minerals" in Part A of the First Schedule.

Under this act, the central government is given considerable authority to grant mining leases, prospecting permits, and reconnaissance permits, which allows for preferential treatment of the public sector. This taints the concept of a level playing field in the industry.

The State government is not permitted to conduct any operations linked to reconnaissance, prospecting, or mining in any territory within its own state, according to section 4(3) of the 1957 Act. Without the previous consent of the central government, the state government is not able to award or renew mining lease or prospecting licence permits. The union's unrestricted power under this act makes the act's intentions crystal obvious. Section 11 A

permits the purchase of coal blocks through a competitive bidding process, but only certain industries—such as steel, power, and washeries—are permitted to participate, and even then, only for captive use. As a result, other sectors and industries are barred from engaging in commercial coal exploitation.

Governments and PSUs are able to reserve coal blocks thanks to section 11A's proviso. This method has drawn criticism because it enables them to keep the prime blocks while the private corporations buy the remaining blocks through open bidding. This demonstrates a blatant advantage for the federal, state, and PSU governments, which is hurting competition.

- **The Coal Mines Special Provisions Act 2015**

The Supreme Court ruled in August, 2014, that the allocation of coal blocks had to be halted and that associated orders were to be followed. The Coal Mines (Special Provision) Act 2015 was passed by the Indian Parliament in order to put them into effect. The purpose of the Act was to allocate coal mines and vest the right, title, and interest in and over the land and mine infrastructure, as well as mining leases, to winning bidders and allottees. According to this act, it is imperative that coal mining activities and production continue in order to maintain national security interests, and it is also that coal resources are utilised in a manner compatible to those interests, as well.

The act also aimed at allocating the cancelled coal mines as quickly as possible to the highest bidders and recipients in order to ensure the country's energy security and minimise the impact on critical sectors like steel, cement, and power utilities.

Chapter II of the Coal Mines Special Provisions Act 2015, established a public auction for the distribution of coal mines on Schedule I. Section 4 outlined the requirements for participating in the auction and the associated fees that must be paid. An allotment of mines to governmental entities was made possible under Section 5 of the Act. Prior allottees' rights and obligations were addressed in Chapter III.

- **The Mineral Laws (Amendment) Act, 2020**

This Act revised the Mines and Minerals (Development and Regulation) Act of 1957 and the Coal Mines (Special Provisions) Act of 2015. It would enhance the ease of conducting business and increase coal production while decreasing imports. It broadens the range of corporations eligible to participate in coal auctions by removing prior coal-mining experience criteria in India and allowing companies with similar experience in other minerals or other countries to participate. Due to current restrictions on end-use, corporations who purchase coal mines on the Schedule II or III list of the cmsp act can only use the coal they produce for the specified purposes. This ban on the use of coal mined by these enterprises is lifted by the legislation. A central government directive will allow companies to mine coal for their own use and sale, or for any other purpose that the government specifies.

The Acts states that coal mining experience in India is not required for corporations to participate in the sale of coal and lignite blocks. In addition, the competitive bidding process for auctioning coal and lignite blocks will not apply to mines that are being considered for allotment to: I a government company or its joint venture for own consumption, sale, or any other specified purpose; and (ii) a company that has been awarded a power project based on a competitive bid for tariff.

For the purposes of providing a reconnaissance permit, a prospecting licence, or a mining lease for coal and lignite, state governments are required by the MMDR Act to get prior consent from the federal government. According to the Act, there are several circumstances in which awarding these permits for coal and lignite will not require previous approval from the central government. These situations include those in which the allocation was made by the central government and (those in which the mining block was set aside to protect a mineral.

At present, separate licences known as prospecting licences and mining leases are offered for the exploration and mining of coal and lignite, respectively. Prospecting entails looking for, finding, or locating a mineral deposit. The Act creates a brand-new licence category known as a prospecting license-cum-mining lease. This composite licence will permit mining and exploration operations.

- **The Mines and Minerals (Development and Regulation) Amendment Act, 2021**

To alter the 1957 Mines and Minerals (Development and Regulation) Act, this bill was introduced. For minerals, it removes the constraints on their use. It permits captive mines to sell up to 50% of their annual production in the open market after completing their own standards and paying a predetermined royalty. The captive mines will have a greater motivation to produce more. New firms will not have to reapply for statutory permissions for the entire lease time by amending Section 8B (Mine and Minerals (Development and Regulation) Act, 1957) to ensure continuity of operations. Section 10B (4) and 11(5) of the 1957 Act further give the federal government the authority to ensure that the auction procedure is completed on time. By inserting Section 8(4) of the 1957 Act, it allows the extension of mining leases for government firms and the distribution of expired lease mines to government corporations (amendment of Section 8B). This amendment also included a provision granting more authority to the federal government as a whole. The Mine and Minerals Development Regulation (Amendment) Act of 2015 purchased the District Mineral Foundation (DMF).

Regulatory Flaws in the Coal Structure

a. Arbitrary Allocation Policy

The Comptroller and Auditor General in an audit of allocation of coal mines in 2012, where it was found that A process for reviewing the coal supply from the various CIL companies did not exist. Due to a scarcity of supply, the primary goal of the New Coal Development Policy—to effectively distribute coal to small and medium consumers—was unsuccessful. In a way, this has raised the possibility of coal being sold illegally.

A review of the 49 dereserved coal blocks that were to be made available to captive producers revealed that the majority of them had not yet been assigned or were not yet ready to start production. A review of the screening committee meeting minutes revealed that the committee had no basis for evaluating the applications when allocating the blocks. It showcased the lack of transparency in the entire mechanism.

Parallel to it a writ petition was filed in the Supreme Court of India t. challenging the entire coal block allotment process from 1993 to 2010. Mainly two issues were brought in the forefront First, it is important to determine whether or not the legal framework of the coal industry gives the central government the authority to distribute coal blocks.

Second, if such power is deemed to exist, the question should be asked as to whether or not the allocation was carried out in accordance with the law, free from arbitrariness and injustice. The court after scrutinizing all the contentions, procedure of allotment that was followed and the CAG report gave a revolutionary judgment that highlighted the failure of the executive in performing its constitutional l duty of distribution of natural resources. The apex court in its judgment cancelled the allocation of 214 coal blocks given to the captive miners.

b. Ineffective Captive Mining Policy and Competition Issues in the Sector

Today, with commercialization established in the sector in 2018, the question arises as to why nationalisation was implemented and whether it was beneficial to the sector. After taking on the responsibility of managing the coal business on its own following nationalisation, the government established a sole public sector undertaking, CIL, together with its subsidiaries, which evolved gradually and progressively through time. It grew to become the world's first major government coal production corporation. However, it was soon discovered that CIL and its subsidiaries were overburdened, therefore captive mining with end use restrictions was allowed in the industry. As a result, the electricity sector, as the primary consumer of coal, could now mine the black gold for its own use but not sell it to other consumers. Captive mining, rather than problem solving, was added to it. Though these miners were given coal blocks from which they may harvest and use coal but a lot of competition and governance issues cropped up in the sector. CIL was alleged to abuse its dominant position in a number of cases. The CCI identified a number of examples in which it claimed that CIL had entered into unilateral FSAs with power firms that had biassed terms and that CIL had unfairly hiked the rates without incorporating tax.

Other problems with the application of laws including the MMDR Act, the CBA(), and the CMNA. These acts' provisions that favour PSUs have resulted in discriminatory treatment. Captive miners also expressed dissatisfaction at being given poor quality blocks in challenging geographic regions without a sufficient railroad network for the delivery of mined coal. The writ petition of *Manohar Lal Sharma v. Principal Secretary & Ors*, which resulted in one of the most well-known political scams in 2014 after the CAG released its report on coal

block allocation, demonstrates the government's inefficiency in allocating coal blocks to captive miners and upholding the principles of accountability and transparency.

The very reason for its introduction was to foster competition and boost coal production in order to satisfy the demands of diverse sectors. However, both of these appear to be defeated. There have been several gaps in captive coal mining policy. First and foremost, coal blocks were not distributed based on financial capability. Private miners, who were largely from the power, steel, or cement industries, may not be as good or specialised as their own industries, or they may have financial constraints in excavating coal mines, which require a large capital investment and delayed returns. These concerns were completely overlooked while awarding coal blocks, a method that was eventually overturned by the Supreme Court in 2014. However, even after revamping the allocation procedure, the captive industry saw little improvement. This clearly demonstrates a lack of consistency in the implementation of captive mining policy.

c. Monopolistic Structure of the Sector

CIL being the world's largest coal producing company has become India's monopolistic behemoth in the col sector. Prior to commercialization of the sector, around 80 percent of coal production in India comes from CIL. CIL have been charged by a number of complainants from the power sector for abusing its dominant position. It has been alleged for making unilateral supply agreements with clauses beneficial for its own self.

In order to be effective, any policy must take into account the interests of all parties concerned. It is difficult for private entrepreneurs to play a constant role in energy production and distribution because the industry is dominated by public sector firms and there are few private participants in it. There are numerous clauses in various legislation that either give favourable treatment to the government businesses or have numerous loopholes when it comes to creating a level playing field for all the players in the coal industry.

For egample, Coal Bearing Areas (Acquisition and Development) Act 1957 allowed the government to acquire virgin coal bearing areas and other rights. It allows the government to announce its intention to acquire coal-rich territory in the Official Gazette. After a government notification, any organisation or person requesting a leasing license for that area is set aside and the land is kept exclusively for mining. Even if a lessee owns unworked land with coal or likely coal resources through a mining lease, the government can make it non-operational. Such laws should be repealed or updated in order to create a level playing field for the private players.

There are also a number of benefits that are available to CIL like having geographical data of coal mines, being in the market for more than 3 decades and being in the close proximity with the ministry.

d. Inability of CIL to accomplish Environmental norms

Due to the excessive carbon produced during coal mining and combustion, coal is the most polluting industry and is on the verge of being phased out in many nations across the world. All forms of pollution are inevitable in the coal business due to its intrinsic nature, but the behaviour and disregard for the law on the part of the coal companies adds to the issue.

There have been numerous instances where CIL's attitude toward environmental compliance has been careless. For instance, CIL created the Corporate Environment Policy (CEP) in 1996. This policy stayed unmodified for years even after the Indian government's National Environment Policy (2006) mandated that businesses create plans of action and develop strategies at the federal, state, and local levels. The PSU delayed excessively and for no good cause, as the CEP was only modified in March 2012 by CIL.

In addition, it was discovered that six of CIL's seven subsidiaries did not have any environmental policies in place, despite MOEF&CC's requirement that all businesses get an environment policy that has been properly developed and authorised (by BoD) prior to receiving environmental clearance. These six subsidiaries claimed that they were following the parent company's environmental policy even if their manuals did not follow suit. These subsidiaries did not have a separate environmental policy of their own. This made it possible for the mines to run haphazardly and inconsistently. Although CIL and its subsidiaries were determined to have adopted clean coal technologies, the audit report by CAG in 2012 highlighted that there were numerous instances where the business may be held accountable for failing to comply with water requirements and other environmental regulations.

The governance and compliance mechanisms of CIL and its subsidiaries with regard to some environmental standards are found to have gaps in a recent environment assessment report created by the CAG.

It was discovered that, of the seven subsidiaries of CIL, six did not have any environmental policies in place, in violation of MOEF&CC's requirement that, in order to receive environmental clearance, every company have policies that have been properly developed and approved (by BoD). Although the six subsidiaries claimed to be following the parent company's environmental policy, their manuals did not follow suit. These companies did not have a separate environmental policy. As a result, the mines could operate at will and without any consistency. The audit report by CAG in 2012 showed that even though it was discovered that CIL and its subsidiaries have adopted clean coal technologies, there were numerous instances where the business might be held accountable for failing to comply with water norms and other environmental regulations.

Suggestions and Conclusion: The Regulatory Paradox

Today the coal dominated energy sector of India is in a transformation stage. With the sector being opened to private miners, the regulatory regime of coal sector in India also needs to be reformed. At present ,Coal Controller's Office under the ministry of Coal has the primary responsibility of monitoring the growth and development of mines, inspecting coal quality, dealing with disputes relating to the grading or size of coal supplied to consumers, regulating the supply of coal including both cooking and non-cooking coal, and acting as an advisory and consultancy body to the Ministry of Coal. It also supports in the implementation of coal legislation.

The functions, role, and authority of CCO, which currently oversees the Indian coal industry, initially appear to be extensive. However, once we consider the insights of one of the landmark rulings of the apex court from 2014, which exposed one of the biggest scams in the nation related to coal allocation, the illusion dissipates. The government had given 218 coal blocks to captive coal companies between 1993 and 2010, but the distribution of those blocks was nullified by the supreme court since there was no real and proper process for allocating coal blocks. The distribution method as a whole, according to the Comptroller and Auditor General's Report from 2012 on "," lacks accountability, transparency, and legality. The entire nation was shaken by the Supreme Court's unexpected and unconventional ruling, and the coal industry was torn apart as a result. It not only demonstrated the extreme ineptitude of the authorities in managing the distribution of natural resources, but it also impeded the expansion of the energy sector as a whole.

The need of the hour is to bring about a regulatory overhaul of the coal sector which could be either through introduction of a separate autonomous body which can provide an unbiased market environment for the execution of commercialization policy. Moreover, aid in meeting the international commitments smoothly by phasing down coal in a planned and more aligned manner.

After the careful study and assessment of the Indian coal sector, one thing must be understood that to achieve a just and smoother transition, an environment away from politics is required. A planned execution of transition away from coal will be able to warrant a sustainable and equitable growth for the energy sector while mitigating economic and social impacts. Designing as well as executing a framework for a shift from highly coal dependent economy towards non fossil and renewable energy economy shall require strong support from the government at all the levels including the administrative support of local authorities, a communication strategy which is highly effective, creating parallel job diversification opportunities, reskilling and training the work force which is effected by scaling down coal mining and production activities. restructuring of Coal India Limited by diversifying and utilizing the man and capital power for promoting, generating and disseminating solar, wind and other eco-friendly sources of energy.

The entry of private sector businesses and the unbundling of public companies create competition. In order to provide a regulatory framework that offers equal playing conditions for all players, regulators play a critical role in this situation. Since 1992, many types of regulators have been established in our nation, with the Securities Exchange Board of India (SEBI) serving as the initial regulatory agency to oversee the securities industry. Since then, several regulators have been established, including the Central Electricity Regulatory Commission (CERC), which was established in 2003 as a quasi-judicial body to oversee the power sector, the Telecom Regulatory Authority of India (TRAI), which was established in 1999, and the Odisha Electricity Regulatory Commission (OERC), which was established in 1996.

However, there are differences in our nation's sector regulators' mandates, roles, and statuses. Their levels of autonomy, decision-making, and transparency differ. Each regulator is designed to address the particular needs of the industry.

The other way of revamping the regulatory apparatus could be breaking or splitting of CIL. The current regulatory framework naturally focuses on the rules and demands of these important public sector coal producing businesses, and future regulators will also have the difficult challenge of regulating both a monolith and tiny entities. Because of this, the regime is asymmetrical in character and either clearly favours government corporations or has many traps and loopholes that are challenging for private sector businesses to navigate. Furthermore, because the overall production of the private sector is so small in comparison to the public sector behemoths, the regulatory framework is not required to develop proper incentive strategies for that sector. Even if an independent regulator is established, it will still have to decide between adopting policies that are fair for all sector participants but may not be appropriate for public sector monoliths that produce the majority of the market or, alternatively, adopting policies that favour the majority while ignoring the small entities. It will be challenging to strike a balance between the two complex and incompatible goals.

These factors strengthen CIL's position, limiting the entry of new players and driving out the market's current players because the allocation process for coal blocks is heavily biased in favour of public sector enterprises. Aside from operating independently in the absence of market forces for more than three decades, CIL also benefits from a number of incumbency advantages. Nationalization of the industry not only gave rise to CIL but also gave the company many advantages over rival businesses. The authority to buy mines without incurring any costs, obligations, mortgages, or other charges in relation to these mines was granted to CIL. The government also consistently provided the corporation with enough financial aid in the form of loans with relatively lenient repayment terms, waivers of interest liability along with its financial restructuring, and the building of a highly developed rail network for transportation. Because coal discovery and mining necessitate significant upfront costs, CIL is given a competitive advantage over the private sector because to these incumbency benefits. Naturally, any governance change in the industry would have to take Coal India Limited's deregulation and possible deconstruction into account. Deregulation of CIL would entail providing it less regulatory or financial handholding and more discretionary flexibility and autonomy. It would entail giving it the ability to compete, grow its capacity, and adopt global best practices as well as eliminating any sort of prioritising or protecting the sector so that the full operating and economic costs are revealed and decisions are made in accordance with them. Vertical or horizontal decentralisation based on functions or geographic area, respectively, can be used to examine the deconstruction of CIL. By doing this, any cross-subsidization—where more prosperous miners support less profitable ones—will be eliminated. Additionally, it will result in CIL functioning in sectors where it has comparative advantages and areas of competence. The benefits will be numerous, including a quick boost to the commercialization of the coal industry, level playing fields, cost structures pricing discovery, manageable and transparent structures, enhanced competitiveness, and other incidental and auxiliary benefits.

The need of the hour is to bring about a regulatory overhaul of the coal sector which could be either through introduction of a separate autonomous body which can provide an unbiased market environment for the execution of commercialization policy. Moreover, aid in meeting the international commitments smoothly by phasing down coal in a planned and more aligned manner.

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