



# COMMON CAUSE UPDATES

## Supreme Court

### **C**ontempt Petition on Non-Appointment of Lokpal:

The petition for appointment of Lokpal filed by Common Cause was disposed by the SC in April 2017 maintaining that the Lokpal Act was a perfectly workable piece of legislation. However, the government failed to appoint the Lokpal nine months after the Apex Court verdict. Common Cause filed a contempt petition seeking Court's directions against the government's wilful and deliberate failure to fully comply with the aforementioned judgment.

The matter was taken up on February 23, 2018 and thereafter in March, April and May, 2018. The Centre had on May 15, 2018 informed the Court that senior advocate Mukul Rohatgi has been appointed as an eminent jurist in the selection committee for Lokpal appointment. The Supreme Court on July 2, 2018 directed the Centre to apprise it within 10 days about the time frame for Lokpal appointment.

A Bench comprising Justices Ranjan Gogoi and R Banumathi asked the government to file an affidavit within 10 days giving details of the steps which are likely to be taken for appointing the Lokpal. The Bench posted the matter for hearing on July 17, 2018, when the Centre

informed the SC that the Lokpal selection committee had decided to meet on July 19 for constituting a search panel. This panel would be responsible for recommending names to be considered for Lokpal appointment. As the selection committee was scheduled to meet on July 19, 2018, the Bench fixed the matter for further hearing on July 24, 2018, without passing any orders. On July 24, 2018, the Attorney General (AG) submitted an affidavit stating that a meeting of the selection committee was held but the names for the search committee were not finalised and therefore another meeting would be held soon.

Expressing dissatisfaction over the Centre's response, the Bench directed it to file a fresh affidavit giving relevant details of the search committee within four weeks. The matter was listed on August 24, 2018 but could not be taken up.

**Writ for Police Reforms:** The battle for police reforms has been going on for the last 22 years. The Supreme Court took 10 years to give a historic judgment in 2006 in the petition filed by Prakash Singh, Common Cause and NK Singh. Since then it has been a struggle to get the Court's directions implemented.

On July 3, 2018, responding to an interlocutory application filed

by the Ministry of Home Affairs regarding the appointment of acting Director General of Police (DGP) in the states, the Supreme Court gave a slew of directions to ensure that there were no distortions in such appointments. It laid down that the states shall send their proposals to the Union Public Service Commission (UPSC) three months prior to the retirement of the incumbent DGP. The UPSC shall then prepare a panel of three officers so that the state can appoint one of them as DGP.

To curb the practice of appointing Acting DGP by the states, the Court directed that the UPSC should ideally empanel officers who have at least two years of service under their belts, giving due weightage to merit and seniority. It also held that any legislation/rule framed by any of the states or the central government running counter to the direction shall remain in abeyance.

Declining modification of its previous order on comprehensive guidelines regarding the appointment and removal of DGP by state governments, the SC on July 30, 2018, granted liberty to the petitioner to file plea for clarification in the event of a sudden vacancy in the DGP post. On September 7, 2018, the state of Jammu and Kashmir





approached the SC after it had appointed the new DGP, pending “regular arrangement.” The SC declined to interfere as the state had indicated how the acting DGP appointment was an interim measure. It stressed that the decision was taken in the wake of peculiar circumstances as well as law and order situation.

On September 20, 2018, while allowing the newly appointed acting DGP to continue in office, the SC asked the state to comply with the procedure as sought for by the UPSC, within five days of the order. The Apex Court also directed UPSC to take a decision thereafter within four weeks. The matter is required to be listed after six weeks.

**Combating the Criminalisation of Politics:** On September 25, 2018, the Constitution Bench declined to ban politicians with criminal cases from contesting elections, holding that it cannot interfere in the legislative domain. The Court disposed of our petition (filed jointly with the Public Interest Foundation) and referred the matter to Parliament, requesting it to enact appropriate laws in this regard.

To secure the interest of the citizens, the Bench prescribed the following directions to the Election Commission of India (EC).

- The form filled up by each candidate for EC must state in bold letters details of criminal cases pending against him or her
- The candidate is required to inform the party about

pending criminal cases against him/her

- The party has an obligation to put up on its website information pertaining to candidates with criminal antecedents
- The candidate as well as the political party shall issue a declaration in widely-circulated newspapers of the locality about criminal antecedents of the candidate. They shall also give wide publicity in the electronic media. The Bench emphasised this by stating “When we say wide publicity, the same shall be done at least thrice during the campaign”.

The Bench agreed on the issue raised by petitioners, claiming, “A time has come that the Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream”. However, it declined to pass directions to the EC as requested in the petition as it felt that the judiciary lacked this power. Thus, despite our petition being disposed of, the situation remains unaltered till the Parliament decides to enact laws to prevent criminals from becoming legislators.

**Illegal Mining in Odisha:** There has been much progress since the final judgment on August 2, 2017. On this date the Court imposed 100 per cent penalty on companies indulging in illegal mining – mining without forest and environmental clearances, mining outside lease/permitted area and mining in excess of what had been allowed. In

September 2017, Common Cause filed an application for clarification of issues arising out of the judgment. The Court vide order December 13, 2017 stated that in case of non-payment of compensation and dues, the state of Odisha shall close the mining operations of the erring mining lease holder. This was an answer to our prayers. The Central Empowered Committee (CEC) formed by the SC, consisting of Justices GS Singhvi and Anil R Dave, was asked to ascertain whether there had been any violation of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 and violation of Rule 37 of the Mineral Concession Rules, 1960.

The CEC report (4/2018) calculated the total compensation amount for environmental and forest clearances as Rs 19174.38 crore due from 131 mining lease holders. The report further stated that as on December 31, 2017, an amount of Rs 8289.87 crore had been paid by various lessees. During the hearing on January 30, 2018, the SC directed the state of Odisha to take coercive steps to recover the unpaid dues from defaulting mining lease holders.

Arguments in the interlocutory applications and objections to the CEC Report (4/2018) filed by Sarda Mines, Rungta Group and Essel mining & Ind. Ltd. were concluded and the matter listed for October 26, 2018. Judgment concerning Sarda Mines Pvt. Ltd. has been reserved.





## Delhi High Court

### SIT on Over Invoicing Requested by CPIL and Common Cause:

Common Cause and Centre for Public Interest Litigation (CPIL) have approached the Delhi High Court seeking a direction for a thorough investigation by a Special Investigation Team (SIT) into the over-invoicing of imported coal and equipment. The over-invoicing was carried out by various private power companies as detailed by Directorate of Revenue Intelligence (DRI) in several of its investigative reports. In the last three or four years, major instances of such over-invoicing have been unearthed by the DRI. In these cases several prominent and influential companies are involved. Unfortunately, no action has been taken against such entities as yet.

The matter has been listed for hearing on October 11, 2018.

## National Green Tribunal

### Chardham Road-Widening Project:

In response to a Common Cause petition, the National Green Tribunal (NGT) has appointed a seven-member committee to monitor violation of road construction rules and to address environmental concerns in the Chardham Project.

The petition was filed by Common Cause under Section 14, 15 and 18 of the NGT Act, 2010. It pointed out that due to the widening of NH108 as part of the Chardham Project, debris and muck were being dumped directly into the

Bhagirathi River. Further, the requirement of Environmental Impact Assessment (EIA) was bypassed by dividing the 900 km road project into stretches measuring less than 100 km each. Warning of impending disasters, particularly during the monsoon months, the petition stated that the indiscriminate dumping of muck could lead to an altered course for the river. This would also cause excessive pollution, landslides and floods. The petition sought directions, among others, on following the principles of road design in the hill areas, and submission of a time-bound muck disposal plan. The matter was tagged along with another case, OA 99/2018 (*Citizens for Green Doon v Union of India*).

This petition was disposed of on September 26, 2018 by the bench headed by Justice Goel, and Justices Jawad Rahim and S P Wangdi, which cleared the Chardham project. The NGT refused to interfere in the scheme of widening the NH108, as the notification of August 22, 2013 granted exemption to national highways that are less than 100km long. The NGT chose to ignore that the petition had been filed to expose this very government scheme.

However, based on an annexure filed by Common Cause showing how EIAs are necessary in all road construction projects of more than 5km (G.B. Pant National Institute of Himalayan Environment & Sustainable Development report), the Tribunal held that a Rapid EIA is necessary in the project.

That's because the project has detailed elaboration on slope stabilisation, muck disposal and muck management, compensatory afforestation, disaster management, etc.

The green panel said it was inclined to clear the project with requisite safeguards in view of the larger public interest. The tribunal noted that 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 NGT directed the authorities to devise a mechanism to provide pedestrian pathways for devotees who undertake *padyatras* to religious places, viz. Yamunotri, Gangotri, Kedarnath and Badrinath. It also asked them to come up with a policy, whereby diesel vehicles older than 10 years and petrol vehicles over 15 years are prohibited to ply along the entire road length of the project.

The Tribunal accepted Common Cause's plea to set up an expert committee. It directed that the committee will comprise a former judge of Uttarakhand High Court, representatives from leading research institutes such as the Wadia Institute of Himalayan Geology and others, Secretary of Environment and Forest Department, Uttarakhand, as well as the concerned District Magistrates. It was directed that the committee be set up within three weeks of the order, and that it should continue to function till the completion of the project.





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Common Cause is a non-profit organisation which makes democratic interventions for a better India. Established in 1980 by the legendary Mr. H D Shourie, Common Cause also works on judicial, police, electoral and administrative reforms, environment, human development and good governance.

Its very first Public Interest Litigation benefitted millions of pensioners. Subsequent PILs transformed the way natural resources are allocated in India. Its landmark cases include those regarding criminalisation of politics; cancellation (and re-auction) of the arbitrary 2G telecom licenses and captive coal block allocations; quashing of Section 66A of the IT Act; prohibiting misuse of public money through self-congratulatory advertisements by politicians in power, to name only a few. Our other prominent petitions pertain to imposing penalties on rampant illegal mining in Odisha, criminalisation of politics, the appointment of Lokpal and seeking human beings' right to die with dignity through a 'Living Will.'

The impact: Re-auctions leading to earning of several thousand crores, and counting. Even though that is a lot of money for a poor country, the earnings are a smaller gain when compared to the institutional integrity built in the process. From spectrum to coal to mines, today no government can 'gift' precious resources to cronies thanks to these two PILs. (For more details about cases, please visit [www.commoncause.in](http://www.commoncause.in))

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Address: Common Cause,  
Common Cause House, 5, Institutional Area,  
Nelson Mandela Marg, Vasant Kunj,  
New Delhi - 11 00 70  
(Phone numbers: 011 26131313 and 45152796)

## COMMON CAUSE VISION

An India where every citizen is respected and fairly treated

## MISSION

To champion vital public causes

## OBJECTIVES

To defend and fight for the rights and entitlements of all groups of citizens

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Editor-Vipul Mudgal Tel No. 26131313, 45152796, email: [commoncauseindia@gmail.com](mailto:commoncauseindia@gmail.com), website: [www.commoncause.in](http://www.commoncause.in)

