

SHALE GAS IN INDIA

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Shale Gas Regulation: Factors for Consideration

- Gas trapped and absorbed within shale formation : part of rock till process of fracking completed and gas freed. Unlike a reservoir that is comprising of natural gas reserves,
- Water Usage issues,
- Safety and Standards stipulation,
- Environment Impact issues,
- Waste Water treatment and disposal issues,
- Liability Issues
- Land issues,
- Ground Water issues,
- Pipeline access issues.

Shale Gas Regulation: Factors for Consideration

- Policy with Model Contract from GOI will not be able to cover legal issues related to Shale Gas in India.
- Will need a clear Centre-State cohesive regulatory framework to prevent projects from stalling .
- Absence of such regulatory framework will make projects open to various legal challenges
- Till specific regulatory framework developed, GOI policy and Model Contract will have to be comprehensive and be supported by clear policy directions relating to various identified issues.

Legal Issues That Need to be addressed

- Jurisdiction of GOI to undertake unilateral policy measures and vest rights through ICB Open To Challenge:
 - Legally till fracking process releases natural gas, under Indian law, there is no “shale gas” but only a rock formation that does not automatically fall under exclusive jurisdiction of Union Government.
 - “Fracking” is an industrial process of releasing/manufacturing natural gas from shale rock beds
 - It does not prima facie fall under Entry 53, List I “regulation and development of oil fields and mineral oil resources, petroleum and petroleum products”

Legal Issues –contd.

- Jurisdiction of GOI to undertake unilateral policy measures and vest rights through ICB Open to Challenge :
 - “Fracking”, unless clarified, will fall under “gas works” i.e. industrial process of generating gas that is under Entry 25, List II.
 - S.C. Opinion in *Association of Natural Gas v. UOI* (2004) that established UOI’s supremacy in natural gas sector will itself come in the way. As methane released by fracking process will not be “natural gas” as defined by SC. Also as per same judgment “Fracking” will be a “gas work”.
 - Proactive State Governments in whose jurisdiction shale beds fall can validly claim jurisdiction over grant of rights in relation to shale gas extraction. States can formulate enforceable state specific policies. Can impose state levies. Can challenge GOI’s claim to exclusive jurisdiction on this sector.
 - “petroleum” definition under Indian laws lays emphasis on “natural occurrence in a free state” – Shale Gas will fall outside this limited definition. GOI jurisdiction open to question.

Legal Issues –contd.

- State has jurisdiction over critical processes anyway:
 - Irrespective of jurisdiction issue, process of Fracking requires use of immense quantities of water, land and land access: all of which are under state jurisdiction.
 - Water is a State subject – the approval to use water will need to be obtained from state government. Without corresponding policy from state governments for granting approval for use of water for Fracking, projects would face high risk. State Governments could impose conditions including royalty payment. Unless a policy provides framework for obtaining water related clearances it will not provide confidence.

Legal Issues –contd.

- Jurisdiction of GOI to undertake unilateral policy measures and vest rights through ICB :
 - Shale Gas Fracking process will throw up new land related issues in India unless regulatory framework clearly address the issue. Indian legal framework not framed to handle horizontal drilling issues on large scale.
 - Shale Gas Companies will be exposed to absolute liability under Indian Environment legal regime for any damage caused by fracking process or environmental pollution caused by fracking process, unless specific legal framework governing liability issues is formulated.

Indian Laws: Specific Env. Regulations

- Specific rules under Environment Act and Air and Water Pollution Acts would be needed to provide a clear framework for approvals for Shale Gas Projects.
- It is imperative that specific EIA Framework for Shale Gas Projects be formulated.
- In absence of clear Environment Framework/EIA framework, all Shale Gas Projects will face imminent environment litigation. National Green Tribunal (NGT) has either suspended, cancelled, modified or amended more than 90% environment clearances for infrastructure projects challenged before it since it commenced operations in 2011.

Indian Laws: Other Issues

- PNGRB regulates development of natural gas pipelines. GOI should issue a policy directive to PNGRB to formulate specific enabling framework for shale gas pipelines and their inter-connection with closest pipeline system.
- Shale Gas Developers should be given automatic right to develop gas pipeline from well till closest feasible gas pipeline system. A corresponding mandate on gas pipelines to interconnect with pipeline of Shale Gas developers will have to be formulated.

Indian Laws: Other Issues

- Laws regulating Health Safety Issues. Present legal framework does not cover fracking operation safety regulations. In absence of regulation, litigation potential high.
- Right to develop access infrastructure : particularly roads needs to be clearly provided. State will have jurisdiction over development of such access road.
- Legal Framework regulating abandonment and reclamation of land needs to be put in place.

Indian Laws: Specific Measures

- A comprehensive Regulatory Framework is required to enable Shale Gas to be successful in India:
 - Clarity Over Jurisdiction. Enabling grant of Right.
 - Cooperation of State Government critical
 - Water Use Related Approvals
 - Waste Water Treatment and Disposal Framework
 - Environment Related Approvals/Specific EIA Framework
 - Framework providing for sharing of revenue between Centre and State to enable State to benefit
 - Liability Related Framework
 - Creation of a monitoring authority

Thank you!