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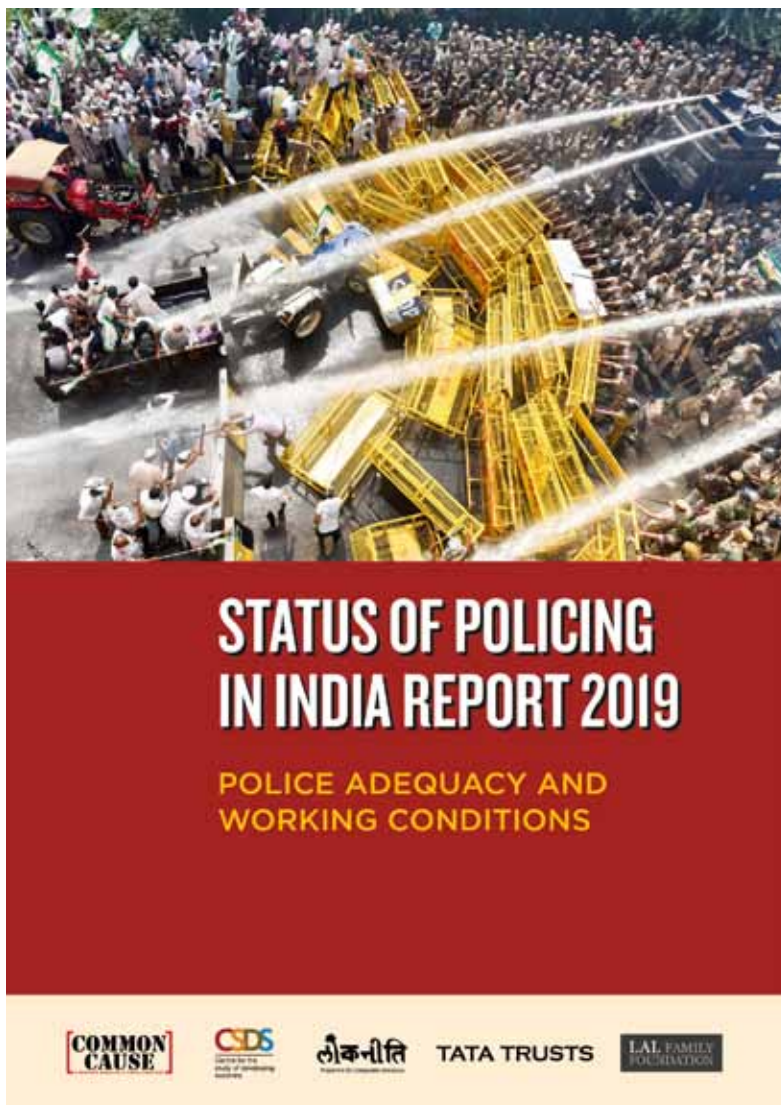
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Jointly prepared by Common Cause and its academic partner, CSDS, the report is a study of the trying working conditions of police personnel, their meagre resources and infrastructure, crime investigation, diversity, people-police contact and police violence. We interviewed about 12000 police personnel inside police stations or at their residences in 21 states as well as around another 11000 of their family members.

The SPIR 2019 studies the experiences of the police personnel and their attitudes towards incidents of crime, use of violence and torture, marginalised communities, juvenile delinquency and incidents of mob lynching.

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# WHOSE BUSINESS IS ENVIRONMENT?

## Climate Change is Like a Time-bomb Ticking

We tend to take the Environment and Climate Change for granted. Most of us are blasé about the global crisis, perhaps, because everybody's problem is nobody's problem. Every time there is a cyclone or an untimely flood or forest fire, or any extreme weather event, we curse the climate change, but do not always connect it to happenings around us.

We also tend to view things in the binary of environment or development. If you want development, it is believed, you must brace for some collateral damage. It is taken as a necessary evil. But we also forget that development is a site of conflict and sometimes reckless development can lead to disasters. What brings happiness and prosperity to some in the short run can bring misery to some others, and worse, a calamity for the rest of us in the long run.

The popular expression 'natural calamity' is insufficient to describe environmental upheavals of our times. It creates the impression that disasters are natural or imminent. But fortunately, the intrinsic link between ecology, disasters, and large projects, is beginning to get appreciated today. And that is why our policymakers must understand the configuration, geology, and nature of the terrain before clearing a large project. They must also listen to experts and affected people before commissioning mega projects in fragile regions.

### CHAR DHAM ROAD-WIDENING PROJECT

Take for example the Char Dham road widening project coming up at a hurtling speed in Uttarakhand. The 900-km project is set to connect the Hindu holy places of Badrinath, Kedarnath, Gangotri, and Yamunotri. The policymakers were keen to create a mega high-speed corridor for pilgrimage while overlooking the fact that the area was known for landslides and disasters. They also ignored sincere and credible warnings that the project's environmental costs will be several times higher than its colossal price tag of Rs 12000 crore. Worse still, this cost will be borne by the poor subsistence farmers, hillside villagers, and the delicate ecological balance of these magnificent mountains. Huge cracks have already appeared in houses and access roads to many villages have collapsed.

Common Cause got involved when it was contacted by the villagers and panchayat members from Harsil Valley, located on the banks of the Bhagirathi River on the way to Gangotri. They got in touch on the advice of Gandhian green activist, Radha Bhatt, known to the outside world as Radha Bahan or Radha Didi. A veteran of the Chipko movement and an eternal itinerant for social causes, Radha Bahan had been crisscrossing the valley for decades. She requested Common Cause President Mr Kamal Kant Jaswal to intervene. A retired IAS officer of the (undivided) UP Cadre, Mr Jaswal had firsthand experience of the region's fragile ecosystem, first as the DM of Uttarkashi and later as the head of UP's PWD. He had overseen relief and rehabilitation in the aftermath of the 1991 earthquake in which hundreds were killed and thousands were made homeless. The Common Cause team joined him in his due diligence, collecting personal testimonies and photographic evidence.

Our investigations confirmed the dumping of sludge and wreckage directly into the river. Thousands of trees had been chopped off and hundreds of hectares of forest land had been diverted. The whole project was being carried on by subterfuge. It was being pushed ahead without conducting the Environmental Impact Assessment (EIA), mandatory for every road project longer than 100 km. An EIA conducts varied assessments including cost-benefit analyses and social audits by the affected people. The EIA, in this case,

was conveniently bypassed by some clever paperwork which showed the project not as one but many smaller stretches measuring just under 100 km. In 2018, Common Cause filed an Original Application in the matter at the National Green Tribunal (NGT) which was later tagged with another petition by Citizens for Green Doon.

In response to the petitions, the NGT appointed a seven-member committee to monitor violation and address environmental concerns. It had representatives from well-informed institutions like the Wadia Institute of Himalayan Geology, G.B. Pant National Institute of Himalayan Environment, National Institute of Disaster Management, and Forest Research Institute, among others. Even though the NGT did not stop the project, it ordered a 'rapid EIA,' a halfway house of sorts, factoring air quality, slope stabilisation, muck disposal arrangements, afforestation, and disaster preparedness, etc.

The project has had a long legal journey with many ups and downs. At one stage, the Supreme Court appointed an expert committee headed by noted scientist Ravi Chopra. The court later agreed with the committee's partial recommendation to restrict the road width to 5.5 metres instead of 10-metres. While the work goes on, some vested interests are trying to circumvent the court's order. Char Dham project is a living example of how little the ecology matters for policymakers and how difficult it is to secure environmental justice for ordinary people.

## OTHER GREEN INTERVENTIONS

Common Cause has filed many more PILs to secure environmental justice. Some recent ones are about the right to clean air and the adoption of electric vehicles. We joined like-minded organisations to ask for the implementation of the Government's own plan for faster adoption of hybrid and electric vehicles. Another landmark PIL was against illegal mining in Odisha which led to the imposition of a hundred percent penalty on mining without forest or environmental clearance. Yet another joint PIL sought relief against the implementation of the Civil Liability for Nuclear Damage Act which ostensibly glossed over safety and environmental concerns.

Many more Common Cause PILs have taken up the issues of accountability in the allocation and operations of captive coal blocks or for remedial action in the improper waste disposal, and malpractices regarding health and hygiene in the slaughterhouses. We at Common Cause believe that the issues like climate change affect us all, but the poor are hit the hardest. It has a direct impact on agriculture, livelihoods, and food security. And that is why we need to act as watchdogs to sustainable management of our natural resources like the rivers, forests, and mountains. Our health, nutrition, and futures depend on them.

While global negotiations are crucial, a lot can be achieved through sensible domestic policies. Even small interventions and court rulings can lead to meaningful outcomes as is evident from Common Cause PILs. We must acknowledge that climate justice is not some nebulous idea out there but it is something that impacts all living beings. For starters, the citizens can demand transparency and accountability in the commissioning and implementation of all mega projects. We can also root for climate-smart policies locally which reduce hunger and poverty. When in doubt, our policymakers can always try Mahatma Gandhi's principle of recalling the face of the poorest and the weakest person one has seen and ask how the policy being contemplated will impact him.

Do write in to us at [commoncauseindia@gmail.com](mailto:commoncauseindia@gmail.com) with your feedback or suggestions on this issue of your journal.

**Vipul Mudgal**  
Editor

# CLIMATE CHANGE OR CRISIS?

## Common Cause Cases to Mitigate Environmental Disaster

Swapna Jha\*

The February 7 flash flood in Chamoli district of Uttarakhand, showed how the world is at a tipping point for deadly climate-related natural disasters. Sweeping away the Rishi Ganga hydroelectric power project, the flood, according to experts, was triggered by the breaking off a large chunk of glacial ice from the Ronti glacier<sup>1</sup>. Nothing screamed climate change in the Himalayas more than this flash flood in Uttarakhand<sup>2</sup>. It seems we are standing on the edge of a precipice called global warming, which is accelerating horrors such as severe storms, melting glaciers, persistent droughts and widespread fires. Clearly, Uttarakhand is more vulnerable than others. According to an analysis by the Council on Energy, Environment and Water (CEEW), over 85% of districts in Uttarakhand are hot spots of extreme floods and associated weather events.<sup>3</sup> The analysis also said that the frequency and intensity of extreme flood events in Uttarakhand have increased four-fold since 1970. Flood related events such as landslides, cloud bursts, glacial lake outbursts, etc. have also increased four-fold during this period, causing massive loss and damage.<sup>4</sup>

Scientists are insisting that there's evidence on the clear link between environmental impact of Hydro Electric Power (HEP) Projects on fragile Himalayan ecology and are demanding that better studies be conducted before projects are approved in the region. Many are stressing on the need for looking at projects from the lens of sustainability, rather than revenue generation.<sup>5</sup>

The price of arbitrary construction in the Himalayan region is just too steep to ignore. Experts are going out on a limb to warn that all new infrastructure projects in the Himalayan context must take the climate related risks into account, while designing, planning and executing them. They are also hammering home the urgency of inducting strict cost-benefit analysis into project designs, taking environmental costs into account.<sup>6</sup>

Common Cause has been at the forefront of the campaign against violations of necessary environmental clearances by the proposed 900 km long Char Dham highway, which connects four important pilgrimage sites in Uttarakhand --- Kedarnath, Badrinath, Gangotri and Yamunotri.

We have been following in the footsteps of concerns put forward at the Earth Summit held in Rio way back in 1992. It re-emphasised the creation of sustainable development strategies, integrating social and environmental policies with the help of precautionary and polluter-pays principle.

Over the years, the environmental jurisprudence in India has evolved and accepted the Principle of Absolute Liability in respect of Hazardous Industry, Polluter Pays Principle, Precautionary Principle and the Principle of Sustainable Development. Guided by the framework of environmental rights and legal principles developed by the courts, Common Cause has worked towards the protection of the environment through legal interventions.

This article is an in-depth analysis of several cases filed by Common Cause in order to put an end to environmental degradation and uphold the rights of the citizens to a clean environment.

### Char Dham Project

The Char-Dham Road Project is a prestigious two-lane expressway scheme, currently being executed in the Himalayan

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\* Swapna Jha is a Senior Legal Consultant at Common Cause



*The proposed Char Dham Highway, that aims to provide all-weather connectivity to Yamunotri, Gangotri, Kedarnath and Badrinath, in Uttarakhand.*

state of Uttarakhand. The Lesser Himalayas have a history of frequent landslides because of their recent origin and are, therefore, unstable. Natural disasters in recent times have been both frequent and ominous. In 2003, a massive landslide damaged at least 100 buildings, while 3,000 people had to be evacuated in the wake of the calamity. Battering the region were other climate-driven catastrophes. Heavy rains in 2016 killed scores of people in Pithoragarh and changed the landscape. In such an ecologically sensitive area, the Centre decided to launch a Rs 12,000-crore project to improve road connectivity to the four revered Hindu pilgrimage sites in Uttarakhand. Prime Minister Narendra Modi launched the construction of the Char Dham Mahamarg on December 27, 2016, as a tribute to those who died in the 2013 Kedarnath disaster<sup>7</sup>.

Concerned by the road-widening project of Char Dham Mahamarg at an enormous cost to the environment, Common Cause, filed an Original Application on July 3, 2018 at the National Green Tribunal (NGT), under Section 14, 15 and 18 of the NGT Act, 2010.

On September 17, 2018 our application was tagged with the case filed by environment non-profit Citizens for Green Doon.

Common Cause was distressed by the widening project being done without conducting the mandatory Environmental Impact Assessment (EIA). The requirement of EIA was bypassed by dividing the 900 km road length into stretches measuring less than 100 km. This measure took refuge under the August 22, 2013 notification, which granted EIA exemption to national highways stretching for less than 100 km.

The Char Dham project has led

to the felling of thousands of trees in ecologically sensitive areas, including the core area of Gangotri National Park, which covers the main glaciers feeding the Ganga. During the construction of the project, debris and muck were being directly dumped along the slopes into the Bhagirathi river. With the onset of monsoon, the impact of the muck disposal intensified, heightening fears of landslides and other disasters. Our petition also argued that indiscriminate dumping along the slopes would result in excessive pollution in the river and eventually lead to the alteration of its course. It sought directions, among others, on following the principles of road design in the hill areas, and the submission of a time-bound muck disposal plan.

Refusing to interfere, the Bench on September 26, 2018, disposed the petitions and cleared the Char Dham project with requisite safeguards in view of the larger public interest and the country's security in the construction of the highway. However, the Tribunal noted that the structural stability of muck-dumping sites was not satisfactory and there was possibility of some caving in during excessive landslides and other natural disasters. In addition, it ordered the constitution of a High-Powered Committee (HPC) as an oversight authority. The authorities were directed to devise a policy whereby diesel vehicles older than 10 years and petrol vehicles over 15 years old are prohibited

to ply along the entire road length of the project.

Subsequently, the other co-competitioners challenged the NGT'S order in the Supreme Court. The Apex Court ordered a change in the composition of the HPC, and recommended the addition of representatives from a wide range of ministries and research organisations. The previous HPC chairman, Justice U.C. Dhyani was replaced by noted environmentalist Prof. Ravi Chopra. The more broad-based HPC was tasked with conducting 'rapid' EIAs and submitting a report after reviewing the ecological concerns related to the project activities. It was also mandated with suggesting ways for complying with environmental norms.

In July 2020, owing to difference of opinion, the HPC members submitted two different reports to the Apex Court. The majority group recommended the carriageway width be of 7m. The HPC Chairman Chopra and four others, advocated for a 5.5m-wide carriageway, citing a circular issued by the Ministry of Road Transport and Highways in 2018. Chopra had also written a letter to the Secretary, Ministry of Environment, Forest and Climate Change, detailing the alleged compliance lapses.

However, the Supreme Court in its order of September 8, 2020 chose to follow the circular of 2018. In the latest hearing of the case on February 17, 2021, the Court has given time to allow Ministry of Defence to respond

to allegations put forward by the HPC Chairman, linking the project to the recent disaster at Dhauliganga river. Chopra, had written a letter to the Supreme Court suggesting a link between the disaster and the Char Dham road widening project. Speaking on behalf of the Defence Ministry, Attorney General KK Venugopal said that there is no link, but he sought two weeks to file a reply and put his stand on record.

Earlier the Centre had also submitted before the Court that a road with a width of 7 to 7.5 m was necessary for the Army's requirement. It would allow heavy trucks carrying troops, equipment and armaments to the Indo-China border which runs to 385 km in Uttarakhand.

## **Right to Clean Air, Adoption of Electric Vehicles**

If you are a Delhi resident, you are no stranger to burning eyes, itching throat and even breathing difficulties when spending long stretches of time in outdoor settings. Not surprisingly, according to a report by IQAir, a Swiss group measuring air quality levels based on the concentration of PM2.5 (particulate matter with a diameter of less than 2.5 micrometres, which can enter the lungs and the bloodstream), New Delhi is the world's most polluted Capital for the third straight year in 2020.<sup>8</sup> This global environmental health threat is compounded in no small measure by exhaust fumes of

vehicles. In this context, adopting electric vehicles (EVs) can go a long way in improving the overall air quality and lowering carbon emissions.

The central government's initiatives for electric vehicle adoption have not had the desired impact. It launched the Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (FAME) scheme for a two-year period in 2015, and extended it till September 2018. It focussed on technology development, demand creation, pilot projects and charging infrastructure. Under phase II of FAME, the government wished to extend financial support for three years, zeroing on the deployment of electric buses, along with other electric vehicles.

While NITI Aayog has been working towards the implementation of an electric and hybrid transportation future in India, other stakeholders including, Ministry of Road Transport and Highways, Ministry of Heavy Industries and Public Enterprises, Finance Ministry and Goods & Services Tax Council have also been roped in to make the overall process of implementation smoother. However, impactful results did not seem forthcoming. Therefore, Common Cause, jointly with Centre for Public Interest Litigation (CPIL) and Sitaram Jindal Foundation, filed a PIL, demanding the implementation of the FAME scheme and NITI Aayog's recommendations. It also





prayed for the adoption of internationally recognised best practices for the integration of usage of electric vehicles.

The petition brought to the Court's attention the government's release of the National Electric Mobility Mission Plan, 2020 in 2012, in which several recommendations were made for the adoption of electric vehicles, switching of government fleets and public transportation to electric vehicles, provision of subsidies to consumers for purchase of electric vehicles as well as tax and policy incentives. It also recommended provisions for charging points in apartment buildings, parking lots, government offices, malls etc.

On March 5, 2019, taking note of the contentions of the petitioners, the Court ordered the government to apprise it of the status of implementation of the FAME-India scheme.

Subsequently, the Court noted that the electric vehicle use issue was inextricably linked to other allied matters on air pollution pending before it, including the serious problem of vehicular pollution. This impacted not only the NCR region, but the entire country. The Court considered it appropriate that all such pending issues be considered simultaneously and with the assistance of an authority empowered to take decisions. It specifically sought assistance from the parties on issues such as procurement of electric vehicles, providing charging ports, feebate system (imposing fee on vehicles with high emissions and providing a subsidy on electric vehicles), use of hydrogen vehicles, among other issues.

### **Petition on Illegal Mining in Odisha**

In the quest for rapid economic growth, mining has been deemed an arsenal by many

countries across the globe. India, with its huge mineral resources, inevitably considers mining as a key industry. But the price of mining on the environment can be very steep. Pollution of air and drinking water, wildlife and habitat destruction, and permanent disfigurement of natural landscapes are few of the fallouts of unregulated mining. The exercise has also been linked with serious negative impacts on human health by experts.

Illegal mining merely adds to the horrors of the existing damage. In the aftermath of public outcry over large-scale mining scandals in various parts of the country, the central government set up the Justice MB Shah Commission of Inquiry for illegal mining of iron ore and manganese in November 2010. The Commission's first report on Odisha, two volumes of which were accessed by the media, documented the reckless plunder of the nation's mineral wealth, flagrant violation of the laws relating to mining and environment protection besides the fundamental rights of the local populations. In order to force the hands of the Centre, Common Cause filed a public interest petition before the Supreme Court, seeking a detailed enquiry into illegal mining in Odisha and termination of the leases of the mining companies involved in the scam.

The Supreme Court gave its judgment on August 2, 2017.



Following the filing of the petition, the operation of 26 illegal mines was stayed. The court in 2016 had directed the states to consider applications of miners filed before January 2015 or 12 months before the expiry of the lease. The court had held that mining leases will not lapse automatically unless the state governments hear the companies and pass orders to that effect.

The Supreme Court on August 2, 2017 imposed a hundred per cent penalty on mining companies indulging in illegal mining on account of lack of forest and environment clearances, mining outside lease/ permitted area and for mining in excess of what has been allowed. The bench headed by Justice Madan Lokur directed that an Expert Committee be constituted and presided over by a retired judge for identifying the lapses that have occurred over the years that have enabled rampant illegal and unlawful mining in Odisha and to recommend preventive measures not only to the state of Odisha but generally to all other states where mining activities are proceeding on a large scale. The Union of India was directed to have a fresh look at the National Mineral Policy, 2008 which is almost a decade old, particularly with regard to conservation and mineral development and that the exercise should be completed by 31st December, 2017.

Another important feature of the judgment was setting up of a Special Purpose Vehicle

(SPV) for Tribal Welfare. In its order of 2014, the court had directed the Central Empowered Committee (CEC) for setting up a SPV for tribal welfare and area development works. The SPV was to undertake specific tribal welfare and area development works including works/projects related to livelihood intervention, health, water supply and sanitation, education, special programmes for development of women and children through identified agencies/government departments. Common Cause has since been following up the progress of the SPV activities through the tools of RTI.

## **Civil Liability for Nuclear Damage**

The Fukushima Daiichi nuclear plant disaster in Japan still sends shivers down the spine of environmentalists across the world. Managing nuclear waste, or large quantities of radioactive materials generated to produce nuclear power, is the biggest concern for the environment and human wellbeing. Governments need to be worried about these radioactive materials, generated right from uranium mining and enrichment, to reactor operation and the reprocessing of spent fuel. Accidents in these plants have the potential to wipe out entire populations or cause environmental pollution for even future generations.

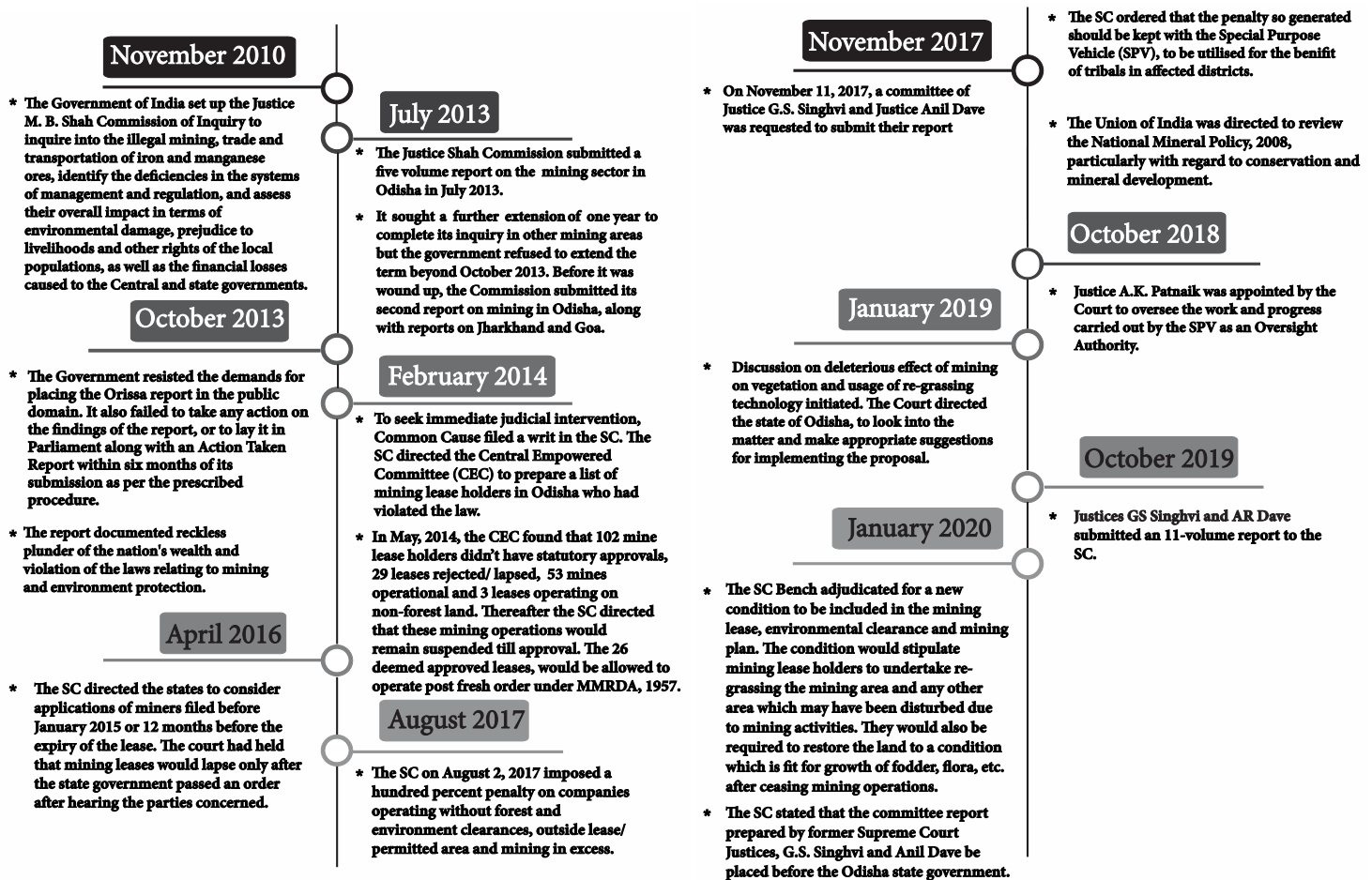
In an industry characterised by humongous amounts of environmental, health and security risks, there is an urgent

need for regulation. Civil Liability for Nuclear Damage Act (CLNDA), 2010, a bill seeking to fix liability for nuclear damage and to specify procedures for compensating victims was introduced in the Lok Sabha on May 7, 2010 by the Ministry of Science and Technology (MoS&T). It was referred to the Standing Committee on Science & Technology, Environment & Forests on May 13, 2010. It met with vigorous opposition from a wide spectrum of citizens' groups on the grounds that it indemnified manufacturers/suppliers of nuclear goods while at the same time fixing low liability caps for operators. Further, it made exceptions violating the right to life, the principles of polluter pays and absolute liability. Despite the criticism, it was notified in the official Gazette and came into force from November 11, 2011. Common Cause and other likeminded organisations filed a writ in the Supreme Court in 2011 to seek relief against the imminent public danger posed by the implementation of this legislation, as the new law seemed to have glossed over serious safety and long-term cost-benefit issues of nuclear power plants. The judgement has since been reserved.

## **Safety Issues in Kudankulam Nuclear Plant**

As a corollary to our PIL challenging the validity of the CLNDA, CPIL, Common Cause

# ODISHA MINING CASE TIMELINE



and others filed a writ petition in 2012 to ensure that suppliers of the Kudankulam nuclear power plant in Tamil Nadu are bound by the 'Polluter Pays' and 'Absolute Liability' principles. We also prayed that in case of an accident, the victims should be able to sue the reactor suppliers for damages, even if the government and the plant operator choose not to sue. Our petition sought a further declaration that the suppliers are bound by the said Act, irrespective of any bilateral agreement to the contrary, and

challenged the rule framed by the government to scale down the liability of suppliers as ultra vires the Constitution and the parent Act.

The Court has reserved its judgment in the matter

## Endnotes

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- 2 Nandini, Jayashree (2021, February 11) Over 85% of Uttarakhand districts, including Chamoli, hot spots of extreme

floods: Analysis. *Hindustan Times*. Retrieved March 23, 2021, from <https://bit.ly/3sclyva>

3 *Id.*

4 *Id.*

5 *Supra* Note 1

6 *Supra* Note 1

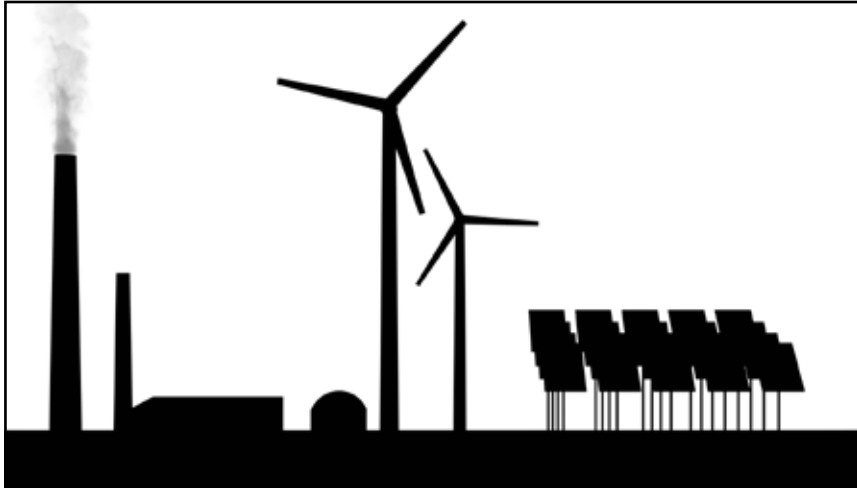
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# WHY THE WORLD NEEDS TO SAVE THE PLANET

## Nations Come Together to Battle Climate Threat

Anshi Beohar\*



While the ‘new normal’ started out by meaning social distancing and mask wearing, it has evolved to embrace extreme weather events. Even as we struggle to pick up the pieces of the destruction wrecked by Cyclone Amphan, we hear of forests of Uttarakhand going up in smoke. Reports of 40 incidents of forest fire across four districts of Nainital, Almora, Tehri Garhwal and Pauri Garhwal in the state have surfaced. These unseasonal fires are raging when temperatures are not even within the maximum range. In these areas, higher temperatures are generally known to catalyse such fires. But what has set alarm bells ringing is that forest fires have started in the winter months in many districts this time.<sup>1</sup> Make no mistake, apocalyptic weather events, triggered by climate

crisis are becoming more real by the day. Even Uttarakhand’s forest department officials have reckoned that the swell in forest fire incidents this year can be attributed to change in climatic conditions, such as strong winds, no rainfall, rise in temperature with less rainfall and snowfall during the winters.<sup>2</sup>

Even as climate change accelerates cyclones, forest fire infernos, unrelenting rain, and record-breaking deluges, nations need to re-double their efforts on emissions and clean energy. It is not as if they were turning a blind eye to a warming world earlier. There have been talks about strengthening international cooperation to usher positive changes to the environment for years now. Accords on the environment have brought

together countries who have marshalled resources to combat the degradation of the planet and slash emissions to some extent. Although critics point out that the tangible results of these summits have been elusive, innovative and cooperative efforts of nations have continued over the years.

This article examines the history and objectives of some of the head-lining international cooperations on environmental matters, which sought to provide guidelines to governments, encouraging them to act collectively towards repairing the environment.

### Stockholm Conference 1972

The United Nations Conference on the Human Environment (also known as the Stockholm Conference) was held in Stockholm, Sweden, from June 5, to June 16, 1972. It was attended by 113 member states of the United Nations, as well as members of its specialised agencies. It stood out not only as the first UN summit on the environment but also for recognising it as a global political agenda.

Clearly the conference’s legacy lies in framing environmental

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degradation as a collective global concern. Scholar Jutta Brunnée, in her paper 'The Stockholm Declaration and the Structure and Processes of International Environmental Law,' writes that The Stockholm Declaration "laid the foundation for a shift in international environmental law from its predominant focus on transboundary pollution to a conceptual framework with a much broader outlook."<sup>3</sup>

Although the Stockholm Conference was marked by an undercurrent of strife between the industrialised world and developing countries, it brought into its fold a multitude of environmental actors including scientists, activists and non-governmental organisations. The highlight was the establishment of a Working Group on the Declaration on the Human Environment, based on environmental reports

from various governmental, inter-governmental and non-governmental sources.

Specific committees were also formed to study the following:

- Planning and management of human settlements for environmental quality;
- Educational, informational, social and cultural aspects of environmental quality;
- Environmental aspects of natural resources management;
- Development and environment;
- Identification and control of pollutants of broad international significance; and
- International organizational implications of action proposals.

After much consideration and discussion, the Declaration on the Human Environment

containing 7 proclamations and 26 principles was adopted by the Conference on June 16, 1972. The Conference also adopted 109 recommendations for environmental action at the international level. In 20 years, the United Nations Conference on Environment and Development 1992 (Rio Earth Summit) took note of the development in the intervening years and reconsidered the principles. These later paved the way for ground-breaking international agreements like the Kyoto Protocol, the Paris Agreement, etc. leading to the way we perceive and protect the environment today.

Some of the crucial principles which formed the bedrock of environmental laws and global intergovernmental action have been given below:

### **Principle 1: Right to Protect Environment**

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

### **Principle 2: Management of Natural Resources**

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be



safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Although Stockholm was one of the first summits, it was the earliest to take cognisance of the devastation triggered by human impact on the environment. It was also a pioneer in cobbling together a united front to conserve the planet. Not surprisingly, the Stockholm Declaration is a document reinforcing environmental policy goals and objectives, instead of setting specific standards or guidelines. But it did prove to be a breakthrough moment in environmental awareness, and influenced international environmental law-making in its own way. "The Stockholm Declaration did not expand the conceptual framework of international environmental law. Yet, it did foreshadow, to a remarkable degree, the framework within which international environmental lawyers operate today," says Brunnée.<sup>4</sup>

International environmental activism also got a fillip post the Stockholm Conference, as around 400 NGOs attended it, enriching the consultative process on environmental protection to a great degree. A motley group of scientists, business representatives, journalists, lobbyists and others made the conference much more broad-based and representative. Non-state actors

mostly used marches, songs and demonstrations to draw attention to issues of pollution control, civil rights and even vegetarianism.

## **The Rio Declaration on Environment and Development 1992**

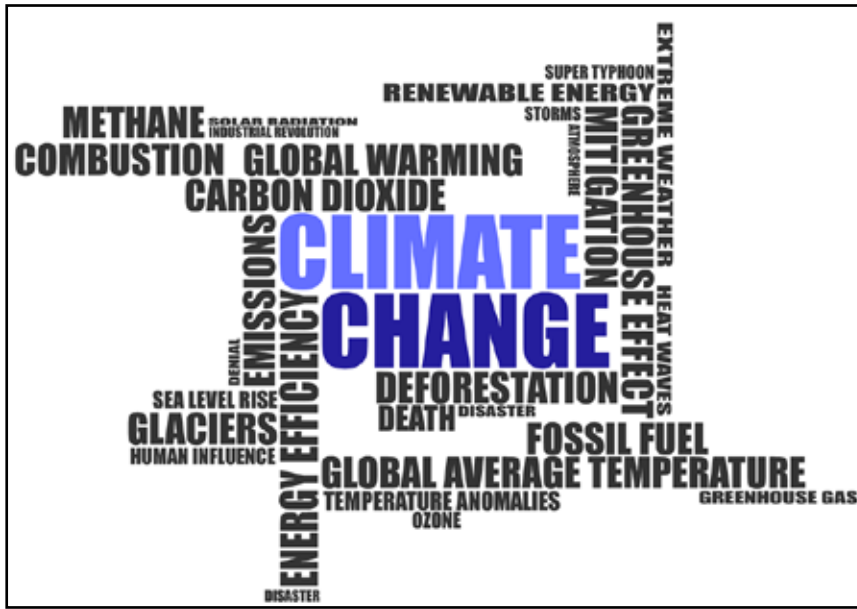
The United Nations Conference on Environment and Development (UNCED) met at Rio de Janeiro from June 3 to June 14, 1992 to create a document containing 27 guiding principles called the Rio Declaration on Environment & Development (or the Rio Declaration). Billed as a major environmental legal landmark, this document reaffirms the Stockholm Convention of 1972 and builds upon it with the goal of establishing a new and equitable global partnership. This is hoped to be achieved through the creation of new levels of cooperation among states, key sectors of societies and people. It also recognises the integral and interdependent nature of the earth and calls it our home.

The principles are built around the need for human beings to adopt Sustainable Development and co-exist harmoniously with nature (Principle 1). It urges states to create developmental policies that take the environment into consideration while not damaging anything outside their domestic territory (Principle 2, 4). It also discusses development keeping in mind intragenerational equity (Principle 3). It recognises the

need for eradicating poverty (Principle 5), global switch towards a sustainable lifestyle (Principle 8), gender equality (Principle 20), mobilisation of the youth (Principle 21), effective participation of the Indigenous groups and local communities and protection of their identity, culture and interests (Principle 22), in order to move towards sustainable development and decreasing disparities in the global standards of living.

Simultaneously, the Declaration, is also a set of principles, that acknowledge that preserving the environment is a priority and set international guidelines to that end. It also stresses that at the national level, awareness and access to information concerning the environment amongst citizens must be facilitated by the state along with enacting effective environmental legislations, effective access to judicial and administrative proceedings, including grievance redressal and remedy. (Principle 10, 11).

As per the principles, the national law must address liability of the polluter and compensation for the victims of the damage (Principle 13). The principles also lay stress on fixing liability on the polluters. It talks about the Precautionary Principle (Principle 15) and the Polluter Pays Principle (Principle 16), which have been accepted as law of the land to ensure that those contaminating the environment must be identified



and be held accountable for their actions, before and after the act. Principle 17 talks about Environmental Impact Assessment (EIA):

“Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority”

This becomes particularly relevant in the Indian context as EIA is an essential part of Indian law. However, attempts to dilute it are being made through the Draft Environmental Impact Assessment 2020. The 2020 Draft waters down several significant long-standing principles of environmental jurisprudence, such as the Polluter Pays Principle, Precautionary Principle,

Public Trust Doctrine and the standards set out in international conventions such as the Rio Declaration on Environment and Development, 1992, and the Paris Agreement, 2015.

In fact, according to Professor Günther Handl, “one of several of the Rio Declaration Principles that does not have a counterpart in the Stockholm Declaration is Principle 15, which provides that ‘the precautionary approach shall be widely applied by States according to their capabilities:’ Whenever there are threats of serious or irreversible damage, a lack of full scientific certainty shall not excuse States from taking cost-effective measures to prevent environmental degradation.”<sup>5</sup>

The United Nations Conference on Environment and Development, which also has the popular moniker of Earth Summit, did have tangible

results. It produced the Rio Declaration of Principles on Environment and Development, a programme of action, called Agenda 21, a statement of principles on forests, the UN Convention on Biological Diversity (UNCBD); and the UN Framework Convention on Climate Change (UNFCCC).

It was also the cradle for agreements such as the UN Convention to Combat Desertification and the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks.

More importantly, it brought into sharp relief the environmental inequities between the privileged and the poor. Maurice Strong, Secretary General of the summit, stated in no uncertain terms that “one part of the world cannot live in an orgy of unrestrained consumption where the rest destroys its environment just to survive. No one is immune from the effects of the other.”

Later, in 1997, Kyoto Protocol, an international treaty prescribing legally binding emission cuts for the 36 developed nations in order to deal with the rising global mean temperature of the earth, came up. The Protocol was mindful of the difference between the capacities and capabilities of the nations and allowed flexible ways to combat climate change such as by trading emissions permits, by investing in developing or under-developed countries,



establishing carbon sinks such as forests to soak up emissions, etc. Despite concerns for domestic economies, it was entered into force in 2005, with the first round of commitments taking place from 2008 to 2012. Thirty six nations were slated to join the second round of commitments but only 34 have ratified them. Kyoto Protocol operationalises the UNFCCC treaty negotiated at the Earth Summit.

A spate of international conferences took place after Kyoto, which continued to offer guidelines to both governments and non-state actors in environmental protection measures.

In September 2000, at the Millennium Summit in the UN Headquarters, New York, eight Millennium Development Goals (MDGs) were adopted by 191 states, and over 22 international organisations. Rio+20 Summit, the United Nations Conference on Sustainable Development (UNCSD) succeeded the Earth Summit. Over 190 member states launched a process to develop a set of Sustainable Development Goals (SDGs), building upon the Millennium Development Goals in 2012.

## **The Paris Agreement 2015**

More recently, the Paris Agreement, a landmark international accord, has come under the spotlight for a variety of reasons. It is another legally

binding multilateral treaty on climate change, with the goal to limit global warming. Its primary objective is to keep the world's temperature spike in this century well below 2°C above pre-industrial levels, and to take measures to contain the temperature swell even further to 1.5° C.

It was an agreement within the UNFCCC, on climate change mitigation, adaptation, and finance, adopted by 196 parties in Paris, on December 12, 2015 and signed in 2016. As of January 2021, 190 members of the UNFCCC are parties to the Paris Agreement.

The Agreement has not been without its fair share of controversies. Former US President Donald Trump announced his intention to exit the historic 2015 Paris climate agreement in 2017, becoming the only country to withdraw from a global response to the spectre of climate change. However, the current US President, Joe Biden, issued an executive order, making the US rejoin the Paris Climate Agreement again officially on February 19, 2021.

The Paris Agreement is one of the initiatives to contain global warming. As per goal 13 of the Sustainable Development Goals, countries have adopted the Paris Agreement to address climate change. This is the first international binding agreement in the climate change process.

It works on a 5-year cycle of climate action carried out by countries comprising economic and social transformation, based on the country's resources. The climate action plan is known as nationally determined contributions (NDCs), or the commitment made by the countries indicating their individual goals and strategies to reduce their greenhouse gas emissions.

The Paris Agreement also provides a financial, technical and capacity building support system for the countries in need. The developed countries are expected to offer financial assistance to countries in vulnerable financial positions. Financial resources are also needed to reduce the impacts of a changing climate or adapt to its adverse effects. Similarly, the accord is a platform to achieve optimum technology transfer for dealing with climate change as well as reducing the emissions. Simultaneously, developing countries lacking in capacity to deal with climate change are expected to be provided support for capacity-building actions by the developed countries.

In order to track the progress of the Paris Agreement, countries have established an enhanced transparency framework (ETF). Under the ETF, countries will start reporting on actions taken and progress made in climate change mitigation, adaptation measures undertaken and support provided or received

from the year 2024. The information gathered through the ETF will feed into the global stock take, which will assess the collective progress towards long-term climate goals.

The Paris Agreement has indeed mapped a new direction for measures seeking to avert a climate crisis. Since 2016, it has initiated conversations around low-carbon solutions. More and more public and private sector institutions are going forward to establish carbon neutrality targets. In fact, zero-carbon solutions have become a new market trend in the power and transport sectors. It is estimated that presently zero-carbon solutions are competitive in economic sectors representing 25% of emissions. In another 10 years or by 2030, it could be competitive in sectors representing over 70% of global emissions.

## Conclusion

It is a fact that international environmental treaties have catalysed the response to the

dire threat of climate change. They have strengthened the resolve of countries to rise up to the challenge as a single unit. Declarations and accords have fostered innovative, cooperative efforts to find solutions when climate crisis is swinging a wrecking ball to the planet. But all the combined green plans seem to have little impact so far. Catastrophes are still devastating large populations. According to Internal Displacement Monitoring Centre's report, 'Internal displacement 2020: Mid-year update': "Disasters continue to trigger the majority of new displacements worldwide. Cyclone Amphan was the largest single displacement event in the first half of 2020, triggering 3.3 million pre-emptive evacuations in India and Bangladesh."

Despite the all-pervading bleakness, something needs to be done to protect people from climate disasters. The idea is to take a cue from international climate talks and pursue climate action on the ground. As Bill

Gates writes in his most recent and prescient book, *How to Avoid a Climate Disaster*, "1. To avoid a climate disaster, we have to get to zero (greenhouse gases). 2. We need to deploy the tools we already have, like solar and wind, faster and smarter. 3. And we need to create and roll out breakthrough technologies that can take us the rest of the way."

## Endnotes

1 Chauhan, Chetan (2021, April 4). Uttarakhand witnessing unprecedented forest fires. *Hindustan Times*. Retrieved April 12, 2021. Retrieved February 15, 2021 from <https://bit.ly/326WESw>

2 *Id.*

3 Brunnée, Jutta et al. *The Future of Ocean Regime Building: Essays in Tribute to Douglas M. Johnston*. p. 39-62. eds. Aldo Chircop, Ted McDorman. July 2009: Brill|Nijhoff. Retrieved February 23, 2021 from <https://bit.ly/3wMQNjg>

4 *Id.*

<sup>5</sup> Handl, Günther, "Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992," United Nations Audiovisual Library of International Law, 2012. Retrieved February 2, 2021 from <https://bit.ly/3sdg8PI>

# COMMON CAUSE EVENTS

## Launch of the India Justice Report, Second Edition

Akhilesh Patil\*



The second edition of India Justice Report (IJR), a data-driven initiative ranking individual Indian states in relation to their capacity to deliver access to justice, was launched on January 28, 2021. Common Cause, along with the Commonwealth Human Rights Initiative (CHRI), Centre for Social Justice, DAKSH, Tata Institute of Social Sciences-Prayas, and Vidhi Centre for Legal Policy are the key collaborators in this Tata Trusts initiative. Owing to the ongoing Covid-19 pandemic, the report was launched in an online event in the presence of Dr. Rajiv Kumar, VC, NITI Aayog, Justice (Retd.) Madan B Lokur and other dignitaries. Mr N Srinath, CEO of Tata Trusts, in his welcome address, talked about the significance of the report for policymakers and the civil society. Ms Maja

Daruwala, Senior Advisor, Tata Trusts and Chief Editor of the India Justice Report, presented the main findings and gave a broad overview of the report. While stressing on the importance of the justice system during extraordinary times such as the present pandemic, she said, “The justice system must be designed as an essential service and be equipped as a first responder to provide the public with its services in every situation, especially emergencies, and certainly in the on-going pandemic.”

Justice Lokur, who has also penned the foreword for the report, said that it sets out a roadmap for both the states and the high courts. “The significance of the information (rankings) is that it tells us where exactly the action needs to be taken,”

he said. Dr Rajiv Kumar, in his keynote address, highlighted the importance of a better justice delivery mechanism in achieving other development goals. While lauding the IJR team he said, “IJR 2020 will help the states to identify areas of immediate improvement and the rankings will hopefully give an incentive to do better.”

The launch was followed by a question-answer session featuring Justice Lokur, Ms Maja Daruwala, Prof Vijay Raghavan of TISS-Prayas, Dr Vipul Mudgal of Common Cause, Mr Avinash Singh of How India Lives, Dr Arghya Sengupta of Vidhi, Mr Sanjoy Hazarika of CHRI and Mr Gagan Sethi of Centre for Social Justice.

The India Justice Report uses data obtained from government organisations to construct nearly 78 indicators, measuring the structural capacities of Police, Judiciary, Prisons, and Legal aid- the four pillars of the justice system. Its maiden edition, ‘India Justice Report 2019’ was launched in November 2019. The latest report, IJR 2020, uses the same methodology to rank individual states. However, along with publishing the updated state rankings, based on the latest data, it also compares the current performances of the states with

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\* Akhilesh Patil is a Research Executive at Common Cause

their earlier productivity, as per IJR 2019. This has been done to track the rise and fall in each indicator. According to the latest report, Maharashtra once again topped the overall ranking in 'large and mid-sized states' category (states with over 1 crore population), followed by Tamil Nadu, Telangana, Punjab and Kerala. In the 'small states' category, Tripura grabbed the top spot, followed by Sikkim and Goa.

To access the full report, please visit: <https://bit.ly/3pH3ozl>

## LETTER TO THE EDITOR

Mr Bhagvanji Raiyani, a Common Cause member and public-spirited citizen has forwarded for publication in the journal a letter written by him to the Prime Minister and the Chief Justice of India. A founder of the Forum for Fast Justice and Janhit Manch, Mr Raiyani has dedicated his life to making the justice delivery system affordable to the poor. Summarised below are the main points contained in his letter:

Among Mr Raiyani's key demands is the implementation of the recommendations of the 85th Report by the Standing Committee of Parliament, headed by Mr. Pranab Mukherjee. It proposed accepting the recommendation of the Law Commission, which in its 120th Report, suggested that the strength of judges per one million population may be increased from 10.5 to 50. This was repeated by the Supreme Court, in its judgment of March 21, 2002, in the *All India Judges' Association & Ors vs. Union of India & Ors* case. The Apex Court directed the states that the above-stated increase in the strength of judges should be implemented within a period of five years. However, it still remains a pipe dream.

Mr. Raiyani has vowed to go on a fast-unto-death in Delhi from January 30, 2023, if judicial reforms in lieu of the judgment, with matching annual budgets of the Central and State governments are not initiated on a war footing. If 50 per cent work is over by the stipulated date, he will not go on a fast-unto-death, he has clarified. Mr Raiyani also seeks joint assurance by both the Prime Minister and Chief Justice of India that the balance work will be completed by January 30, 2025. His prayers include setting up four more Benches of the Supreme Court in the East, West, South, and Centre of the country to ease the long travelling time of poor litigants.

Mr Raiyani is known for his 117 PILs filed in different courts, most of which were argued in person. He also undertook and led a 35-day "Nyay Yatra" in 2016, covering 18000 km across India. Many of these facts have been mentioned in the letter which adds: "Everyone has appreciated our fight for justice but none joined the movement. Backlog of cases went on piling up in Indian courts, reached over 4 crores as of today and it takes lives after lives till disposal. The maximum human rights violations are committed in Indian courts and Human Rights Commissions are toothless."

More information about the Forum for Fast Justice and Janhit Manch could be obtained from the following links:

<https://bit.ly/3ykft3n> | <https://bit.ly/3fuV1Ea> | Articles about/ by the Forum for Fast Justice  
<https://bit.ly/3os0VtT> | Mr Raiyani and his colleagues could be reached at [fastjustice@gmail.com](mailto:fastjustice@gmail.com)

# COMMENTS ON THE DRAFT EIA 2020 NOTIFICATION

## Common Cause Response

The draft EIA notification 2020, aimed to replace the EIA notification 2006, was put in the public domain while the Ministry of Environment, Forest and Climate change (MoEFCC) sought views and comments on it from all stakeholders. The EIA makes a scientific assessment of the impacts of a project on the environment, such as a mine, irrigation dam, industrial unit or waste treatment plant.

In response to the request for public feedback, we submitted comments and suggestions on the draft EIA 2020 Notification.

We feel that the Draft Notification significantly dilutes the provisions of the EIA Notification, 2006. It also waters down several provisions of the parent legislation i.e. the Environment (Protection) Act, 1986, resulting in the erasure of long-standing principles of jurisprudence relating to environmental safeguards, such as the Polluter Pays Principle, Precautionary Principle, Public Trust Doctrine and the standards set out in international conventions such as the Rio Declaration on Environment and Development, 1992 and Paris Agreement, 2015.

The mission statement for the draft EIA notification 2020 claims to improve the process

of securing environmental clearances, but in reality, the diluted rules seem to offer big corporations an unchecked ease to hastily build infrastructure at the cost of environmental accountability. In effect, if notified, these rules will weaken the safeguards for the country's fragile ecosystem, secured through years of judicial precedents and legislative foresight.

Following are our comments and suggestions submitted to the Secretary, Ministry of Environment, Forests and Climate Change, Government of India, in response to the Draft EIA 2020 Notification.

### General Comments

Environment Impact Assessment (EIA) is an evaluation process to study the environmental aftermath of any development project from its inception. The Ministry of Environment and Forests (MoEF) issued the EIA notification in 1994, making environmental clearance (EC) for certain development projects mandatory. The purpose of this notification was to impose restrictions and prohibitions on the expansion and modernisation of any activity or new projects so as to assess and minimise the potential environmental impact.

Several committee reports, CAG

reports and court judgments have highlighted the importance of prior environmental approvals.

A committee constituted by the MoEF, following a 2009 draft notification, published a report in October, 2009. In it, the committee specifically recommended that modernisation and expansion of projects cannot be absolved of the framework of environmental approvals. The draft amendment was subsequently not adopted.

A subsequent March 14, 2017 MoEF notification was also loaded in favour of the industry. Industrial projects violating the 2006 notification were given the one-time opportunity to regularise their operations. However, the current 2020 notification would ensure that such post-facto approvals become the order of the day and

“***The Draft Notification waters down several provisions of the parent legislation, the Environment (Protection) Act, 1986***

”



the whole EIA process runs the risk of being dismantled into a mere procedural formality.

It's critical for us to recognise that we are in the midst of a pandemic. Experts across the globe have acknowledged that Covid-19 is a zoonosis, a disease that jumped from animals to humans. Several research reports have already revealed the links between biodiversity loss/climate change and zoonotic diseases. They have stressed how anthropogenic (human activity-related) land use changes drive a range of infectious disease outbreaks and emergence events and modify the transmission of endemic infections. These drivers include agricultural encroachment, deforestation, road construction, dam building, irrigation, wetland modification, mining, the concentration or expansion of urban environments, coastal zone degradation, and other activities.<sup>1</sup> We need to keep in mind how constant reconfiguring of our shared ecosystem is resulting in some of the deadliest infectious disease outbreaks across the world.

India's first climate assessment report 'Assessment of Climate Change over the Indian Region,' prepared by the Ministry of Earth Sciences has also acknowledged that "forests and urban green spaces will deliver substantial economic benefits to the country by mitigating a wide range of the expected impacts of climate change in India and is the safest,

***“Time and again, the top court has come down heavily on the granting of post facto environmental clearances for industries.”***

most reliable means of realizing several of India's sustainable development goals.”<sup>2</sup> Numerous Supreme Court judgments have pushed for greater environmental accountability. For instance, the Apex Court, in a 2011 judgment held that “the present mechanism under the EIA Notification ... is deficient in many respects and what is required is a Regulator at the national level.”<sup>3</sup>

In fact, the 2011 order to establish an independent national environmental regulator is a reflection of the Court's disenchantment with the piecemeal nature of the environmental clearance regime and an attempt to provide a clear institutional framework to address the existing challenges.

In *Alembic Pharmaceuticals Ltd.*<sup>4</sup> the Court has observed as follows:

“23. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence

and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation.” The order is significant in the domain of India's environmental approval framework since it upholds the principles of environmental law.

Time and again, the top court has come down heavily on the granting of post facto environmental clearances for industries. In the illegal mining in Odisha case filed by Common Cause<sup>5</sup>, the Court refused to accept the narrow interpretation of “illegal mining” given by the mining companies counsels, holding that “illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement.”

Common Cause agrees with the country's strong judicial response to egregious violations of environmental norms which not only safeguard the fragile ecosystem, the hills, the forests and the rivers but also check poverty and forced displacement of millions of people and annihilation of their cultures. The intent of new EIA notifications should not be to circumvent various court and National Green Tribunal rulings and



the environmental safeguards provided by them. We also feel that legitimising ecological violations by institutionalising a permanent mechanism for post-facto approvals and hence, re-writing the norms of environmental protection will be catastrophic for the country's vulnerable ecosystem. Therefore, we suggest the following changes (provided in the next section) to the specific Clauses of the Draft Notification 2020.

## Specific comments

### 1) Nomenclature of terms

- (i) The 2020 draft notification provides a vague definition of the term "project." Our suggestion is that the term should include sequentially dependent project components. The EIA is often carried out on the site of the main project but its corollary establishments remain overlooked. In addition, projects often evolve in different phases; particularly in cases of transmission lines, tunnels, pipelines etc. The 2006 EIA notification under clause 8(v) had a specific mention for the kinds of sequential developments stated above. We suggest a similarly worded provision with a more definite and clear understanding of the term 'project.'
- (ii) The draft notification gives a carte blanche to projects categorised as

strategic projects, without any definition as to what constitutes a strategic and a non-strategic project. These terms need to be clearly defined.

- (iii) The Draft Notification, 2020 has defined the term 'violation' in limited terms, by referring to only those cases where projects have started the construction/installation/excavation/expansion/modernisation without obtaining prior EC. However, it remains silent on projects which violate the conditions of EC once granted by the regulatory authority. It is submitted that violations and non-compliance of the conditions of EC must be included in the definition of violation.

### 2) Requirement of Prior Environment Clearance (EC)

The draft does not deem

“

***We need to keep in mind how constant reconfiguring of our shared ecosystem is resulting in some of the deadliest infectious disease outbreaks across the world.***

”

certain activities as construction work for the purpose of this notification. These include securing the land by fencing or compound wall; temporary shed for security guard(s); levelling of the land without any tree felling; geo-technical investigations, if any, required for the project etc. Therefore, no prior environmental clearance will be required for these activities. However, they can make significant and permanent changes to the land use pattern on a particular terrain. This is a departure from the standard set out in EIA 2006, which required an environment clearance before commencing any construction work on the land in question. We would like to submit that the standard notified in the 2006 version not be diluted.

### 3) Public Consultation

- (i) Access to detailed information set should be provided, prior to a public consultation. As of now only the summary of the draft EIA report for a project is made available on the websites of State Pollution Control Boards (SPCB)/Union Territory Pollution Control Committees (UTPCC) before the public consultation. We suggest that a GPS based shape file of the project site as well as both the draft EIA Report and its summary be shared on the websites of SPCB/UTPCC, MoEFCC and project proponents for meaningful public

**“For an effective public hearing, we recommend a minimum notice period of 60 days.”**

participation.

- (ii) The notice for public hearing, as stated in both the 2006 and 2020 notifications, mandates the publication of its notice in one national and one regional vernacular newspaper. However, this provision has often been rendered ineffective, as project proponents tend to publish the notice in newspapers with limited distribution in the project site. We recommend that the public hearing notice be published in widely circulated newspapers in the proposed project sites and at least in one popular vernacular language newspaper. In addition, the local municipal corporation and the gram panchayat have to be involved for wider circulation of the notice through public hearings.
- (iii) The draft notification has reduced the notice period for public hearing from 30 days as prescribed in the 2006 version, to 20 days. In our opinion, even 30 days, as stipulated earlier,

is inadequate for project-affected communities to make sense of the highly-technical EIA reports of proposed constructions. For an effective public hearing, we recommend a minimum notice period of 60 days.

- iv) The public hearing should be conducted with a deliberate attempt to ensure that the participation is free, fair and informed. The video recording of the public hearing must be submitted with Form 2 to the regulatory authority for a final appraisal.

#### **4) Grant of Post-facto EC**

One of the most egregious aspects of the 2020 notification is that it regularises industries which had commenced operations without valid environmental clearances by granting them post facto approval opportunities, by paying the penalty amount. In doing so, the notification obliterates the Precautionary Principle, central to EIA regulations. This clause is also in violation of the Supreme Court judgment, *Alembic Pharmaceuticals v. Rohit Prajapati & Ors.* (CA No. 1526 of 2016) where it was held that an executive notification allowing post-facto clearance goes against the parent legislation, the Environment (Protection) Act, 1986, and is therefore illegal. In addition, the practice of post facto approvals removes the relevance of public hearings, meant to address the concerns

of the relevant stakeholders. This provision, if notified, would make the mandatory procedure a mere formality, leading to gross negligence by industries.

#### **5) Non-compliance of prior EC or prior Environment Permission (EP)**

Clause 23 of the Draft Notification, 2020 has elaborated the procedure to deal with noncompliance of prior EC or prior EP conditions by project proponents. The 2006 EIA Notification stipulated the following: “Failure to comply with any of the conditions may result in withdrawal of the clearance and attract provisions of Environment (Protection) Act, 1986.” However, the current draft has diluted the penal provisions of noncompliance, further curtailing the power of the regulatory authority to withdraw the EC or take punitive action against the project proponent under the same Act. This has reduced the provision to a ‘pollute and pay’ model, which has nightmarish consequences for the ecology and livelihoods dependent on it. Further, the current punitive measures are limited to a maximum penalty amount of the bank guarantee deposited with SPCB or UTPCC. The said provision is ultra vires its parent act as it dilutes the penalty provisions laid down in it. The 1986 Act provides for a wider range of penal actions, including prosecution and punishment for non-compliance and contravention of the

provisions, orders and directions issued under it.

## 6) Project Exemptions for EC

About 40 different categories of projects have been granted exemptions from a prior EC requirement, as per Clause 26 of the 2020 Notification. We suggest the setting up of an expert committee to review the reasons of exemption and the report of said committee be made public. The following categories of projects, if not included in EIA regulations, will lead to significant impact on land use and wildlife as discussed below:

- (i) Solar Thermal Power Plants and Photovoltaic (PV) Plants: Solar Power plants require massive quantities of water for electricity production which in turn has a substantial impact on surface and ground water resources. These plants, through their various concomitant projects, such as transmission lines, water pipelines have a significant role to play in shaping the topography and ecology of a region. Thus, it is completely unjustified to keep Solar Thermal Power Plants and Photovoltaic Plants outside the regulatory purview. We suggest the said projects be included in the EIA Notification as category A and B1.
- (ii) Maintenance Dredging: In the EIA Notification, 2006,

the maintenance dredging is exempted, provided it formed part of the original proposal for which the Environment Management Plan (EMP) was prepared and environmental clearance obtained. However, the proposed draft has made a deliberate attempt to remove this provision and has completely exempted maintenance dredging from an EIA requirement. This will have severe environmental consequences as many rivers and wetlands, doubling as habitats of animals and insects, will be disturbed due to dredging activities.

- (iii) Extraction of earth for linear projects: Extraction of ordinary earth for linear projects entailing the construction of roads, pipelines has ecological fallouts. They disturb wildlife movement and damage habitats by fragmenting continuous landscape. It is submitted that extraction of earth from protected areas and other ecologically fragile areas should not be allowed. In other areas, such extraction should be made part of the EIA study undertaken by the linear projects for prior EC.
- (iv) Liquefied Natural Gas (LNG) terminal: The 2006 notification mandated that LNG Terminals require prior EC and they were treated as Category A under item 6(a) of the Schedule. We

recommend their retention within the same Category.

- (v) Non-Notified Eco-sensitive Zones: The draft notification mandates the recognition of only those areas notified as eco-sensitive zones by the MoEFCC. This can have severe ramifications. Although national parks, protected areas and sanctuaries will not be impacted by the notification, outdoor spaces like coastlines and shores as well as urban spaces like rivers and bird sites (such as Mumbai's flamingo habitats) will lose all kinds of safety nets. Similarly, dry grasslands of Gujarat and Rajasthan, habitats of critically endangered fauna like the Great Indian Bustard and used by nomadic pastoralists will be seriously threatened.

## 7) Restricted provisions for registering complaints for

***“The intent of new EIA notifications should not be to circumvent various court and National Green Tribunal rulings and the environmental safeguards provided by them.”***

## noncompliance

The draft notification places significant restrictions on the standing of complainants under Clauses 12 and 23. The lack of provisions enabling individuals and civil rights groups to raise violation complaints is an attempt at undermining the legal rights of relevant stakeholders to voice their concerns. We suggest that citizens be allowed to report violation without securing prior government approvals.

### 8) Post-EC Monitoring of Projects

- i) The 2020 notification requires industries to submit the self-compliance reports annually, as opposed to six months, allowed by its 2006 version. The delayed reporting period flies in the face of established principles of environmental laws and will give leeway to industries to under report serious ecological consequences of their projects. Thus, we propose that self compliance reports be submitted every three months instead of annually.
- ii) Penalties for non-submission of self-compliance reports are negligible Penalties for non-submission of self

compliance reports for projects under the B2, B1 and A category are pegged at Rs 500, Rs 1000 and Rs 2,500 per day respectively. They are a pittance and insufficient to ensure compliance. These piffling fines are unlikely to deter defaulters and should instead be replaced with more stringent punishment such as the suspension and cancellation of the prior EC.

### 9) Monitoring

As per Report of the C&AG (39/2016) on Environmental Clearance and Post Clearance Monitoring (<https://bit.ly/3fNsW9A>), there was non-compliance in setting up of a separate monitoring cell with adequate manpower in 98 out of the total 274 assessed projects. In 71 projects there were shortfalls in monitoring of environmental parameters by the project proponents. The 2020 Draft Notification proposes third party monitoring by government institutions of national repute. However, there is ambiguity about the parameters for choosing them and the nature of their functioning. Often the credibility of these institutions has come under the scanner. The CAG report in 2016

had revealed there were inadequacies in monitoring by third party agencies in 201 projects. In light of these findings, we propose a criteria-based selection process for third-party monitoring institutions, with details of their selection and working methods placed in public domain.

## Endnotes

1 Patz, A.J. et al (2004). Unhealthy Landscapes: Policy Recommendations on Land Use Change and Infectious Disease Emergence. Accessed from: <https://bit.ly/2AWHYLP>

2 R. Krishnan, J. Sanjay, Chellappan Gnanaseelan, Milind Mujumdar, Ashwini Kulkarni, and Supriyo Chakraborty. 2020. Assessment of Climate Change over the Indian Region: A Report of the Ministry of Earth Sciences (MoES), Government of India. Springer Nature. Retrieved February 20, 2020 from <https://bit.ly/3fSxlbP> <https://bit.ly/3fSxlbP>

3 Lafarge Umiyam Mining Pvt Ltd v. Union of India & Ors. (2011) 7 SCC 338

4 C.A. No. 1526 of 2016 decided by the Hon'ble Supreme Court on April 1, 2020

5 Common Cause v. Union of India [W.P.(C) 114 OF 2014]



# A HEATED PLANET

## Some Recent Extreme Weather Events

Akhilesh Patil\*

Photo by Markus Spiske on Unsplash



*Fridays for future - global climate strike on the European elections in Germany in May, 2019*

At the 'Leaders Summit on Climate,' hosted by U.S. President Joe Biden, he announced that America would aim to cut its greenhouse gas emissions 50 per cent to 52 per cent below 2005 levels by 2030. It's a steep near-term target among wealthy, industrialised nations but comes close on the heels of terrifying risks of climate change.

Even recently, at least eight people have died and six more critically injured after a glacier broke off, leading to an avalanche in Sumna

area of Joshimath Sector in Uttarakhand's Chamoli district. The tragedy comes in the wake of another environment nightmare, just two months ago, when another glacier disaster in Chamoli caused a flash flood, decimating over 200 lives.<sup>1</sup>

Following is a curated list of events that tell us in no uncertain terms that we are already living through climate change's worst-case scenario.

### One of the Hottest Years on Record

As per the provisional report published by the World Meteorological Organisation

(WMO) on the State of the Climate, 2020 was one of the three hottest years on record. The report, based on the data collected from January till October 2020 was published on December 2 of the same year. It was further updated on January 15, 2021.<sup>2</sup>

An exceptionally hot 2020 couldn't be evaded despite a La Niña event, in the later half of the year. La Niña is a weather pattern causing water in the eastern Pacific to be colder than usual.

The year also experienced multiple lockdowns all around the world, significantly slowing

Photo by Jo-Anne McArthur on Unsplash



*A kangaroo and her joey who survived the forest fires in Mallecoota, Australia in 2019*

\* Akhilesh Patil is a Research Executive at Common Cause



*Bushfires below Stacks Bluff, Tasmania, Australia in 2019*

down carbon emission. Yet it couldn't impact the ongoing warming process in a significant way. It also highlights how powerful human contributions to global warming have become. Data analysed by the WMO shows that 2011-20 was the warmest decade on record, with 2016, 2019 and 2020 being the top three hot years.

## A Year of Record Wildfires

Large chunks of the planet went up in a blaze this year. While massive wildfires are not unknown to certain parts of the world, their frequency has gone up significantly. The usual suspects are to blame --- rising temperatures, dry summers, severe droughts and of course, human errors. This year particularly witnessed record levels of fire activities in regions not witnessing the

phenomenon earlier. Like always, the western part of the United States, mainly the state of California, and several states of Australia experienced wildfires during their summers (Although Australia has had a quiet fire season in 2021, compared to the Armageddon like blazes in 2019 and 2020). However, parts of the Arctic, Siberia, Indonesia, Brazil, Argentina, China, Ukraine, Poland and Africa experienced their worst wildfires in decades if not all of the recorded history.<sup>3</sup> According to multiple studies, only 10 to 15 per cent of wildfires occur on their own in nature, rest are caused because of human errors like unattended camp or debris fire, arson, deforestation for agriculture etc.<sup>4</sup> However, constant dry weather and warm temperature have been making the situation worse.

In 2020, the Russian town of Verkhoyansk became the first

place above the Arctic Circle to experience temperatures over 100 degrees Fahrenheit, or about 38° Celsius, in June, mainly because of all-time high wildfires in the region. It burnt almost an area roughly the size of Belgium.<sup>5</sup> In Brazil, the Pantanal wetlands of the Amazon rain forest experienced one of its worst wildfires in the past 13 years. As per the National Interagency Fire Center of the U. S. in the state of California, 10,000 fires had burned over 4.2 million acres, effectively more than 4% of the state's land. It was the largest wildfire season recorded in California's modern history.

## Devastating Tropical Storms

Super-cyclone Amphan tore through the coast of eastern India and Bangladesh in May 2020, ripping apart cities, mangrove forests, embankments and homes with its 100-mile-per-hour winds and walls of rain.

Electricity transformers and poles exploded in showers of light, while giant trees cracked open roads even as they smashed into the ground.

Other cyclones too made their rounds of the country, such as Nisarga, BOB 03 and Nivar, wrecking havoc and devastating lives. But Amphan stood out even in this calamitous crowd. It was the strongest storm recorded in the past two decades. The cyclone caused damage worth ₹1.02 lakh crore, and destroyed



over 28.6 lakh homes with an estimated loss of ₹28,650 crore, as per the report submitted by the Inter-Ministerial Central Team (IMCT), after its assessment in the state of West Bengal.<sup>6</sup>

It is important to note that, seven of the 10 strongest landfalls in recorded history have occurred since 2006. The frequency of rapid-intensification of tropical storms has increased over the past four decades, and this increase has been linked to climate change. According to experts, the overall increase in atmospheric temperature has raised the ocean temperatures and this is the main reason behind the rapid intensification of storms.<sup>7</sup>

## Record Low Arctic Sea Ice

Arctic sea ice reached its annual minimum on September 15, 2020, at 3.74 million sqkm. This was its second-lowest extent and volume ever recorded, after September 17, 2012. The readings were put out by the National Snow and Ice Data Center (NSIDC).<sup>8</sup> The 2020 minimum is the second-lowest in its nearly 42-year satellite record. Heatwaves and wildfires in Siberia adversely affected the ice extent in the region.

Even in July, 2020 less sea ice covered the Arctic Ocean than

in any other July since scientists began keeping track of the phenomenon. In the 1980s the ice covered an average of about 9.8 million square kilometres, roughly the area of the U. S. or Canada. In July, 2020, ice covered only 7.2 million sqkm. Since 1979, sea ice has declined by an average of 70,000 square kilometre a year.<sup>9</sup> At this rate in just 15 years from now, the Arctic Ocean may be functionally ice-free for some parts of the year, according to the study 'Sea-ice-free Arctic during the Last Interglacial supports fast future loss,' published in the journal *Nature Climate Change* in August 2020. The study projects the Arctic to be ice-free in the summer, from as early as 2035.<sup>10</sup> Ice cover in the Arctic is of great significance because it influences weather patterns globally and its loss could leave a severe impact on climate across the world.

Therefore, as the study suggests, this should be of huge concern to Arctic communities and climate scientists.<sup>11</sup>

## Endnotes

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# COMMON CAUSE UPDATES

## **Supreme Court**

### **Petition Challenging the Appointment of Interim Director, CBI**

Common Cause has filed a PIL in the Supreme Court challenging the appointment of an “Interim Director bypassing the selection procedure.” It also sought a direction for the appointment of a regular Director of the Central Bureau of Investigation (CBI). The petition was filed on March 2, 2021 and is likely to be listed on March 12, 2021.

As per the Delhi Special Police Establishment (DSPE) Act, 1946, the appointment of the Director, CBI is to be made by the High-Powered Committee, consisting of the Prime Minister, leader of the single largest opposition party and the Chief Justice of India (CJI) or any judge of the Apex Court nominated by the CJI.

The plea has sought direction to the executive to initiate the process of selecting a regular

Director without delay. The petition has also sought a direction to the Centre to initiate and complete the process of selection of the CBI director well in advance. The selection process should be completed at least one to two months before the date on which the vacancy to the post is about to occur.

In 2019, Common Cause had challenged the appointment of M Nageshwar Rao as Interim Director, CBI (W.P. (C) 54/2019) on similar grounds. On February 19, 2019, while declaring the decision of the case, the Court indicated that if due process is not followed in appointments, it is always open to any incumbency and the said appointments could be questioned in accordance with the law.

### **Petition Challenging Re-Appointment of the Director of Enforcement Directorate**

Common Cause has filed a PIL in the Supreme Court on

November 27, 2020, seeking a direction for the appointment of the Director, Enforcement Directorate (ED), in a fair and transparent manner and strictly in accordance with law as mandated by Section 25 of the Central Vigilance Commission Act, 2003.

The writ petition has prayed for the quashing of the central government’s order dated November 13, 2020, to retrospectively amend the tenure of Sanjay Kumar Mishra as ED Director. The order, extending the tenure of the Director, ED, is in violation of the CVC Act.

The bench of Justices L Nageswara Rao and S Ravindra Bhat issued notice on February 15, 2021 and the matter is likely to be listed on April 5, 2021.

### **Illegal Mining in Odisha**

This matter was listed thrice in January 2021, where some interlocutory applications filed by interested parties were disposed.

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