

PRADHAN MANTRI KHANIJ KSHETRA KALYAN YOJANA AND DISTRICT MINERAL FOUNDATION



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A MIXED BAG OPPORTUNITY



On September 16, 2015, the Central Government launched the Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY). The scheme has been noted by the Ministry of Mines as “a revolutionary and unprecedented scheme of its kind, which will transform the lives of people living in areas which are affected directly or indirectly by mining”.

The PMKKKY has been allied to the District Mineral Foundations (DMF), to facilitate the implementation of the scheme. The DMF was instituted by introducing amendments to the Mines and Minerals (Development and Regulation) Act (MMDR), 1957, earlier this March, to “work for the interest and benefit of persons, and areas affected by mining-related operations”. For the DMF to serve its objective, a certain amount of money has to be paid by mine lease-holders to the DMF. The PMKKKY will be implemented by the DMFs of various mining district, by using the funds accrued to them.

On September 17, just the next day, the Centre also notified the amounts that mine lease-holders of major minerals, such as coal, iron ore, bauxite etc., are required to pay to the DMF. The amounts were notified through the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015. The Rules require mining lease-holders, or prospecting license-cum-mining lease-holders, to pay ten per cent of the royalty for leases granted on or after January 12, 2015; and thirty per cent of the royalty for leases granted before January 12, 2015.

The January 12, 2015 timeframe has been noted as, it being the date when the MMDR Amendment Ordinance 2015 was promulgated by the Centre, and considered as the date of coming into force of the MMDR Amendment Act, 2015.

VITAL FACTS: HOW MUCH WELFARE WILL BE DELIVERED TO MINING AFFECTED AREAS?

The rolling out of the PMKKKY and instituting DMF is a significant move in mining governance of India. It is recognition of the biggest irony of India’s mining areas, that richest lands of the country are inhabited by its poorest people. It is also recognition of the fact that mining wealth cannot be concentrated in the hands of the few, but communities in the mining areas have a right to benefit from that. However, such recognition is not an end in itself; its success lies in how it materialises. This entails a closer look at three things:

- Pradhan Mantri Khanij Kshetra Kalyan Yojana;
- Contribution to DMF as notified in the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015;
- Role of the State Governments in regulating the DMFs.

A. PRADHAN MANTRI KHANIJ KSHETRA KALYAN YOJANA

In exercise of power of Section 20A of the MMDR Amendment Act, 2015, the Central Government issued a directive to the State Governments laying down the guidelines for implementation of PMKKKY, and directing the states to incorporate the same in the rules framed by them for the DMFs. The PMKKKY has been rolled out with three broad objectives:

- To implement various developmental and welfare projects/programs in mining affected areas, and these projects/ programs will be complementing the existing ongoing schemes/projects of State and Central Government;

- To minimize/mitigate the adverse impacts, during and after mining, on the environment, health and socio-economics of people in mining districts;
- To ensure long-term sustainable livelihoods for the affected people in mining areas.

To realize such objectives, the scheme underscores some crucial issues that are important considerations for the DMF to function effectively.

POSITIVE OUTLOOK

- Provides a guideline for identifying directly as well as indirectly affected areas, and affected people, which is crucial to ensure the effective use of DMF funds.
- Recognises an important fact that people affected by mining should not only be limited to those who have legal and occupational rights over the land being mined, but must also include those who have “usufruct and traditional rights”. This is a crucial aspect that was left out in the MMDR Amendment Act, 2015.
- Mentions the need of Gram Sabha consultation for identifying affected people and families.
- Takes into account the long term concerns of people’s lives and livelihoods in the mining areas. Requires the creation of an “endowment fund” for providing sustainable livelihood to communities.
- Proposes health care reforms in mining affected areas such as a Group Insurance Scheme for mining affected people.
- Outlines mechanisms to ensure transparency and accountability of DMF.

However, despite such positive approaches, there remain certain loopholes and limitation in the provisions of the scheme that can limit the success of the initiative, as well as of DMFs. To alleviate communities from poverty and underdevelopment in the mining areas, the following issues needs to be considered before the provisions of the scheme are incorporated by various State Governments into their DMF Rules framework.

LIMITATIONS AND COMMENTS

1. FUND UTILISATION

Section 2 of the PMKKKY outlines the purposes for which DMF funds may be used. The scheme identifies certain activities as “high priority areas” for which at least 60 per cent of DMF money should be used. High priority areas include drinking water supply, environment preservation and pollution control measures, health care, education, welfare of women and children, welfare of aged and disabled people, skill development and sanitation. The scheme also identifies certain “other priority areas” for which maximum 40 per cent of DMF money should be used. These include physical infrastructure, irrigation, energy and watershed development, and any other measures for enhancing environmental quality in mining districts.

However, there exist major problems in the way DMF fund utilisation has been outlined under PMKKKY. At many instances, provisions of fund utilisation are vague and have major loopholes. It can create huge uncertainty in providing adequate benefit to the tribals and the poor people. These include:

- The use of DMF funds for developing effluent treatment plants, pollution prevention technologies for mitigating pollution from working or abandoned mines, etc. is highly objectionable. Putting in place such pollution control measures is the responsibility of the company or the individuals undertaking mining operations. Utilizing the DMF money for such purposes will actually help the companies to externalise the environmental costs of mining activities, which communities will be required to absorb by reduction of their share from DMF. This is not what DMFs are meant for.

- Mention of such pollution prevention activities by using DMF money also makes the scheme self-contradictory, as under the General Guidelines for fund utilisation in Section 2, it says that “activities meant to be taken up under the polluter pays principle should not be taken up under the PMKKKY”.
- If DMF money is to be earmarked for environmental purposes, it can be done by creating a Chief Minister’s Fund, for which no more than five per cent of money should be set aside. This amount, as required, should be used only for remediation of pollution or other mining-related calamities, in such other areas within the state, but not falling within the district of the concerned DMF.
- The use of DMF money for infrastructure projects, such as roads, bridges, railways and waterways is highly objectionable. DMF money must not be spent on such big ticket infrastructure projects. These should be done by concerned departments of the State Government for which there are funds earmarked in the state coffer. The DMF money at best can be used for supporting essential services such as drinking water and electricity, and creation and maintenance of small infrastructure, basic health services and education facilities.
- The scheme also lists a number of facilities to be developed for better health care, sanitation, drinking water supply, education etc. in the mining affected areas. While all of these are basic and certainly of crucial need, it is important the DMF money is strictly used as add-on or supplementary resources to support such work, as mentioned in the scheme guidelines. Many of these are already the responsibility of various State departments, or falls under the ambit of other schemes for which the Centre or the State Government, as the case may be, has already identified potential sources of funds.
- The proposal of an “endowment fund” for providing sustainable livelihood to communities requires clarification. The provision as mentioned under Section 2(2) does not specify any amount that needs to be earmarked for the endowment fund. For instance, 10 per cent of the funds that the DMF will receive in a year can be set aside as endowment fund for supporting sustainable livelihoods.

2. COMMUNITY INVOLVEMENT

As provided in Section 3, for scheduled areas, approval of Gram Sabhas will be required for all plans, programs and projects to be taken up under PMKKKY. The report on the works undertaken also shall be furnished to the Gram Sabha after completion of every financial year.

- However such provision is limiting primarily in two aspects-
 - It discounts the need of approval of Gram Sabhas for areas outside schedules areas, despite the fact that a significant amount of mining happens in such areas.
 - The scheme also provides limited opportunity for people to be engaged in the decision-making process. For instance, in schedules areas too, while Gram Sabhas can approve the plans or programs under PMKKKY, they have not been made a part of developing annual plans or identifying programs. This can leave out important considerations for plans or programs to be undertaken that can benefit the community.
- Since the DMF money is for the benefit of the people, it is in the best interest of the scheme to involve them in the decision making process as much as possible. The process of developing plans and identifying projects that should be implemented with DMF money must adhere to the principles of bottom-up approach, involving the Gram Sabhas of affected areas. For instance, the Gram Sabhas at the beginning of the planning process can be informed about the money available for various purposes. According to the funds provisionally earmarked, concerned Gram Sabhas can prepare a plan for the deployment of such funds for various developmental schemes and works. The functionaries of the DMF can take initiatives for training and capacity building of Gram Sabhas of affected areas for preparation of such plans.
- The scheme also does not also provide for any opportunity of independent social audit once projects or plans have been cleared. This is crucial considering the status of implementation of our various flagship development and poverty eradication schemes including the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005.

There must be provisions of social audit with respect to benefit sharing, timeliness of benefit payments, timeliness of developmental schemes/works undertaken, work completion rates, and any such related issues.

B. CONTRIBUTION TO DISTRICT MINERAL FOUNDATION

The major limiting aspect for the success of realising the intentions of the PMKKKY however can be the huge cut-down of share that lease-holders are required to pay to the DMF. The amounts notified in the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015, are a huge compromise on what was intended in MMDR Amendment Act, 2015. The 2015 Amendment prescribed the DMF contribution much higher by lease-holders; for mines leased before the commencement of the Act it prescribed an amount up to an equivalent of the royalty, and for mines leased after the commencement of the Act, it was up to one-third of the royalty.

However the notified amount, 30 per cent and 10 per cent royalty respectively for old and new lease-holders, is a significantly watered down version. This is less than one-third of what the law could potentially achieve to fulfill its objective. This will grossly undermine the potential of the DMFs for ensuring optimum relief to the mining-affected communities.

C. ROLE OF STATE GOVERNMENTS

With the PMKKKY being rolled out, and the contribution to DMF for major minerals being notified, it now is in the hands of the State Governments how they develop their DMF Rules. Section 15 of the MMDR Amendment Act 2015, empowers the State Government to make rules for regulating the functions of DMF. In addition, the state is to determine the amount of payment concession holders of minor minerals will make to the DMF.

The most significant considerations for the State Governments while developing the Rules should be the following:

- Define the process of identification of affected persons and areas;
- Develop an inclusive institutional structure, ensuring that affected persons have a role in deciding how the funds are spent so that it ensures their interests and benefits them;
- Clearly define functions of the various members/functionaries of DMF, to ensure effective utilisation of funds for the benefit of persons and areas affected by mining or mining-related operations;
- Clearly outline how and on what DMF funds will be spent, including future use, so that it is for the interest and benefit of persons and areas affected by mining or mining-related operations;
- Institute mechanisms to ensure that DMF operates with best principles of transparency and accountability;
- Institute safeguards and penalties for non-compliance with the payments to DMFs;
- Set up a grievance redressal mechanism, in the form of an Ombudsman, for addressing the grievances related to the functioning of DMF.

The states also have a key role now in determining the amounts that holders of minor mineral leases are required to pay to the DMF. This must be done keeping in mind the optimum benefit of the community that DMF should deliver.

All of these will be crucial for alleviating people from grinding poverty and deplorable social conditions in the mining areas. Although the notified DMF contributions are not agreeable, the PMKKKY guidelines still give us some hope in relieving such distress. The State Governments now need to formulate their respective DMF Rules appropriately and implement them with proper oversight and accountability.