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The Introduction of Commercialization in India's Coal Sector: An Impact Analysis

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ABSTRACT

The country's continuous population increase results in more energy demand. Electricity, which is mainly produced from coal and is highly cost-effective in a country like India, is one of the most important energy sources in any community. Approximately 75 percent of the electricity used in our country comes from coal. The primary and most important resource for meeting the demands of the expanding economy has always been the coal sector, which is vital to Indian industry. However, despite worldwide adoption of renewable energy sources, the coal sector still meets at least half of India's basic energy demands. For many years to come, the coal sector will continue doing this. According to the Planning Commission's Integrated Energy Policy, coal will continue to supply 40% of the world's primary energy needs even after the 2030s. The industry has been in the spotlight since the coal allocation scandal, also called "The Coalgate Scam." Coal India Limited, the biggest government coal producer in the world, currently controls the whole Indian coal market. In 2020, India started commercial coal mining through coal mine auctions after decades of public-sector ownership and control, making the private sector a minor player in coal mining.

Despite the introduction of commercialization, the coal sector continues to face several internal and external challenges. A thorough regulatory framework is required for the coal sector in India. The author examines the structural, financial, and other issues the industry has been dealing with and suggests modifications to the sector's regulatory framework.

Keywords: *Energy, Coal, Commercial mining, Issues, Independent Regulator etc.*

I. INTRODUCTION

The ability to provide energy security to the most significant number of people at reasonable rates is a key indicator of a country's growth and development. The nation's population is constantly growing, driving up energy demand. Electricity, which is produced primarily from coal and is one of the most vital energy components in any society, is particularly abundant and reasonably priced in a country like India.[2] In our nation, coal provides around 75% of the

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[2] MINISTRY OF COAL, COAL - INDIAN ENERGY CHOICE, https://coal.nic.in/en/major-statistics/coal-indian-energy-choice (last visited March 1, 2022).

electricity needed.[3] Given its plentiful resources in India, coal undoubtedly fits the criteria for energy security in terms of access to energy at a reasonable price.[4] The coal sector supplies at least half of India's basic energy needs. It will continue to do so for many decades, despite the global embrace of renewable energy sources. According to the Planning Commission's Integrated Energy Policy, coal will continue to provide 40% of the world's primary energy needs after the 2030s.[5] In India, the coal business is controversial and faces many difficulties and worries. There are numerous structural and regulatory problems plaguing the industry.[6] The Indian coal industry has regulatory obstacles that undermine the goal of good governance, in addition to several competition-related issues. The coal allocation scam, "The Coalgate Scam," has brought the industry into the public eye. In 2012, the Indian Comptroller and Auditor General questioned the process of assigning captive players to coal mines.[7] In Manohar Lal Sharma v. Principal Secretary,[8] the Supreme Court ruled in 2014 that 218 coal blocks should be canceled. Numerous legal and regulatory changes have been implemented in the sector to address the shortcomings following this court's decision.

The coal sector is declining in countries including the United Kingdom, Australia, Germany, Canada, Poland, Vietnam, and Chile, which are already in the transformation stage.[9] Forty countries have indeed pledged to phase out coal by 2040 or 2030.[10] India has begun investing in renewable energy resources and intends to install 523 gigawatts (GW) of renewable energy capacity by 2030, including 73 GW from hydropower.[11] However, coal's significance cannot be overlooked, particularly in light of the nation's recent coal crises. First, in October 2021, a shortage of coal inventories with power plants threatened to cause outages in several countries.[12] Indonesia's prohibition of coal exports was another instance in which disaster

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[3] MINISTRY OF COAL, GENERATION OF THERMAL POWER FROM RAW COAL, https://coal.nic.in/en/major-statistics/generation-of-thermal-power-from-rawcoal (last visited January 12,2022).
[4] Id.
[5] PLANNING COMMISSION, INTEGRATED ENERGY POLICY, REPORT OF THE EXPERT COMMITTEE (2006).
[6] Radheshyam Jadhav, Structural Problems That Fuel The Coal Crisis, The Hindu, October 17, 2021, at https://www.thehindubusinessline.com/data-stories/deep-dive/structural-problems-that-fuel-the-coalcrisis/article 37037244.ece
[7] MINISTRY OF COAL, ANNUAL REPORT 2012-13 149 (2013).
[8] Manohar Lal Sharma v. Principal Secretary & Ors., [Writ Petition (CRL.) No. 120 of 2012] [Writ Petition [C] No. 463 of 2012] [Writ Petition [C] No. 515 of 2012] [Writ Petition [C] No. 283 of 2013].
[9] Fiona Harvey, Jillian Ambrose and Patrick Greenfield, More than 40 countries agree to phase out coal-fired power, The Guardian, November 3, 2021, at https://www.theguardian.com/environment/2021/nov/03/more-than40-countries-agree-to-phase-out-coal-firedpower
[10] Id.
[11] INDIA BRAND EQUITY FOUNDATION, RENEWABLE ENERGY INDUSTRY IN INDIA, https://www.ibef.org/industry/renewable-energy.aspxL (last visited March 2, 2022).
[12] Nidhi Srivastava, Opinion: Coal strikes back - Lessons from a crisis, ET Energy World, October 13, 2021, at coal crisis: OPINION: Coal strikes back - Lessons from a crisis, Energy News, ET Energy World (indiatimes.com).

might have occurred. India would have experienced a severe issue because it is one of the leading importers of Indonesian coal.[13] However, we managed to get by because the prohibition was shortly partially relaxed. These examples demonstrate that, even though coal production will decrease and be replaced by renewable energy sources in the ensuing decades, coal will continue to be the primary source of electricity generation until the disparity between supply and demand for renewable energy sources is closed and the necessary technology is developed.[14] The Brookings research has also confirmed this.

Since the coal industry handles the majority of mining in our nation, it is necessary to examine the several issues this industry is dealing with. In addition to being one of the most polluting industries due to the excessive carbon generated by mining and combustion, the coal sector is also plagued by poor planning and inefficient coordination. The coal mining industry is also troubled by land disputes that lead to social unrest among the tribes and delayed environmental clearances. However, regarding accountability and transparency, India's coal industry is governed by a far better legal and regulatory structure.

A step in the right direction toward resolving governance concerns can be seen in the 2014 implementation of competitive bidding in the auction process[15] and the current commercialization of the industry with a single e-auction window for mining distribution.[16] Since coal is one of India's most important non-renewable energy sources and that it is set to undergo a drastic transformation in order to fulfill the commitments made at the United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP) in November 2021, it is now necessary to look at the internal issues surrounding the industry.

As India's coal industry enters a revolutionary phase, the issues above must be examined effectively through legislative and policy changes and a general improvement in the execution process. We must shed some light on the history of this black fuel in India, paying particular attention to the causes and consequences of its nationalization to analyze and comprehend the issues the coal industry is confronting.

Importance of Coal in the Economy

Coal is defined as “Coal is a combustible compact black or dark-brown carbonaceous

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[13] Vibhuti Garg, How Indonesia’s coal export ban could impact India, Institute of Energy Economics and Financial Analysis, January 13, 2022, at https://ieefa.org/indonesia-coal-export-india/

[14] Rahul Tongia and Samantha Gross, Coal in India Adjusting to transition, 7 BROOKINGS 5, 1-18 (2019).

[15] MINISTRY OF COAL, ANNUAL REPORT 2022-23 77 (2023).

[16] Press Trust of India, Cabinet Approves Offering of Coal Via Common E-Auction Window, The Hindu, Feb 26, 2022, at https://www.thehindu.com/business/Industry/cabinet-approves-offering-of-coal-via-common-e-auction-window/article65087783.ece

sedimentary rock formed from compaction of layers of partially decomposed vegetation and occurs in stratified sedimentary deposits, primarily used as a solid fuel to produce electricity and heat through combustion".[17] Other available fuel resources are oil, natural gas, and uranium.[18] However, coal is widespread and is available as a fossil fuel around the globe.[19]

The coal sector has always been the leading and essential resource for incorporating the needs of the growing economy, and for Indian industry, coal is indispensable.[20] Coal currently accounts for 55% of India‘s total energy consumption; it will remain the most essential fuel for driving sustained economic growth for many years. Therefore, an affordable and sustainable coal supply is inextricably linked to ensuring energy security for India.[21] Coal provided around 53% of the energy in the form of primary commercial energy in India in 2012 and is expected to provide around 47% of primary commercial energy in 2031-32, according to the Integrated Energy Policy.[22] According to the World Energy and Climate Statistics - Yearbook 2023, Asian coal-producing countries account for more than 70% of global coal output. China remained the world's largest coal producer in 2022, producing 4,430 MT, accounting for more than half of the supply (51% in 2022). Its share is growing (+4% points since 2019), followed by India's coal production of 937 MT (11%) and Indonesia producing 690 MT (8%).[23]

Commercial primary energy consumption in India has grown by about 700% in the last four decades. India's current per capita commercial primary energy consumption is 350 kg/year, well below that of developed countries.[24] Driven by the rising population, expanding economy, and a quest for improved quality of life, energy usage in India is expected to rise. Considering the limited reserve potentiality of petroleum & natural gas, eco-conservation restrictions on the hydel projects, and geo-political perception of nuclear power, coal will continue to occupy the center stage of India's energy scenario.[25]

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[17] MINISTRY OF MINES, GEOLOGICAL SURVEY OF INDIA, https://mines.gov.in/webportal/content/gsiao (last visited November 19, 2024).

[18] MINISTRY OF COAL, REPORT OF THE EXPERT COMMITTEE ON ROAD MAP FOR COAL SECTOR REFORMS 1 (2005).

[19] PREPARED FOR MINISTRY OF CORPORATE AFFAIRS, Competitiveness in the coal sector (2012).

[20] Arpita Khanna, *Governance in Coal Mining: Issues and Challenges,* THE ENERGY AND RESEARCH INSTITUTE (2013).

[21] Arpita Khanna, Governance in Coal Mining: Issues and Challenges, 9 THE ENERGY AND RESOURCES INSTITUTE 7,8 (2013).

[22] Mamta Nayak, Competition and Regulatory Issues in Coal Sector in India, 4 CENTRE FOR COMPETITION, INVESTMENT & ECONOMIC REGULATION 1, 2 (2014).

[23] WORLD ENERGY & CLIMATE STATISTICS - YEARBOOK 2024, COAL AND LIGNITE PRODUCTION, https://yearbook.enerdata.net/coal-lignite/coal-production-data.html (last visited Oct 10, 2024).

[24] MINISTRY OF COAL, India needs 1.3 to 1.5 billion tonnes of coal by 2030, https://pib.gov.in/PressReleasePage.aspx?PRID=1806584 (last visited Mar 20,2024).

[25] Sajal Bose, Coal remains an invincible force, Business India, Nov 13, 2022, at https://businessindia.co/magazine/coal/coal-remains-an-invincible-force

Indian coal offers a unique, eco-friendly fuel source to domestic energy market for the next century and beyond. Hard coal deposits spread over 27 major coalfields and are mainly confined to the eastern and south-central parts of the country.[26]

II. Regulatory landscape of Coal India Limited

The Ministry of Coal (MoC), which is in charge of developing and carrying out different policies and plans for the development of coal reserves and mines, as well as other related topics, is in charge of the coal industry in India. Through its PSUs, which include Singareni Collieries Company Limited (SCCL), a joint venture between the governments of Telangana and India, NLC India Limited, and CIL (a state-run company), MoC carries out its duties. The primary goal of the coal ministry is to ensure that the necessary amount of coal is available for use by the various sectors of the nation to meet the demand for coal. Producing the required coal with the least negative impact on the environment and society is another connected goal of the MoC. The government's primary goal is to make the coal industry sustainable. To do this, MoC is working to integrate clean coal technology into the system, innovate, explore mechanisms, and employ creative and scientific coal mining techniques.[27]

The ministry's other top priorities include preserving the quality of the coal, ensuring customer satisfaction through an efficient grievance procedure, attracting long-term and private investments, guaranteeing transparency in the allocation process, effectively resolving land and environmental clearance issues, and enhancing interministerial coordination. MoC's primary priorities are meeting the yearly goals, properly cleaning coal, developing research and development strategies, and enhancing CIL's overall effectiveness.[28]

The development and supervision of coal mines and quality and quantity checks are the primary responsibilities of the Coal Controller's Office, which was founded under the MoC's auspices and functions as an advising agency. It also handles complaints and conflicts pertaining to the purchase of coal-bearing territory under the Coal Bearing Areas (Acquisition and Development) Act of 1957. With seven subsidiaries, CIL is a fully-owned government corporation that falls under the jurisdiction of the MoC. Numerous legislative and policy changes have affected the coal industry. The coal industry's regulatory framework consists of several statutes. Below is a list of laws along with their purposes:

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[26] MINISTRY OF COAL, Coal - Indian energy choice, https://coal.nic.in/en/major-statistics/coal-indian-energy-choice (last visited May 11, 2024).
[27] MINISTRY OF COAL, ANNUAL REPORT 2018- 19 (2019).
[28] Id.

A) The Coal Mines (Nationalization) Act, 1973

To facilitate the acquisition and transfer of the owner's rights, title, and interest in coal mines listed in the Schedule, the Coal Mines (Nationalization) Act of 1973, was passed. A list of about 711 coal mines spread across the nation was included in the Schedule.

Objectives

1) To restructure and rebuild coal mines to guarantee the logical, well-coordinated, and scientific development and utilization of coal resources in line with the nation's expanding needs.

2) To transfer ownership and management of these resources to the state, which will allocate them as best serves the general welfare and for related or incidental purposes.

3) Improving coal mining operations' productivity, efficiency, and safety while guaranteeing workers receive fair compensation and welfare benefits.

4) Prevent private owners and contractors accused of poor management, corruption, and environmental harm from exploiting coal resources.

Key provisions of the act

1) The Act stated that, to the extent provided by the Act, it was in the public interest for the Union to assume authority over the regulation and growth of coal mines. With two exceptions:

(a) captive mining by private companies involved in iron and steel production, power generation, coal washing, or other end uses notified by the government periodically, and

(b) Sublease for coal mining to private parties in isolated small pockets not amenable to economic development and not requiring rail transport, the Act exclusively reserved coal mining for the public sector.

2) Section 17 of the act provides for the appointment of a Commissioner of Payments to handle claims resulting from ownership transfers, a Custodian to assume or continue managing a coal mine, and a Coal Mines Tribunal to settle issues pertaining to coal mines.[29]

B) The Coal Mines (Special Provisions) Act, 2015

To promote consistency in coal mining and coal production activities, the 2015 Act allocates coal mines, as well as the right, title, and interest in and over land and mining assets, along with mining leases, to successful bidders.

[29] The Coal Mines (Nationalization) Act, 1973, §17.

Key features of the Act

1. **Schedule I, II, and III Mines:** The act refers to all 204 mines as "Schedule-I coal mines," whose allocation has been canceled by the Supreme Court.[30] "Schedule-II coal mines" are the 42 mines that have already produced coal and have the capability to do so.[31] The other thirty-two coal mines were categorized as "Schedule-III coal mines,"[32] in varying development phases. Because of their limited end-use, the Central Government permitted these coal mines to move from Schedule I to Schedule III.

2. **No end-use restrictions on eligibility to participate in the auction:** This Act stipulates that, except for Schedule II and III coal mines, which will only be auctioned for end-use purposes in the production of steel, cement, and oil, there will be no end-use restrictions on eligibility to participate in the auction.[33]

3. **Nominated Authority**: The Act gives the Central Government the authority to designate a Nominated Authority to carry out the auctioning, allocation, vesting, and transfer of all rights, privileges, and titles of such coal mines to the successful bidder under the supervision of a person holding the position of joint secretary. Appointed Authority assists other officers and experts.[34]

4. **Auction proceeds:** All auction proceeds will be gathered by the designated authority and distributed to the appropriate states. Until their allocation is revoked, the previous allotees will get compensation for the land and immovable assets they constructed. A "Commissioner of Payments" must be appointed to handle payment disbursement.[35]

5. **Additional Provisions:** Until they are distributed through an auction, the central government may designate a custodian or custodians to oversee and operate the coal mines. The statute includes measures for the compensation and rehabilitation of displaced people.[36]

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[30] The Coal Mines (Special Provisions) Act, 2015, § 3(1) (p): “Schedule I coal mines” means,— (i) all the coal mines and coal blocks the allocation of which was cancelled by the judgment dated 25th August, 2014 and its order dated 24th September, 2014 passed in Writ Petition (Criminal) No.120 of 2012, including those allotments which may have been de-allocated prior to and during the pendency of the said Writ Petition; (ii) all the coal bearing land acquired by the prior allottee and lands, in or adjacent to the coal mines used for coal mining operations acquired by the prior allottee; (iii) any existing mine infrastructure as defined in clause (j).

[31] The Coal Mines (Special Provisions) Act, 2015, § 3(1)(q): “Schedule II coal mines” means the forty-two Schedule I coal mines listed in Schedule II which are the coal mines in relation to which the order of the Supreme Court dated 24th day of September, 2014 was made.

[32] The Coal Mines (Special Provisions) Act, 2015, § 3(1) (r): “Schedule III coal mines” means the thirty-two Schedule I coal mines listed in Schedule III or any other Schedule I coal mine as may be notified under sub-section (2) of section 7.

[33] The Coal Mines (Special Provisions) Act, 2015, § 4.

[34] The Coal Mines (Special Provisions) Act, 2015, § 8.

[35] The Coal Mines (Special Provisions) Act, 2015, § 15.

[36] The Coal Mines (Special Provisions) Act, 2015, § 18.

According to the Act, the Tribunal established under the Coal Bearing Areas (Acquisition and Development) Act, 1957, would decide any disputes.

C) The Mineral Laws (Amendment) Act of 2020 altered the Mines and Mineral (Development and Regulation) Act of 1957, which is now known as the Mines and Mineral (Development and Regulation) Amendment Act of 2021.

The Indian mining industry is governed by the Mines and Minerals (Development and Regulation) Act of 1957, stipulating that leases for mining operations must be granted. Mineral resource grants were made using the "first come, first served" approach before 2015. The decision-making process in this system of allocating mineral concessions was opaque and discretionary. The renewal procedure of mining leases was hampering large-scale investment in the mining industry. The government did not make any money from the mineral concessions besides royalties. As a result, the granting of new concessions and the renewal of old ones slowed. The downstream manufacturing sector, which heavily relies on the raw materials supplied by the mining sector, was consequently impacted by the mining sector's beginning to record a drop in production.

The National Mineral Exploration Trust and District Mineral Foundation were established, the Act was amended entirely in 2015 to implement several changes in the mining sector, including (a) requiring the auction of mineral concessions; and (b) Stringent punishments for illegal mining.

To address the emerging problem of leases expiring on March 31, 2020, and to permit lease transfers for captive mines that are not up for auction, the Act was further revised in 2016 and 2020, respectively. Additionally, the Mines and Minerals (Development and Regulation) Amendment Act, 2021, has been passed in order to quadruple employment potential in the next five years and catapult India into a five trillion dollar economy. The goals of the Act were to facilitate the expansion of exploration and to utilize the potential of the mining industry. The amendment makes significant changes to the Mines and Minerals (Development and Regulation) Act, 1957, which regulates the mining sector in India.

Key features of the new amendment:

1) Statutory Clearances Transfer:

- Section 8B of the 1957 Act deals with the transfer of statutory clearances. It states that when a mining lease expires, it transfers to new owners.

- According to the 2021 amendment, statutory allowances shall remain valid until the mineral reserves are depleted or the mining lease period has ended. The government selects a successful bidder after holding an auction. As a result, following a successful auction, all rights associated with the mining lease pass to the successful bidder.[37]

2) Elimination of end-use limitations for captive mines:

This modification allows captive mines to sell up to 50% of the minerals produced once they have complied with the requirements of the connected end-use plants.[38] Steel manufacture and power generation were the previously recommended end applications. The holder of the restricted mine will have to pay an additional sum determined by the Sixth Schedule.[39] Furthermore, the distinction between open and captive mines has been eliminated, meaning mines are no longer restricted to any particular industry or purpose.

3) Transfer of mining concessions by auction:

- The new amendment has removed the restriction on transferring mineral concessions, and concessions are now given up with no changes to the transfer process. This makes doing business in India easier. A new provision clarifying that a mining lease does not require the payment of any fees whose transfer is in question has been added to Section 12A.[40] In any case, a discount will not be applied to the prices already paid for the transfer.

4) Elimination of Section 10C[41]:

- The court has settled all future instances under section 10A (2) (b) by nullifying the clause about issuing of non-exclusive reconnaissance permits for mining leases.[42] As

[37] The Mines and Minerals (Development and Regulation) Act, 1957, § 8B.
[38] The Mines and Minerals (Development and Regulation) Act, 1957, § 8(5).
[39] The Mines and Minerals (Development and Regulation) Act, 1957, Sixth Schedule: List of additional amount to be paid under following heads: (i) For non-auctioned captive mines (other than coal and lignite), (ii) For auctioned captive mines (other than coal and lignite) and (iii) For coal and lignite.
[40] The Mines and Minerals (Development and Regulation) Act, 1957, § 12A: Transfer of mineral concessions.
[41] The Mines and Minerals (Development and Regulation) Act, 1957, § 10C: Grant of non-exclusive reconnaissance permits.
[42] The Mines and Minerals (Development and Regulation) Act, 1957, § 10A (2)(b): Rights of existing concession holders and applicants: (b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,— (i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government; (ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence; (iii) has not become ineligible under the provisions of this Act; and (iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six

a result, when a company sought to explore a large area to ascertain the mineral potential or content, a range of methods were employed, such as aerial surveys, seismic instruments, and photography. The clauses required the business to acquire a non-exclusive license to do this. This clause's modification eliminates the license's non-exclusivity clause and guarantees operational simplicity.

5) Addition of two new schedules:

- Fifth Schedule

New schedules are implemented following the "Fourth Schedule,"[43] which includes the "Notified Minerals" list. The "Fifth Schedule"[44] was added to provide an opportunity to include additional sums that need to be paid when a lease is issued for specific mineral types, like coal and lignite, copper, iron ore and chromite, and other minerals.

- Sixth Schedule

However, the sixth Schedule, which has been divided into three parts, specifies the additional sum due for other minerals like limestone, chromite, and bauxite. These are as follows:

(i) Captive mines that are not auctioned (apart from coal and lignite)

(ii) Captive mines that were put up for auction (apart from coal and lignite)

(iii) For coal and lignite[45]

The sum, which is also known as royalty, is due to the government and other stakeholders that regulate the mining sector in India. These stakeholders need royalties to guarantee their future interests because they have several interests in the mining sector apart from those of the state government.

On March 12, 2020, the Mineral Laws (Amendment) Act 2020 was introduced to address the need for comprehensive legislation and facilitate the implementation of mining laws. To overcome the limitations of captive mining policy and abolish the monopoly of coal giant CIL, commercialization was introduced in 2018, marking a fundamental shift in the regulatory framework of the Indian coal sector. The Mineral Law (Amendment) Act was introduced in 2020 to implement this policy.

The two current laws that oversee the whole mining sector in India are the Coal Mines (Special

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months as may be extended by the State Government.

[43] The Mines and Minerals (Development and Regulation) Act, 1957, Fourth Schedule: Notified Minerals.

[44] The Mines and Minerals (Development and Regulation) Act, 1957, Fifth Schedule: Additional amount on grant or extension of mining lease.

[45] The Mines and Minerals (Development and Regulation) Act, 1957, Sixth Schedule: (iii) For coal and lignites.

Provisions) Act of 2015 and the Mines and Minerals (Development and Regulation) Act of 1957. The two pieces of law were superseded by the Mineral Law (Amendment) Act, 2020, which gave it a more complete shape.

The leases for 334 mines, 46 active non-captive mines, were set to expire on March 31, 2020. Although some states took the initiative to put these blocks up for auction, the mines awarded through the auction process could not have begun operations until they had received up to twenty-three clearances from various government bodies. Due to this, the start of mining activities and the subsequent production of minerals were being excessively delayed. Subsequently, the Mineral Laws (Amendment) Act 2020 was introduced to maintain mineral availability.

Key features of the New Amendment Act:

1) Removing restrictions on end-use coal

The end-use of coal was limited to specific activities under the prior legislation. According to the clause, companies that acquired coal mines at auction under the second[46] and third schedules[47] must use the coal generated for steel and electricity production rather than for personal use.[48] Under the new law, companies will be free to conduct any coal mining activity, whether for their own gain or in compliance with directives from the central government.

2) **Coal and lignite block auction eligibility**

To bid on coal and lignite minerals, the law previously required someone involved in mining activities to have prior mining expertise. However, as the amended law clarifies, one does not need any prior mining experience to participate in the auction. This way, entrepreneurship skills are promoted, and the number of participants in a given auction increases.

3) **A combined prospecting and mining license**

Prospecting is one of the primary stages of territory analysis, which involves looking for, locating, or finding a mineral deposit, fossils, precious metals, or mineral specimens. Removing these minerals for industrial use from deposits is known as mining. Prospecting permits and mining leases were the two distinct licenses for these procedures. A

[46] The Mines and Minerals (Development and Regulation) Act, 1957, Second Schedule: Rates of royalty in respect of minerals.
[47] The Mines and Minerals (Development and Regulation) Act, 1957, Third Schedule: Rates of Dead Rent
[48] The Mines and Minerals (Development and Regulation) Act, 1957, § 9 and 9A.

new kind of composite license called a prospecting license cum mining lease is added by this Act.[49] The granted license shall be considered valid for prospecting and mining operations.

4) Prompt action over the auction

It was previously not within the government's authority to start the mining lease auction procedure before the lease period ended. This Act permitted State Governments to auction the mining lease before its expiration to guarantee that mining operations would continue.[50]

5) Providing new bidders with statutory permissions

According to the Act, the successful bidder in the auction will be granted the same licenses, permissions, and approvals as the previous bidder for two years. The new lessee may continue mining operations for the next two years, but must get the necessary permits and statutory clearances within that time frame.[51]

6) Approval from the Central Government

This Act gives the state governments the authority to grant mining licenses or distribute mines without the prior approval of the central government on lease, with a few exceptions, such as when the central government has already made the allocation or the mining block has been set aside for a specific purpose, like conservation.[52]

In the past, the "*early bird gets the worm*" approach was used to award mineral assets. This mineral concession allocation arrangement was optional. By encouraging the commercial selling of minerals, the reforms helped to simplify the issues surrounding the self-use mines. Additionally, it permitted captive miners to sell half of the minerals they extracted over a year. This was done after coal mines were sold to private companies for commercial mining. Forty-two years after coal mining in India was nationalized, the state-owned Coal India Limited declined to syndicate. The degree of efficiency and productivity of mining activities in India aids in evaluating the effects of these reforms.

III. IMPACT ANALYSIS OF LAWS AND POLICIES RELATED TO THE COMMERCIALIZATION OF THE COAL SECTOR

Several legislative and policy reforms have affected the coal industry. The coal industry's regulatory framework consists of several statutes. Below is a table that lists these statutes along

[49] The Mines and Minerals (Development and Regulation) Act, 1957, § 3(a) "composite licence" means the prospecting licence-cum-mining lease which is a two stage concession granted for the purpose of undertaking prospecting operations followed by mining operations in a seamless manner
[50] The Mines and Minerals (Development and Regulation) Act, 1957, § 8A.
[51] The Mines and Minerals (Development and Regulation) Act, 1957, § 8B.
[52] The Mines and Minerals (Development and Regulation) Act, 1957, § 8.

with their objectives:

Coal Nationalization Act, 1973	The purpose of its enactment was to deprivatize coal mines. It was changed in 1993 to permit captive mining of coal.
The Mineral Laws (Amendment) Act of 2020 altered the Mines and Minerals (Development and Regulation) Act of 1957, which is now known as the Mines and Minerals (Development and Regulation) Amendment Act of 2021.	This sovereign law governs India's mining activities. In 2021, it was modified to promote exploration, expansion, and utilize the mining industry's potential.
The Coal Mines (Special Provisions) Act, 2015.	Reallocating the mines that the Supreme Court had canceled in 2014 was primarily intended to ensure production continuity.
Mineral Concession (Amendment) Rules, 2021.	With the removal of end-use limitations, it is adopted to facilitate business dealings and boost investment and job opportunities in the mining industry.
Coal Blocks Allocation (Amendment) Rules, 2020.	It opened the door for competition to be introduced into the industry and provided an opportunity for the exploration of unexplored coal blocks.

Even though the laws above are a complex aspect of coal governance in India and have been repeatedly amended to take into account different policy changes, to address the need for comprehensive legislation and facilitate the implementation of these laws, the Mineral Regulations (Amendment) Act 2020 was introduced on March 12, 2020. 2018 saw the introduction of commercialization, which represented a paradigm shift in the regulatory framework of the Indian coal industry and an attempt to set free from the constraints of captive mining policy and end the monopoly of coal behemoth CIL. To put this policy into effect, the year 2020 saw the introduction of the Mineral (Amendment) Act. By abolishing end-use restrictions on coal mining and enabling even those with less experience to undertake coal mining activities, this law aims to increase the base of coal production. [53]

The law above was introduced to give the participants a relaxed and adaptable environment in which to conduct business, particularly when the adoption of merchant mining has emerged as a crucial step in saving the coal industry from drowning. This umbrella law amends two laws about the coal industry: The Coal Mines (Special Provisions) Act, 2015, and The Mines and Minerals (Development and Regulation) Act, 1957. In the well-known case of *Manohar Lal Sharma v. Principal Secretary*,[54] the Supreme Court of India revoked the allocation of coal blocks stipulated in the latter statute, which is the primary legislation governing the mining industry in India.

Some clauses of these acts prohibited the commercialization of coal mining, which prompted the revision. For example, only power and steel companies were permitted to use the coal from the mines listed in Schedules II and III of the CMSPA, 2015, for their consumption. Therefore, the Mineral Amendment Act 2020 had to revise the acts that permitted end-use restrictions on coal mining. [55]

The primary legislation for regulating minerals, including coal, the MMDRA Act 1957, was modified multiple times in 2015, 2016, and 2021 to accommodate the industry's evolving needs. As was previously mentioned, the MMDR Amendment Act 2021 has undergone some significant alterations. Nonetheless, it is clear from comparing the mining industry's regulatory framework to the coal industry that these improvements were long overdue. Any industry that wants an effective and dependable governance structure must first create policies, which are subsequently turned into laws and regulations. The goals for which such rules and regulations are intended should be clear. Once policies are legally supported by legislation that incorporates their purpose, the next stage is establishing a strategy and plan of action to achieve the goals. In this sector, the regulations that were in existence ran counter to and were inconsistent with the objectives stated in the policy statement, even if the policies themselves were included in the document. As a result, it was also unclear how to accomplish the established goals. There has been an effort to increase private involvement in the industry for many years because, shortly after CIL was established, it became clear that the government giant could not supply the growing demand for black fuel on its own and that additional merchants who could mine and invest were needed to keep up with the increasing demand.

[53] Supra note 109.
[54] Supra note 07.
[55] Supra note 151.

About 83% of the nation's coal production[56] is produced by CIL and SCCL, placing the industry in a monopolistic setting with numerous competition problems. Captive mining was implemented by amending the Coal Nationalization Act of 1973 with the primary objective of boosting coal production to meet the industry's expanding needs and encouraging more competition However, as the CAG report from 2012[57] and the subsequent cancellation of the coal block allocation make clear, the captive policy was poorly executed and had numerous inconsistencies.

Consequently, CIL maintained its dominant position and benefited from it as the incumbent. However, following a significant legislative shift that commercialized the industry and allowed private companies to mine coal, the end-use limitations have since been lifted. It is anticipated that CIL's monopoly will weaken once privatization takes place. In addition to regulating the quantity and quality of coal produced and supplied, the industry now requires an independent, non-statutory organization that can act as a mediator and create a practical regulatory framework that guarantees all parties have an even playing field and are free to make decisions without the undue influence and interference of the government and ministries.

When suggesting that a distinct coal regulator be established to enhance the coal governance system, it is essential to understand what an independent regulator is, its significance, scope, and ideal character and function. Analyzing effective regulators from various sectors in the country and worldwide is also necessary.

IV. COAL SECTOR: MOVE TOWARDS PRIVATIZATION

One of India's primary energy sources, coal, has substantially contributed to the nation's industrialization. Power generation uses over 75% of India's total coal production.[58] Because India has abundant coal resources, coal plays a significant role in the energy basket. The Indian Bureau of Mines estimates the country has 286 billion tonnes of gross geological coal resources, enough to cover its needs for the next 100 years or more.[59] Because India has abundant coal resources, coal plays a significant role in the energy basket. The Indian Bureau of Mines estimates the country has 286 billion tonnes of gross geological coal resources, enough to cover its needs for the next 100 years or more.[60] Thus, the objective of guaranteeing

[56] COAL INDIA LIMITED, Annual Report 2020-21 16 (2022).
[57] REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA, Allocation of Coal Blocks and Augmentation of coal Production (Performance Audit) (Report No. 7 of 2012-13).
[58] Manas Ranjan Senapati, *Fly Ash from Thermal Power Plants-waste Management and Overview*, 100 CURRENT SCIENCE 1791-1794 (2011).
[59] INDIAN BUREAU OF MINES, INDIAN MINERAL YEARBOOK 2011 (2014).
[60] MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, ENERGY - STATISTICAL YEAR BOOK INDIA 2012 (2013).

energy security in India is closely related to the availability of coal at a reasonable price and in a sustainable manner.

A. STUDY I: Commercial Mining of Coal

After India gained independence in 1947, the need for a more extensive and effective coal-producing system became apparent. Most of India's power-producing capacity at the time comprised high-grade lumpy coal-fired thermal power plants and modest hydroelectric power plants. Coal was an obvious choice for fostering industrial growth because of its low production costs, easy technological access, and significant domestic reserves. The private sector exploited the majority of India's coal mines until 1970.[61] However, the government felt the need to nationalize these mines in the early 1970s due to two related events: (i) the oil price shocks of the early 1970s forced the government to closely examine its energy options, identifying Coal as the primary source and making its commercial development a priority; and (ii) although private miners did not invest much in the sector's growth, the low safety standards and poor working conditions in mines were an additional concern. Nationalization was believed to enhance workers' quality of life and safety requirements and guarantee sufficient investments in the sector.[62]

As a result, the coal sector was nationalized in two stages: in 1971 for coking coal mines and in 1973 for non-coking coal mines. The Coal Mines (Nationalization) Act of 1973 made coal resources available to the public sector. Coal India Limited, was established in 1975 as part of the restructuring of the nationalized coal industry.

The Ministry of Coal was primarily responsible for developing plans and policies for coal exploration and development. Even though the Coal Mines (Nationalization) Act of 1973 limited the involvement of private players in coal mining, later revisions to the act permitted private companies to engage in captive mining for specific end-use industries, including coal gasification, cement, power, iron and steel, and washing. These adjustments increased coal output by permitting more private sector involvement.[63]

Just twenty years after coal mines were nationalized in 1973, introducing private sector companies into captive mining was permitted in 1993, primarily due to the growing scarcity of Coal, which is essential for India's energy security as it generates about 70% of the nation's

[61] Arpita Asha Khanna, Nationalisation vs Privatisation, Economic & Political Weekly, Dec 10, 2016, at https://www.epw.in/journal/2016/50/notes/nationalisation-vs-privatisation.html

[62] COAL INDIA LIMITED, HISTORY, https://archive.coalindia.in/en-us/company/history.aspx (last visited Oct 22, 2024).

[63] Priya Bhatnagar & Vidhi Madaan Chadda, *Energy Conundrum in India: A case of coal sector*, ILI LAW REVIEW 211 (Winter Issue 2022).

electricity.[64]Nevertheless, domestic coal production has significantly fallen short of demand, particularly with the recent increase in electricity generation, which has resulted in a massive increase in imports. With 249 million tonnes imported in 2019–20, India is now the world's second-largest importer of Coal, with imports making up almost a fifth of total domestic consumption. Coal imports have increased dramatically, from ~14,371 crore in 2004–05 to an astounding 1.59 lakh crore in 2019–20. In addition to India's fifth-largest coal reserves of 106 billion tonnes, or approximately 9.9% of the world's total reserves, this is a significant setback because it results in the flight of much-needed job opportunities abroad and significantly reduces foreign exchange resources.

In the current period, however, coal production is still mainly concentrated in the public sector. CIL has a monopoly over coal production and accounts for more than 80% of India's total production.[65] Large tracts of land containing good quality coal are reserved for exclusive exploitation by the CIL. Nevertheless, this PSE's coal output has continuously lagged behind demand. For example, in 2011, it was estimated that 559 million tonnes of coal were produced, compared to 650 million tonnes of demand.[66] The CIL's ineffective mining methods have caused coal quality to decline over time and quantity shortages. Coal's quality has decreased from 5,250 kCal/kg in the 1970s to 3,500 kCal/kg.[67] The use of outdated technologies also characterizes coal mines. Underground mining technology is neglected in India and is characterized by low production, productivity, and recovery rates.[68] The lack of advancement in underground mining technologies has made it challenging to reach Coal more than 150 meters below the surface. The demand-supply imbalance is predicted to widen even more due to the growing depletion of Coal found at shallow depths and the lack of long-term plans to expand underground mining. High reliance on imports is the outcome of the widening imbalance between supply and demand and the ongoing decline in coal quality. For example, reliance on imports of thermal-grade Coal has grown from 10 million tonnes in 2002 to 69 million tonnes in 2011.[69] High import dependence on Coal has the potential to undermine the affordable and sustainable supply of energy while widening the current account deficit. Changes in exporting countries' policies, the imposition of levies, and other export-reducing

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[64] MINISTRY OF INFORMATION AND BROADCASTING, Commercial Mining of Coal ,Big Boost to Aatmanirbhar Bharat (2020).
[65] MINISTRY OF COAL, COAL CONTROLLER'S ORGANISATION, PROVISIONAL COAL STATISTICS 2011-12 (2012).
[66] MINISTRY OF COAL, Annual Report 2011-12 (2012).
[67] NAVEEN KUMAR AGARWAL & RAMANI V V, INDIAN INDUSTRY AND ENVIRONMENT: POLICIES AND PRACTICES 190 (2008).
[68] S.K.CHAND & P.V.SRIDHARAN, THE COAL DILEMMA 56 (2008)
[69] Supra note 11

measures also expose the economy to increased global prices and geopolitical concerns.[70]

It is widely believed that providing a sufficient, affordable, and sustainable energy supply requires ramping up coal production from domestic sources. This has put enormous pressure on CIL to meet its production targets, which the Planning Commission of India set. In 2012, the President also directed CIL to guarantee electricity producers at least 80% of the assured supply.[71] However, the directive has not increased production in any way. CIL is still falling short of the set goals due to the lack of significant improvements and the current inefficiencies. The private sector has had a limited participation in the Indian coal business, even though it was permitted to extract Coal under the captive mining option. 2011, for instance, its share in the total coal production was 9%. This represents an increase of only 3% since 2005.[72] The private sector has failed to increase production because of price distortions, the absence of an independent regulator, opaque and ineffective policies, and a lack of level playing fields between the public and private sectors.

Increasing coal production requires an infusion of modern technologies and efficiencies in the sector. One of the essential ways through which this could be achieved is by introducing competition in the industry. To this end, the National Democratic Alliance (NDA) government in 1997 proposed an amendment to the 1973 Act to allow non-captive coal mining by the private sector and open the coal sector to private investment.[73] The Coal Mines (Nationalization) Amendment Bill was considered a practical step towards commercializing the coal industry in India. The bill was introduced in the upper house of the Parliament in 2000.[74] However, the bill could not be passed due to the lack of a majority and strong opposition from trade unions. The bill was then referred to the Standing Committee on Energy, which submitted its report in 2001, endorsing the passage of the bill. The NDA government set up a Group of Ministers (GoM) to clear out differences with the opponents and make specific policy recommendations. However, with the change in government in 2004, the GoM ceased to exist. A new GoM was constituted in 2009 under the United Progressive Alliance (UPA) government, but it took no significant steps forward.[75]

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[70] MINISTRY OF COAL, ENERGY CELL, Annual Report 2023-24 9 (2024).
[71] PTI, Coal India gets presidential directive to commit fuel to power companies, The Economic Times, Apr 03, 2012, at https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/coal-india-gets-presidential-directive-to-commit-fuel-to-power-companies/articleshow/12521115.cms?from=mdr
[72] Supra note 11.
[73] INTERNATIONAL ENERGY AGENCY, Understanding Energy Challenges in India 46 (2012).
[74] PTI, Coal Mines Nationalization Amendment Bill withdraw from RS, Coal Junction, Dec 09, 2014, at https://www.coaljunction.in/news/n_newsdetail/Coal-Mines-Nationalisation-Amendment-Bill-wit/7446#sthash.LPpPYTBo.dpbs
[75] MINISTRY OF COAL, Reforms in coal mining (2009).

After decades of public-sector dominance and controls that relegated the private sector to minority status in coal mining, India launched commercial coal mining via coal mine auctions in 2020. Despite ample indigenous coal resources, the growing dependence on coal imports has fortified the debate on whether the public sector retaining its monopoly is an effective strategy. This chapter structurally analyses the discussion and the core arguments advanced against and in support of privatization. By providing both static and longitudinal analyses of the debate, the chapter sheds light on two things: (i) why the previous efforts towards privatization failed and (ii) whether these factors are still prevalent or have changed over time. Two studies have been conducted to understand the potential policy outcome better.

1. Methodology and Data

The analysis is based on data collected from newspapers in India and covers the period **from January 1, 2020, to December 31, 2022**. The rationale for choosing news media as the primary data source is that it provides a reasonably broad and comparable overview of the stakeholders involved and their preferred policy. As a first step, I selected newspapers with regular coverage of the coal sector. **These include newspapers such as The Hindu, The Hindu Business Line, The Economic Times, The Financial Express, and Business Standard.** Considering this period in the analysis is essential for gaining insights into the main stakeholders supporting and opposing privatization.

Considering this period in the analysis is essential for gaining insights into the main stakeholders supporting and opposing privatization.

The analysis consists of only those statements where a concept accompanies the agreement or the disagreement. Statements where the actor gives policy preference without justifying were ignored. Some policy preferences were given explicitly in the data, while others had to be inferred. Statements that were ambiguous about the policy preference were excluded from the analysis. Analyzing articles from different newspaper sources could include a problem with multiple coverage of the event. To avoid this, only one source was coded out of the various articles appearing in other newspapers and covering the same actor's statement on a particular date. The entire process thus produced a list of statements containing information about the actor, the concept that the actor referred to, indicating agreement or disagreement with privatization, and the date of the statement. The stakeholders in the data have been classified int**o five categories: public sector coal producers, think tanks, regulators, industry associations, and the Government.**

The core concepts used by the stakeholders are Coal India Limited's inability to meet demand

and the need to promote competition. These are followed by concepts such as removing price distortions, maintaining consistency in energy sector reforms, reducing fiscal and current account deficits, improving technologies, and reducing coal prices and power tariffs. Other concepts include increasing power generation capacity, increasing investments in infrastructure, exploitation of untapped coal reserves, and inefficiencies in CIL. All the above concepts fall in the pro-privatization camp. Thus, stakeholders who favor privatization mainly advance economic arguments to justify their policy preference. Interestingly, this seems to contradict the objectives of the 1973 nationalization of the coal sector, which included ideas such as increasing production and introducing modern technologies. These very arguments are now used in favor of changing policy towards privatization.

The concepts that fall in the anti-privatization camp include arguments such as poor track record of the private sector, indiscriminate mining by private companies, poor working conditions in private mines, cherry-picking of coal by private miners, inequitable benefit sharing, potential diversion of coal away from power generation, high cost of power generation, etc. Thus, stakeholders in this camp advance economic, social, and environmental arguments to justify their policy preference. They believe that CIL should remain the nodal agency for coal mining and blame external factors like ecological hurdles, corruption, coal mafia, etc, for the inability of CIL to increase production. An important thing to note here is that none of the concepts are disputed - that is, the same concept does not occur positively or negatively. In other words, a concept either falls in a pro-privatization or an anti-privatization camp and not in both. The Ministry of Coal, Coal India Limited, and Ernst and Young are the most prominent stakeholders. While most stakeholders are either in the anti-privatization or pro-privatization camps, the Ministry of Coal and Coal India Limited appear in both.

2. Result and Analysis

Table: Understanding the views of stakeholders towards privatization in the coal sector.

First timeline: Jan 1, 2020 to Dec 31, 2020				
Name of Newspaper	**Date of Publication**	**Stakeholders**	**Supporting Privatization**	**Opposing Privatization**
The Hindu Business Line	10/01/2020	Officials of CIL	—	Notwithstanding the entry of private miners in commercial coal mining, CIL is confident of

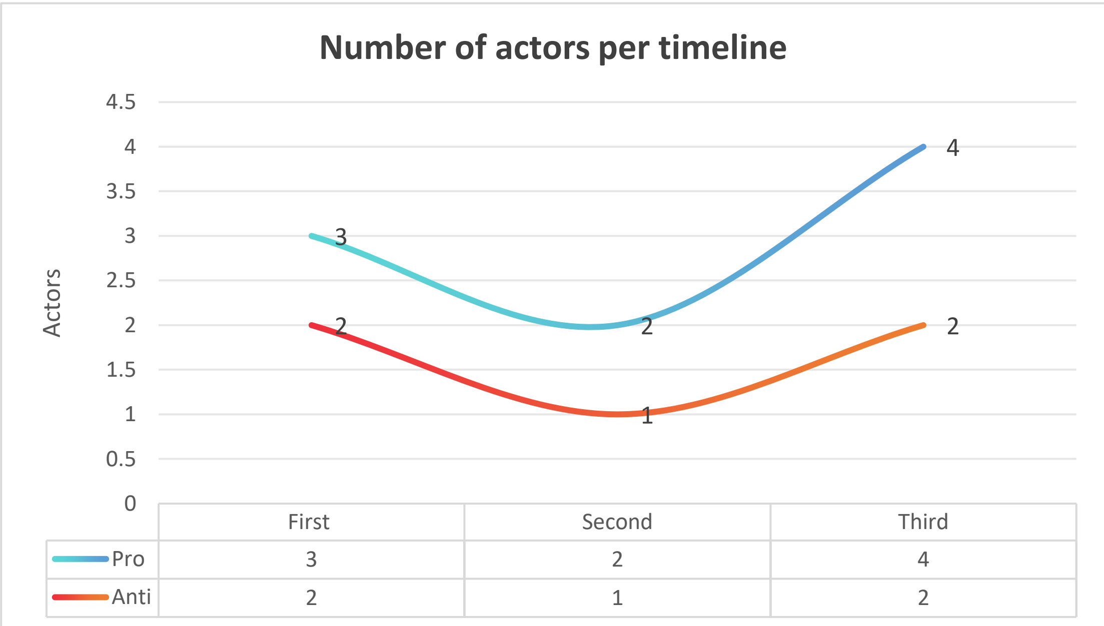
				staying ahead of the competition with a strong resource base, core expertise of operations, updated mechanism & multidisciplinary workforce.
The Economic Times	11/01/2020	Pralhad Joshi, Union Coal & Mines Minister	_	We have to depend on coal for at least 30-40 years. In that case, we cannot depend wholly on the private sector. The Govt. does not want that only private companies should be there in coal mining.
The Hindu	17/05/2020	The CARE Ratings	The coal sector gets a boost as the private sector can now bid at the auctions for 50 blocks, enhancing supplies and reducing imports, which is good for the economy.	_
The Hindu	17/05/2020	Saurabh Bhatnagar, partnership & national leader, Metals & Mining,	The Introduction of competition, transparency & private sector participation in the coal sector will automatically build	_

		EY India	transparency of mine valuations fore rigorous mine planning & compliance, & invite investments for enhancing operational efficiency to justify the bids made at the time of mine acquisition. These were much-needed reforms in the mining sector as India is a mineral-rich country & any sectoral reforms to attract investments that add to India's GDP through this sector & save precious foreign exchange are welcome.	
The Hindu	17/05/2020	Nirmala Sitharaman, Finance Minister	Structural reform measures in the coal & mining sector are expected to give a boost to private investments in the sector & reduce India’s reliance on	—

			imports.	
Second timeline: Jan 1, 2021 to Dec 31, 2021				
The Financial Express	06/04/2021	Pramod Agarwal, Chairman of CIL	_	Commercial mining by the private players won't destabilize CIL.
The Hindu Business Line	27/05/2021	Press Trust of India	The private sector's participation in the existing mines will be preferred if they are ready to bring in their contribution in the form of mine-specific machinery & equipment.	_
The Financial Express	25/10/2021	Vivek Kaul, Author	Commercial mining of coal might work out well in the long run, but in the short to medium term, the importance of coal India & import dependence is likely to continue.	_
Third timeline: Jan 1, 2022 to Dec 31, 2022				
The Financial Express	03/03/2022	Indronil Roychowdhury	The private sector has an inherent commercial advantage both in terms of payout &	_

			productivity. It can employ funds to bring in advanced technology to extract coal from deeper seams. Technological advancement has prompted the Government to take such a view, giving leverage to commercial mining & making more coal available in the open market.	
Business Standard	10/11/2022	S. Dinakar, Senior Editor	—	Larger shares of the state-owned miner's production are sold significantly below global benchmark prices, deterring global investors from participating in divestment plans.
The Economic Times	27/11/2022	Dr. B. Veera Reddy, Chairman cum MD, Central Coalfields Ltd.	CIL focuses on unlocking underground reserves of coal for private participation	—

The Hindu Business Line	19/12/2022	Press Trust of India	CIL outsources mines to take on private players.	—
The Hindu	15/12/2022	Think Tank	CIL tracked 15 projects to mine coal through the MDO route.	—
The Hindu	25/09/2022	Pramod Agarwal, Chairman of CIL	—	Competition from private players is not a worrying factor for CIL.



To analyze the structure and pattern of a pro-privatization or an anti-privatization camp, the whole period from Jan 1, 2020, to Dec 31, 2022, is divided into **three timelines: Jan 1, 2020, to Dec 31, 2020 (first timeline); Jan 1, 2021, to Dec 31, 2021 (second timeline) and Jan 1, 2022, to Dec 31, 2022 (third timeline).** In the first timeline, it has been observed that one actor's statement was in favor of and against privatization, which was again very confusing, and the actor was the Ministry of Coal and Mines. The only actors against privatization were CIL and its officials, while the stakeholders in favor of privatization comprised the Ministry of Finance, E & Y, and CARE Ratings Ltd. However, the data was collected from only four newspaper sources, which may give an incomplete picture of the stakeholders involved.

During the second timeline (Jan 1, 2021 to Dec 31, 2021), the pro-privatization camp expands to include book authors and Newspaper editors. The anti-privatization camp was comprised of only one actor, that is, CIL. The data during this timeline has been collected from three newspapers only. The actor associated with the period beginning January 2021 shows a considerable increase in the constituency. The most prominent stakeholders in the pro-privatization camp include the Ministry of Coal & mines, Central Coalfields Ltd., and newspaper editors. The most notable actor against privatization is still the CIL. Thus, there is effectively only one actor who stands tall against privatization and has remained constant throughout the period starting in 2020. The pro-privatization coalition increased considerably over time, particularly in the third timeline. The reasons for the significant increase in the third timeline can be attributed to the inability of CIL to increase production, exposure of corruption and malpractices within the sector, and the introduction of a coal regulatory bill that optimizes the benefits from privatization, on the other hand, has remained more or less constant throughout this period. The data during this timeline was collected from only five newspapers.

The anti-privatization camp fails to provide a coherent storyline. Stakeholders in pro-privatization camps, on the other hand, convey a cohesive policy image. They can present their concepts in a more compact and congruent manner. The dynamic analysis of concepts across the three timelines clearly shows that the sharp increase in coherence and bundling together of concepts results only in the third timeline.

B. STUDY II: Auction of coal blocks for commercial mining

On its third anniversary, the Narendra Modi government claimed to have brought in an era of "precise policies, transparent transactions, and transformative outcomes," highlighting the cases of "transparent auction of coal block and telecom spectrum."[76] Coal mine nationalization was implemented in the 1970s to eradicate unscientific mining methods and subpar labor conditions in the nation's private coal mines. The coal industry was an open market before nationalization, but it is now a closed market. The coal block allocation policy became vital after enacting the Coal Mines (Nationalization) Amendment Act, 1993, which introduced private sector participation in coal mining. While a screening committee was constituted to review proposals as early as 1992, there were no specified criteria for allocation. Further, the rationale for allocation among competing applicants was never recorded in the screening

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[76] Priyanshu Gupta & Anuj Goyal, Coal Auctions, Economic & Political Weekly, July 14, 2018, at https://www.epw.in/journal/2018/28/commentary/coal-auctions.html

committee minutes.[77] As a result, the Comptroller and Auditor General of India found the allocations to private coal miners to be discretionary and non-transparent.[78] Even a parallel process of direct allotment to government companies faced serious issues, often leading to back-door privatization through the formation of joint ventures with private companies. In light of these circumstances, on 25 August 2014, the Supreme Court canceled the allotment of 204 coal blocks allocated since 1993, holding that "there was no fair and transparent procedure, all resulting in unfair distribution of the national wealth."[79]

To manage the fallout from this situation, the National Democratic Alliance (NDA) Government introduced a new coal block allocation policy through the Coal Mines (Special Provisions) Act, 2015. It allowed allotment of all the canceled 204 coal blocks through two routes: (i) auction to private and public sector players for defined end-uses, and (ii) direct allotment to public sector companies through a tendering process.[80] Ostensibly, the first route sought to encourage private sector participation and extract ground rent at market prices. The second route attempted to ensure fuel security for government companies to care for developmental needs, especially for the power sector. Subsequently, the Government auctioned 31 coal blocks, claiming to yield a total estimated revenue of over `1.96 lakh crore. The Government claimed it was a huge success, stating, "The year 2015 will be written in golden letters in the annals of the history of the coal sector … India has hit a gold mine with the recently concluded auctions".[81]

1. Methodology and Data

The data has been collected by filing applications through RTI. Ministry of Coal, Coal India Limited and its subsidiaries,[82] North Eastern Coalfields Limited, Neyveli Lignite Corporation Limited and Singareni Collieries Company Limited out of which Coal India Limited, Central Coalfields Limited, Ministry of Coal, and Neyveli Lignite Corporation Limited have all sent data regarding the opening of commercial mining in the coal industry.

Information captured from RTI applications:

[77] Manohar Lal Sharma v. The Principal Secretary and Others (2014), Writ Petition (CRL) No 120 of 2012.
[78] MINISTRY OF COAL, REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA ON E-AUCTION OF COAL MINES (Compliance Audit) (Report No. 20 of 2016).
[79] Supra note 20.
[80] The Coal Mines (Special Provisions) Act, 2015, §4.
[81] MINISTRY OF COAL, Year End Review Coal Mines (Special Provisions) Bill 2015 Passed; Laid Down Robust & Transparent System for Coal Mines Auctioning (2015).
[82] Bharat Coking Coal Limited, Central Coalfields Limited, Eastern Coalfields Limited, Mahanadi Coalfield Limited, Northern Coalfields Limited, South Eastern Coalfields Limited, Western Coalfields Limited and Central Mine and Planning Design Institute.

A) Reasons behind the opening of commercial mining.

B) Number of auctions conducted between November 2020 to November 2022.

C) The total number of coal mines successfully auctioned in each auction round.

D) Change in the financial and operating performance of PSE.

2. Result and Analysis

Coal mine nationalization was implemented in the 1970s to eradicate unethical mining methods and subpar worker conditions in the nation's private coal mines. Following nationalization, the coal industry transitioned from an open to a closed market. However, to meet the nation's growing electricity needs, the Nationalization Act was changed in 1993 to permit private captive coal mining for power generation. From 1993 to 2011, 206 coal blocks were distributed using a screening committee process and a government dispensation route. The Supreme Court ruled in 2014 that these allocations were unlawful and arbitrary due to the opaqueness of the process, and the 204 coal blocks were revoked.

The Coal Mines (Special Provisions) Act was introduced by the Central Government in 2015 to redistribute coal blocks that the Supreme Court had canceled. The Act brought other mines into production quickly and guaranteed the producing mines' continued operation. To introduce uniformity to the requirements of all three Acts controlling coal block allocation, the Act also revised the Mines and Minerals (Development and Regulation) Act and the Coal Mines (Nationalization) Act.

The Government created a High-Level Committee led by the Vice-Chairman of NITI Aayog in 2019 to liberalize the coal industry. By the suggestions, the Mineral Laws (Amendment) Act, 2020, revised pertinent CMSP and MMDR Act provisions to guarantee ease of doing business, eliminate redundant rules, and provide flexibility in allocation. By removing the potential of a restricted interpretation of the eligibility requirements and permitting the allocation of blocks for composite prospecting license-cum-mining lease, the amendment increased the number of people who may participate in coal mine auctions. The coal blocks would be auctioned without limitations on coal use or sale. Coal exports were also permitted under the relevant legislation. Coal-bed methane and minor minerals were allowed to be exploited to facilitate operations. Another significant change was introducing a revenue-sharing mechanism in the auction of coal mines, thereby making the auction more market-friendly. With these policy reforms in place, the auction of coal mines for commercial mining was initiated to liberalize the coal sector completely. It was undertaken to scale up coal production in the country and bring down coal imports.

The preamble to the Coal Mines (Special Provisions) Act, 2015 mentions that the key objective of the new policy was to "ensure continuity in coal mining operations" and "to minimize any impact on core sectors such as steel, cement, and power utilities." Thus, the efficacy of the auction process can be assessed on two metrics: success rate achieved in allotment vis-à-vis the total number of blocks sought to be auctioned and the start of coal production by the auctioned mines. A third measure could be the revenue realized through auction proceeds. Coal blocks for commercial mining were auctioned in June 2020, and 38 blocks were used in the first round. 19 of the 38 blocks had a 50% success rate in November 2020 after the auction process was successfully finished.[83]

A two-stage online bidding method is used for commercial coal block auctions. In the first stage, competitive first-price proposals are submitted after technical screening, and in the second and final stage, better price offers are expected to be received. The previous system of limited sectors, use, and pricing differs entirely from commercial coal mining auctions.[84] There are no such limitations now. New companies can enter the bidding process because the auctions' terms and circumstances are lenient. A transparent bidding process, 100% FDI via automatic route is permitted, the upfront amount is reduced, adjusted against royalty, open efficiency parameters to promote flexibility in coal mining operation, reasonable financial terms, and a revenue-sharing model based on the National Coal Index.[85]

On March 25, 2021, the Ministry of Coal opened the second round of the commercial mining auction. There were 67 coal mines/blocks available in the II Tranche. Ten of these 67 coal blocks have been successfully sold at auction.[86]

On October 12, 2021, the Ministry of Coal, the Nominated Authority, began the third round of the commercial auction for 88 coal mines. On December 15, 2021, technical bids containing online and offline bid materials were launched to the bidders. Twenty coal mines, sixteen of which are fully explored and four of which are partially explored, have drawn fifty-five bids in all. The remaining eighteen are non-coking coal mines, whereas two are coking coal mines. Ten coal mines have received two or more bids. There was just one bid for ten coal mines, and the auction procedure was canceled. A multidisciplinary Technical Evaluation Committee assesses the bids for the ten coal mines where two or more bids were received.[87]

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[83] MINISTRY OF COAL, ANNUAL REPORT 2023- 24 77 (2024).
[84] Id.
[85] MINISTRY OF COAL, Unleashing Coal: New hopes for Atmanirbhar Bharart (2020).
[86] MINISTRY OF COAL, ANNUAL REPORT 2023- 24 20 (2024).
[87] Shriparna Saha, India auctions 13 commercial coal mines to cut imports, S & P Global, Mar. 18, 2024, at https://www.spglobal.com/commodity-insights/en/news-research/latest-news/coal/031824-india-auctions-13-commercial-coal-mines-to-cut-imports

On December 16, 2021, the fourth round of commercial auctions began its bidding procedure. Ninety-nine coal mines were auctioned off. Of these 99 coal mines, 35 fall under the CMSP Act's 14th Tranche of Auction, while 64 fall under the MMDR Act's 4th Tranche of Auction.[88]

The commercial mining auction's fifth round saw eight coal/lignite blocks receive single bids. Therefore, the Ministry pursued the second effort at the eight coal/lignite mines. Submission of the Technical Bid was due on January 13, 2022.[89]

The Ministry of Coal launched the auctions of coal mines for commercial mining of 133 coal mines under the *sixth round and 2nd attempt of the 5th round* on November 3, 2023, the most significant tranche of the auction of commercial coal mines. In the auctions held, 29 coal mines were successfully auctioned.[90] The auctions witnessed intense competition, with many first-time bidders in this round. This is a testament to the continued interest in the coal mining sector and the stable future of coal mining in India. This also signifies that the reforms brought in by the Government in the coal sector through the introduction of commercial coal mining have been well received by the industry.[91]

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To make India Atmanirbhar in coal, the Ministry of Coal is preparing for the November 15, 2023, start of the eighth round of auctions for commercial coal mines. This would be a significant stride forward in the coal industry. The first successful commercial mining auctions were held on June 18, 2020, when the prime minister officially opened the coal sector for commercial coal mining. Since then, the Ministry of Coal has held seven rounds of auctions for commercial coal mining, selling 91 mines with a maximum annual capacity of 221 million tons. Additionally, allowing coal mine auctions without end-use restrictions and guaranteeing

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[88] MINISTRY OF COAL, Details of Fourth Round Commercial Coal Mine Auction (2022).
[89] PTI, Govt extends deadline for bidding in commercial coal mines' auction till Jan 13, The Times of India, Dec 19, 2022, at https://timesofindia.indiatimes.com/govt-extends-deadline-for-bidding-in-commercial-coal-mines-auction-till-jan-13/articleshow/96348409.cms
[90] MINISTRY OF COAL, 6th round of auctions of commercial coal mines receives huge response (2023).
[91] Id.
[92] MINISTRY OF COAL, Coal Ministry completes 7th tranche of coal block auctions successfully (2023).

a fair playing field for both public and private sector participants were made possible by the amendment of mineral laws. These mines provide coal that can be sold, used for personal consumption, or used for any other reason. There are many advantages to the start of commercial coal mining, including increased government revenue, healthy competition, and improved coal supply due to corporate involvement. Crucially, the states rich in coal have made significant profits from these auctions, putting them in a position to spur regional growth and directly and indirectly create jobs for the local population.

Following a string of successful auctions, the eighth round of commercial coal mining auctions reflects the Ministry's steadfast dedication to advancing the mining sector. Thirty-five coal mines will be available, including 24 under the MMDR Act of 1957 and 11 under the CM (SP) Act of 2015. Four coal mines, including three MMDR and one CMSP, are also up for grabs under the second attempt of round seven of Commercial Coal.[93]

An essential step in encouraging private sector involvement in the coal mining and boosting coal production is the start of the eighth round of commercial coal mining auctions. Because of the Ministry of Coal's progressive policies, mines are now being allocated to the private sector more quickly, and more new participants in the industry are participating in these auctions.

On December 20, 2023, the Ministry of Coal will begin the ninth round of Commercial Coal Mine Auctions here, marking another critical step in promoting economic growth and providing energy security. With more private companies expected to participate in the ninth round of commercial coal auctions, the coal industry is expected to become more competitive, efficient, innovative, and supportive of sustainable development. This program was launched following historically high coal production and dispatch rates from captive and commercial coal mines.

Since 2014, the Ministry's coal sector reforms and achievements have centered on boosting local coal output, reducing reliance on imports, and achieving national coal self-sufficiency. As it takes this critical step, the Ministry confirms its steadfast commitment to influencing the country's energy landscape through sensible coal reforms. Following several successful auctions, the Ministry's steadfast dedication to advancing the industry is demonstrated by the ninth round of Commercial Coal Mine auctions. In the ninth round, 26 coal mines were offered, including 23 under the MMDR Act of 1957 and 3 under the CM (SP) Act of 2015. The second

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[93] MINISTRY OF COAL, Coal Ministry to launch 8th round of commercial coal mines auctions on 15th November (2023).

attempt of round 7 of Commercial Coal also offers five coal mines, including one MMDR coal mine and four CMSP coal mines.[94] The sale and use of coal are unrestricted, in contrast to earlier Commercial Coal Mine Auctions. Notably, there are no longer any eligibility requirements. Therefore, there are no longer any financial or technological obstacles to participation. Mineral law amendments have been crucial in opening up the coal industry, giving public and private sector participants a level playing field, and permitting auctions for various uses, including personal use and sale.

The Ministry of Coal has envisioned a Single Window Clearance System (SWCS) portal to facilitate business transactions. This portal will provide a platform for obtaining various clearances for the early operationalization of coal mines, ultimately leading to the expansion of coal production in the nation through a single gateway. These reforms are the cornerstones of resilience and advancement in the coal industry. Additionally, the following auctions of commercial coal mines will boost economic expansion, create jobs, improve energy security, and support sustainable development. The Ministry is still dedicated to creating an atmosphere encouraging growth and innovation in the energy industry.

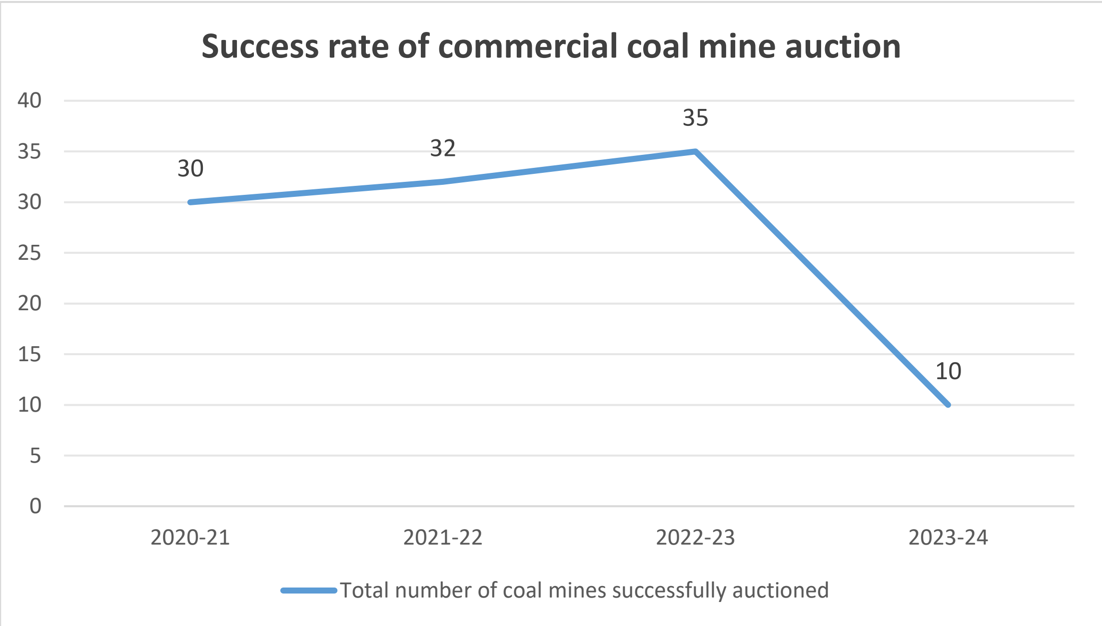
Aligning with the vision of Prime Minister Shri Narendra Modi for attaining energy independence by 2047 and to ensure "Atma-Nirbharta (self-reliance) in coal", the Union Minister of Coal and Mines, Shri G Kishan Reddy, launched the 10th round of Commercial Coal Block Auctions. During the tenth round of the auction, 62 blocks were offered without end-user restrictions.[95] The Prime Minister launched the commercial coal block auction in June 2020. Since then, during the last nine rounds, the Ministry of Coal has successfully auctioned 107 coal blocks. In the 10th round, nine coal mines were successfully auctioned.[96] Since the inception of commercial coal mining in 2020, 113 coal mines have been auctioned successfully, with a production capacity of 257.60 Million Tonnes per year. [97]

The Success rate of commercial coal mine auction:

Date	Rounds	Coal mines offered	Mines successfully auctioned	Success rate
November	1st	38	19	50%

[94] MINISTRY OF COAL, Coal Ministry to launch 9th round of commercial coal mines auction (2023).
[95] MINISTRY OF COAL, Coal Ministry to launch 10th round of commercial coal block auction (2023).
[96] PTI, Nine mines successfully auctioned in 10th round of commercial coal mine auctions, Business Standard, Dec 17, 2024, at https://www.business-standard.com/markets/capital-market-news/nine-mines-successfully-auctioned-in-10th-round-of-commercial-coal-mine-auctions-124112700392_1.html
[97] ET Energy World, Nine coal mines auctioned in 10th round: 19,000 jobs, Rs. 1446 crore revenue expected, The Economic Times, Nov 28, 2024, at https://energy.economictimes.indiatimes.com/news/coal/nine-coal-mines-auctioned-in-10th-round-19000-jobs-1446-cr-revenue-expected/115751252

2020				
March 2021	2nd	67	11	16%
October 2021	3rd	88	13	15%
December 2021	4th	99	08	8%
March 2022	5th	109	11	10%
November 2022	6th	133	29	22%
March 2023	7th	106	06	6%
November 2023	8th	39	02	5%
December 2023	9th	32	08	25%
June, 2024	10th	62	06	10%
Total			**113**	



The country would be able to establish a market-based coal economy with the openness of the coal sector. End users will gain from increased competition in the coal industry, while end-user sectors will gain from transparently securing their input coal supplies.[98] As we move closer to becoming energy self-sufficient, a rise in domestic coal production would help cut down on

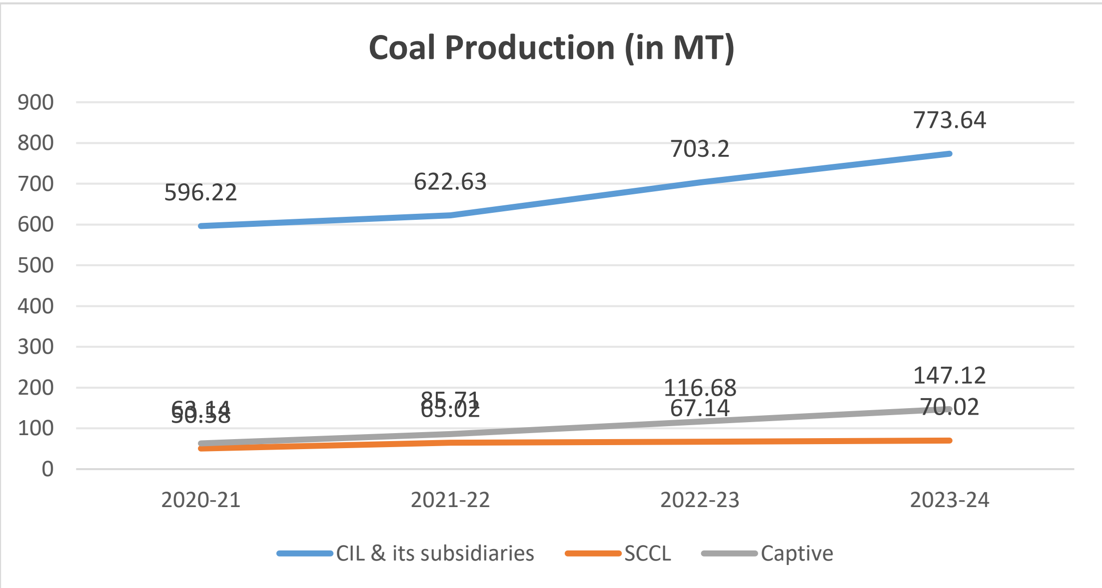
[98] MINISTRY OF COAL, Reforms initiated in 2014 transform coal sector, making it more efficient, transparent, investor-friendly and ensuring coal's vital role in nation's economic growth and energy security (2024).

unnecessary coal imports, which would help us save valuable foreign exchange.[99] Commercial coal mining will result in new investments and direct and indirect job creation.[100] It is anticipated that coal-bearing states like Jharkhand, Chhattisgarh, Madhya Pradesh, Maharashtra, and Odisha will experience significant socioeconomic gains as all auction proceeds will be distributed to the state governments that own the coal. Considerable investments are being made in clean coal technologies to gasify 100 million tons of coal by 2030. The auction process has also incentivized the use of clean coal technologies like liquefaction and gasification.[101] To influence our future, efforts are being made to maximize the use of our enormous coal deposits while also pursuing diversification initiatives.

V. Impact analysis of commercial auctions under Coal Mines (Special Provisions) Act, 2015, and Mines and Minerals (Development and Regulation) Act, 1957

A. Analyzing the change in Coal Production after the launch of commercial mining in India (in MT)

Company	2020-21	2021-22	2022-23	2023-24
CIL & its subsidiaries	596.22	622.63	703.2	773.64
SCCL	50.58	65.02	67.14	70.02
Captive	63.14	85.71	116.68	147.12



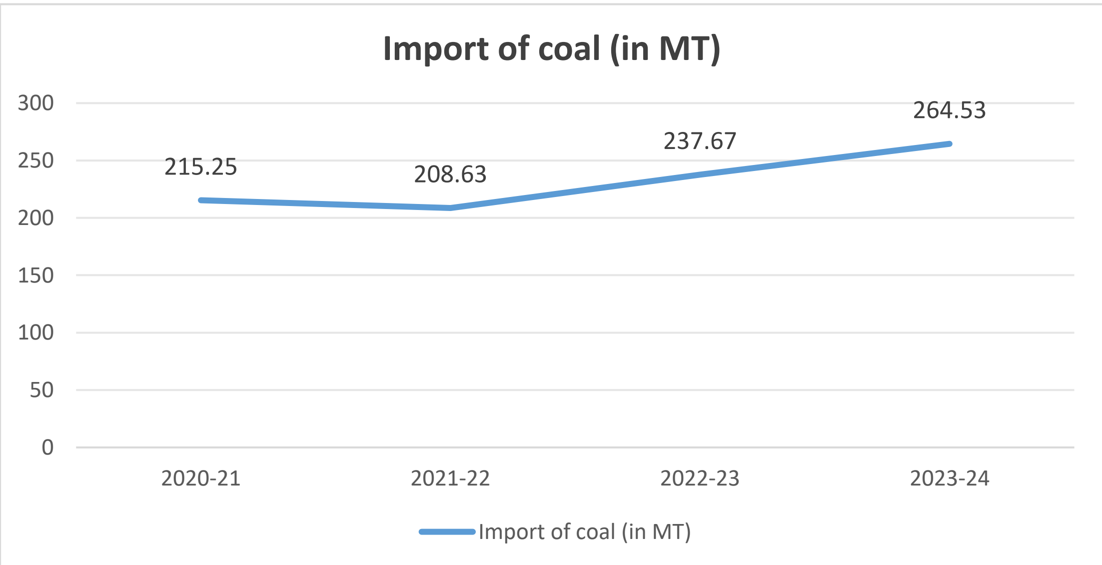
[99] MINISTRY OF COAL, Reducing coal imports, boosting exports (2024).
[100] MINISTRY OF COAL, Commercial coal mining (2021).
[101] MINISTRY OF COAL, NATIONAL COAL GASIFICATION MISSION 7 (2021).

The CIL's coal production for FY 2020–21 was 471.802 MT (up to Dec 2020), which was 56.95% of the yearly target of 828.50 MT. In contrast to the annual goal of 67.50 MT, the SCCL produced 32.660 MT of coal from 2020–21 (up to December 2020). In FY 2021–2022, coal production reached 447.557 MT (until November 2021) compared to the yearly objective of 848.00 MT, in which 52.78% was achieved (until November 2021). Until November 2021, CIL produced 353.420 MT, falling short of the 670.00 MT yearly goal. In 2021–2022, the SCCL produced 40.857 MT of coal (until November 2021), falling short of the 68.00 MT annual goal.

All-India coal production increased by around 12.07% in 2023 to 968.61 MT from 864.26 MT in the same period the previous year. The country has witnessed the highest-ever coal production in 2023-24. Later in the FY 2023-24, the coal production was 997.25 MT (Prov.). Compared to 893.19 MT during the FY 2022-23, there is a growth of about 11.65% in the FY 2023-24. CIL produced 773.64 MT against the annual target of 780.00 MT. The SCCL produced 70.02 MT of coal during 2023-24, which was against the annual target of 70.00 MT. Since the launch of commercial mining, coal production has increased significantly from FY 2020-21 to FY 2023-24. It has been observed that the coal production of CIL has shown a significant increase over the years from 596.22 MT to 773.64 MT with a growth rate of 29.75%. Similarly, the coal produced from captive/commercial coal mines showed an increasing trend from 63.14 MT to 147.12 MT, with an increase of 133%.

B. **Change in import of coal pattern**

YEAR	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Import of coal (in MT)	215.25	208.63	237.67	264.53



The coal export increased drastically to 264.53 MT during FY 2023-24, compared to FY 2022-23, which was 237.67 MT, registering a growth rate of 11.30%. It has been observed that in the year 2023-24, the country witnessed the highest-ever coal production. In the same year, our country also recorded the maximum import of coal after the introduction of commercial mining in India. It has been observed that the country's coal imports have increased from 215.25 MT during FY 2020-21 to 264.53 MT during FY 2023-24, registering a growth rate of about 22.89%.

I have sought to present a dynamic analysis of the debate on coal ownership in India from 2020-2021 to 2022-2023, shedding light on the structure and stability of coalitions and the position of different stakeholders, as well as the spread and coherence of concepts, over various periods. It is evident that early efforts towards privatization through the introduction of Coal Mines (Nationalization) Amendment Bill 2000 failed due to three reasons: (i) the Ministry of coal could not attract a large constituency to face trade unions which had a significant representation and a powerful voice in the political process; (ii) by merely presenting the argument of demand-supply deficit, they could not convince the opposition, which presented far more varied arguments against privatization; and (iii) there was a lack of political will for a considerable time, as the leading actor opposing privatization was also one of the parties within the coalition of the ruling Government of the time.

However, these factors have changed considerably over the years. The diversity of stakeholders supporting privatization has increased dramatically, as has their internal congruence. They are now more united, organized, and active in the mainstream media. They can present diverse arguments in a more compact and congruent manner. At the same time, ensuring a sustainable and affordable energy supply is currently very important on the political agenda. Restructuring of CIL to increase domestic production has failed as a policy option. Introducing competition and strengthening regulations is now believed to be the most effective way of meeting the country's growing energy needs. In the mining sector, policy changes have also been implemented recently to address the various issues involving privatization. For instance, introducing an independent coal regulator with pricing and distribution powers addresses concerns that privatization will lead to the diversion of coal and result in higher power generation costs. It also addresses the problems of privatization, resulting in the "cherry picking of coal," as the regulator has the power to ensure efficient mining and conservation of coal reserves. With these policy initiatives, stakeholders' arguments against privatization lose ground. This, along with a well-organized and coherent pro-privatization camp, provides the most significant potential for the stakeholders to push for the country's most essential and impending structural reform. Opening up commercial coal mining for private entities has been a tremendous success. Since the first commercial mining auction in 2020, 113 coal mines have been successfully auctioned in various auctions. The coal production from captive/commercial coal mines has increased significantly over the years since the launch of commercial mining.

VI. Need for a central regulatory authority

Given the shifting market conditions in the coal industry, the regulatory framework must be precisely specified in terms of transparency and the duties and responsibilities of each agency involved in the process. The regulatory agency should be strong, independent, accountable, and transparent. It is also essential to ensure that the regulations, laws, and procedures are stable so that manufacturers have a sufficient planning horizon. The regulatory agencies should operate separately from the Government. The regulatory body's independence from the direct reach of the governmental machinery becomes even more critical in a market context where a major producer or customer in the state sector dominates.

In these cases, the agency's affiliation with governmental ministries or departments will hinder its ability to regulate prices, which involves striking a balance between the often conflicting objectives of setting prices with a rate of return that will attract new competitors and, on the one hand, delivering the output to the end user at a fair price. To maintain operational autonomy, these specialized organizations must be staffed by industry professionals, such as financial experts, and a professional board representing all the services and interests of the particular sector.

An appropriate statute should be used to establish the body. The regulating agency's efficacy will be diminished without statutory Authority. To be effective, the regulatory body in each industry must be able to impose penalties. In other words, the body should have enough executive powers to make decisions. This is a significant divergence from the committee on integrated coal policy's report's proposal that the regulating body may only arbitrate on reference. That adherence to its ruling would be entirely voluntary. In addition to being empowered, the Regulator should have access to the data required to oversee and control the different market participants impartially.[102] Within the confines of the current legal system, the regulatory functions would include problem identification, fact-finding, information dissemination, rule drafting, norm and standard setting, and rule enforcement. A large body of knowledge would be required for the regulatory operations to be carried out effectively. In

[102] OECD, Regulatory Policy in India: Moving towards regulatory governance, Working Papers no. 8, 19 (2017).

other words, the Regulator should know all facets of the activity in question. This highlights the need for specialized knowledge once more. Arbitration must be given some judicial Authority because it is a crucial regulatory body function. The regulatory body may function in a quasi-judicial manner. As a result, efficient procedures for promptly resolving conflicts must be established. If the regulatory system lacks judicial Authority, plans should be made to create such mechanisms within the existing legislative framework. Appellate tribunals for the coal industry, for instance. Ideally, a single regulatory authority that encompasses several regulatory and enabling functions should be established for a single economic sector. Instead of having multiple regulating bodies handling different issues, emphasis should be placed on establishing a single, multifunctional entity. The aforementioned regulatory body's goals are all connected and ought to be handled by a single organization. For instance, equitable distribution of the means of production, which again depends on fair bidding of the mining blocks, will be essential to competitive pricing.

Numerous regulatory agencies will work against the precise objective of liberalization, leading to inconsistent decisions, further delays, and diluting the investment process. The coal regulatory agency should operate at two levels: the central/nodal and state-level agencies, as the two have overlapping jurisdiction. This is important since state administration is responsible for numerous laws and regulations relating to ownership, natural resource rights, and financial impositions like royalties and cesses. This process would take time in a federal, pluralistic society like India, but the goal is to minimize the overlap between the jurisdiction of the national and state governments. The central or apex regulatory body may use a coordinator or arbitrator to reduce the points of conflict temporarily.

According to some experts, government support for regulatory agencies should be minimized. Annual fees, license fees, recurring charges, or royalties paid by coal producers and users as a percentage of yearly turnover can all be used to fund the agency. It is essential to make clear that the levies are not considered taxes. Furthermore, the fees should be assessed as a percentage of the services rendered if feasible.[103] However, before the cess or charge can be implemented, the Regulator may need to establish confidence. Therefore, the Government may send money to develop a corpus for running the organization and starting such initiatives. Nonetheless, the Regulator should answer to Parliament even though they are independent of the ministries and departments. Producers and consumers' representatives will inevitably be held accountable to the economic players who stand to gain from their operations if they

[103] Id.

participate in the regulatory process.

VII. CONCLUSION AND SUGGESTIONS

An autonomous and independent regulation protects against "hold up" by the private sector or politically motivated government involvement. An equal playing field with established public and private players is also anticipated. For instance, the presence of independent regulators will prevent arbitrary actions by public sector companies like Coal India Limited and Indian Railways, which could result in stranded private assets. This would greatly relieve the new private companies aiming to enter these once-public monopoly sectors.

The ideal scenario for positive social effects is a market with perfect competition, including consumers, captured in the sentence, while

"he intends only his gain ... he is ... led by an invisible hand to promote an end which was no part of his intention ... By pursuing his interest, he frequently promotes that of the society more effectually than when he intends to promote it." [104]

The Telecom Regulatory Authority of India (TRAI), the Central Electricity Regulatory Commission (CERC), the State Electricity Regulatory Commissions (SERCs), the Tariff Authority for Major Ports (TAMP), and the Airports Economic Regulatory Authority (AERA) are the four infrastructure regulators in the nation, which was established in response to the need to regulate infrastructure services. Probably the most independent sectoral regulators are found in India, which has made decision-making more difficult and time-consuming and raised uncertainty about the business environment.

Whether the current sectoral regulators have been successful in reducing the regulatory risk in their particular industries is the question we must address. There have been allegations of private sector regulatory capture in the TRAI case, which is evident from the Regulator's alleged partisan decisions, whether they reduced the interconnection usage charge (IUC) or prevented Vodafone and Airtel from using legitimate market segmentation techniques.[105] The regulatory reversals in the CERC case about the tariff setting for the Tata Mundra plant are widely recognized.

The entire concept of competitive bidding with revenue share as a bidding parameter is a farce, as TAMP is all too familiar with the case of Nhava Sheva International Container Terminal,

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[104] Smith, Adam (1776): *The Wealth of Nations*, London: W Strahan and T Cadell.

[105] PTI, Telecom call: TRAI's reduction in interconnection usage charges is welcome, The Times of India, Sep 20, 2017, at https://timesofindia.indiatimes.com/blogs/toi-editorials/telecom-call-trais-reduction-in-interconnection-usage-charges-is-welcome/?source=app

where the revenue share to be paid to the public Authority was made a part of costs to be taken into account in tariff fixation for the project. There would be no practical cap on the amount bidders provide if guaranteed that the outlay resulting from their bid would be reimbursed. This is because raising the user fees would cover any bid amount. This would negate the purpose of competitive project bidding.

To the prejudice of passengers' interests, AERA has also been charged with authorizing development expenses for Delhi and Mumbai airports after contracts are signed. "Report of the Comptroller and Auditor General of India for the Year Ended March 2012 on Implementation of Public Private Partnership: Indira Gandhi International Airport," was released by the Comptroller and Auditor General in Delhi in 2012.[106] Since 2009, the Delhi International Airport Limited (DIAL) has collected development fees from travelers to cover roughly 27% of the capital expenses. As a result, DIAL gained Rs. 3,415 crore from development fees at the expense of passengers. Additionally, it is expected that those who placed high bids for the most recent round of six Indian airports will ask AERA to include the bid parameter (per passenger fee or a variation, such as development fee) as a cost element when determining airport fees for both passengers and airlines. This would make competitive airport bidding a farce.

The highest echelons of Government have voiced their displeasure with how the current sectoral regulators operate. In his 2011 Independence Day speech, for instance, the Prime Minister stated:

"We have established independent regulatory authorities in many areas in recent years. These authorities discharged many responsibilities previously in the Government's domain. We have no legislation that would enable monitoring of the work of these regulatory authorities and make them more accountable without compromising their independence. We are also considering the enactment of such a law."[107]

We should also be aware that the Government is considering parallel regulatory structures even in sectors with independent sectoral regulators. For instance, the new Electricity Act (Amendment) Bill suggests creating a National Electricity Contract Enforcement Authority, which would eat into the Authority of the current electricity regulators.[108] The following are just a few examples of the mandatory and advisory duties performed by the electricity regulatory commissions: resolving disputes between transmission licensees and generating

[106] COMPTROLLER AND AUDITOR GENERAL OF INDIA, COMPLIANCE AUDIT ON GENERAL PURPOSE FINANCIAL REPORTING OF CPSEs OF UNION GOVERNMENT (Report No. 2 of 2014).
[107] FORMER PRIME MINISTER OF INDIA, DR. MANMOHAN SINGH, PM’s Independence Day Speech, 2011 (Aug 2011).
[108] MINISTRY OF POWER, Proposed amendment to Electricity Act, 2003 (April, 2020).

companies; establishing and enforcing standards for the quality, continuity, and dependability of service provided by licensees; and encouraging investment in the electricity sector.[109]

As a result, creating rival regulatory institutions may not be the best course of action for the nation's infrastructure regulation progress. Therefore, creating an independent sectoral regulator does not automatically translate into autonomous regulation. Many factors depend on the Regulator's ability to make decisions independently (without the Government's de facto prior approval), manage institutions and management independently (a regulator has control over internal administration and is protected from being removed from office for political reasons), and be financially independent (a regulator has designated a secure and sufficient source of funding). In several of these areas, the sectoral regulators of the Indian infrastructure fall short.

Mr. Sriprakash Jaiswal, the coal minister, introduced the Coal Regulatory Authority of India Bill, 2013, in the Lok Sabha on December 13, 2013. However, it hasn't moved further in many years.[110] A proposal to reintroduce the aforementioned Bill of 2013 is being considered because it has expired, and the 15th Lok Sabha was dissolved on May 18, 2014.[111] The proposed coal regulator would establish a multisectoral regulator by requiring the Ministry of Coal to practice "regulation by contract." Alternatively, CERC might serve as the coal regulator. A check on the overabundance of regulators and multisectoral regulators would help increase capacity and competence, encourage uniformity in strategy, avoid regulatory capture, and reduce expenses.[112] The Federal Communications Commission is a multisectoral regulator in the United States; most Australian states have multisectoral regulators, and the United Kingdom and Sri Lanka are considering regulatory reforms that would include multisectoral regulators to streamline the regulatory framework and eliminate overlapping regulations.[113] The Ministry of Civil Aviation oversees the Commission of Railway Safety, the railway safety regulator. This suggests that CERC can be considered a multisectoral regulator for the coal and electricity sectors.

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[109] The Electricity Act, 2003, § 70.
[110] Supra note 20.
[111] MINISTRY OF COAL, ANNUAL REPORT 2013- 14 7 (2014).
[112] PLANNING COMMISSION, ELEVENTH FIVE YEAR PLAN, Volume I 2007-12 14 (2012).
[113] Id.