

COMMON CAUSE

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POLICY-ORIENTED JOURNAL SINCE 1982



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Common Cause is in the vanguard of India's anti-corruption movement and the fight for stronger public institutions since the 1980s. We make democratic interventions through PILs and bold initiatives. Our landmark PILs include those for the cancellation of 2G licenses and captive coal block allocations, against the criminalisation of politics, for Internet freedom and patients' right to die with dignity. Please visit commoncause.in for more information on our mission and objectives. We also run special programmes on police reforms and cleaner elections.

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The Voice of Common Cause

Echoing Since 1982

40 years is an important landmark in the life of any publication. More so for a non-profit journal which comes free to its subscribers. For the members and friends of Common Cause, it is a matter of great pride that the journal has survived serious odds and is still thriving.

Our legendary Founder Director, Mr H D Shourie, called it as the voice of Common Cause. Over time, it became the organisation's main link with its members and well-wishers. Our catchline – A Romance with Public Causes – was Mr Shourie's coinage, as if to remind us that ours is more like a love affair with public causes rather than a vicious conflict with the powers that be!

But while romancing with our causes, we never flinched from fighting a good fight. It was in this spirit of constructive campaigns that we have been taking on the high and mighty for probity in public life and governance reforms. Our PILs testify that we chose our battles irrespective of political ideologies of those in power. And therefore, the mission of our democratic interventions has been to improve life of fellow Indians and to strive for an India where every citizen is respected and fairly treated.

The journal, like the organisation it represents, has also evolved over time. In the initial years, we tended to take up civic and consumer issues but gradually changed course. After Mr Shourie's time, Common Cause veered towards defending fundamental rights and building institutional integrity under the leadership of Mr Kamal Kant Jaswal, a distinguished former civil servant. The old issues of your journal clearly reflect this journey.

You will be happy to know that nearly all the old issues of the journal are now just a click away on commoncause.in, our website. Some striking issues of the journal, from the eighties and nineties, are devoted to themes such as 'scams, scandals, stigmas' or 'religious harmony and peace' or on India's achievements and 'positive scores.' This issue tries to walk you down the memory lane and retrace our steps since the foundation of the organisation and subsequently the journal.

You would have noticed that the look and feel of today's journal is very different. This is important for keeping in step with the times but the new format carries on the original spirit of reaching out to you with a fresh theme every quarter. We try to get the best subject experts to write in the journal. Also featured regularly are our Status of Policing in India Reports (SPIRs) and important PILs in order to keep you informed about our activities and legal battles.

We at Common Cause are aware that the journal, first and foremost, is a platform for our interactions with our primary audience—our valued members and well-wishers. It is also a vehicle to fulfil our objective: to defend and fight for the rights and entitlements of all groups of citizens. The purpose of this dialogue is to stay on the same page with you and also receive your comments, criticisms, thoughts and suggestions.

In the times of Covid-19 pandemic, we had to bring out many digital-only issues. We are now back to printed copies but a digital future for the journal looks like something whose time has come. Of course, we will keep you informed if and when that happens.

As always, we would be very eager to hear from you. Please write in to us at commoncauseindia@gmail.com

Vipul Mudgal
Editor

Common Cause Journey —



Mr H D Shourie

1980- Foundation Year

Common Cause founded by distinguished former civil servants Mr H D Shourie as founding Director and Mr S Ranganathan as founding President. The idea was to take up common problems of the citizens and to champion vital public causes

1982

Common Cause Journal Launched

1982-1986

PILs for Pensioners Rights lead to Landmark Judgments
1982: Apex Court ends discrimination in pensionary benefits

2006

Police Reforms Case
SC gave seven landmark directives for bringing about reforms in the police, in a petition filed jointly with Mr Prakash Singh

2007

Underweight LPG Cylinders
SC directed the concerned ministry to ensure that all deliverymen of LPG cylinders came with proper weighing scales to satisfy customers

2011

Apex Court Quashes the Appointment of CVC
SC quashes appointment of P. J. Thomas as CVC for a corruption case charge-sheet against him.

2012

Scrapping of Illegal 2G Spectrum Allocation
SC declares the 2G allocation "illegal" and cancels all 122 telecom licences allotted on or after 10.01.2008

2016

EC Bans Use of Public Funds for Party Promotion
In a Common Cause PIL, Delhi HC asked the Election Commission to restrain political parties from misusing public funds to publicise their poll symbols

2017

Regular CBI Director Appointed
A Common Cause PIL led to the appointment of Alok Kumar Verma as new CBI Director, post approval by the Selection Committee

2017

SC Pushes for Appointment of Lokpal
The Court said that the legislation passed to appoint Lokpal was a workable one, in response to a Common Cause PIL of 2014

2018

Supreme Court Allowed Living Will and Passive Euthanasia.
The Court ruled in a Common Cause PIL that right to die with dignity is an inextricable facet of Article 21

Major Milestones

1985

Family Pension for widows of pensioners irrespective of date of retirement

1986

Pension Commutation: Full Pension restored after 15 years

1996

PIL for Tax Compliance of Political Parties
Supreme Court (SC) asks political parties to file regular IT returns or face penal action

2005

End of An Era- H.D. Shourie Passes Away

2014

SC Quashes Allocation of 214 Coal Blocks
SC cancels 214 of the 218 coal block allocations made in favour of private entities and jt ventures from 1993 to 2010

2014

Crime & Politics: Deadline Set for MP/MLA Trials
SC ruled that trials in criminal cases against lawmakers must be concluded within a year of the charges being framed

2015

Sec 66 (A) of IT Act Struck Down
SC struck down Section 66A as unconstitutional, in a PIL filed by Common Cause and others

2015

Curb on Misuse of Public Funds for Laudatory Political Ads
SC laid down guidelines for self-congratulatory ads issued by politicians and governments

2018

Char Dham Project: NGT Orders High Power Committee
While clearing the project with safeguards, the NGT ordered formation of the HPC on environmental compliance

2018

Combating Criminalisation of Politics
SC directed candidates and parties to disclose criminal cases pending against them and publicise them in the media

2019

Lokpal Appointed
Retired Supreme Court judge Pinaki Chandra Ghose appointed as Lokpal, as a direct result of legal intervention by Common Cause

2018-2021

Status of Policing in India Reports (SPIR)
Four SPIR reports released on citizens' trust/satisfaction in police; cops' attitudes, working conditions, and other systemic issues

SECURING DIGNITY OF THE ELDERLY

Relief to Pensioners Came after Sustained Battles

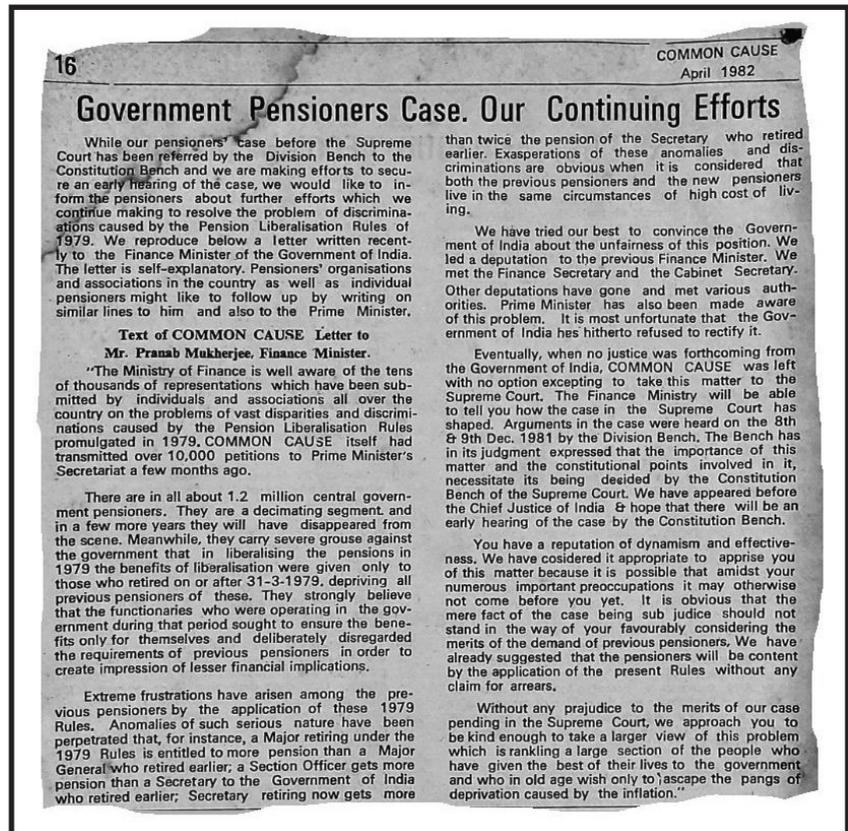
Swapna Jha*

Pensioners' Cause: The First Crusade

Pensions are essential to ensuring rights, dignity and income security for older persons, according to International Labour Organization (ILO). And that is why the right to an adequate pension has been included in the right to income security in old age in international labour standards.¹

There is no denying that pension for the elderly enhances their quality of life and helps rescue them from a life of irrelevance and suffering. Pensions also enable the elderly to access healthcare and go a long way in reducing gender inequality.

Mr H.D. Shourie, the founder of Common Cause, always recognised that pensionary benefits were a key development strategy for the betterment of society in general and the lives of the vulnerable and the elderly in particular. The very first Public Interest Litigation filed by Common Cause under Mr Shourie was an attempt to end the discrimination between various classes of pensioners. The import of the landmark PIL, the turn of events before and after it, and many more supplementary pension cases which followed, are discussed in this article.



Common Cause letter to then Finance Minister Pranab Mukherjee on discrimination caused by Pension Liberalisation Rules

The Govt of India introduced a measure of liberalisation for its pensioners in 1979, altering the formula of pension calculation. It accorded a substantial increase, offering further relief to pensioners of civil and defence establishments, against developing inflationary pressures. However, the liberalised pension benefits were offered only to those who retired after April

“ **Pension for the elderly enhances their quality of life and helps rescue them from a life of irrelevance and suffering** ”

*Swapna Jha is Senior Legal Consultant at Common Cause

1, 1979. Not surprisingly, the pre-1979 pensioners raised objections and submitted representations, but no redressal came their way.

Mr. Shourie started a campaign through the Common Cause Journal and by making representations to authorities concerned. He urged the affected pensioners to write 'letters-to-editors' in newspapers and also send their representations to the Common Cause office, so that they could be collectively presented to the then Prime Minister Mrs Indira Gandhi. Common Cause received about 15,000 representations which were duly delivered to the PMO. In due course, the govt sent a three-line reply, offering no remedy.

The underlying discrimination between two categories of pensioners was in clear contravention of Article 14 of the Constitution, which guarantees to every citizen, the fundamental right to equality.

It was on this ground that Common Cause challenged the govt's liberalisation order, asserting that the grant of benefits only to post 1979 pensioners and depriving others, despite both living in the same circumstances of rising costs, was violative of the Articles 14 and 21 of the Constitution. The petitioners included a civilian pensioner (Mr. D. S. Nakara) and a defence services pensioner, besides Common Cause.

“ ***Mr Shourie urged the affected pensioners to write 'letters-to-editors' in newspapers and also send their representations to the Common Cause office*** ”

Although the case is cited as *D.S. Nakara & others vs. Union of India*, as per the practice of the Supreme Court, this was the first victory for Common Cause, in its crusade to secure the fundamental rights of common citizens.

The Supreme Court judgment not only provided relief to hapless pensioners but it also formed a legal precedent for the interpretation of Article 14 of the Constitution. The Constitution Bench held that pensioners form one class, and cannot be discriminated against regarding pensionary benefits, merely on the basis of their retirement date. The court also held that pension is a right, and not a bounty or gratuitous payment. The govt filed a review against the Constitution Bench decision but the review was rejected.

This decision of the Supreme Court became applicable to all central govt pensioners, from both civil and defence services.

Despite the big victory, there were still big hurdles on way to the implementation including an inordinate delay in the disbursement. In one of his candid editorials featured in the Common Cause journal published in 1983, Mr. Shourie writes: "...Continuing delays in the implementation of Supreme Court judgment..., even after the dismissal of Review Petition of the govt, are exasperating the pensioners."

Eventually Mr. Shourie's efforts yielded results and the orders were issued in 1983, directing revision of pension in accordance with the prescribed formula. This measure also entitled the old group of pensioners to the hike in benefits. Common Cause also ensured that the liberalised pension benefits was applicable of state govts and all public institutions, including local bodies etc.

Common Cause's crusade for pensioners continued even after receiving a landmark judgement in its first PIL. Taking into account the concerns of a vulnerable and ageing population, Common Cause filed two more PILs to protect the rights of pensioners, who remain at risk of poverty in old age. Both the follow-up pension PILs elicited positive results. The cases are discussed below.

Family Pension: Irrational Entitlements



The Family Pension Scheme, introduced in 1950, was aimed at the economic empowerment of widows of govt servants. In 1964, the Scheme was made contributory. It required govt servants to contribute their two months' salary or Rs. 5,000, whichever was lesser, out of their death-cum-retirement gratuity. This measure entitled the survivors to the family pension. Consequentially, widows of pensioners opting out of the contributory scheme and of public employees who expired before 1964 were denied the pension benefits. In 1977, even though this requirement of contribution was dispensed with, widows of pensioners opting out of the 1964 contributory scheme were not eligible for family pensions. Common Cause and others moved the Supreme Court contesting the inequality perpetrated by the new revised scheme.

We raised the following issues:

- i. Whether the orders will apply to the widow/minor son/ unmarried daughter as defined in the relevant provisions of family pension scheme;
- ii. whether the scales of pension as prescribed with effect from 1.1.1973 will be made uniformly applicable to all the eligible persons in the family pension scheme;
- iii. whether the benefits of the family pension scheme will be made available to all pensioners, irrespective of their contributions of two months' emoluments in terms of the original family pension scheme, one deleted with effect from 22.9.1977.

In its ruling, the Court said that pension is not merely a statutory right but also a fulfilment of a constitutional promise. It was found that by the exclusion of widows of govt servants

not contributing to the 1964 scheme from those who are part of the new scheme, the govt had introduced an 'invidious classification,' and hence, was in violation of Article 14.

On the date of the final hearing, the following clarification was submitted by the Union govt:

- i. Govts are prepared to grant to the dependents i.e., minor sons, etc. of the pensioners governed under pre- 1964 scheme the same pensionary benefits as are admissible to the dependents under current pension rules.
- ii. It is clarified that govts are agreeable to apply the increased pension rates introduced from 1.1.1973 to all the eligible persons, including dependents. This will, however, be subject to the condition that the total amount admissible (excluding dearness relief) under the liberalised provision now being agreed to, will not be more than what is admissible to a person covered under the current rules.
- iii. Govts have already agreed to the grant of arrears of family pension with effect from 22.9.77-the date on which contribution of two months' emoluments by pensioners was dispensed with. Persons who are now to be granted the benefits of family pension will not

be required to contribute two months' emoluments. Similarly, no demand for refund of contribution already made by pensioners will be entertained.

The court found this clarification, submitted in response to the queries raised by Common Cause, to be clear, unambiguous and wholly satisfactory and disposed of the case in favour of the petitioners. The respondents, i.e. UOI, consented to grant pensionary benefits at increased rates under the new Rules. It also agreed to clear the arrears due to dependents governed by the 1964 scheme with effect from the date of promulgation of the new non-contributory scheme.

Commutation of Pension Rules

In order to meet any urgent and unforeseen requirement post retirement, civil employees can claim up to a third, and defence personnel half, of the pension due to them for 10 years in a lump sum, as 'commutation.' Common Cause received several letters attesting to the deprivation suffered by commuted pensioners. A magazine article attested to the misery of these senior citizens, as recounted in their letters: "The most moving is one from Amrit Lal of Jullundur, who is 85 years old and can sign only with a shaky thumbprint. Lal retired as a civilian superintendent from Army

“The Common Cause cases filed on behalf of pensioners benefitted millions across India”

Headquarters in April 1954. In February 1960 he asked for, and got, a commutation lump sum of Rs 9.720. So far, the Govt's relentless deduction of one-third of Lal's pension has resulted in his repaying Rs 24.750.”²

Common Cause challenged Central Civil Services (Commutation of Pension) Rules, 1981 to strike down certain provisions of the said Rules, as they permitted the Union to recover more than what was paid to the pensioners upon commutation. Further, it sought a direction requesting an appropriate scheme, rationalising the provisions relating to commutation.

On the suggestion of the Apex Court, the Union of India agreed to restore the commuted portion of the pension in regard to civilian employees at the age of 70 years or after 15 years from commutation, whichever is later, effective from April 1, 1986. This would apply to all civilian pensioners (whose retirement age on superannuation was 58 years) and the Armed forces

personnel (whose retirement age varied in accordance with the rank in service, the age of 37-38 years or more).

Hence, the reduction in monthly pension on account of commutation, which was a lifetime commitment, was shortened to 15 years, effective from April 1985. The Court directed to give effect to the order in this matter within three months.

Conclusion

The Common Cause cases filed on behalf of pensioners benefitted millions across India. They were also applied as precedence and served as the guiding principle for social security. The govt's arbitrariness on the pension rules could only be remedied by approaching the Apex Court. These were early days of PILs in India but through these petitions, Common Cause became a pioneer in making legal interventions for securing the fundamental rights of common citizens.

Endnotes

- 1 International Labour Organization. Social protection for older persons: Key policy trends and statistics. Retrieved on March 3, 2022 from <https://bit.ly/31GEvPO>
- 2 Kalbag, Chaitanya (2013, July 26). Delhi-based Common Cause decides to fight on behalf of pensioners. India Today. Retrieved March 2, 2022 from <https://bit.ly/31IbUcc>

MAKING A DIFFERENCE SANS THE SPOTLIGHT

Critical Cases Strengthening Life and Liberties

Anshi Beohar*

While writing for the Special Memorial issue of Common Cause, the former Governor of the erstwhile J&K State, Mr N N Vohra, wrote this about our founder Director: “Shourie Sahib will be remembered as the father of the consumer protection movement in the country and for his sustained battle to liquidate the nexus between secrecy and corruption in every sphere of governance.”

While the scope and scale of the Society’s activities remain vast, the legacy of its founder and subsequent directors continues to guide us in our future pursuits. For those adversely affected by a range of arbitrary govt decisions and violations of fundamental rights, some of our cases came as

“ ***While the scope and scale of the Society’s activities remain vast, the legacy of its founder and subsequent directors continues to guide us in our future pursuits*** ”



beacons of hope. For instance, the first pension case of 1980, filed in the Supreme Court, got India-wide attention and ended up benefitting 2.5 million pensioners. Common Cause’s Writ Petition received pro bono support from legal luminaries like Fali Nariman, P. H. Parikh and Anil Diwan, and was heard by a Constitution Bench of five judges.

Other cases that made the organisation a household name focussed on issues ranging from illegal mining in Odisha, quashing of Section 66A of the IT Act, and right to die with dignity to cancellation (and re-auction) of the arbitrary 2G telecom licences.

But other crucially important

cases did not make their way to the hall of fame, yet impacted millions of people in meaningful ways. This article is a curated compilation of the lesser-known interventions by Common Cause that have strengthened its objective for reforms, equal rights and the protection of transparency and integrity of the Indian democracy.

Against Exploitation at Workplace

In November 2021, the Labour and Employment Minister initiated the first-ever All-India Survey on Domestic Workers (covering 37 states and UTs and 742 districts). It aims to identify the number of households engaging domestic workers, wages paid and related

*Anshi Beohar is Legal Consultant (Research) at Common Cause

demographics and the average number of workers engaged by various kinds of households. Other details sought to be revealed by the survey include the proportion of domestic workers at the national-level and in the states as well as ratio of live-in/live-out workers, migrant/non-migrant workers, etc.¹ This survey will also study the effect of the pandemic on various aspects of a domestic worker's life.

Common Cause recognised the importance of the rights of domestic workers and filed a writ in the Supreme Court in 2018, to ensure fair and humane working conditions. The petition argued that interim guidelines should be issued for safeguarding the human rights and interest of domestic workers inside private homes of the employers. Among other things, they should have a maximum of an eight-hour workday, weekly rest, the right to paid leaves, maternity benefits, notice of termination and one month's salary in lieu of notice of termination, in line with ILO Convention 189, until a law is brought in place.

The petition also prayed for a Committee of Experts to be appointed under the supervision of the Supreme Court to suggest means to regulate domestic workers' employment agencies. The Committee should also regulate the terms and conditions of dignified employment of domestic workers as well as set up a mechanism for dispute

resolution. The matter is pending in the Supreme Court.

The present case seeking to secure humane working conditions of domestic workers is in continuation of many other similar matters taken up by Common Cause in the past. In 2010, a petition was filed in Delhi High Court to highlight and ameliorate the unsafe working conditions at construction projects of the 18th Commonwealth Games 2010. A series of orders were issued to the Labour Department and other concerned authorities in order to ensure the health, safety and rights of these workers. The Court made recommendations on measures to streamline the administration of labour laws and the implementation of labour welfare schemes and directed that an 'action-taken report' be filed within six months.

HIV-AIDS Control Programmes

The latest India HIV Estimation 2020 report released by National AIDS Control Organisation (NACO) found that "the national adult prevalence continued to decline from an estimated peak level of 0.54% in 2000–2001 through 0.33% in 2010 to 0.22% in 2020. This corresponds to a 33.3% decline in the last ten years."²

Despite the current decline, the scenario was pretty grim in the earlier years. In 2003, Common Cause filed a petition seeking

to streamline the operations of NGOs in the HIV-AIDS Control Programme and to universalise the access to counselling and specialised HIV-AIDS treatment. The petition highlighted the spread of HIV-AIDS in India and also brought to light the corrupt practices followed by several NGOs working with NACO.

Common Cause urged the authorities to take urgent steps to weed out the suspect and bogus NGOs as well as to set up a proper mechanism for monitoring the work of non-profits working in this space. Additionally, we prayed for appropriate legislation to ensure that patients are not refused treatment but given access to medicines and diagnostic centres either free of cost or at subsidised rates. The Union of India, in response to the petition, formulated a scheme for universal access to second line treatment of HIV-AIDS.

Road Safety

Common Cause has also contributed to the efforts to ensure road safety and has made interventions to prevent road accidents and casualties over the years. Multiple petitions were filed to bring into light the increase in road accidents in both the Supreme Court and Delhi High Court. They have led to an enduring impact on the security of citizens on Delhi roads.

In 1998, Common Cause

Check Your Challan

And share your stories

COMMON CAUSE

A Romance With Public Causes Since 1980



Car driver gets e-challan for 'not wearing helmet'

If you have encountered or know of about the impropriety in the issuance of challans, then write to us at checkyourchallan@gmail.com

CheckYourChallan campaign was launched by Common Cause in 2020

petitioned for the phasing out of the privately-owned Blueline buses. These buses were introduced in Delhi in 1992 in the wake of a sudden strike by the Delhi Transport Corporation (DTC) staff protesting the non-implementation of the recommendations of fourth pay

commission. In the absence of any direct control from the govt, the Blueline bus operators plied without fixed routes and competed against each other throughout their runs. The drivers flouted traffic rules while the operators acted arbitrarily. Yet punitive action against errant

drivers was allegedly slow.

The Delhi High Court, while adjudicating another case, termed them "killers" and held them responsible for most of the accidental deaths. Eventually, the then Delhi Transport Minister Arvinder Singh Lovely set the deadline of December 14, 2010, to cease the functioning of Blueline buses and ensured that the network of DTC buses and Metro was in a position to replace the private fleet³.

The objective of ensuring road safety and secure journeys for citizens have been taken up by Common Cause in recent times as well. It launched a campaign to promote awareness about e-challans amongst drivers and vehicle owners, #CheckYourChallan in 2020. The campaign was aimed at generating awareness across social media platforms about the exact procedure of checking and pursuing e-challans. In response to the growing distress of common citizens regarding the new e-challan system and the e-payment gateway launched by Delhi Traffic Police, Common Cause had also sent representations to the Delhi Police Commissioner and the Union Minister, Ministry of Roadways, Transport & Highways in 2020. We suggested that the authorities carry out a campaign with the participation of citizens to promote driver awareness of the automated systems so that they are able to maintain better road safety standards.

Environmental Degradation

Slaughterhouse Pollution: The devastation wrecked by the current pandemic is unlike any experience in living memory. Many have debated on the origins of the virus. A WHO team sent to Wuhan in China said that the introduction (of the virus) as a zoonotic (a disease that is transmitted between species) spill-over was deemed a “possible-to-likely pathway.”⁴ Clearly zoonotic diseases are emerging as the biggest public health threats of our times.

Common Cause had realised the health risks from animals long ago and had filed a petition. It outlined the extent of environmental pollution and danger of epidemics caused by disposal of animal waste and slurry on the land or in sewer systems. A substantial part of this slurry is generated from roadside vends that slaughter goats, sheep and poultry with impunity, regardless of all rules and regulations framed by the state.

Despite the Bureau of Indian Standards providing “Guidelines for Handling, Storage and Transport of Slaughter House By-products,” Common Cause discovered that these instructions were not being followed. With no other system in place, the slurry from slaughter houses from acts of illegal slaughter was being drained into public sewers. This sludge ultimately

made its way into rivers, ponds and sometimes seeped into the underground water table. Children too, were found to be employed in slaughter houses and roadside vends, in violation of the Child Labour (Prohibition and Regulation) Act, 1986.

The petition prayed for remedial measures against the rampant malpractices in slaughter houses, notably improper waste disposal, slaughter of diseased animals and employment of children in the trade.

A bench headed by Justice K G Balakrishnan expressed displeasure on the state of the slaughter houses and asked for their upgradation. He also called for strict checks over private abattoirs operating without license. After the battle running for years, a compendium of the Indian Standards governing the slaughtering of animals and management of slaughter houses was prepared along with all relevant material. This was done in consultation with all stakeholders.

The Court directed the Centre to print the compendium and circulate it to all the state governments and Union Territories for compliance within six weeks. The Court disposed of the case on February 17, 2017, with the observation that the petitioners were entitled to approach the concerned District Collector or judicial authorities in the event of non-compliance with the Indian Standards, and

other rules and regulations.

Conclusion

While Common Cause is better known for its more renowned cases about countering corruption, injustices and arbitrary appointments in public institutions, the lesser publicised cases too have managed to make a difference in their own right, and without fuss. These range from common problems of citizens to protecting their life and liberties to strengthening democracy and integrity in governance.

Endnotes

- 1 PIB (2021, November 22). Shri Bhupender Yadav flags off first ever All India Survey on Domestic Workers. Press Information Bureau. Retrieved on March 13, 2022 from <https://bit.ly/3r7bRj3>
- 2 India HIV Estimates 2020 (2021). National AIDS Control Organisation & Indian Council of Medical Research – National Institute of Medical Statistics (ICMR-NIMS), Ministry of Health & Family Welfare, Government of India. Retrieved on March 16, 2022 from <https://bit.ly/3NRAIRS>
- 3 Dwaipayan Ghosh (2010, October 26). All Bluelines to go off Delhi roads by Dec 14. The Economic Times. Retrieved on March 12, 2022 from <https://bit.ly/3jsdmo5>
- 4 Taran Deol (2021, December 30). As COVID-19 pandemic enters 3rd year, what do we know about its origin? Down To Earth. Retrieved on March 16, 2022 from <https://bit.ly/3r5bO7u>

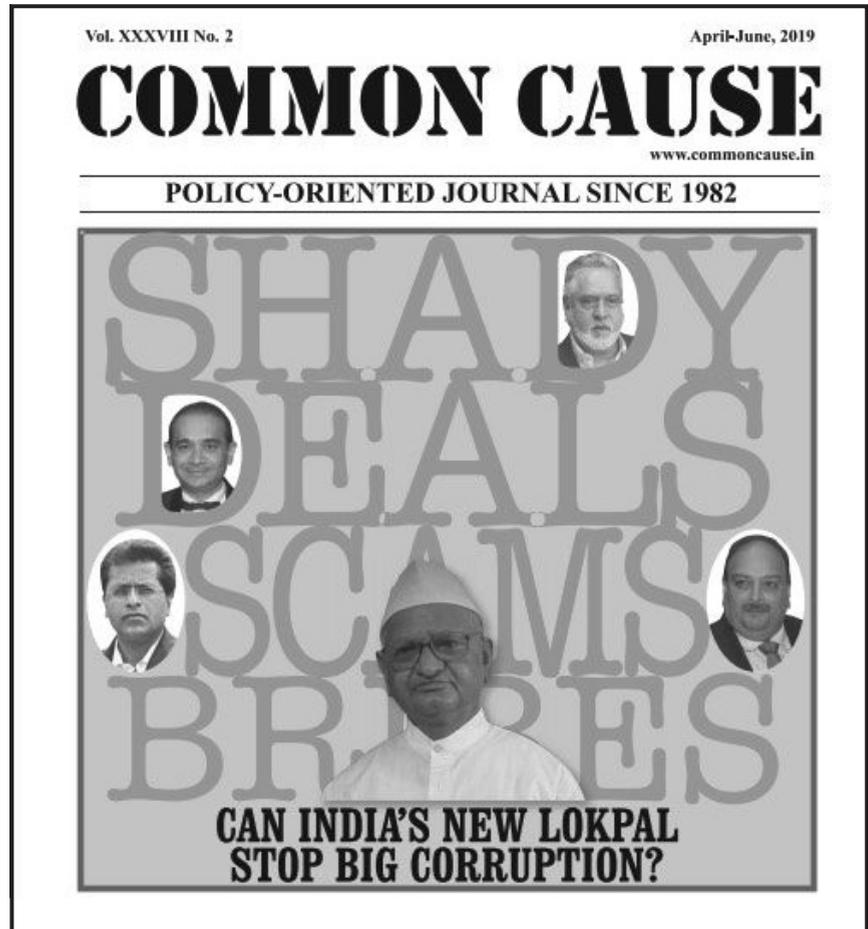
OUR CAMPAIGN AGAINST CORRUPTION

Civil Society Efforts Must Be Continued

Swapna Jha

“Corruption is an evil that threatens and challenges all people around the globe, but bears with special cruelty upon the world’s most poor,” warned the Durban Declaration of the 9th International Anti-Corruption Conference in 1999. “It deepens poverty; it debases human rights; it degrades the environment; it derails development, including private sector development; it can drive conflict in and between nations; and it destroys confidence in democracy and the legitimacy of governments. It debases human dignity and is universally condemned by the world’s major faiths,” said the declaration.¹

To stem this rot, it is imperative that we create and strengthen institutions that monitor adherence to ethical conduct by public servants, the global conference further observed. Yet time and again, creating an empowered monitoring structure has been one of our biggest challenges. Common Cause is among many civil society organisations and peoples’ movements in India that have consistently fought for probity in public life and integrity of institutions. This article discusses the Society’s multi-pronged approaches to eliminate



corruption through a series of democratic interventions and advocacy efforts.

Although Lokpal Bills designed to put in place an institutional framework to combat corruption in public life were introduced in Parliament by successive governments on as many as eight occasions, no real commitment

to enact a Lokpal legislation was in evidence. All governments past and present have failed in their duty to institute systemic reforms to minimise corruption and ensure the exercise of due vigilance. They have displayed no inclination to remedy gross financial irregularities under their watch, or penalise corrupt

“ All governments past and present have failed in their duty to institute systemic reforms to minimise corruption and ensure the exercise of due vigilance ”

politicians and bureaucrats colluding with them.

As the executive stubbornly refused to make abiding changes to the transparency architecture of the country, Common Cause carried on with its battle for anti-corruption reforms, and also took the initiative to prepare the blueprint of a legislative framework for combatting endemic corruption and abuse of office in the polity. These endeavours are recapitulated in the following paragraphs.

Common Cause had filed a PIL in the Supreme Court in 1995 to demand the establishment of an effective framework for combatting corruption by creating the institutions of Lokpal at the central level and Lokayukta at the state level. The essential features of a law for establishing an independent and empowered Lokpal were first outlined in an affidavit filed by Common Cause in August 2008. After an eventful contest over 20

long years, the PIL was dismissed in 2015 for having become infructuous with the passage of the Lokpal and Lokayuktas Act, 2013.

The year 2011 was marked by one of the biggest people’s movements to emerge not from one of India’s remote villages, but also from the national Capital, demanding to pass the Jan Lokpal Bill to establish a citizen’s ombudsman. A mass campaign under the banner of India Against Corruption (IAC) was launched in January 2011 at Ramlila Ground, Delhi, to press for a strong legislation for setting up a central and state-level ombudsmen. This was followed by a march to New Delhi’s Jantar Mantar by activists, lawyers, retired civil servants, academics, students and throngs of common people.

Meanwhile, in the context of rampant corruption and the failure of the government to visibly combat it, certain events unfolded in quick succession. The leading lights of civil society came together to draft a law for the establishment of an independent and empowered central institution for combating corruption at both political and bureaucratic levels. This was in sharp contrast to the toothless advisory body with limited jurisdiction envisaged in the Lokpal Bill being formulated by the government.

Common Cause, used the Karnataka Lokayukta Act as base



The anti-corruption logo of Common Cause, designed by the National Institute of Design, Ahmedabad

and reworked it. This draft helped navigate the path for the Jan Lokpal Bill used by the family of civil society organisations. One of the key features of this Bill was to set up an institution completely independent of the government. The Bill also asked that corruption and vigilance matters be dealt with entirely by the Lokpal, who would have

“ 2011 was marked by one of the biggest people’s movements to emerge not from one of India’s remote villages, but also from the national Capital, demanding to pass the Jan Lokpal Bill ”

”

jurisdiction over bureaucrats, politicians and judges.

It was also demanded that the Lokpal be empowered to initiate investigations and prosecution without needing permission from any other agency. He/she should also be invested with powers to act as an appellate authority as well as supervisory body for grievance redressal in all central govt departments. Common Cause recommended that an effective Lokpal legislation be evolved, based on the Jan Lokpal Bill. It advocated that the new legislation be a great improvement on the previous versions of the Lokpal Bill ritualistically introduced in Parliament eight times by successive governments and allowed to lapse.

The efforts of Common Cause bore results, when the National Advisory Committee (NAC) agreed to engage so as to ensure that the govt's draft bill was publicly debated, appropriately strengthened and finally enacted. In the meeting of the NAC, held on February 26, 2011, it was decided that the NAC Working Group on Transparency and Accountability, convened by social activist Aruna Roy, would take up the Lokpal Bill. This was a huge success for the civil society organisations. By February 2011, the delegation formed by civil society organisations had met the leaders of the ruling party as well as those in opposition to try to form a consensus on proper

public consultation and inclusion of relevant portions of the Jan Lokpal Bill in the bill proposed by the government.

During the same period, the UPA-II government at the Centre, already reeling under a tsunami of corruption allegations, prompted Mrs. Sonia Gandhi to delineate her prescription for combating corruption in her presidential address at the Congress Plenary Session in Delhi's Burari on December 18, 2010. In response to this event, Common Cause addressed an open letter to Mrs Gandhi on January 14, 2011. It urged her to translate the Congress Party's declaration of intent into concrete action. The letter highlighted the following five action points to tackle bribery and embezzlement of epic scales:

- State funding of political processes and parties.
- Fast-tracking of all cases of corruption by public servants, including politicians.
- Legislation, clear procedures and full transparency in public procurement and contracts and protection of whistleblowers.
- All discretionary powers, particularly in land allocation, breed corruption and should be reviewed and relinquished.
- An open and competitive system for exploitation of mineral resources should be put in place.

The spontaneity of the upsurge

witnessed during the first two phases of the Jan Lokpal campaign exploded the myth that corruption is a non-issue in Indian politics. It is true that even in the Lok Sabha elections of 1989, the Bofors affair had taken centre stage, but it was the first time that people from all walks of life had taken to the streets in response to a call to bring about a systemic change in the institutional anti-corruption framework.

Within four days of Anna Hazare's first indefinite fast at Jantar Mantar in December 2010, the govt was forced to yield. It conceded to the demand for the participation of Hazare's nominees in the process of drafting the Lokpal Bill to be introduced in Parliament. Subsequently, the bill that the govt eventually introduced in Parliament on August 4, 2011 was a damp squib.

In its second phase, the movement received a shot in the arm with the denial of a venue to IAC for staging Hazare's fast and the subsequent arrest of its leaders early in the morning of August 16, 2011. Common Cause took an active part in the protest against the denial of a venue to IAC for staging Hazare's fast and the subsequent arrest of the leaders of the movement on August 16.

By the time Hazare chose to come out of Tihar Jail, the growing support for the movement was apparent

to everyone. The trickle of protesters at the Ramlila ground, where Hazare was to stage his second indefinite fast, soon turned into a deluge. However, it became clear that the political establishment would not allow the Jan Lokpal Bill to be enacted.

The next battle was to be fought in the precincts of the Parliamentary Standing Committee. This Committee was mandated to redraft the Bill, taking into account the 'Sense of the House' resolution and the divergent views expressed in the debates inside and outside the House.

As the divisions within civil society over an institutional framework to combat corruption widened, Common Cause took the initiative to bring IAC and the National Campaign for People's Right to Information (NCPRI) to the conference table. This was done in an attempt to enlarge the area of convergence and forge a common approach for resolving the outstanding issues. These efforts met with considerable success. The Society also exhorted the IAC leadership to make full use of the opportunity afforded by the consultation process of the Parliamentary Standing Committee to steer the Lokpal Bill in the desired direction.

After several protests and much persuasion, the Union Govt eventually passed the Lokpal and Lokayuktas Act, 2013. Later, in January 2014, it notified the

rules under the Act. These rules undermined the independence of the ombudsman institution by restricting the field of selection to hand-picked nominees of the govt. They also gave undue advantage to senior bureaucrats in their appointments as non-judicial members of the Lokpal. It was a blatant abuse of the device of delegated legislation.

Common Cause, which had been fighting for the establishment of an independent and effective Lokpal since 1995, realised that the rules were an attempt to dilute the institution. Hence, the Society filed a PIL in the Supreme Court, challenging the arbitrary Search Committee rules on March 5, 2014.

Subsequently, an IA was filed to foil the outgoing UPA II govt's last-ditch effort to convene a meeting of the Selection Committee in order to pack the Lokpal with its nominees. The government had to give an undertaking that it would proceed with the appointments only after amending the impugned rules.

Even after the impugned Rules 10 (1) & (4)(i) were amended in terms of the prayers made in the petition, the govt did not initiate the appointment process of the Lokpal. Hence, Common Cause filed an IA in March 2016, requesting the Court to allow an additional prayer in the writ petition for a writ of mandamus to the govt to constitute the Lokpal as per the amended rules.

The amended petition was taken on record. In its hearing on April 27, 2017, the Apex Court held that there was no justification to put the Lokpal appointment on hold because of a vacancy in the Selection Committee, and that the Lokpal Act, as it stood, was enforceable. It turned down the Centre's plea to keep the Lokpal Act in suspension until the laws governing the recognition of the Leader of Opposition were amended. The Court observed that if the Leader of Opposition was not available, the Chairperson and two other members of the Selection Committee could proceed to appoint an eminent jurist as a member of the Selection Panel.

Despite the Court's ruling that the Lokpal Act was a perfectly workable piece of legislation, the govt failed to appoint the Lokpal for nine months. Hence, Common Cause filed a contempt petition regarding the Govt's willful and deliberate failure to fully comply with the judgment. The matter was listed several times as the govt seemed to be in no hurry to set up an anti-corruption body. Eventually, the Lokpal was constituted on March 19, 2019, leading to the dismissal of the contempt petition on December 2, 2019.

In 2013, Common Cause also challenged the competent authority's (Lt. Governor of Delhi) rejection of the recommendations made by the Lokayukta, with respect to eight

former Municipal Councillors, who had been caught in the act of negotiating bribes for facilitating unauthorised constructions. It was contended that the Lt. Governor had deviated from the prescribed procedure by conducting fresh inquiries and considering extraneous circumstances. The High Court was urged to set aside the impugned orders and direct that the case records be forwarded to the Commissioner of Police for further action in accordance with law.

On February 19, 2015, the bench of Chief Justice G. Rohini and J.R.S. Endlaw disposed of the petition following the Court's judgment in *Sunita Bhardwaj vs Smt Shiela Dixit* case.

Refusing to sit in appeal over the decisions of the Competent Authority, the Court expressed its helplessness in addressing the inherent weakness of the legislation, which made the Lokayukta a powerless body. Granting a token relief, the Court, however, said that the formality of laying the Lokayukta's Special Reports in the Assembly, which had not been done as yet, should be

completed within six weeks.

Conclusion

Despite the President giving his assent to the Lokpal and Lokayuktas Act on January 1, 2014, the implementation of the Act took ages. The simple job of setting up a constitutionally autonomous office that will look into complaints against top-ranking govt officials just didn't get done. Despite the change of wind at the Centre, the new govt didn't seem to be in a hurry to remedy its predecessor's gross inaction. The new government, cruising along to power on the anti-corruption movement, had to be prodded with multiple PILs in the Supreme Court, beginning with one challenging the arbitrary nature of the Search Committee Rules and even a contempt petition.

Finally, when the Lokpal was appointed on March 19, 2019, as a direct result of a Common Cause intervention, it seems unable to come out of its incubator to resolve the big-ticket corruption cases. On paper, India finally has a Lokpal but it is hardly an anti-corruption watchdog the country eagerly awaited. Even after the delayed

appointments, the govt failed to appoint the Directors of Investigation and Prosecution for a long time without which Lokpal had no meaning. The institution is still run by hand-picked officials which was feared by the civil society during the drafting of the Jan Lokpal Bill.

While the debate must go on, the moot point is if the lame duck Lokpal we have is any better than no Lokpal at all. The struggle to set up truly credible and autonomous institutions may still be a work in progress but it can surely be the goal that citizens can aspire to. As for Common Cause, we are disappointed but certainly not disheartened. The fight against corruption must go on because we know that corruption is a moral failing that hollows out democratic institutions and undermines the rule of law, civil liberties, and human development.

Endnote

- 1 The Durban commitment to effective action against corruption: Durban, South Africa, 15 October, 1999, *Trends in Organized Crime*, Vol. 5, Iss. 1, (Fall 1999): 94-97. Retrieved on 17 March 2022 from <https://bit.ly/3ujigSD>

HOW CAN WE NURTURE NATURE?

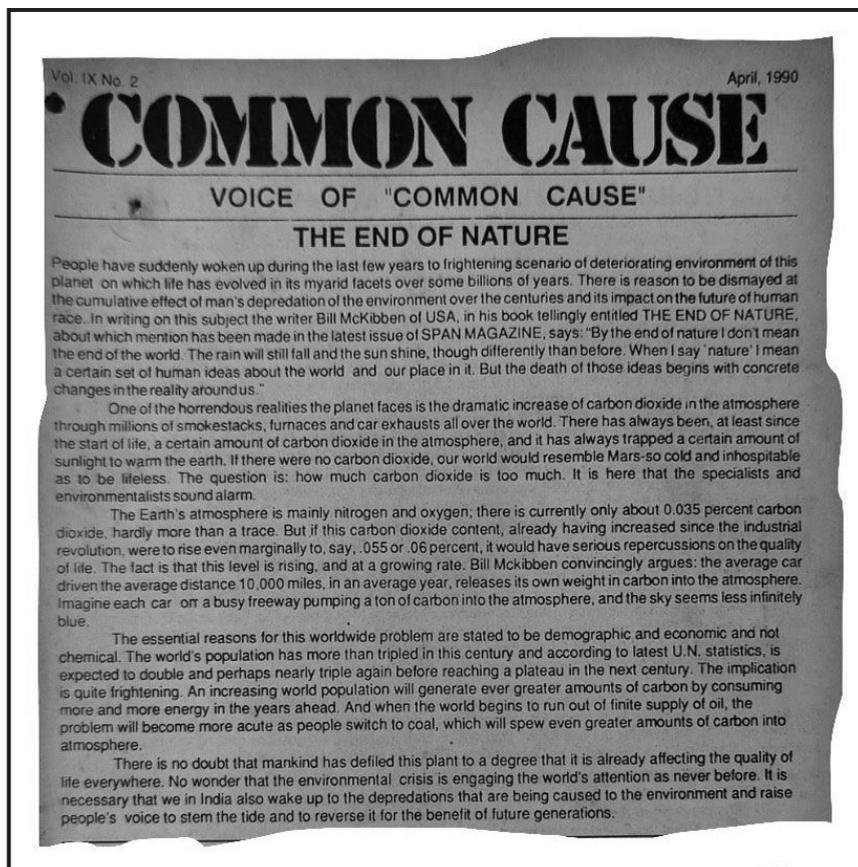
Safeguarding Rights to a Clean Environment

Susmita Saha*

"I know people everywhere are anxious & angry. I am, too," tweeted UN secretary-general António Guterres, while releasing the new IPCC climate report, a damning document of negative climate change impacts. The latest Intergovernmental Panel on Climate Change (IPCC, Sixth Assessment Report) says on an ominous note that "climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater and coastal and open ocean marine ecosystems." ¹The Report also sounds the death knell for future remedies: "Some losses are already irreversible."²

For decades, Common Cause has been making efforts to mitigate the suffering of mother nature and the wellbeing of humans. It has been discussing the concern of worsening climate scenarios with its public-spirited members even when a warming planet and catastrophic weather events were not so high on the policymakers' agenda.

Way back in April 1990, Mr H.D. Shourie wrote in this journal: "There is no doubt that mankind has defiled this planet to a degree that it is already affecting the quality of life everywhere. No wonder that the environmental crisis is engaging the world's



Mr H.D. Shourie's editorial in the journal on the deterioration of the environment

attention as never before. It is necessary that we in India also wake up to the depredations that are being caused to the environment and raise people's voices to stem the tide and to reverse it for the benefit of future generations."

Since then, Common Cause has been making legal interventions to mitigate environmental

degradation and uphold the rights of the citizens to a clean environment. This article looks at the vast cross-section of such interventions:

Char Dham Highway Project

Citizens of the country have been paying a hefty price for arbitrary construction in

*Susmita Saha is Senior Research Analyst at Common Cause

the Himalayan region for a long time. Experts have been consistently warning that states like Uttarakhand have lost more than 50,000 hectares of forest cover, leading to micro climatic changes in the region and a rise in extreme climate events. They also caution that all new infrastructure projects in these regions need to be climate proofed.³

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, currently being executed in the Himalayan state of Uttarakhand.

We have known for a long time that the region's relatively recent and unstable, Lesser Himalayas, are more prone to frequent landslides. According to media reports, 3000 people had to be evacuated in 2003 when a massive landslide damaged at least 100 buildings. Heavy rains in 2016 killed scores of people in Pithoragarh and changed the landscape. It is surprising, therefore that in such an ecologically sensitive area, the Rs 12,000-crore project was launched by Prime Minister Narendra Modi in 2016, "as a tribute to those who died in the 2013 Kedarnath disaster."⁴

Concerned about the

project's enormous cost to the environment, Common Cause filed an Original Application (OA) 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 nonprofit 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, rather inexplicably, 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.

Common Cause petition also drew the court's attention to the indiscriminate dumping along

the slopes which were bound to result in excessive pollution in the river and an eventual 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 of the petitions and cleared the Char Dham project with requisite safeguards in view of what it described as the larger public interest and national security. 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. The court constituted a High-Powered Committee (HPC) as an oversight authority, among other things.

Subsequently, the other co-petitioners 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 while the HPC Chairman Chopra and four others, while noting alleged lapses, advocated a 5.5 m carriageway. (Earlier, the Centre had said in its submission that a road with a width of 7 to 7.5m was necessary for the Army's requirement of the movement of troops and equipment)

In December 2021, the Apex Court allowed double-lane widening of three strategic stretches of the project. In doing so, the bench, headed by Justice D.Y. Chandrachud modified the SC's September 2020 order restricting the road width on the entire highway to 5.5 metres.

Simultaneously, the bench set up an oversight committee so that the HPC's observations on concerns about hill-cutting, muck disposal and preservation of water resources are addressed and its suggestions on remedial measures are implemented. SC judge Justice A.K. Sikri (Retd) will head the panel.

Right to Clean Air, Adoption of Electric Vehicles

If you are a Delhi resident, you are no stranger to burning eyes, itching throat and breathing

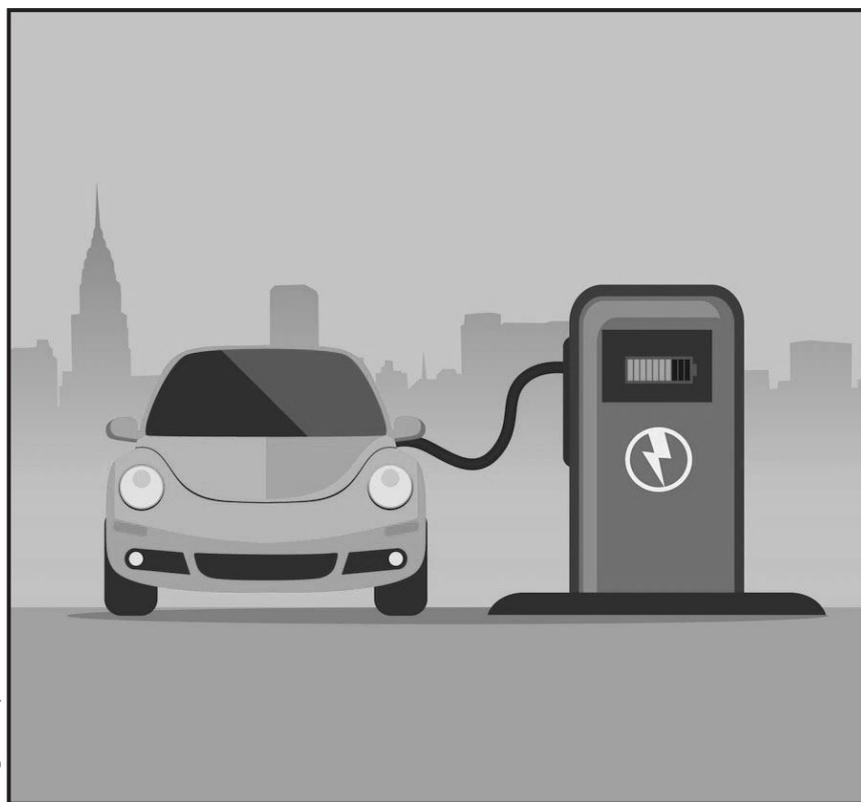


Image: reepik.com

difficulties. Not surprisingly, New Delhi is the world's most polluted Capital for the fourth straight year in 2022, according to a report by IQAir, a Swiss group measuring air quality levels based on the concentration of PM2.5 (minute particulate matter which can enter the lungs and the bloodstream). The story is not very different in many other Indian cities.

This global environmental health threat is compounded by exhaust fumes of vehicular traffic. Obviously, electric vehicles (EVs) help a great deal in improving the overall air quality and lowering carbon emissions.

However, the gov't's initiatives for EV 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 gov't wished to extend financial support for three years, zeroing on the deployment of electric buses, along with other EVs.

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, the impact of all these policies is hardly visible on the ground, largely because of a lack of proper implementation.

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 EV usage.

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 EVs, switching of government fleets and public transportation to EVs, provision of subsidies to consumers for purchase of EVs 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 govt to apprise it of the status of implementation of the FAME-

India scheme.

Subsequently, the Court noted that the issue of EV use 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 EVs, providing charging ports, feebate system (imposing fee on vehicles with high emissions and providing a subsidy on EVs), use of hydrogen vehicles, among other issues.

The matter is still pending in the court.

Petition on Illegal Mining in Odisha

In the quest for rapid economic growth, mining has been deemed an arsenal across the globe and India is no exception. But the price of mining on the environment can be very high and unregulated mining can lead to air and drinking water pollution, destruction of wildlife and forests, besides adversely impacting human health.

Illegal mining merely adds to the horrors of the existing damage. In the aftermath of public outcry over large-scale

mining scandals across India, Justice MB Shah Commission of Inquiry for illegal mining of iron ore and manganese was set up 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 violation of 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. The landmark judgment 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 large-scale mining is undertaken. The Union of India was directed to have, within a timeframe, a fresh look at the National Mineral Policy, 2008, which is almost a decade old, particularly with regard to conservation and mineral development.

Another important feature of the judgment was the 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. Govts

Photo by Dan Meyers on Unsplash



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 like-minded 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 and there is no indication as to when will it be

finally out.

Safety Issues in Kudankulam Nuclear Plant

As a corollary to our PIL challenging the validity of the CLNDA, CPIL, Common Cause, 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 govt 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 govt to scale down the liability of suppliers as ultra vires to the Constitution and the parent Act. Eventually, the Court partly admitted our petition in terms of the prayer for declaration of the CLNDA as unconstitutional and void ab initio.

The Court has reserved its judgment in the matter.

Conclusion

Despite regular interventions to safeguard citizens' rights to a clean environment, there have been mixed outcomes. More concerted efforts need to be made to stem the current state of environmental decline. Even as we write this article, unthinkable

environmental damage is happening at an alarming frequency and the poorest of the world are the worst sufferers. Obviously, efforts to secure environmental justice are more urgent now than ever before.

Endnotes

- 1 Climate Change 2022: Impact, Adaptation and Vulnerability (February 2022). Intergovernmental Panel on Climate Change. Retrieved on 24 March 2022 from <https://bit.ly/36Mur9x>
- 2 id.
- 3 Nandi, J. (2021, February 11). Over 85% of Uttarakhand districts, including Chamoli, hot spots of extreme floods: Analysis. Hindustan Times. Retrieved on March 24, 2022 on <https://bit.ly/3x1EZMK>
- 4 Kukreti, I. (2019, January 3). Char Dham national highway has cost Uttarakhand its ecological balance. DownToEarth. Retrieved on March 22, 2022 on <https://bit.ly/3iYUuMT>



We really need to kick the carbon habit and stop making our energy from burning things. Climate change is also really important. You can wreck one rainforest then move, drain one area of resources and move onto another, but climate change is global.

Sir David Attenborough, Natural World Broadcaster



WINNING AT ALL COSTS

A Mirage called Electoral Reforms!

Swapna Jha

An analysis by the National Election Watch and Association of Democratic Reforms (ADR) of the self-sworn affidavits of candidates who contested in the recent assembly elections of Goa, Manipur, Punjab, Uttarakhand and Uttar Pradesh threw up alarming, but predictable findings. Out of 6874 candidates analysed, 1694 (25%) have declared criminal cases against themselves in their affidavits. In a frightening turn of events, 1262 (18 %) candidates have declared serious criminal cases against themselves. Also, 44 candidates have declared cases related to murder (IPC Section-302) against themselves.¹

Candidates did not fare better when it came to gender crimes. As high as 107 candidates have declared cases related to crime against women. Out of 107 candidates 16 candidates have declared cases related to rape (IPC Section-376, 376D & 376(2) (n)).²

Political parties who distribute tickets to candidates have done their bit to strengthen the nexus between crime and politics. This is not surprising, given that there is no incentive for them to find cleaner candidates who find it tough to win without using excessive money or



Photo by Markus Winkler on Unsplash

muscle power. It seems obvious, therefore, that absence of electoral reforms is serving the interest of those who try every trick to manipulate the popular will.

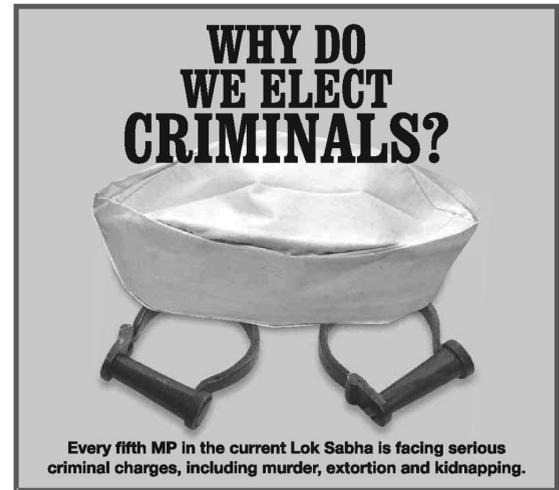
Common Cause has been proactively trying to remedy this, by working for a more transparent and robust electoral system. Our founder-director Mr H.D. Shourie wrote as far back as in 1999: "There is now a definite nexus between political parties and anti-social elements. This unfortunate position has arisen despite (or because of) the provision in Representation of People Act (1951) that a person 'convicted' under any of the

offences mentioned in its Section 8 is debarred from standing for election for a period of six years from the date of conviction."

Common Cause has been leading from the front, through representations, PILs, and other democratic interventions, some of which are mentioned below.

Interventions for a Cleaner Polity

In 1994, Common Cause approached the Supreme Court to bring transparency to the election expenses of the candidates contesting elections. The petition contended that even though the political parties



had done precious nothing even though they were required to maintain audited accounts and comply with the other conditions under Section 13A of the Income-tax Act to be eligible for tax exemption. After all, the citizens, in a democracy, have a right to know the source of expenditure incurred by political parties and contesting candidates.

In a landmark judgment on our PIL, the Supreme Court held that the political parties were under a statutory obligation to file regular IT returns and that failure to do so rendered them liable for penal action. This judgment not only marked a significant progress in the campaign for a cleaner polity, but also paved the way for mandatory declaration of assets by the candidates.

Crime and Politics Nexus

Even though the judgement was a watershed moment for India's autocratic parties, we decided to continue the crusade. In 2011, Common Cause, along with other civil society partners, filed a PIL in the Apex Court for decriminalising politics. This PIL sought expeditious disposal of criminal cases against Members of Parliament and Legislative Assemblies. It also challenged the powers of Section 8(4) of the Representation of the People Act, 1951 (RPA), whereby the disqualification of candidates following their conviction was automatically suspended on filing an appeal or a revision application.

In the course of the hearing,

the Court requested the Law Commission to submit its report on specific issues highlighted by it. The Commission submitted its recommendations in the form of its 244th report called Electoral Disqualifications. Subsequently, on March 10, 2014, the Supreme Court in its interim order held that trials in criminal cases against lawmakers must be concluded within a year of the charges being framed. The Court also directed that trials must be conducted on a day-to-day basis. It said that if a lower court is unable to complete the trial within a year, it will have to submit an explanation to the Chief Justice of the High Court concerned and seek an extension of the trial.

Unfortunately, even after a lapse of more than eight years,

the order of the Apex Court is yet to be implemented. The prayer of Common Cause to hold Section 8(4) of the RPA as unconstitutional was granted in a separate PIL. The Apex Court held that the Parliament did not have the competence to provide different grounds for disqualification of applicants for membership and sitting members.

Powers of Election Commission

Common Cause has intervened whenever the power of the constitutional authorities tasked with ensuring free and fair election has been challenged or sought to be diluted. In 2011, former CM of Maharashtra Ashok Chavan challenged the power of the Election Commission (EC) to issue notice under Section 10 A of the RPA, seeking to disqualify a candidate on account of incorrect return of election expenses, in the Delhi High Court. The High Court upheld the EC's power to inquire into the correctness of the account of election expenses filed by a candidate. Subsequently, Mr. Chavan filed a Special Leave Petition (SLP) against this order.

The Union government then told the Supreme Court in a counter affidavit, that according to it, the EC had no power to disqualify a candidate, based on reasons like "correctness or otherwise" of his/her election accounts. It claimed that in terms of Section 10A of the RPA and Rule 89 of

the Conduct of Election Rules, the power of the Commission to disqualify a person arose only in the event of failure to lodge an account of election expenses and not for any other reasons.

It was ironic that having set up so many Commissions in the past to suggest cures for an ailing democracy, the same executive saw no wrong in the incorrect filing of election expenditure. Not only was it seeking to undo the EC's acclaim of conducting elections with integrity but was also trying to reverse the law already settled by the SC in the past. Reporting on the incident, noted journalist and Magsaysay Award winner P. Sainath underlined the ridiculousness of the government's argument in his article for *The Hindu*: The government's position implies, an outraged Election Commission source told *The Hindu*, "that a candidate can fill in zeros in every column and submit his accounts without fear. As long as he lodges them and does so on time."

Common Cause made up its mind to put its weight behind the EC in this matter. Hence, it made an application to intervene in the SLP in 2011, along with other like-minded civil society partners and eminent citizens. Dismissing Mr. Chavan's SLP, the Supreme Court, in its judgement of May 5, 2014, upheld the EC's disqualification of Mr Chavan, for three years. This judgment is a milestone in establishing the right of the EC to take steps to

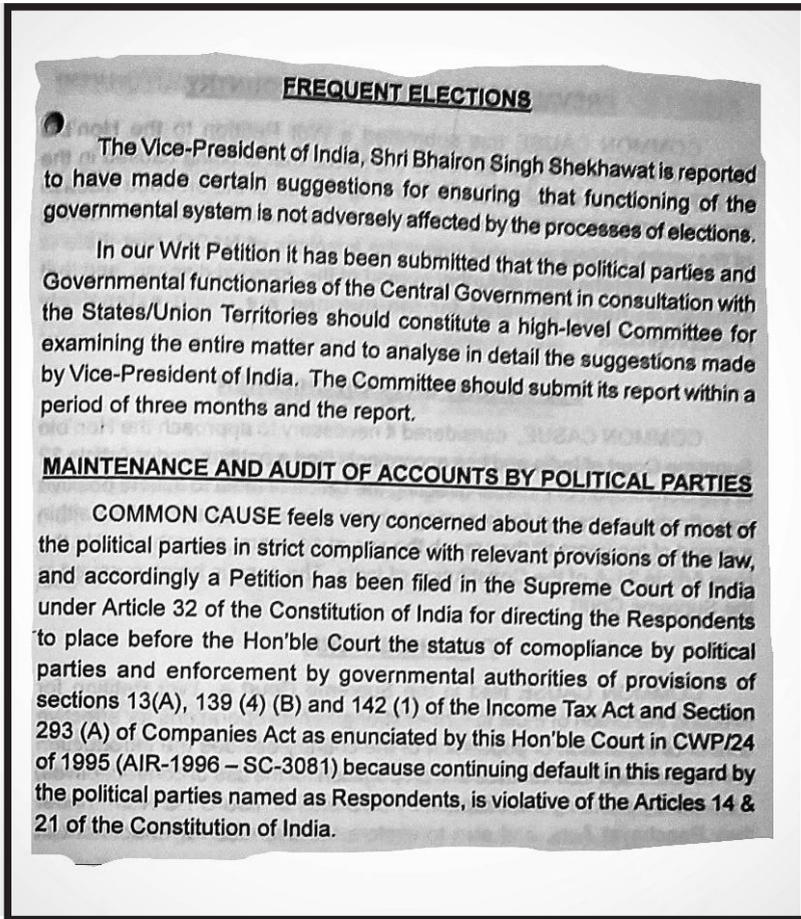
ensure free and fair elections.

Challenging the Electoral Bonds

Very soon, another instrument, which seriously undermines the accountability of the political class, was announced in the form of Electoral Bonds in the 2017 Union Budget. Common Cause and the Association for Democratic Reforms (ADR) challenged these bonds, which were introduced by amending the Finance Act 2017. These bonds have not only made electoral funding of political parties more opaque, but has also legitimised high-level corruption at an unprecedented scale by removing funding limits for big corporates and opening the route of electoral funding for foreign lobbyists. The PIL sought direction from the Supreme Court to strike down the amendments brought in illegally as a "Money Bill" in order to bypass the Rajya Sabha.

Ahead of the Assembly elections in four states and a Union Territory (UT), an application was filed again in the Supreme Court on March 6, 2021. This was to stop the sale of electoral bonds till their validity, already under examination by the Apex Court, was finally decided.

On March 26, 2021, the SC dismissed the application, saying that it did not find any justification to stay fresh sales of electoral bonds ahead of the state Assembly elections. The Bench, headed by Chief Justice



An older issue of the Journal lists our interventions in electoral reforms

S.A. Bobde, declined to stay their sale, noting that the bonds were allowed to be released in 2018 and 2019 without interruption and that “sufficient safeguards are there.” The EC, which had red flagged the issue in 2017 and 2019, took a different stand while claiming that staying electoral bonds would mean going back to the era of unaccounted cash transfers.

Use of Inaccurate Data by ECI

Subsequently, Common Cause,

along with ADR, filed another writ petition in 2019, challenging electoral irregularities and to ensure free and fair elections and the rule of law. The PIL was filed under Article 32 of the Constitution to ensure that the democratic process is not subverted by electoral irregularities and for the enforcement of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution. The instant writ petition highlighted the dereliction of duty on the part of the ECI in declaring election

results (of the Lok Sabha and State Legislative Assemblies) through Electronic Voting Machines, based on accurate and indisputable data which is put in the public domain.

The petitioners sought a direction for the ECI not to announce any provisional and estimated election results prior to actual and accurate reconciliation of data. They further sought a direction to the ECI to evolve an efficient, transparent, rational and robust procedure/ mechanism by creating a separate department/ grievance cell. The cell is to be used for investigation of discrepancies in election data and for responding to the elector’s queries on the same. A notice was issued, returnable on February 17, 2020.

On February 24, 2020, the Bench of the Chief Justice and Justices B.R. Gavai and Surya Kant directed this matter to be listed on a non-miscellaneous day after four weeks. Meanwhile, the counter-affidavit is yet to be filed.

Political Ads at Taxpayer’s Expense

In its bid to ensure that the govt in power did not waste public funds on large scale advertisements, Common Cause approached the Apex Court way back in 2003. Despite the Supreme Court judgment in 2015, issuing several guidelines aimed at regulating govt

advertisements to check the misuse of public funds, the trend continues unabated.

According to an analysis of the annual audit reports of political parties submitted to the ECI, between 2015 and 2020, more than Rs 6,500 crore was spent on elections by 18 political parties, including seven national parties and 11 regional parties. Of this, political parties spent more than Rs 3,400 crore, or 52.3 per cent, on publicity alone.³ Therefore, Common Cause has once again approached the Supreme Court in 2022, seeking directions to put a curb on wastage of public money by political parties to gain mileage through laudatory and self-congratulatory advertisements.

In the background of the current election extravaganza, it has filed the PIL seeking appropriate directions to restrain central and state governments from using public funds on govt advertisements in ways that are completely malafide and arbitrary and amount to breach of trust as well as abuse of office. They should also not be in violation of the directions/guidelines issued by the Apex court and the fundamental rights of citizens under Article 14 and 21 of the Constitution.

Conclusion

Introduction of the 'Electoral Bonds' and 'Election Laws Amendment Act 2021' are structural changes which are bound to fundamentally alter the parliamentary election framework. While the govt claims that the Electoral Bond Scheme is, "an unprecedented step towards cleansing the process of funding of political parties" believers in transparency and accountability are not convinced. Academician Milan Vaishnav writes that "in truth, electoral bonds have only legitimized opacity. The government has promised reform, while doubling down on nefarious old habits. But as a recent five-part investigative series in HuffPost India—#PaisaPolitics—authored by the journalist Nitin Sethi reveals, this new instrument has done something more: it has intensified the crisis confronting India's much-vaunted apex institutions."⁴

Similarly, linking Aadhaar to electoral rolls has been mired in debates. On the face of it, the govt sees this move as a means to purify the electoral rolls. Supporters also argue that this legislation will allow for remote voting, helping migrant voters. But many opposition leaders feel

that this legislation could lead to the disenfranchisement and vicious profiling of the legitimate voter.

With 'winning at all costs' becoming the mantra of all political parties, electoral reforms that will fundamentally lead to free and fair elections seem a pipedream. As Mr. Shourie put it succinctly: "The election system is the bedrock of our democracy; however, there are some basic flaws in it which are detrimental to the interest of democracy. The Election Commission has repeatedly brought these flaws to the notice of the government but has not been able to get remedial action taken."

Endnotes

- 1 Analysis of Criminal Background, Financial, Education, Gender and other Details of Candidates (2022, March 4). Association for Democratic Reforms. Retrieved on March 9, 2022, from <https://bit.ly/3uJHjFp>
- 2 Id.
- 3 Indiaspend staff (2021, December 26) Big Spenders: Election expenses cross Rs 6500 crore shows data, Business Standard. Retrieved on March 7, 2022, from <https://bit.ly/3tBqZa7>
- 4 Vaishnav, Milan (2019, November 25) Electoral Bonds: The Safeguards of Indian Democracy are crumbling, HuffPost India. Retrieved on March 9, 2022, from <https://bit.ly/3JECJhO>

CASE UPDATES

Supreme Court Cases

Petition to Restrain the Use of Public Funds for Political Campaigning through Government Advertisements:

State governments across the country have started to roll out extensive advertisement campaigns outside the territory of their respective states. These advertisements are aimed to project personalities and promote particular parties without the interest of the target audience or prime beneficiaries of that government's achievements, policies and welfare measures. Common Cause has filed a petition under Article 32 of the Constitution, seeking appropriate directions to the respondents, restraining them from using public funds on government advertisements. These ads should not be used in ways that are completely malafide and arbitrary and amount to breach of trust, abuse of office and violative of the directions/guidelines issued by the Apex Court.

The Supreme Court, in its judgment dated March 13, 2015, in *Common Cause vs. Union of India* (2015), had issued several guidelines. They aimed at regulating government advertisements in order to check the misuse of public

funds by central and state governments. In addition, they prohibited state governments from publishing advertisements outside the territory of their respective states except to invite stakeholders to the state for business summits/conclave or attract tourism and private investments. The present petition prays for issuance of directions, prohibiting the publication of government advertisements in the form of advertorials as well as the publication of government advertisements at least 3 months prior to elections. The directions should also mandate that the Content Regulation in Government Advertising (CCRGA) shall be appointed by a three-member committee, comprising the Prime Minister, Leader of the Opposition in the Lok Sabha and the Chief Justice of India or, persons individually appointed by each of them as their representative.

We have also sought directions to set up an independent website of the CCRGA, featuring all relevant information regarding the working of the committee and other guidelines that the Court thinks fit to make the CCRGA a truly independent, impartial and neutral body. Finally, Common Cause has prayed for directions to the respondents, prohibiting them

from publishing photographs on government advertisements of elected public functionaries.

Petition to Completely Ban Export of Iron Ore: Common Cause filed a writ petition in April 2021, to completely ban the export of iron ore (whether in the form of pellets or otherwise). Alternatively, it has sought the levy of export duty of 30%, on the export of iron ore in all forms, including pellets (except pellets manufactured and exported by KIOCL, formerly known as Kudremukh Iron Ore Company Limited). The petition also prays to initiate proceedings under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Section 135(1) of the Customs Act, 1962. In addition, it seeks the levy of appropriate penalty as per law against mining companies exporting iron ore pellets in contravention of the provisions of India's export policy. By exporting iron ore pellets, they have been evading the duty chargeable on the commodity. The petition also prays for a thorough and independent investigation into the role of public officials in allowing the same. Notice was issued on September 24, 2021 directing the respondents to file their response within four weeks from the date of the order.

The UOI filed its response on November 11, 2021, which was taken on record by the Court. The Union of India was directed to provide a copy of the counter affidavit to the counsel for the petitioner. Rejoinder affidavit, if any, was directed to be filed in the meantime. The matter was taken up on February 18, 2022, when upon hearing the counsel, the Court ordered the matter to be listed on March 9, 2022 for final disposal. However, the matter was not taken up.

On March 22, 2022, the matter was mentioned for early listing and the Court agreed to list it in the following week.

Petition Seeking Filling of Pending Vacancies in the Central Vigilance Commission:

Common Cause filed a petition in November 2021, seeking the timely and transparent filling of long pending vacancies in the Central Vigilance Commission. It was done to ensure that the Commission can effectively discharge its duties as an 'integrity institution. The

petition, filed under Article 32 of the Constitution, prays for an appropriate writ, order, or direction to the UOI to take urgent steps to appoint Vigilance Commissioner and Central Vigilance Commissioner, in pursuance of its advertisements issued on 20.07.2020 (15 months ago) and 04.05.2021 (5 months ago) respectively.

It also prays for an appropriate writ, to forthwith place all details of the selection process/ appointments to be made to the Central Vigilance Commission in the public domain. UOI should do this as it has been directed with respect to the selection/ appointments made to the Central Information Commission, vide the SC's judgement in the *Anjali Bhardwaj & Ors v. Union of India & Ors*. The matter is yet to be listed.

Writ Against Illegal Mining in Odisha: The SC judgment on 02.08 2017, imposed 100% penalty on illegal mining (i.e., without forest and environmental clearances, mining outside lease/

permitted area and mining in excess of permissions).

On February 25, 2022, interlocutory applications filed by the Odisha Mining Corprn. (OMC) Ltd. were heard by the Court. The OMC sought permissions to commence mining operations and informed the Court that they had obtained all the necessary statutory clearances in respect of the mines. The counsel for the state of Odisha submitted that the government has no objection if the prayers made in these applications are granted by the Court. The Supreme Court thus allowed the prayers made in the applications.

IAs were also filed by other respondents in the case and the matter was mentioned by the respective counsels on March 10 and March 23, 2022, seeking urgent listing of the matter. The court directed the Registry to list the applications before an appropriate bench in the following week.

WHO WILL DEFEND THE CONSUMER?

Effective Laws are Key to Grievance Redressal

Swapna Jha

In liberalised economies across the world consumerism has seen an exponential growth. Unfettered trade across nations has also given Indian citizens a dynamic consumer profile. However, the question remains whether the unfair commercial practices in the buyer-retailer relationship is addressed by the law.

No other time in the history of trade has consumer rights been more relevant, given the explosion of e-commerce and mobile platforms, a burgeoning fin-tech sector and a dramatic expansion of choice. In this complex and rapidly-evolving marketplace, issues such as the consumer's access to information about goods, products and services, as well as the regulatory framework around consumer rights have become increasingly relevant.

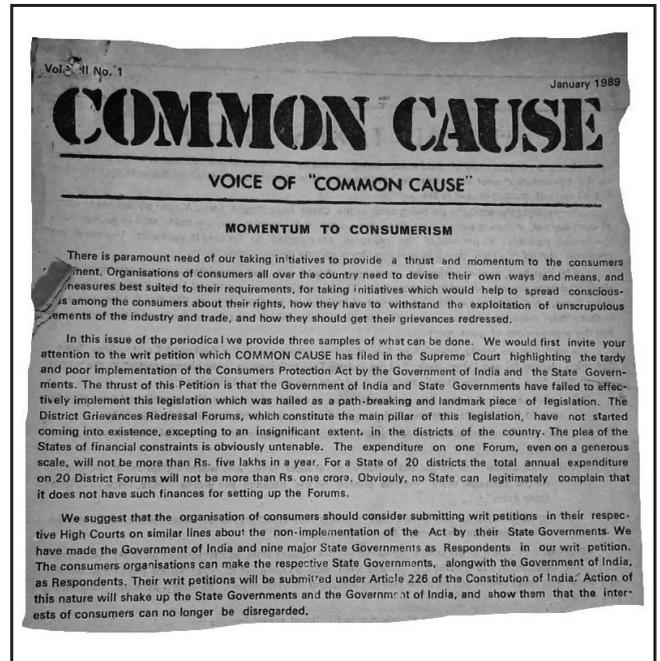
Common Cause had launched initiatives to protect the common consumer against blatant exploitation, cheating and other assorted unfair practices even before our economy was liberalised in 1991. Even at a time when state monopolies ruled the roost, Mr. H.D. Shourie, the founder-director of Common Cause, realised how the average citizen was at the mercy of these public sector

enterprises and were devoid of access to redressal mechanisms. He wrote a series of letters to the powers that be bringing out the problems of poor consumers, seeking redressal and suggesting solutions. His letters and representations are documented in the earlier issues of the Common Cause journal.

India's consumer-security legislation, Consumer Protection Act, was introduced and enacted as a path-breaking jurisprudence, intended to safeguard the consumer from rampant exploitation by unscrupulous manufacturers and traders of goods.

The object of the legislation, as the Preamble of the Act proclaims, is 'for better protection of the interests of consumers.'

Its foundation is the three-



A previous editorial of the Journal spoke about increasing awareness on consumer rights and ways to go about it.

tier fora --- the district forum, state commission and national commission. They are designed for redressal of consumer grievances and to protect citizens' basic rights (to safety, choice, information and most importantly, redress in matters of defective goods and deficient services).

Under the Act, a simple written submission is enough to kick-start the redressal process. The aim is to provide speedy and inexpensive justice to the common man, as opposed to the cumbersome and expensive law courts where judicial delays are

legendary.

The Consumer Protection Act, 1986 received the assent of the President on December 24, 1986.

Despite enacting the legislation, the central government was not in a tearing hurry to make it effective till 1989. There was no allocation of funds, provision for infrastructure (accommodation, staff etc.) or judicial appointments, as required by the Act.

Common Cause intervened at this juncture to prevent the consumer protection law from becoming a victim of neglect and apathy. We approached the Supreme Court with a PIL, underlining that the Act's implementation was sluggish and the grievance redressal machinery at the district forums had not been set up in most of the districts. This Writ Petition was moved under Article 32, for a direction to the appropriate government for the Act's urgent implementation.

Notices were issued to the Union and state governments as well as Union Territories, requiring them to file counters indicating the action taken for setting up a district forum in each district. After the counters were filed by most states, the Court passed its order on January 17, 1990. It directed that district forums be set up in every district with the District Judge as its President, as a stop-gap arrangement. It also asked concerned governments to appoint two more members as

part of each district forum.

The National Commission President was asked to obtain first-hand information from every state/U.T. about full compliance of the statute requirements. The High Courts were also requested to accord appropriate sanction/ consent to District Judges functioning as district forum Presidents.

The petition was finally disposed of on January 7, 1993. The SC gave a number of noteworthy directions. It said that whenever the workload of the sitting District Judge, functioning as a District Forum President exceeded the minimum monthly load of 150 cases for six months, the High Court will convey the same to the state government/ U.T. administration. The latter will then set up a regular independent district forum. The court order ensured, among other things, that the onus will be on the concerned state government /U.T. administration to implement the provisions of the Act.

The impact of the Common Cause intervention was phenomenal. An article published in the aftermath of the judgment goes like this: "Ironically, the pioneering pro-consumer legislation itself had become a victim of sloth and neglect until Shourie filed a writ petition in the Supreme Court against non-implementation of the Act. In August last year, the court ordered state governments to set up consumer courts within two months. From barely 30

district forums before Shourie's petition, the number has now zoomed to 361, covering a major chunk of the country's 450 districts."¹

Before setting up the infrastructure with judicial intervention, Common Cause rallied behind assorted issues of consumer protection that established the bonafides of the society as pioneer in consumer activism.

In the early days it made detailed submissions before the National Consumers Disputes Redressal Commission on various aspects of the functioning of the Indian Airlines, as it caused dissatisfaction and inconvenience to the consumers. An older journal article elaborates on the motivation behind the submission: "The Airlines has been operating as a typical monopolistic enterprise functioning on lines which cannot be termed efficient..."

Another issue of the Common Cause journal describes the scale and scope of the problem. "A petition was filed against the Indian Airlines highlighting the various problems encountered by the passengers including flight delays, flight cancellations, inadequate standard of inflight catering, delays in baggage clearance, inadequacy of supply of information about flights, and certain important aspects of safety of the flights."

The Commission ruled in favour of Common Cause, offering redressal for genuine difficulties

faced by passengers of the public sector domestic carrier.

Details of other petitions filed before the National Commission to protect consumer interests have also been listed in the journal. "A petition was filed against Delhi Electric Supply Undertaking highlighting various problems encountered by the consumers, including billing delays, billing defects, voltage fluctuations, load shedding, theft of electricity etc."

Another case in this space highlighted why the founder-director of Common Cause is still regarded "as the father of the consumer-protection movement in the country." The Society's case against contaminated pharmaceuticals, in response to a growing scandal over the quality of intravenous fluids and blood products (tainted dextrose and saline solutions) supplied to hospitals shone the spotlight on the life-threatening fluids patients are administered intravenously.

Common Cause filed a complaint before the National Commission established under the Consumers Protection Act, pointing out how pharmaceutical companies were supplying contaminated products to hospitals. It underscored the serious danger involved in inadequate quality control of the Intra-Venous Fluids extensively used in hospitals and administered into the blood stream of patients. In the complaint, Union of India, Drug Controller of India as well as Drug Controllers of all the states

were impleaded.

Notices were issued by the National Commission to all the respondents, and reports were submitted by the Union of India, Drug Controller of India and by some of the state Drug Controllers. The deficiencies in the administrative setup of the Drug Controller of India as well as of the Drug Controllers of the states were brought to the notice of the National Commission during the hearing of the case. Eventually, the Union government assured that effective measures would be taken to obviate the chances of contamination of IV Fluids. It also said that rigorous inspection of the production units as well as production processes would be undertaken.

It was also decided that no manufacture of IV Fluids should be permitted on "loan license" basis, and should be allowed only after inspection by a group of experts. On October 22, 1989, on the basis of the government's assurances and decisions taken in the meeting, the Common Cause complaint was allowed to be disposed of and a major battle was won against the drug enforcement agencies.

These legal battles by the "messiah of the masses" received widespread global attention. An article in The New York Times lauded the victory of the hapless consumer: "... in one of three important victories for the quiet consumer

revolution taking place in India, the group, Common Cause, which monitors Government-run services as well as private commerce and industry, got the backing of India's new National Consumer Disputes Redressal Commission. The panel ordered local authorities to enforce laws governing the safety of medical products, and will monitor their compliance," it wrote.²

In the subsequent years Common Cause waged many battles under the new legislation to provide succor to the common people, not only against private entities but also public sector enterprises failing to deliver adequate services.

The woes of telephone subscribers stirred Common Cause into action time and again. In a petition filed by the Society against the Delhi area telephone company, the Commission ruled in favour of Common Cause.

This state monopoly had been receiving hundreds of thousands of consumer complaints for poor service, frequent breakdowns and rude or corrupt treatment by employees.

Responding to Common Cause's submission, the commission dismissed the telephone company's argument that it belonged to a government department outside of the Act's purview.

Mr Shourie regularly took up the issue of mandatory printing of Maximum Retail Price (MRP) in

the case of India Photographic Co. Ltd vs H.D. Shourie. He underlined that Hindustan Photo Film Manufacturing Co., a public sector enterprise was in serious violation of the statutory provisions of packaged Commodities rules, promulgated under the Standards of Weights & Measures Act by not printing the product MRP on the film packages. This allowed enough room to traders to manipulate prices.

On August 3, 1999 the sellers of photography materials were appellants before the Apex Court challenging the order of the District Consumer Disputes Redressal Forum, which was affirmed by the National Consumer Forum. The appellant contended that neither any rule nor any statute mandated it to exhibit /publish or print the price on the film rolls being imported and sold in India by its distributor.

The petitioner also contended before the Supreme Court was that it was the manufacturer alone, and not the distributor, who was liable for not printing the price. This contention was rejected by the Apex Court, which noted that the stress was upon the package and not the person manufacturing or selling the package. It became a landmark case for determining the liability of the distributor regarding product packaging.

In order to make this legislation more effective, the Union government had introduced

the Consumer Protection (Amendment) Bill, 2011, in Lok Sabha on December 16, 2011, to facilitate quicker disposal of cases and to widen and amplify the scope of some of the provisions of the Act. Common Cause had offered its detailed comments on it to the Lok Sabha Secretariat.

The Society also submitted detailed comments in response to suggestions invited for the Consumer Protection Bill, 2015. The new bill sought to replace the 29-year-old Consumer Protection Act, 1986, and proposed setting up a regulatory authority to curb unfair trade practices and expedite redressal of consumer grievances. It also sought to create a Consumer Protection Authority, modelled on the lines of the US and European countries for fast-tracking redressal of consumer grievances.

The Consumer Protection Act of 1986, offering easy access to justice, had brought a legal revolution in India. It provided cost-effective mechanisms and empowered citizens in their fight against trader malpractices. However, with advancements in technology and the economy turning a page, the age-old 1986 Act needed an update. Thus, the old Act was substituted with the Consumer Protection Act, 2019 to keep pace with the modern marketplace. It ushered in much-required changes that favour consumers of a digitised world. The new legislation arms them

with clearly defined rights and a fast-track dispute resolution process.

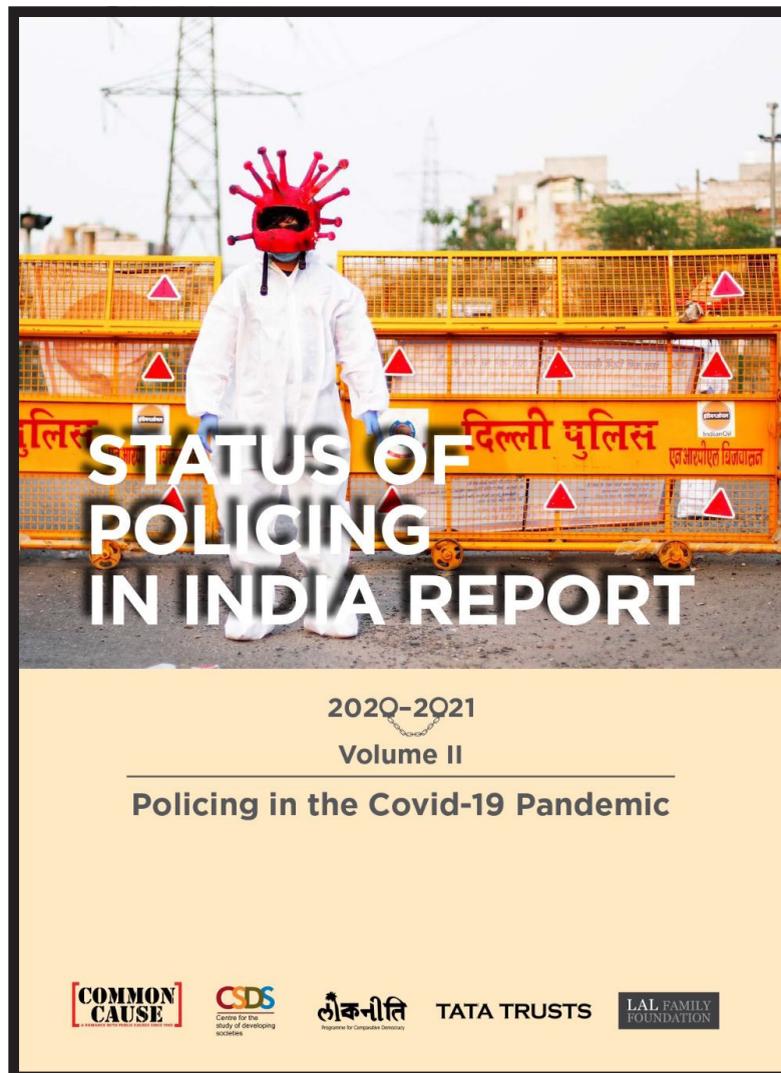
Conclusion

The 36-year-old Consumer Protection Act was a social welfare legislation, designed to be a bulwark against exploitation by business practices. The gigantic size of India's consumer base and its inherent vulnerabilities had exposed to it unscrupulous practices of deep-pocket product manufactures and service delivery entities. Many multinational brands keen to profit from the Indian market were giving short shrift to Indian consumers. Many others were accused of indulging in unfair trade practices and dumping sub-standard products (and even drugs that are banned in developed countries) in India. Given this context, the Consumer Protection Act is a much-needed weapon in the consumer's arsenal to fight for his rights against big businesses.

Endnotes

- 1 Rahman, M. (2012, December 21) Consumers finally get quick redressal, but major problems remain. India Today. Retrieved on March 13, 2022 from <https://bit.ly/3tBSXmg>
- 2 Crossette, B. (1989, October 22) Indian Consumer Group Wins Fight on Medicine. The New York Times. Retrieved on March 13, 2022 from <https://nyti.ms/36nTJur>

Please email us at commoncauseindia@gmail.com if you want a soft copy of the report.



Jointly prepared by Common Cause and its academic partner, CSDS, The Status of Policing in India Report (SPIR) 2020-2021, Volume II: Policing in the Covid-19 Pandemic, covers a range of citizen-police interactions during the lockdown, the handling of the crisis, and the emergence of new challenges for the law enforcement apparatus.

The report analyses data from a survey of common people and police personnel from Tier 1 and Tier II/ III cities of 10 states and Union Territories. It also looks at the media coverage of the nature of policing during the initial phases of the national lockdown.

Please email us at commoncauseindia@gmail.com if you want a soft copy of the report. A PDF can also be downloaded from commoncause.in

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