

**7.8 LEGAL CELL****7.8.1 Introduction**

As a Regulator in the Mining Industry, it is the responsibility of Indian Bureau of Mines to oversee the implementations of various Acts, Rules & Regulations applicable to the Industry and thereby has to deal with hosts of legal issues. The regulatory functions are carried out by IBM under different statutory provisions as stated below :

- ❖ Mines and Minerals (Development & Regulation) Act, 1957
- ❖ Mineral Concession Rules, 1960
- ❖ Mineral Conservation and Development Rules, 1988
- ❖ Environment (Protection) Act, 1986
- ❖ Environment (Protection) Rules, 1986
- ❖ Offshore Areas Mineral (Development & Regulation) Act, 2002

As an Advisor to the Government, IBM constantly deals with matters, such as, interpretation of Policy, Act and Rules, revision of rates of Royalty and Dead Rent, examination and comments on the sectoral policies, such as, Environment Policy, Steel Policy, Rehabilitation and Resettlement (R&R) Policy etc., comments on the new Acts/Rules or amendments proposed by the various Departments/Ministries etc.

**7.8.2 Legal Matters Dealt by IBM**

The following Divisions/Section of IBM engage & handle legal matters and court cases:

**7.8.2.1 Mines Control & Conservation of Minerals Division**

MCCM Division carries out various types of inspections as it is mandated to do. The objectives of all inspections are to ensure systematic & scientific development of mineral deposits, conservation of minerals and protection of mines environment. These objectives have been well crystallised in the form of Mineral Conservation and Development Rules, 1988. Therefore, in the course of inspection, if any deviations from the rules are detected, such violations are pointed out to the defaulting permit holder/licence holder/leaseholder with directions to rectify the violation and comply with the rules. In normal course, if the violation is not rectified within

specified period, another opportunity is given in the form of show cause notice. Even after the issue of show cause notice, if permit holder/licence holder/leaseholder does not comply with the rules, in the fit cases, prosecution case is launched in the Court of Law. This cognisance of offence is filed under Section 22 of MM (DR) Act, 1957 and is governed by the Code of Criminal Procedure, 1973. In certain cases IBM directs for suspension of mining operations or prohibits deployment of persons in the mines. In some cases, order issued by the IBM are subjected to litigations.

Further, the number of litigation cases filed by NGOs/individuals/mine owners regarding environmental problems, lease boundary disputes, compensation etc. received at IBM from time to time are far too many. In most of the cases the Central Government/IBM is made respondent and IBM is, in most cases, obligated required to submit factual reports in the court.

**7.8.2.2 Mining & Mineral Statistic Division**

The Mining & Mineral Statistic Division (MMS) of IBM serves as Data Bank on mines and minerals in the country. The prime source of information to this Division is through receipt of Monthly and Annual Returns under Rule 45(1) (a) & 45(1)(c) of Mineral Conservation and Development Rules 1988 respectively. The Division issues violation letters/show cause notices for non-submission of Annual Returns to the defaulting mine owners and also launch prosecution cases in fit cases.

**7.8.2.3 Mineral Economics Division**

This Division provides information support and advisory services to the Government and Mineral Industry especially on issues of marketing, specifications & uses of minerals, mineral legislation, inventory of mineral resources, mining leases, taxation etc. A small Legislation Unit operates under in this Division which presently is manned by the cadres of mineral economics discipline. As regards legislation-related functions, the Division presently deals with the following matters.

- a) Favouring amendment in Mines & Minerals (Development & Regulation) Act 1957 and Rules thereunder
- b) Ministry References for interpretation of Policy, Act and Rules
- c) Revision of royalty rate and dead rent under Section 9 and 9A of MMDR Act.
- d) Offshore Area Mineral (Development and Regulation) Act 2002 and Rules made thereunder.
- e) Examination and comments on new Act/amendments like Mines Act, 1952, Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986, Factory Act, LLP Act, Company Act etc.

*As an Advisor to the Government, IBM constantly deals with matters such as interpretation of Policy, Act and Rules, revision of rates of Royalty and Dead Rent, examination and comments on the sectoral policies such as Environment Policy, Steel Policy, Rehabilitation and Resettlement (R&R) Policy etc.*

*If any permit holder/licence holder/leaseholder does not comply with the rules, prosecution case is launched in the Court of Law. The offence is filed under Section 22 of MM (DR) Act, 1957 and is governed by the Code of Criminal Procedure, 1973.*





- f) Court cases pertaining to technical matters, such as, grant of mineral concessions, royalty, taxation, interpretation of rules etc. wherein IBM/ Government is respondent.
- g) Examination and advisory roles for the revision cases filed by mine owner against any order of State Governments under Section 30 of MMDR Act and Rule 54 of MCR, 1960.

#### 7.8.2.4 Administration Section

The Administration Section deals with various legal cases in the Central Administrative Tribunal, High Court, Supreme Court pertaining to service matters of the employees of IBM, such as, seniority, promotion, suspension, termination, financial benefits, vigilance cases etc.

#### 7.8.3 Prosecution Cases & Their Status

The pendency of number of prosecution cases filed by IBM is increasing every year. The number of cases filed by IBM during the last 10 years (2000-2001 to 2009-2010) is indicated in Table 7.11 and also shown in **Figure 7.18**. It may be seen that IBM has filed an average of more than 83 prosecution cases per year (831 cases during the last 10 years) for non-compliance of MCDR 1988 in various courts. At the same time the rate of disposal (decided by the court and compounded) per annum comes to about 53 cases on an average. This means on an average 30 cases are piled up every year. At the end of 2009-10, 532 cases were pending in various courts of law in the country. Some of these cases are more than 10 years old.

**Table 7.11 : Status of Prosecution Cases Launched by IBM During Last 10 Years (Technical Cases Excluding of Service Matter Cases)**

Year	Number of cases pending at the beginning	Number of cases filed	Number of cases decided	Number of cases compounded	Number of cases dropped	Number of cases pending at the end
2000-2001	248	87	29	15	-	291
2001-2002	291	94	27	14	2	342
2002-2003	342	179	39	25	4	453
2003-2004	453	147	53	19	1	527
2004-2005	527	99	33	20	8	565
2005-2006	565	55	43	22	-	555

contd...

#### highlights

IBM has filed an average of more than 83 prosecution cases per year (831 cases during the last 10 years) for non-compliance of MCDR 1988 in various courts.

Rule 58 of MCDR 1988 stipulates that whoever contravenes any of the provisions of the Rules shall be punishable with imprisonment for a term which may extend up to two years or with fine extending up to fifty thousand rupees or with both.

2006-2007	555	36	31	30	-	530
2007-2008	530	35	21	26	-	518
2008-2009	518	57	30	21	-	524
2009-2010	524	42	17	17	-	532
<b>Total</b>	<b>4553</b>	<b>831</b>	<b>323</b>	<b>209</b>	<b>15</b>	<b>4837</b>

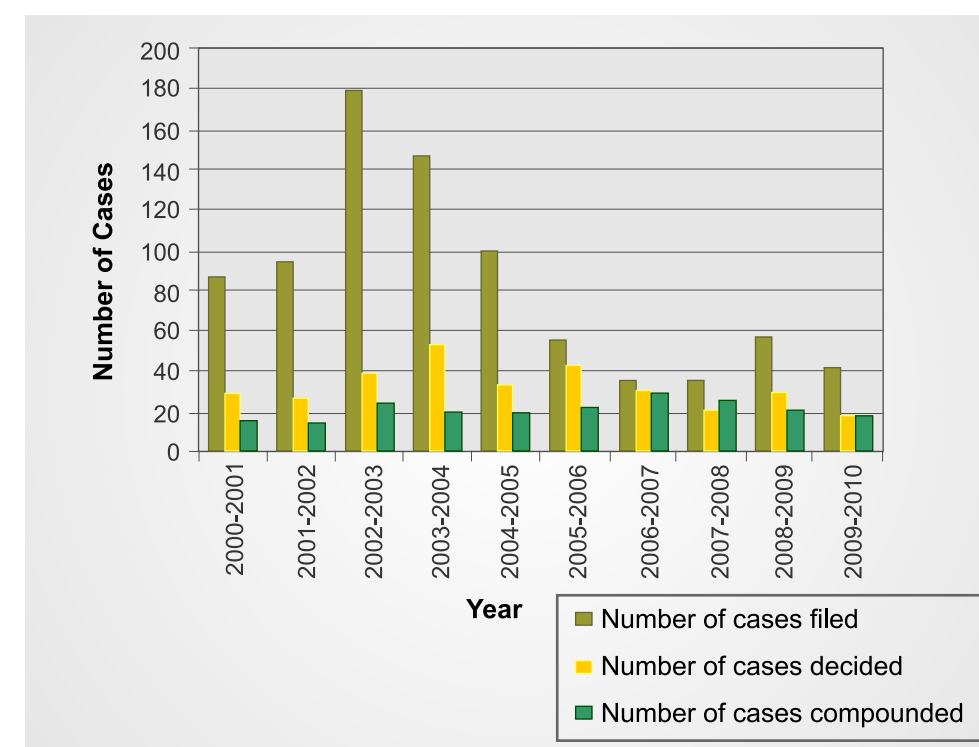


Figure 7.18 : Number of Prosecution Cases Launched by IBM During Last 10 Years

#### 7.8.4 Statutory Provision for Violations of Rules

Rule 58 of MCDR 1988 stipulates that whoever contravenes any of the provisions of the Rules shall be punishable with imprisonment for a term which may extend up to two years or with fine extending to fifty thousand rupees or with both, and in case of persistent contravention with an additional fine which may extend up to five thousand rupees for every day during which such contravention continues, after conviction for the first such contravention.

However, it has been observed that so far no imprisonment has been awarded by any of the court for violation of MCDR 1988. It has been also noticed that in some cases, the fine imposed by Hon'ble Court is so meager that it does not have deterrent effect on the defaulting lease holder. To cite an example, a violation of MCDR 1988



was observed in a dolomite mine of Katni district on 2.9.1999. A prosecution case was filed on 10.1.2000 and the court that heard the case passed judgement on 30.10.2009 imposing a fine of Rs 5000/- only.

### 7.8.5 Service Matter Cases

Apart from the aforesaid technical legal cases, IBM also deals with various service matter cases in various courts. These service matters cover wide subjects, such as, promotions, seniority list, suspension/termination, penalty, grant of financial benefits, vigilance matters, caste verification etc. The number of such cases added during the last ten years is indicated in Table 7.12. During the last 10 years, 66 cases have been added. This means on average 6 to 7 cases were added every year. Out of these, as of now 53 cases have been disposed off and 13 cases are still pending for disposal. Of late cases pertaining to Right to Information Act 2005 matters have also started and this would certainly add the workload to a large extent.

**Table 7.12 : Number of Court Cases Added During the Last 10 Years (Service Matters)**

Year	No. of Cases Added
2000-2001	7
2001-2002	5
2002-2003	8
2003-2004	9
2004-2005	7
2005-2006	2
2006-2007	8
2007-2008	4
2008-2009	11
2009-2010	05
<b>Total</b>	<b>66</b>

### 7.8.6 New Areas of Legal Matters

#### 7.8.6.1 The Mines and Minerals (Development and Regulation) Bill, 2011

In pursuance of the National Mineral Policy 2008, the Government is contemplating to bring new Mines & Minerals (Development & Regulation) Act by repealing the existing Mines & Minerals (Development & Regulation) Act 1957. The new draft Act is more comprehensive and deals with more stringent provisions as compared to the existing Act. The Mines and Minerals (Development and Regulation) Bill, 2011 has been introduced in the Parliament for its enactment. As per the MMDR Bill 2011, the important functions to be performed by IBM are:

### highlights

IBM also have to deal with various service matter cases in various courts on subjects, such as, promotions, seniority list, suspension/termination, penalty, grant of financial benefits, vigilance matters, caste verification etc.

In pursuance of the National Mineral Policy 2008, the Government is contemplating to bring a new Mines & Minerals (Development & Regulation) Act by repealing the existing Mines & Minerals (Development & Regulation) Act 1957. The Mines and Minerals (Development and Regulation) Bill, 2011 has been approved by the Cabinet. The Government is likely to table the Bill in Parliament for its enactment.

#### 1. Registration with IBM for Grant of Mineral Concession

As per Section 5 (1) of the Bill, no person shall be eligible for grant of mineral concession in respect of major minerals unless registered with the Indian Bureau of Mines.

#### 2. Advisory Role to State Governments to Forfeit Security Deposit/Suspend/Curtail/ Revoke the Lease

As per Section 12, IBM would have to render advise to State Governments in respect of major minerals where IBM has approved the mining plan and mine closure plans before any action could be taken by the State Governments regarding forfeiting security deposit/ suspension/curtailment/revocation of lease.

#### 3. Powers to Issue Directive to Reconnaissance Licence Holder

As per Section 19(3) of the Bill, IBM can issue direction to a reconnaissance licence holder to ensure compliance with the conditions of the licence which will be binding on it.

#### 4. Powers to Issue Directive to Prospecting Licence Holder

As per Section 21(3) of the Bill, IBM can issue direction to a holder of Prospecting Licence/Large Area Prospecting Licence to ensure compliance with the conditions of the licence which will be binding on it.

#### 5. Powers to Issue Directive to Mining Lease Holder

As per Section 24(2) of the Bill, IBM can issue direction to a mining lease holder to ensure compliance with the conditions of the licence which will be binding on it.

#### 6. Advisory Role for Preparation of Framework for Mining Operations in Lieu of Mining Plan

As per Section 26(1) of the Bill, mining operations in respect of all minerals is required to be carried out in accordance with a mining plan. However, in respect of minor minerals, the State Government after consultations with IBM can exempt the preparation of mining plan. In such exempted cases, the State Government has to prescribe a framework in consultation with IBM within which the mining operations could be carried out.

#### 7. Approval of Mining Plans for Major Minerals

As per Section 26(6) of the Bill, the mining plans in respect of all major minerals (except coal minerals and atomic minerals) shall be approved by IBM.

#### 8. Controller General to Hear the Revision Cases in Respect of Mining Plan

As per Section 26(7) of the Bill, the Controller General, IBM is the competent authority to hear the cases in relation to approval or refusal of mining plans in respect of major minerals.





## highlights

**9. Power to Seek Modifications or Impose Necessary Conditions**

As per Section 26 (10) of the Bill, the Controller General or authorised officer of the Indian Bureau of Mines may require the holder of a mining lease to make such modifications in the mining plan or impose such conditions as may be considered necessary by an order in writing.

**10. Advisory Role for Second and Subsequent Renewal of Mining Leases**

As per Section 28(3) of the Bill, before granting approval for second or subsequent extension of mining lease in respect of major minerals, the State Government has to seek a report from IBM whether it is in the interest of minerals development to grant extension of mining lease.

**11. Approval and Monitoring of Implementations of Mine Closure Plans**

As per Section 32(5) and 32 (7) of the Bill, IBM has to approve the Progressive and Final Mine Closure Plan respectively in respect of major minerals. Apart from this as per Section 32(6), IBM has to ensure the compliance of the progressive mine closure plan by the mining lessee.

**12. Advisory Role for Preparation of Framework for Mining Operations in Lieu of Mine Closure Plan**

As per Section 32(4) of the Bill, in respect of minor minerals the State Government after consultations with IBM can exempt preparation of mine closure plans. In such exempted cases, the State Government has to prescribe a framework within which the mining operations could be carried out and such framework shall be deemed to be progressive and final mine closure plan.

**13. Compliance Report Before Determination of Lease**

As per Section 33(2) of the Bill, in respect of major minerals (except for coal and atomic minerals) IBM has to give a certificate to the effect that protective, reclamation, restoration and rehabilitation work in accordance with the approved mine closure plan have been carried out by the mining lessee. After obtaining such certificate it is possible to determine the mining lease.

**14. Ensure the Submission of Registered Deed of Mineral Concession before Commencement of Operations**

As per Section 35 of the Bill, mineral concessions granted in accordance with the provisions of Section 34 shall be in the form of a registered deed executed by the parties on such terms and conditions as may be agreed and an authenticated copy of the deed shall be deposited by the person granted the mineral concession with Indian Bureau of Mines before commencing operations.

**15. Advisory Role to State Government for Issue of Direction**

As per Section 47(3) of the Bill, IBM is required to offer comments to the State

Government for issue of directives to the owner, agent, mining engineer, geologist or manager of a mine in the interest of systematic development of mineral deposits, conservation of minerals, scientific mining, sustainable development and protection of the environment.

**16. Technical or Scientific Investigations for Conservation of Strategic Mineral Resources/Scientific Management, Exploration and Exploitation of Mineral Resources**

As per Section 48(1) of the Bill, The Central Government can authorise IBM to conduct technical or scientific investigations with regard to any mineral or any land for the purpose of conservation of strategic mineral resources or for the scientific management, exploration and exploitation of mineral resources.

**17. Powers of the Indian Bureau of Mines to Enter into PL/ ML Areas to Inspect, Examine the Area and Issue Directions**

As per Section 49 (1) of the Bill, the Indian Bureau of Mines or any officer authorised by the Central Government may enter and inspect a mine, and examine or direct the examination of any mineral deposit in any area under prospecting licence or mining lease and take samples therefrom at any time for the purposes of this Act.

**18. Prohibitions for Deployment of Persons**

As per Section 49(2) of the Bill, if any mine or part thereof, which in the opinion of IBM poses a grave and immediate threat to the conservation of minerals or to the environment, the lessee then can be directed to prohibit deployment of persons.

**19. Directives for Preservation of Cores or Specimen of Samples**

As per Section 49(3) of the Bill, IBM can direct the concerned persons for preservation of core or specimen of rocks and minerals obtained from boreholes, shafts during the prospecting or mining operations for any specific period.

**20. Nomination on the District Mineral Foundation**

As per Section 57(1) of the Bill, IBM has to nominate a representative on the Governing Council of the District Mineral Foundation to be constituted by the State Government in each district where mining lease is granted to work for the interest and benefit of persons or families affected by mining-related operations in the district.

**21. Penalty for Disobeying Direction of Indian Bureau of Mines**

As per Section 112 (1) of the Bill, whoever disobeys any direction issued by Indian Bureau of Mines shall be liable to a penalty which may extend to ten thousand rupees per day for the period of such disobedience.

*As per the proposed Bill, prior approval of IBM on Progressive and Final Mine Closure Plan respectively in respect of major minerals would be required before commencing of mining operation.*

*As per Section 35 of the Bill, mineral concessions granted in the form of a registered deed executed by the parties shall be deposited by the person granted the mineral concession with Indian Bureau of Mines before commencing operations.*





**22. Powers of Entry and to Make Inspections**

As per Section 123 (1) of the Bill, for the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose connected with this Act or the rules made thereunder, any person authorised by the Indian Bureau of Mines in this behalf by general order, may,

- a) Enter and inspect any mine;
- b) Survey and take measurements in any such mine;
- c) Weigh, measure or take measurements of the stocks of minerals lying at any mine;
- d) Examine any document, book, register, or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon, and take extracts from or make copies of such document, book, register or record;
- e) Order the production of any such document, book, register, record, referred to in clause (d); and
- f) Examine any person having the control of, or connected with, any mine.

**23. To Act as Accreditation Grant Agency to Prepare Feasibility Reports**

As per Section 126 of the Bill, IBM will be required to act as an accreditation grants agency for authorising agencies to prepare feasibility studies in accordance with the provisions of the UNFC or any other notified code of practice.

**24. Assistance to State Governments for Better Regulation of Mining Activities**

As per Section 127 of the Bill, IBM would have to render such assistance as may be required by the State Government to ensure that mining activities are regulated in accordance with the provisions of this Act.

**25. Reporting of Unscientific or Illegal Mining to the Central Government**

As per Section 127 (2) of the Bill, if IBM is of the opinion that the provisions of the Act and rules made thereunder are not being complied with and that illegal or unscientific mining is going on in any state, it shall report matter to the Central Government. In such cases, if Central Government directs, IBM has to intervene for investigations and prosecution of offences, revocation of mineral concessions and other action as deemed fit.

highlights

*As per Section 126 of the Bill, IBM will be required to act as an accreditation grants agency for authorizing agencies to prepare feasibility studies in accordance with the provisions of the UNFC.*

*As per Section 127 of the Bill, IBM has to render such assistance as may be required by the State Government to ensure that mining activities are regulated in accordance with the provisions of this Act.*

**Penalty Provisions Suggested in the New MMDR Act**

Violation	Penalty
Exploration carried out without Licence {Section 110(1)(i)}	Imprisonment for a term of up to two years or with fine which may extend to Rs 25,000/- per hectare or part thereof and subject to the maximum of Rs 15 lakh in case of prospecting or with both.
Mining carried out without Lease {Section 110(1)(ii)}	Imprisonment for a term of up to three years or with fine which may extend to ten times the value of the mineral mined or with both.
Failure to implement a Final Mine Closure Plan or abandonment of mine or any portion of the mining lease area which is likely to be a danger to the health and safety of the inhabitants of the area {Section 111}	Penalty which may extend up to one thousand rupees per day per hectare for the period of such default.
Disobeying any direction given by the State Government or the Indian Bureau of Mines or any other authority {Section 112(1)}	Penalty which may extend to ten thousand rupees per day for the period of such disobedience.
Contraventions of any provision of Act or the rules (where no specific penalty is provided elsewhere) {Section 110(1)(i)}	Punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both, and in the case of continuing contravention, with an additional fine which may extend to one thousand rupees for every day during which such contravention continues after conviction for the first such contravention.
Raising of any mineral from any land without any lawful authority {Section 114(1)}	State Government can recover from such person, to whom the mineral may have been transferred, the mineral so raised and the cost of its disposal or, where such mineral has already been disposed off, the price of the mineral so disposed off, and can also recover from such person, rent, royalty, tax or cess for the period during which the land was occupied by such person without such lawful authority.



Violation	Penalty
Raising, transport of any mineral from any land without any lawful authority {Section 114(2)}	Any officer empowered by the Central Government or the State Government can order seizing of such mineral, tool, equipment, vehicle or any other thing, and the court can order the confiscation and disposal of any such mineral, tool, equipment, vehicle or any other thing so seized.

**7.8.6.2 Offshore Areas Minerals (Development & Regulation) Act 2002**

The Government of India declared Controller General, IBM as an ‘Administering Authority’ under the Offshore Areas Mineral (Development and Regulation) Act, 2002. As an ‘Administering Authority’ IBM has to discharge the various functions and carry out different activities for the implementations of the Offshore Areas Mineral (Development & Regulation) Act 2002 and Offshore Areas Mineral Concession Rule 2006 such as to declare the availability of areas for grant of mineral concessions in offshore areas, grant of various concessions, to determine the compensation for any pollution of/ or damage to the marine environment resulting from the operations, to approve the work programmes of Exploration Licence and Production leases and monitoring of it etc. activities.

Grant of mineral concessions in offshore areas is a legally complicated activity wherein all legal aspects having regard to the Act and Rules and also consultations with various Ministries/Departments/Organisations and also compliance with various Acts/Rules/Regulations has to be ensured. This would in turn require the legal advice and consultancy for taking appropriate actions on the part of IBM.

**7.8.6.3 Implementation of Framework of Sustainable Development**

As enumerated in the National Mineral Policy 2008, the Government is in the process of designing the Sustainable Development Framework with an objective:

- To protect the interest of host and indigenous (tribal) populations through developing models of stakeholder interest based on international best practice.
- To take care of bio-diversity issues and to ensure that mining activity takes place along with suitable measures for restoration of the ecological balance.
- To ensure availability of comprehensive relief and rehabilitation packages to the project-affected persons etc.

highlights

*The role of IBM would be to acquire the necessary knowledge and skills, through international studies and field experiences, and then disseminate the same as a master trainer to the State Directorates of Mining and Geology for field level implementation.*

In this direction, IBM will have to ensure that all mining activities are carried out within the framework of sustainable development.

**7.8.6.4 Advisory Role to State Governments as National Regulator**

In line with the National Mineral Policy 2008, the Government is currently in the process of preparing a new Mines and Minerals (Development and Regulation) Act, through which they will attempt to carry forward the process of reforms and liberalisation of the Mining Sector. In the new regime, IBM is expected to don a very important role in regulation. It is envisioned that IBM would evolve from cutting edge regulator to a consultant for creation and improvement of State level regulatory systems. It is implied that IBM would get to become the national regulatory agency which in consonance with the Mines and Minerals (Development and Regulation) Act and Rules made thereunder, would lay down the systems and parameters for the regulation of all the mining activities in the country. In this exercise, IBM would play a leading role in assisting the State Governments to develop capacity in all respect including in legal matters. The role of IBM would be to acquire the necessary knowledge and skills, through international studies and field experiences, and then disseminate the same as a master trainer to the State Directorates of Mining and Geology for field level implementation.

For laying down the systems and parameters of regulation of Mineral Sector for the State Governments and to act as legal consultant, IBM would require the strong back up of legal expertise.

**7.8.6.5 Assistance to State Governments for Curbing Illegal Mining Activities**

The National Mineral Policy 2008 enumerates that the States will be assisted to overcome the problem of illegal mining through linkages with the Indian Bureau of Mines. The new Mines & Minerals (Development & Regulation) Act also proposed stringent provisions for curbing illegal mining activities and transportation of such illegally mined mineral. It has been proposed to create an infrastructure and system in IBM for coordination and assistance to State Government agencies for prevention of illegal mining. IBM would have to provide legal consultancy as well to the State Governments for initiating proper action for prevention of unlawful mining and illegal transport of minerals.

**7.8.7 Need for Creation of Legal Cell**

The legal system of prosecution launched against defaulting mining lessee for violation of different provisions of Mineral Conservation Development Rules, 1988 is quite cumbersome and time consuming.

For initiating prosecution case, IBM has to approach the Government Standing Counsel or the lawyer empanelled by IBM. The Committee observed that the Government Standing Counsels are quite busy in the other criminal cases of serious nature. Moreover, the fees prescribed by the government for engagement of private





lawyers are not so attractive and therefore, the empanelled lawyers are also reluctant to take up cases on behalf of IBM. Therefore, at times, there is constraints on the part of IBM to file cases within the stipulated time for violation committed by the lessee primarily on account of want of quality legal advise. Therefore, the very purpose of systematic and scientific mining, conservation of mineral and protection of environment is defeated.

The inspecting officers are liable for transfer every 3-5 years. Therefore, after launching of prosecution case, it has been virtually impossible to conduct regular follow-ups in order to bring the cases to their logical ends. The Government Standing Counsel or private empanelled lawyers too are not able to devote their time as could be expected as they are in other ways engaged with other cases of serious nature.

As discussed in Para 7.8.6.1, some of the provisions of the new Mines & Minerals (Development & Regulation) Act are quite stringent and IBM may have to exercise the same in order to ensure scientific mining within a framework of sustainable development. The directives of IBM may be contested by the aggrieved party who may go on appeal to the appropriate authority for relief. This would entail IBM to utilise all its legal resources to defend the action initiated by it. The new Act provides for establishment of National Mining Tribunal and State Mining Tribunal wherein IBM, as a National Regulator for the Mining Industry is likely to be respondent. In such cases IBM will require to depend on quality legal assistance. The State Government can constitute as many Special Courts for the purposes of providing speedy trial of offence related to illegal mining and transportation of mineral. In this connection IBM would have to render technical as well as legal assistance to the State Government for prevention of illegal mining activities. Further, the number of litigation cases filed by NGOs/individual/mine owners etc. on host of issues are far too many and in pursuance of these the court generally seeks comments/opinions of IBM.

In addition to the aforesaid activities, two new functions (i) implementation of Offshore Areas Minerals (Development & Regulation) Act 2002 and (ii) implementation of Framework of Sustainable Development to be added to IBM's functional portfolio and for these IBM would need quality legal inputs from time to time. Apart from this as discussed in Para 7.8.6, there are number of new areas emerging wherein IBM would require legal assistance and expertise.

Considering the existing difficulties faced by IBM in discharging its various regulatory functions and the new functions that are to be assigned to IBM, the Committee recommends that in order to fulfil its legal obligations, creation of a Legal Cell in IBM is essential.

### 7.8.8 Proposed Activities of Legal Cell

The proposed Legal Cell of IBM will be responsible for providing legal support to all Divisions, Zonal and Regional Offices of IBM. The proposed Legal Cell will comprise of:

- a) Legal Wing and
- b) Prosecution Wing

### highlights

*The proposed Legal Cell of IBM will comprise of two Wings — Legal Wing and Prosecution Wing*

*The Legal Wing will render legal advise to IBM/Central/State Governments in all matters concerning mineral development and the Prosecution Wing will render services, such as, prepare, modify, examine and finalise petitions related to various Acts & Rules and will coordinate with Government Standing Counsel/Empanelled lawyer for filing of court cases on behalf of the IBM/Central Government.*

The Legal Wing will carry out activities such as:

- > Render advise to IBM/Government for formulation/amendments in mineral development Acts and Rules.
- > Render legal advise to IBM/Central/State Governments in all matters concerning mineral development related statute including matters related to illegal mining activities.
- > Update and maintain the database on legal cases.

The Prosecution Wing will carry out the following activities\*:

- > To prepare, modify, examine and finalise petitions related to various Acts and Rules in particular reference to:
  - Mines and Minerals (Development & Regulation) Act, 1957
  - Mineral Concession Rules, 1960
  - Mineral Conservation and Development Rules, 1988
  - Environment (Protection) Act, 1986
  - Offshore Areas Mineral (Development & Regulation) Act 2002
  - Establishment matters pertaining to Central Administrative Tribunal
  - Right to Information Act 2005
  - Public Interest Litigation
- > To coordinate with Government Standing Counsel/Empanelled lawyer for filing of court cases on behalf of IBM/Central Government.
- > To follow up and monitor legal cases in various courts of law.

*\*Till formulation of new MMDR Bill and resultant Rules. Till such time, the existing Act and Rules will prevail.*

