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(DIRECTORATE OF MINING)

DEPARTMENT OF INDUSTRIES & COMMERCE

### NOTIFICATION

The 14th March, 2016

#### **Monitoring and Prevention of Illegal Mining of Minerals in the State Of Punjab**

**No. GLG/PB/G-1/Mining Plan/1636-B.-** In exercise of the powers conferred by section 15 and section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957, (Central Act 67 of 1957), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the Punjab Minor Mineral Rules, 2013, namely:-

#### **(I) Legal Provisions**

##### **1. Mines and Minerals (Development and Regulation) Act, 1957**

The Government of India under Section 15 & 23(c) of Mines and Minerals (Development and Regulation) Act, 1957 has empowered the State Governments to make rules in respect to grant of concession of minor minerals and preventing illegal mining, transportation and storage of minerals. The Government of Punjab has notified the Punjab Minor Mineral Rules, 2013 while repealing the Punjab Minor Mineral Concession Rules, 1964.

*The Government of India while carrying out amendment in the Mines and Minerals (Development and Regulation) Act, 1957 issued a notification dated 27.3.2015 i.e. the Mines and Minerals (Development and Regulation) Amendment Act, 2015 and are as under:*

*After section 9A of the principal Act, the following sections shall be inserted, namely:-*

*“9B. (1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.*

*(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manners may be prescribed by the State Government.*

*(3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.*

(4) *The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.*

(5) *The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.*

(6) *The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorisation of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government.*

*Further the amendment in Section 15 relevant for minor mineral is as under:*

*In section 15 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—*

*“(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:—*

*(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-section (2) of section 9B;*

*(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and*

*(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A.”.*

*After section 15 of the principal Act, the following section shall be inserted, namely:—*

*“15A. The State Government may prescribe the payment by all holders of concessions related to minor minerals of amounts to the District Mineral Foundation of the district in which the mining operations are carried on.”.*

*In section 21 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—*

*“(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.*

*(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.”*

After section 30A of the principal Act, new sections 30B and 30C shall be inserted and shall have the provisions of Constitution of Special Courts by the State Government which is as follows:

- “30B.** (1) *The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1A) of section 4, constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.*
- (2) *A Special Court shall consist of a Judge who shall be appointed by the State Government with the concurrence of the High Court.*
- (3) *A person shall not be qualified for appointment as a judge of a Special Court unless he is or has been a District and Sessions Judge.*
- (4) *Any person aggrieved by the order of the Special Court may prefer an appeal to the High Court within a period of sixty days from the date of such order.*
- 30C.** *Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973, shall apply to the proceedings before the Special Court and for the purpose of the provisions of this Act, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a public prosecutor.”.*

## **2. Punjab Minor Mineral Rules, 2013**

The Government of Punjab has framed the Punjab Minor Mineral Rules, 2013 under Section 15 & 23(C) of the Mines and Minerals (Development and Regulation) Act, 1957 and following are the provisions under against illegal mining.

- 75.** *Un-authorized Transportation of Minerals. -Wherever a carrier is found being used for transporting any mineral in whatever form, without a valid weighment slip as required under sub-rule (2) of rule 74 or any excavation equipment is found being used or is found having been used for excavating any mineral in an unauthorised way, the same would be dealt with as under, -*
- (i) *where the carrier/excavation equipment is involved in violation of these rules for the first time, the said mineral would be liable to be seized alongwith the impounding of the carrier/excavation equipment which may be released by the authorised officer only upon realization of payment from the owner or person in-charge or person in possession of the carrier/excavation equipment, of applicable royalty as well as compounding fee at a rate specified in the schedule. In case of failure to deposit such compounding fee by the owner or person in-charge or person in possession of carrier, action shall be taken under sub-section (1) of section 21 and section 22 of the Act; and*
- (ii) *wherever a carrier/excavation equipment is involved in violation of these rules subsequently, the authorised officer shall take action as per sub-section (1) of section 21 and section 22 of the Act.*
- 76.** *Illegal Mining of Minerals. - (1) No person shall undertake any mining operations in any area, except under and in accordance with the terms and conditions of the mining lease, contract or permit granted under these rules and any violation thereof shall make such person liable for action under the Act and these rules.*
- (2) *In a case where the action is taken under sub-section (5) of section 21 of the Act, the authorised officer may, if required, make an assessment as per sub-rule 5 of rule 85.*

**85(5)** *If upon information, which has come into his possession the assessing authority is satisfied*

*that any person has raised, without any lawful authority, any minor mineral from any land and has not paid the royalty due therein to the Government, the assessing authority shall within three years after the expiry of the period during which the land was occupied by such person serve on such person a notice in Form 'R' and after giving such person a reasonable opportunity of being heard, proceed to assess to the best of his judgment the amount of royalty due from him. The assessing authority may also pass an order for recovery from such person of the minor minerals so raised or where such minor mineral has already been disposed of, the price thereof.*

### 3. Hon'ble High Court's Orders

The Hon'ble High Court pleased to pass the orders dated 14.12.12 in **CWP 18886 of 2012** to discourage the compounding of offences and ensure that any material that is seized, is put to auction so as not to cause any loss to public property. The operative part of the orders is reproduced below:

*The State of Punjab shall, while implementing the provisions of the 2012 Rules as well as the Mines and Minerals (Development and Regulation) Act, 1957, take notice of Section 21(4) and (4-a) of the aforementioned Act and ensure that these provisions are implemented in their entirety and compounding of offences is discouraged and ensure also that any material that is seized, is put to auction so as not to cause any loss to public property. A direction is also issued to all Courts seized of such offences to discourage compounding of offences and ensure compliance with Section 21(4) and (4-a) of the Act.*

In compliance to Hon'ble High Court order, letters dated 23.09.14 & 29.09.14 was sent to all Deputy Commissioners and General Manager-Cum-Mining Officers of the State to discourage the compounding of an offence and the illegal miners be only prosecuted only while filing FIRs against them (**Annexure A**).

### 4. Cabinet Decision

In the meeting held on 2-9-14 the Cabinet took the decision reproduced below:-

*Cabinet directed the Department of Industries & Commerce not to the release the machinery on bail which was involved in illegal mining and make suitable amendment in Act/rules so that such machinery could be confiscated/auctioned. If there is difficulty in implementing the policy cabinet authorized the committee of Industries & Commerce Minister and Agricultural Minister to resolve the issue.*

In view of Cabinet's decision dated 2-9-14, Letter dated 23.9.14 to Director Prosecution and Litigation and Deputy Commissioners of the State that the necessary action against the illegal miners under section-21 of Mines and Minerals (Development and Regulation) Act, 1957 be immediately initiated and the tool, equipment, vehicle along with mineral be seized under section-4 and further action of confiscation be taken under section 4(a) (**Annexure A**). Further, a letter dated 29.9.14 was issued to all Deputy Commissioners for the implementation of the Cabinet's decision (**Annexure B**).

## (II) Existing system to check illegal mining

### 1. Authorizing officers of various departments to take action under Section 21 & 22 of the Act, 1957 to contain illegal mining

- a) The notifications dated 9.8.12 under section 21 & 22 of the Mines and Mineral (Development and Regulation) Act, 1957 for authorizing officers respectively are as below:

**No. S.O.47/C.A.67/1957/Ss.21 and 26/2012.**-In suppression of the all the notifications issued in this behalf and in exercise of the powers conferred by sub-section (2) of section 26 read with sub-section (4) of section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act No. 67 of 1957), and all other powers enabling him in this behalf, the Governor of

Punjab, is pleased to direct the following officers to seize any mineral raised or transported or caused to be raised or transported by any person without any lawful authority, any mineral from any land and any tool, equipment, vehicle or any other thing he uses for this purpose, with immediate effect:-

- |     |   |                                  |
|-----|---|----------------------------------|
| 1.  | The Director of Industries and Commerce   | Throughout Punjab                |
| 2.  | All the Deputy Commissioners  | In their respective jurisdiction |
| 3.  | All the Senior Superintendent of Police   | -do-                             |
| 4.  | The Additional Directors of Industries and Commerce                                 | Throughout Punjab                |
| 5.  | The Joint Directors of Industries and Commerce                                      | -do-                             |
| 6.  | The Deputy Directors of Industries and Commerce                                     | -do-                             |
| 7.  | The State Geologist   | -do-                             |
| 8.  | All the Geologists  | -do-                             |
| 9.  | Geotechnologist   | -do-                             |
| 10. | Geophysicist  | -do-                             |
| 11. | All the Assistant Geologists  | -do-                             |
| 12. | Survey Officer  | -do-                             |
| 13. | All the General Managers, District Industries Centres in Punjab                     | In their respective jurisdiction |
| 14. | All the Functional Managers and Project Managers in the District Industries Centres | -do-                             |
| 15. | All the Mining Officers in Punjab   | -do-                             |
| 16. | All the Senior Industrial Promotion Officers in Punjab                              | -do-                             |
| 17. | All the Block Level Extension Officers in Punjab                                    | -do-                             |

- b) No. S.O.47/C.A.67/1957/Ss.22 and 26/2012.**-In suppression of the all the notifications issued in this behalf and in exercise of the powers conferred by sub-section (2) of section 26 read with Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act No. 67 of 1957), and all other powers enabling him in this behalf, the Governor of Punjab, is pleased to authorize the following officers/officials to make complaints in writing in the court of competent jurisdiction in respect of any offence punishable under the said Act or any rules made there under, with immediate effect:-

- |    |   |                                  |
|----|---|----------------------------------|
| 1. | The Director of Industries and Commerce             | Throughout Punjab                |
| 2. | All the Deputy Commissioners                        | In their respective jurisdiction |
| 3. | All the Senior Superintendent of Police             | -do-                             |
| 4. | The Additional Directors of Industries and Commerce | Throughout Punjab                |
| 5. | The Joint Directors of Industries and Commerce      | -do-                             |
| 6. | The Deputy Directors of Industries and Commerce     | -do-                             |
| 7. | The State Geologist                                 | -do-                             |
| 8. | All the Geologists                                  | -do-                             |

- |     |   |                                  |
|-----|---|----------------------------------|
| 9.  | Geotechnologist   | Throughout Punjab                |
| 10. | Geophysicist  | -do-                             |
| 11. | All the Assistant Geologists  | -do-                             |
| 12. | Survey Officer  | -do-                             |
| 13. | All the General Managers, District Industries Centers in Punjab                     | In their respective jurisdiction |
| 14. | All the Functional Managers and Project Managers in the District Industries Centers | -do-                             |
| 15. | All the Mining Officers in Punjab   | -do-                             |
| 16. | All the Senior Industrial Promotion Officers in Punjab                              | -do-                             |
| 17. | All the Block Level Extension Officers in Punjab                                    | -do-                             |
- c) Further, the Sub-Divisional Magistrates have also been appointed as Sub-Divisional Mining Officers in the State in addition to their duties in order to contain illegal mining.

No Glg/Pb/2348/5262-B.- In exercise of powers under the Punjab Minor Mineral Rules, 2013 , the Governor of Punjab is pleased to appoint the following officers as Authorized Officer in their jurisdiction in terms of Rule 2(f) of the aforesaid Rules.

- |    |  |                                  |
|----|--|----------------------------------|
| 1. | SDM-cum-Sub Divisional Mining Officers   | In their respective jurisdiction |
| 2. | Divisional Forest Officers   | -do-                             |
| 3. | Executive Engineers and Sub Divisional Engineers<br>In the Department of Irrigation                              | -do-                             |
| 4. | Executive Engineers and Sub Divisional Engineers<br>In the Department of Drainage                                | -do-                             |
| 5. | Executive Engineers and Sub Divisional Engineers<br>In the Department of PWD (B&R)                               | -do-                             |
| 6. | Executive Engineers and Sub Divisional Engineers<br>In the Department of Water Supply & Sanitation               | -do-                             |
| 7. | Regional Environment Engineers & Sub-Divisional<br>Environmental Engineers in the Punjab Pollution Control Board | -do-                             |
| 8. | Block Development & Panchayat Officers   | -do-                             |
- 2. DCs & SSPs responsibilities in illegal mining.**

The Chief Secretary, Punjab in compliance to direction dated 17-8-12 passed in CWP 9388 of 2012 issued Demi-official letters dated 25.08.2012, to all the Deputy Commissioners to take strict steps to stop illegal mining immediately and the orders of the Hon'ble Court be implemented in letter and spirit. Furthermore, another Demi-official letter at the level of Chief Secretary, Punjab on 25.10.2012 was sent directing all Deputy Commissioners to stop illegal mining in cooperation with the police (*Annexure C*).

**3. Providing dedicated police force exclusively to check illegal mining**

The Department of Home Affairs & Justice, Govt. of Punjab has provided half sections of 7th IRBn Kapurthala to all General Manager-cum-Mining Officer on 18.12.14 for containing illegal mining in the State of Punjab along with 1 SP & 3 DSPs at headquarter level (*Annexure D*).

#### 4. SIT as per Hon'ble High Court order

In compliance to directions dated 12.4.2013 issued by Hon'ble Punjab & Haryana High Court, while hearing the matter in CWP No. 22567 of 2012 titled Gurbir Singh Pannu V/s State of Punjab, a *Special Investigation Team* headed by Inspector General of Police for the investigation in the FIRs, has already been constituted. The matter is pending adjudication before Hon'ble High Court and is fixed for hearing on 21.9.15 (*Annexure E*).

#### (III) Action taken

The consolidated action taken report against illegal miners is at *Annexure F*.

#### (IV) Proposal for the Monitoring, Supervision & Prevention of Illegal Mining

##### 1. Constitution of District Mineral Foundation

In view of amendments in the Mines and Minerals (Development and Regulation) Act, 1957, carried out by Govt. of India *vide* notification dated 27.3.2015, the District Level Committee under the Rule 61 and the District Level Environment Management Cell under Rule 66(1)(B) are to be substituted by *District Mineral Foundation* and shall consists of the following, namely:-

1. Deputy Commissioner	Chairman
2. Commissioner of Police/Senior Superintendent of Police	Member
3. SDM-cum- Sub Divisional Mining Officer	Member
4. Environment Engineer, Punjab Pollution Control Board	Member
5. Divisional Forest Officer	Member
6. Executive Engineer, Department of Irrigation	Member
7. Executive Engineer, Drainage	Member
8. Executive Engineer, Public Works Department, Buildings and Roads	Member
9. Executive Engineer, Department of Water Supply and Sanitation	Member
10. Mining Officer Concerned; and	Member Secretary
11. Any other officer nominated by the Government	Member

Further, the DC may co-opt two members from the NGO's/ RTI activist/Social Workers or Panchayat members working in this sector. Six members shall make the quorum for the meeting.

The Functions of the *District Mineral Foundation* shall be as below:

- a) To ensure the compliance of conditions imposed in the environment clearance and Mining Plan.
- b) To check illegal mining in the district and take preventive measures from time to time.
- c) Any un-scientific operation or contravention of the terms of concession or approval (excepting the conditions relating to payment of Government dues) to operate the quarry/mine by the Mineral Concession Holder shall amount to violation of the grant.
- d) To check rehabilitation and restoration of the areas under lease and take necessary action.
- e) The expenditure of District Mineral Foundation shall be met out of one-third extra amount of the royalty and Environment Management Fund.

The Mineral Concession Holder shall deposit an amount equal to one-third of the royalty with the District Mineral Foundation, which shall be in addition to the royalty amount.

## 2. Constitution of Special Courts

The Hon'ble High Court was pleased to pass the directions *vide* orders dated 14.12.12 in CWP 18886 of 2012 as reproduced below:

*The State of Punjab shall, while implementing the provisions of the 2012 Rules as well as the Mines and Minerals (Development and Regulation) Act, 1957, take notice of Section 21(4) and (4-a) of the aforementioned Act and ensure that these provisions are implemented in their entirety and compounding of offences is discouraged and ensure also that any material that is seized, is put to auction so as not to cause any loss to public property. A direction is also issued to all Courts seized of such offences to discourage compounding of offences and ensure compliance with Section 21(4) and (4-a) of the Act.*

In compliance to Hon'ble High Court order, letters dated 23.09.14 & 29.09.14 was send to all Deputy Commissioners and General Manager-Cum-Mining Officers of the State to discourage the compounding of an offence and the illegal miners be only prosecuted only while filing FIRs against them (**Annexure A**).

As per Section 21 of the Act, 1957, the illegal miner was being punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. 25,000/- or with both. The aforesaid provisions of fine and imprisonment in the Act have now been enhanced to five years and Rs. 5 lakh respectively in the amendment carried out vide notification dated 27.03.2015. However, as per the field offices reports, the offences under Section-21 are being tried by the Lower Courts and is time consuming. In the mean while, the machinery i.e. excavators & carriers involved in illegal mining and confiscated during the action against illegal miners are being released on bail i.e. Sapurdari by the Lower Courts and hence does not have any deterrent effect upon the illegal miners.

Hence, the Department of Home Affairs & Justice shall be requested to constitute **Special Courts** as per the provisions contained in Section 30(B) & 30(C) of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 for the speedy & effective trial of offences for contravention of the provisions of sub-section (1) or sub-section (1A) of section 4 of the Mines and Minerals (Development and Regulation) Act, 1957 as such Court shall have all the powers of Court of Session.

## 3. Constitution of State Mineral Foundation

It is proposed to substitute State Level Environment Management Cell under rule 66(1) (A) with the **State Mineral Foundation** and shall consist of following, namely:

- |   |                  |
|---|------------------|
| 1. Director, Mining   | Chairman         |
| 2. Additional Secretary, Department of Home Affairs & Justice                       | Member           |
| 3. Additional Secretary, Revenue Department,  | Member           |
| 4. Additional Secretary, Transport Department,                                      | Member           |
| 5. Inspector General, Police Department,  | Member           |
| 6. Member Secretary, Punjab Pollution Control Board                                 | Member           |
| 7. Chief Engineer, Department of Irrigation and Drainage                            | Member           |
| 8. ADCs of all the District   | Member           |
| 9. State Geologist  | Member Secretary |
| 10. Superintendent of Police, Mining  | Member           |
| 11. General Manager-cum-Mining Officers, District Industries Centre of all district | Member           |



The Functions of the *State Mineral Foundation* shall be as below:

- a) To ensure the compliance of environment condition.
- b) To review and monitor the reports of the District Mineral Foundation and action taken against illegal mining in the State of Punjab.

#### **4. Fixation of Responsibilities**

As per existing provisions in the Punjab Minor Mineral Rules, 2013, the illegal miners attract penal action, whereas the owner/possessor of land is not attracting any penal action. The illegal mining in the land(s) other than on contract is not possible without the knowledge and consent of the owner/possessor. Therefore, to prevent illegal mining, the responsibility of owner/possessor land(s) needs to be fixed.

Illegal mining may take place in following category of lands:

a) *Land not identified as mines and under no mining contract which may be:-*

- i. Government land
- ii. Private land
- iii. Village common land
- iv. Bachat land and Jumla Mushtarka Malkan land

b) *Land identified as mines which may be:-*

- i. Land under mining contract irrespective of the ownership.
- ii. Land not under mining contract which may be
  - a. Government land
  - b. Private land
  - c. Village common land
  - d. Bachat land and Jumla Mushtarka Malkan land

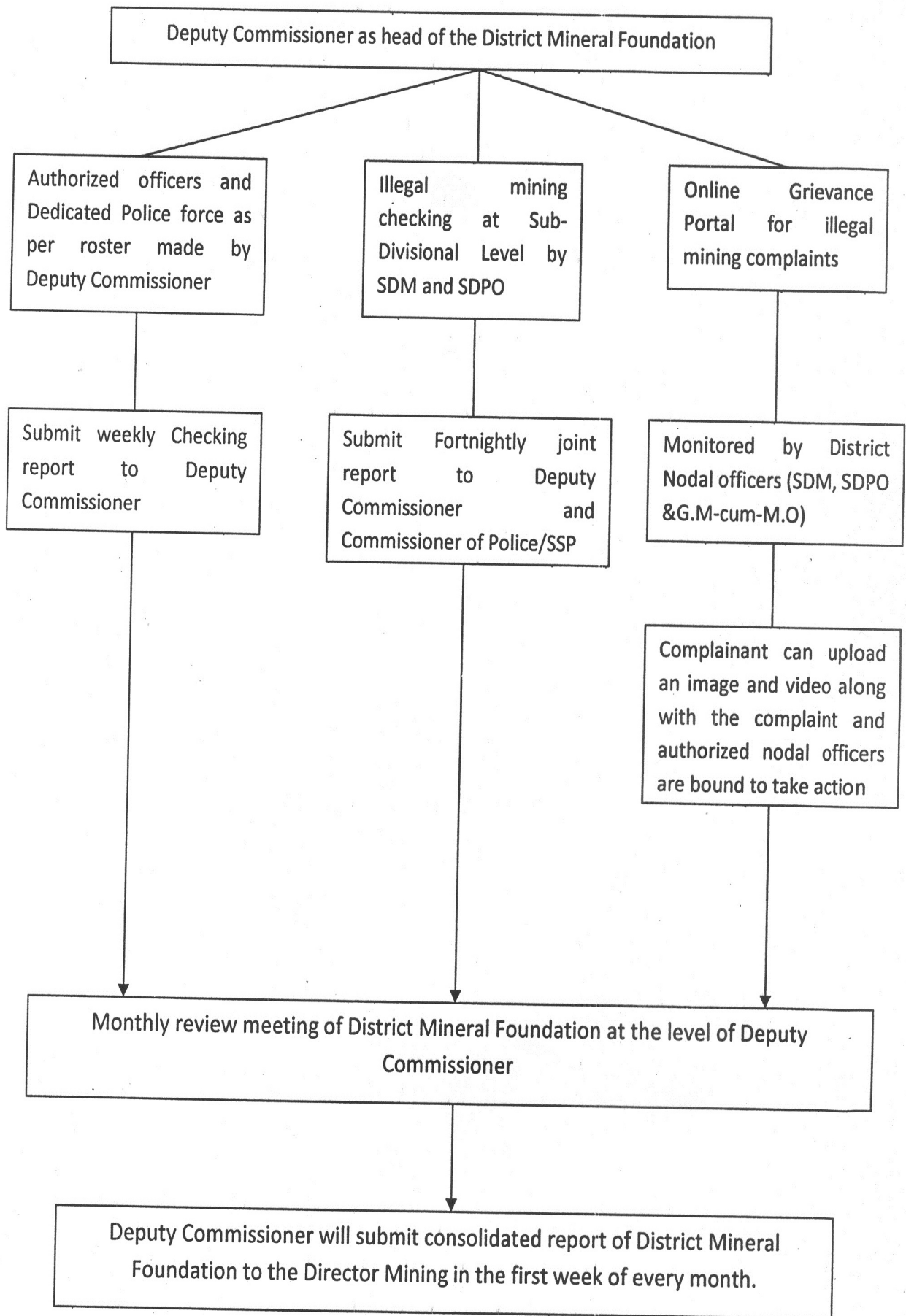
The responsibility of the land owner and/or possessor of private land and sarpanch for village common land may be fixed as below:

1. for the lands under mining contract, the Mineral Concession Holder/s shall be responsible, in case any illegal mining is taking place.
2. for private land, village common land, bachat land & jumla mushtarka malkan land and government land, whether identified as mine or not and not under mining contract, it shall be the responsibility of the owner and/or possessor, sarpanch and/or possessor and officer-in-charge of the land of concerned government department, as the case may be, to report forthwith any occurrence of illegal mining to the District Mining Officer and/or to the Station House Officer of the police station concerned and, in case of failure to do so, he/she/they shall be held responsible in addition to the persons conducting or involved in such activity.

Accordingly an amendment be carried out in the Punjab Minor Mineral Rules, 2013 under Section 23 (c) of the Mines and Minerals (Development and Regulation) Act, 1957 to fix the responsibility of illegal mining as per above scheme.

#### **5. DISTRICT LEVEL MECHANISM FOR MONIORING & PREVENTION OF ILLEGAL MINING**

Although, a provision and mechanism to supervise illegal mining exist at district level as mentioned above, however to streamline the process for optimal utilisation of the resources and effective results following mechanism of monitoring and review is proposed:



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**6. STATE LEVEL MECHANISM FOR MONIORING & PREVENTION OF ILLEGAL MINNING**

A monthly meeting of State Mineral Foundation shall be convened to review and monitor the reports the District Mineral Foundation and action taken against illegal mining in the State of Punjab.

**ANIRUDH TEWARI, IAS**  
Principal Secretary to Government of Punjab,  
Department of Industries and Commerce.