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COMMON CAUSE

VOICE OF "COMMON CAUSE"

TIME FOR JUDICIAL REFORMS

Supreme Court judgment striking down the National Judicial Appointments Commission (NJAC) as unconstitutional split India's legal fraternity down the middle. The churning that followed brought the spotlight on appointments to India's top judiciary though the jury is still out on what will serve the interest of justice better. The issue at hand is not only of appointment and transfer of judges to higher judiciary per se but of making the judicial system kinder and more accessible to common man.

Those who believe business as usual would be a recipe for disaster saw an article of faith in the 99th Constitutional Amendment which constituted the NJAC. The idea of a dedicated commission was seen as one bold step which will stem the rot in India's outmoded judicial system. After all it had the backing of both Houses of Parliament and was ratified by as many as 20 State Assemblies. In many ways the NJAC was a continuance of earlier efforts by illustrious former Chief Justices of India like Justices M N Venkatachaliah and J S Verma. The skeptics saw NJAC as a conspiracy of the political executive to overcome the primacy of the judiciary. They viewed the tricky practice of judges appointing judges as a better choice than the venal politicians subverting the process.

Never mind the sparring but the silver lining is that the supporters and the skeptics agreed on one thing: that the collegiums system, in its present form, is unacceptable. However, the only tangible issue to debate for now is how to improve the (defective) collegium system. We at Common Cause, initially saw merit in a strong and independent commission as it was possible to weed out conflicts and contradictions by reading down provisions. But once that opportunity was lost, we are back to the same question: How to make the process of judicial appointments more transparent and accountable?

In a country with the largest number of poor, uneducated and vulnerable people in the world, access to justice is a mirage. In theory every citizen is free to approach the courts but access to justice takes an opportunity cost. Besides skipping wages and covering long distances, poor litigants have to engage predatory lawyers and suffer unending harassment for every single ritual and every scrap of paper. Nothing comes easily or cheaply, right from identity or address proofs to official documents to protection of witnesses. What shakes the citizen's faith in the system is the judicial corruption and inefficiency at every step of the long and winding way to justice. (Common Cause has also campaigned for setting up of inexpensive *Gram Nyayalayas* which are mandated to work at block levels and without the aid of lawyers)

It is in this light that we see the issues of fairness, transparency and accountability in judicial appointments. Common citizens tolerate delays or high cost of justice because they still see light at the end of the tunnel. But once that light is chocked, there is despair and loss of faith in democracy itself which is indeed perilous to all institutions including the judiciary. The impression which is gaining ground today is that the judiciary is unaccountable to citizens, is unable to root out corruption, nepotism or

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discrimination, and is reluctant to reform itself. Worse, still is the fact that the rot flows from the very top to the lower courts.

A sure spinoff of a fair and accountable process of appointments in higher judiciary is a cascading effect on other institutions. For a long time, Common Cause has been raising issues of opaqueness in appointments to heads of vital institutions like the Central Bureau of Investigation (CBI), Central Vigilance Commission (CVC), Lok Pal and Lokayuktas, besides other statutory and national commissions. It has challenged many such appointments in the past and is still spearheading many PILs in this regard. What matters more than anything else is the rigour of the process designed and empowered to select the best candidate while upholding the values of impartiality and institutional integrity.

When the Supreme Court opened up a small window of a couple of days to seek views from general public, academics and the civil society, Common Cause invited many institutions and public-spirited individuals for a brainstorming session to evolve suggestions for the Court. Our main partners in the endeavor were Vidhi Centre for Legal Policy, Inclusive Media for Change, Association for Democratic Reforms (ADR), Commonwealth Human Rights Initiative (CHRI) and the Centre for Public Interest Litigation (CPIL), among others. After a series of follow up consultations a representation was made pursuant to the Public Notice issued by the Department of Justice, on directions of the Hon'ble Supreme Court.

The main suggestions included adoption of a clear conflict of interest policy for the candidates and the selectors, RTI compliance and an advisory role for two SC judges to avoid cronyism in the interest of transparency. For improving eligibility it was submitted that suitability must include legal scholarship, independence, efficiency, integrity and record of public service and social sensitivity. For a better permanent secretariat, it was suggested that it should work under the SC's supervision with clearly defined eligibility criterion and it must not become a fair game for retired bureaucrats. It was suggested that only complaints to be entertained should be about personal or moral integrity and that the mechanism should include the collegium with a provision for an ombudsman. It was also submitted that the appointment and complaint mechanisms must be mutually independent and that the system should be time-bound and not rushed. (For details please login to www.commoncause.in)

It is true that an improved appointment process alone would not change the way the justice apparatus works in India. We need to redesign the whole system which is free from colonial hang ups and which satisfies the anxieties of the most vulnerable. A mission mode approach to reforms and accountability mechanisms, institutional integrity and a sensible use of new technologies can work wonders for making the system more efficient and equitable. Videography of court proceedings, digitization and proactive disclosures of all data may go a long way in improving the appointment process of judges as well as in reducing the volume of cases piling up at all courts at an alarming speed.

Vipul Mudgal

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

PARLIAMENTARY DISRUPTIONS & LOGJAM: A CHRONICLE

***Anumeha**

Overview

Indian Parliament is one of the most hallowed symbols of our vibrant democracy. Extremes of opinions and myriad views from every corner of the country converge upon its precincts and find an expression. However, of late the great institution has been in the headlines for all the wrong reasons such as devaluation of parliamentary authority, falling standards of debates, deterioration in the conduct and quality of Members, poor levels of participation and the like. This has led to a certain cynicism towards parliamentary institutions and an erosion in the credibility of parliamentarians and parliamentary processes.[1]

The composition, character and culture of parliament too have undergone a sea change. Members seldom seem to value the immense faith the ordinary voters have reposed in them. It is common for members to view their job as a means to acquire power and wealth. According to a report published in Live Mint in May, 2014, "The average wealth of MPs has grown faster over the past five years even as the economy has slowed."[2]

More shockingly, according to an analysis of 541 of the 543 winning candidates by National Election Watch (NEW) and Association for Democratic Reforms (ADR), 186 or 34% of the newly elected MPs in the 16th Lok Sabha have in their election affidavits disclosed criminal cases against themselves. It means that every third of the newly-elected member of Lok Sabha has a criminal background![3] This is reflective of the growing indifference and contempt of successive generations of parliamentarians for the institutions of Parliament.

The gradual decline of Parliament and attenuation of parliamentary authority is also attributed to frequent absenteeism, deterioration in the conduct and quality of Members, poor levels of participation, and the falling standards of debates and legislative business. All these have been exacerbated by frequent parliamentary disruptions leading to logjams as was witnessed in the last monsoon session, with the Opposition's offensives on various issues leading to a series of disruptions, justified or criticized in equal measure depending on whose side one was on. This issue evoked so much concern over the loss of time and the inability of Parliament to transact legislative business, that the Confederation of Indian Industry (CII) even started an online signature campaign asking parliamentarians to end the logjam.

Right to dissent, protest vis a vis parliamentary disruptions

Dissent is a critical component of any democracy and, in that light, disruptions could be seen as a part of established parliamentary practice. To wish it away is unrealistic and even undemocratic. However, it becomes a cause for concern when disruptions become the norm, rather than the exception. Frequent parliamentary disruptions mean low number of sittings leading to a decline in legislative activity, budgets getting passed without discussion, urgent bills getting stalled at either of the houses resulting in loss of sitting days and productive business of Parliament.

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[1] A Background Paper on Working of Parliament and need for Reforms, available at http://lawmin.nic.in/ncrwc/finalreport/v2b3-1.htm (Last visited on Nov 4, 2015)

[2] Politicians shine brighter than gold in India, live mint, May 29, 2014, available at http://bit.ly/1lxWJXP (Last visited on Nov 4, 2015)

[3] Every third newly elected MP has criminal background, Times of India, May 18, 2014, available at http://bit.ly/1oc5WTa (Last visited on Oct 26, 2015)

Parliament logjam happens when Parliament becomes a spectacle or a '*tamasha*' with both Houses unable to conduct normal business for days, even weeks, due to disruptive action, mostly of the opposition parties. Recently, the subject elicited passionate and fervent reactions, opinions and views from even the most politically disinclined Indian. The mainstream opinion though has been largely against parliamentary disruptions as these are seen to not only undermine the democratic role of legislatures, but also affect governance. Concerns have also been raised not only over the colossal waste to public exchequer and stalling of the economic reforms, but debates have also been held on the issue of ethics and morality of politicians and political parties involved.

The monsoon session, 2015 has been one of the least productive in the past 15 years with both the Houses losing around 75 per cent of their allocated time for business.[4] A study by PRS Legislative Research, a policy study group, shows that this session marked a major low, especially in the Rajya Sabha where it recorded 9 per cent productivity, compared to the earlier budget session when it had recorded an astounding 102 per cent. The performance of the Lok Sabha in this session was equally disappointing with a productivity of 48 per cent, compared to 122 per cent in the earlier session. Also, the time spent on legislative business in the Upper House was a meagre 0.1 hours. Both Houses suffered repeated adjournments on several days, thus resulting in lower-than-normal business.[5] According to media reports, the washout of monsoon session of Parliament resulted in a loss of Rs 260 crore of taxpayer money — Rs 162 crore in Lok Sabha and Rs 98 crore in Rajya Sabha.[6]

Politics of Disruptions

Let us try to understand the reason why political parties in Opposition, create such logjams by disrupting the Parliament. Whose interests are best served by such disruptions and deadlocks? These attract immediate media and voter attention but thwart the passage of crucial Bills, thereby discrediting the ruling parties or alliances. On the contrary, participating in a debate requires investment in details of any proposed legislation or discussion, which, due to its serious and complex nature, may not attract media attention, except among parliamentary record keepers or academics.

However, the Government too cannot escape responsibility for these deadlocks and is to be partially blamed because of its apparent inability to manage the floor, or to build consensus across parties on policy issues. Another reason for the increasing disruptions could be the change in parliamentary culture. In the first decade of Parliament's existence, there was a fair degree of homogeneity in the composition of the House, with many of the leading MPs having been schooled in the traditions of British parliamentary practice. The adherence to British parliamentary norms gradually broke down from the 1970s, which was also the time the Congress lost its dominance. The composition of the House became even more heterogeneous — in terms of both caste and class — completely transforming the tenor and idiom of debates. This process was hastened in the late-1980s, which saw the establishment of coalition politics as well as new political forces, particularly the sharp rise in the number of representatives from the Other Backward Classes, unleashed by the Mandal Commission report. The changed composition and diversity of Parliament had a significant impact on parliamentary culture, which was far more permissive to disruptions and protests inside the House.[7]

[4] Session 2015 among least productive, Deccan Herald, Aug 14, 2015, available at http://bit.ly/1I0Ixk1 (Last visited on Oct 26, 2015)

[5]Yes, Rajya Sabha's productivity in this session of Parliament is 9 percent, Indian Express, Aug 13, 2015, available athttp://bit.ly/1QRPTZf (Last visited on Nov 17, 2015)

[6]Washout of monsoon session could cost tax payers heavy money, Business Insider, July 25, 2015, available at http://bit.ly/1Oil9hk (Last visited on Nov 17, 2015);Washout of monsoon session will lead to 260 crore loss, Times of India, July 25, 2015, available at http://bit.ly/1I2P8oL (Last visited on Nov 17, 2015)

[7] The politics of parliamentary paralysis, The Hindu, Aug 21, 2015, available at http://bit.ly/217aahN (Last visited on Nov 17, 2015)

The enactment of the anti-defection law in 1985, which allows parties to herd their members, weakens incentives of legislators to invest in developing their own viewpoints and express them freely as they cannot use their own stand on different issues to evolve or develop their own political careers. This could be another reason for the increased logjams and disruptions seen in Parliament. The effect of anti-defection law is not only manifest in disruptions or the nature of protest and dissent, but is also detrimental for intra-party democracy.[8]

This article endeavors to present an overview of the functioning of the Indian Parliament and is divided into four sections. The first section looks at the Lok Sabha since independence through facts and figures. The second section provides an insight into the sitting days and productivity of Parliament, introduction of private member' bill, duration of parliamentary deliberations etc. The third section provides an account of the powers of the Speaker in LS and that of the Chairman in RS and an overview of the disciplinary mechanisms they are equipped with. The fourth section examines the issue vis a vis Parliaments of some of other democracies, particularly that of Australia, UK, and US.

I. 60 Years of Functioning of Indian Parliament- An Overview

The two Houses of Parliament celebrated their 60th birthday on May 13 (they were constituted on May 13, 1952). The complexities of modern administration and the decline of the essential prerequisites for the success of parliamentary polity - discipline, character, high sense of public morality and the ideologically oriented two party system has altered the character of parliament today. There is a need for us to reflect on the efficacy, relevance and standing of these two democratic bodies that are at the apex of our democratic structure.

In an "aspiring" economy such as ours, the Executive has to balance a multitude of tasks and responsibilities, initiating and formulating legislative and financial proposals, giving effect to approved policieswith the support/consent of Parliament. The relationship between Parliament and Executive is supposed to be without antagonism or dichotomy. However, the following figures present a startling picture and clearly tell a very different tale. In the 1950s, Lok Sabha met for an average of 127 days a year; in the 1960s it rose to 138 sittings. This had declined drastically to just 78 sittings in the year 2003. In 2011, it met for 73 days**.** Compared to the 1950s, the number of sittings of Parliament has declined by about a third (see table 1).

Table 1: Number of sittings of Parliament, 1952–2003

Decade	Number of sittings of LokSabha (annual average)	Number of sittings of RajyaSabha (annual average)
1952–1961	124.2	90.5
1962–1971	116.3	98.5
1972–1981	97.9	85.5
1982–1991	92.7	79.4
1992–2001	81.0	71.3
2002–2003	79.0	78.0

- While sittings per year and time allocated for budgetary matters is down, there is a sharp rise in the time lost in disruptions and in the cost of running the Parliament. The 11thLok Sabha lost 5 per cent of its time to disruptions. This rose to over 10 per cent in the 12thLokSabha and 22.40 per cent in the 13thLok Sabha. In the 14th and 15thLok Sabha, at least 30 per cent of the time has been lost to disruptions in session after session.[9]

- During the first budget session of the 16th Lok Sabha, it worked for 104% of the time available; lesser time lost to disruptions. Both Lok Sabha and Rajya Sabha sat for the overall scheduled time during the session. Whereas Lok Sabha worked for 104% of the time, Rajya Sabha worked for 106%. Though Rajya Sabha witnessed more disruptions than Lok Sabha, it made up for the lost time by working late on several days.
- The first Budget session of the last Parliament in 2009 also recorded a similar level of productivity. However both the Houses worked for 64% of the time available during the first Budget session of the 14th LokSabha in 2004.
- Compared to the last ten years, the first budget session of 16th Lok Sabha had recorded the second highest productivity, the highest being 110% in the Monsoon session of 2005.The recent monsoon session of the 16thLok Sabha saw a mere 48% productivity while that of Rajya Sabha recorded a new low: a figure of 9%.[10]

Whether this was due to the intransigence of an opposition party or due to the obstinacy of the government is a matter for political discussions and debates, but what is appalling is the politicians' absolute indifference and callous disregard for parliamentary institutions and norms. Also, the total loss to the exchequer has been pegged at Rs 260 crore, by no means a small figure, but this hardly deterred the politicians and the political parties from one-upmanship.

Nevertheless, even these numbers sharply overstate the degree to which Parliament, even when it is officially meeting, actually conducts its business. This is because of a sharp increase in adjournments of the house as a result of disorderly scenes and interruptions.

It is ironical that we wish to be counted among the developed nations but have a Parliament which is on the brink of becoming dysfunctional due to a spate of disruptions, MPs'disdain for parliamentary ethics, contempt for parliamentary duties, disregard towards the Speaker/Chairperson and high absenteeism among others. Hence, it is vital that these issues be addressed urgently. 'Reforms and urgent remedial action seem imperative for making parliamentary institutions and processes effective and potent instruments of ensuring sustainable economic growth so vital for the success of our economic policies also'.[11] 'Strengthening of Parliament requires an understanding of its institutional design, processes and the issues that need to be addressed'.[12]

II. Productivity of Parliament and duration of Parliamentary deliberations etc.

The number of Bills passed by Parliament has declined over the last few decades

- India's first 13 Parliaments passed more than 3, 200 bills.[13]
- The number of Bills passed during the period of the First Lok Sabha aggregated 322 as compared to 179 during the Fifteenth Lok Sabha.
- The 1st Lok Sabha passed an average of 72 Bills each year. This has decreased to 40 Bills a year in the 15th Lok Sabha.[14]

[8] The politics of parliamentary disruption, live mint, Aug 24, 2015, available at http://bit.ly/1kJFkvj (Last visited on Nov 16, 2015)

[9] Parliament @60: Time for some stock taking, rediff.com, May 29, 2012 available at http://bit.ly/1PQtDy1 (Last visited on Nov 17, 2015)

[10] Session Track, Monsoon Session 2015, available at http://bit.ly/1NGsPHm (Last visited on Nov 18, 2015)

[11] A Working Paper on Parliament & Need for Reforms, available athttp://bit.ly/217arBf (Last visited on Nov 18, 2015)

[12]Rethinking the functioning of Indian Parliament, available at http://bit.ly/IOwVTn (Last visited on Nov 18, 2015)

[13] The Indian Parliament as an Institution of Accountability)- Devesh Kapur and Pratap Bhanu Mehta, 2006, page 16 available at http://bit.ly/1X1YRb4(Last visited on Nov 17, 2015)

- Parliament passed 118 Bills in 1976. This was the highest number of Bills passed by Parliament in a single year.
- The lowest number of Bills was passed in 2004. In this year, only 18 Bills were passed by Parliament.[15]
- During the five year term of the 14th Lok Sabha, Parliament passed 247 Bills.[16]
- The 16thLokSabha fares slightly better than the previous one so far. In its five sessions 71 bills have been introduced by the government of which 61 have been passed.[17]

Political instability and a divided Parliament—with the ruling coalition often a minority in the upper house—were the principal causes for the decline in the legislative output over the years. The slower legislative output is one reason why governments have increasingly relied on ordinances for pushing through reforms outside of the usual legislative mechanism. The current government in its one year since coming to power has promulgated 13 ordinances. Taking the ordinance route for pushing down its agenda, however well meaning, erodes the parliamentary processes, of discussions, arguments, debates and opinions on the merits and drawbacks of the proposed legislations.

No Private Members' Bill has been passed by Parliament since 1970

- Every MP, who is not a Minister, is called a Private Member. Private Members' Bills are Bills introduced by these MPs.
- In Lok Sabha, the last two and a half hours of a sitting on every Friday are generally allotted for transaction of Private Members' Business, i.e., Private Members' Bills and Private Members' Resolutions.
- Till date, Parliament has passed 14 Private Members' Bills. Six of these were passed in 1956 alone and the last one was in 1970.
- During the ninth Lok Sabha, 156 Private Members' Bills were introduced, but only eight came up for discussion, of which seven were withdrawn and the remaining one did not pass.
- In the tenth Lok Sabha (1991–1996) as many as 406 156 Private Members' Bills were initiated. Only 31 of these were discussed and none was recommended to any parliamentary committee or passed. Yet, the paradox is that despite no hope of being passed, the number of private members' bills being introduced is increasing.[18]
- In the previous term of Parliament, 264 Private Members' Bills were introduced in Lok Sabha and 160 in Rajya Sabha. Of these, only 14 were discussed in Lok Sabha and 11 in Rajya Sabha.[19]
- In April 2015, a 156 Private Members' Bills was passed in Rajya Sabha for the first time in thirty six years, with MPs cutting across party lines to unanimously endorse by voice vote a proposed legislation that aims to promote the rights of transgenders, including reservations and financial aid. [20]

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[14] 60 Years of Parliament, available at http://bit.ly/1O7zoYe (Last visited on Nov 17, 2015)

[15] *Ibid*

[16] Legislative Business in the 14thLokSabha, available at http://bit.ly/1NGtcSd (Last visited on Nov 17, 2015)

[17] 5th session of 16th LokSabha- An overview, available at http://bit.ly/1MYjppZ (Last visited on Nov 18, 2015)

[18]The Indian Parliament as an Institution of Accountability)- DeveshKapur and PratapBhanu Mehta, 2006, page 16, available at http://bit.ly/1X1YRb4 (Last visited on Nov 18, 2015)

[19] 60 years of Parliament, PRS -May 11, 2012, available at http://bit.ly/1O7zoYe (Last visited on Nov 18, 2015)

[20]RajyaSabha passes private bill to protect the rights of transgenders, Indian Express, April 25, 2015, available at http://bit.ly/1IGtA5K (Last visited on Nov 18, 2015)

- In the Parliament of UK the number of Private Members' Bills passed are a small proportion of the number introduced but a lot higher in absolute terms. During 1983-84 to 2012-13, 3177 156 Private Members' Bills had been introduced, but only 295 were passed.[21]In Australia and the US too, the situation is a lot better than India and the Private Members' Bills have witnessed an increase.

Adjournments

The average time taken by adjournments and adjournment motions is roughly 10% of the proceedings of a typical parliamentary session. The disruption can take many forms: many members speaking simultaneously, the opposition not allowing government ministers to make statements and, increasingly, rushing to the well of the house and shouting down the speaker. Secondly, the disruption of legislative proceedings suggests much of what is apparent during zero hour that Parliament is often a site for grandstanding, rather than disciplined debate.

Over the years, the Parliament too has debated the issue of maintaining discipline and decorum within its precincts. In 1992, Parliament had convened a Special Forum for the sole purpose of discussing this aspect. Also, in 1997, a Special Session was convened, the primary legislative business of which was to pass a unanimous resolution calling for greater discipline within Parliament.

In November 2001, in a major initiative aimed at bringing discipline and decorum to Parliament and legislatures, an all-India conference of presiding officers and parties adopted a 60-point code of conduct guideline aimed at sanctioning grave misconduct with suspension. The resolution was unanimously supported by over 300 leaders from all parties at both the federal and sub national levels. However, when the Prime Minister asked the opposition not to resort to any steps that would erode democratic values, the then Leader of the Opposition, Smt. Sonia Gandhi, immediately disagreed saying that a "great deal of disruption" in Parliament was due to the government's reluctance to face the houses on controversial matters. Events since then have belied the resolution.[22]

Question Hour

Question Hour is used by MPs to hold government ministers accountable for the functioning of their ministries. Since parliamentary procedures dictate that the first hour of a sitting has to be question hour, when question hour is disrupted, the opportunity for holding the government accountable is lost. This time is never made up by sitting beyond scheduled time or on Saturdays.[23]

Rajya Sabha has tried to address this problem in November 2014, when Question Hour was shifted from 11 am to 12 pm. The idea behind the shift was to ensure that the Question Hour, doesn't get derailed due to disruptions which often coincide with the start of the day's proceedings.[24] While the Rules of Procedures of Rajya Sabha designate the first hour of sitting for Question Hour, they also allow the Chairman of the House to direct otherwise. It is using this Rule that the Chairman of Rajya Sabha, Mr. Hamid Ansari, issued directions for the Question Hour to be shifted to noon.[25]

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[21]Summary of public bills introduced since 1983-84; Parliamentary Information List, Standard Note: SN/PC/02283 Last updated: 01 July 2013 Author: Department of Information Services) available at file:///C:/Users/ADMIN/Downloads/SN02283.pdf (Last visited on Nov 18, 2015)

[22] Indian Parliament as an Institution of Accountability- Devesh Kapur and Pratap Bhanu Mehta, Jan, 2006, Page 19, available athttp://bit.ly/1X1YRb4 (Last visited on Nov 18, 2015)

[23] Rethinking the Functioning of Indian Parliament, Background note for the Conference on Effective Legislatures, available at http://bit.ly/lOwVTn (Last visited on Nov 18, 2015)

[24] Question Hour timings shifted to noon in RajyaSabha, Times of India, Nov 15, 2014 available at http://bit.ly/1NfrTiW (Last visited on Nov 18, 2015)

[25]RajyaSabha extends sitting hours, changes timing of question hour, Trina Roy, PRS Blog, available at http://www.prsindia.org/theprsblog/?tag=question-hour (Last visited on Nov 18, 2015)

Despite the shift in timings, a breakup of the business transacted in Rajya Sabha in the monsoon session, 2015 reveals that a mere 2% of the allotted time was spent in asking questions.[26]

Moreover, the last decade has seen a decline in the number of questions answered orally on the floor of the House. A look at the Question Hour statistics in Parliament:

- Frequent parliamentary disruptions led to Question Hour being held for 40% of scheduled time in the 15thLokSabha and 43% in Rajya Sabha.
- In the 15thLokSabha, in the Budget session 2012, 656 questions were raised but only 82 answered orally. In the same session in Rajya Sabha 660 questions were raised and 103 answered.[27]
- The 2014 Budget Session saw both Houses of Parliament work for over hundred percent of their scheduled sitting time. However, while Question Hour functioned for 87% of its scheduled time in Lok Sabha, it functioned for only 40% of its scheduled time in Rajya Sabha. In 13 of the 27 sittings of the 2014 Budget Session, Question Hour in RajyaSabha was adjourned within a few minutes due to disruptions.
- The Question Hour of the first budget session of the 16th Lok Sabha was the most productive compared to the last 10 years. [28]

III. Powers of the Speaker in LS and that of the Chairman in RS

The Speaker being the presiding officer of the LokSabha has been vested with several powers to maintain discipline in the House and ensure its dignity. It is his duty to see that the meeting is properly conducted and the rights and privileges of the members protected.

The Rules of Procedure and Conduct of Business in LokSabha, namely Rules 373 and 374 respectively, confer upon the Speaker the power to order the withdrawal of member and suspend a member. Rule 374 (A) provides for automatic suspension of a member on account of grave disorder occasioned by the member coming into the well of the House or abusing the Rules of the House persistently and wilfully obstructing its business by shouting slogans or otherwise.Rule 375 details the power of the Speaker to adjourn House or suspend any sitting.

Occasions when these powers have been exercised with consequences

Recently, the Lok Sabha Speaker, Smt. Sumitra Mahajan named and suspended 25 Congress Lok Sabha members for five days for “persistently and wilfully obstructing” proceedings in the House by invoking Rule 374(A). She defended this as a “decision for the future good of Parliament”. She underlined that the “opposition must have its say, but the government also must have a way”.[29]

This move by the Speaker is not entirely without precedents. In 2013, the decision of the then Lok Sabha Speaker Meira Kumar to suspend the protesting members of Seemandhra region on two occasions (many of them suspended on both the occasions) resulted in a legal debate on whether the Speaker was really vested with such powers by the Constitution.

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[26] Session Track (Monsoon Session 2015), available at http://bit.ly/1NGsPHm (Last visited on Nov 18, 2015)

[27] 15th LokSabha, How successful has Question Hour been in Parliament, available at http://bit.ly/217bi58 (Last visited on Nov 18, 2015)

[28] Data Charts: This session of Parliament was the most productive since 2005, PI, by PRS, Aug 14, 2014, available at http://www.thepoliticalindian.com/budget-session-analysis/ (Last visited on Nov 18, 2015)

[29] Parliament Logjam: Suspended 25 MPs for Greater Good, says Sumitra Mahajan, The Indian Express, Aug 4, 2015, available at http://bit.ly/1MFI2c3 (Last visited on Nov 18, 2014)

[30] Dear Sonia Gandhi, getting suspended from LokSabha is not murder of democracy, first post, Aug 5, 2015, available at http://bit.ly/1QRReiJ(Last visited on Nov 19, 2015)

She had suspended the members by invoking this Rule 374 A of the "Rules of Procedure and Conduct of Business in Lok Sabha". Twelve MPs were suspended on the first occasion and nine on the next instance. In 1989, sixty three opposition MPs were suspended after the then parliamentary affairs minister H K L Bhagat had moved a resolution seeking their suspension for the remainder of the week which amounted to three days. These members were demanding that the Thakkar Commission report on Indira Gandhi's assassination be tabled in the Parliament.

In 2005, 11 MPs (mostly from BJP) were expelled from Lok Sabha on cash for query charges.

During 2011-12, 18 MPs from Telangana region from various parties were suspended and seven MPs of SP, JD (U), RJD and LJP were suspended from Rajya Sabha and physically thrown out of the House to facilitate the passing of Women's Reservation Bill.[30]

In February 2014, during a heated debate on the creation of Telangana, an MP from Vijaywada, L.Rajagopal, used pepper spray on fellow parliamentarians, to protest the tabling of the 'Andhra Pradesh Reorganisational Bill', marking a new low in parliamentary behavior.

Analysis of rule 374 (A)

According to former Lok Sabha Secretary-General and constitutional expert P.D.T. Achary, Rule 374 (A) suffers from Constitutional infirmities. "Under this rule, automatic suspension of members ordered by the Speaker can be rescinded by the House at any time. This provision in a way diminishes the prestige of the Speaker. Rules cannot be made which have the effect of diminishing the prestige of the Speaker." Rule 374A also went against the established practices and conventions. "The rules so framed are subject to the Constitution. Since the Constitution does not expressly or impliedly vest any penal powers in the Speaker it would be against the spirit of the Constitution to vest such powers in the Speaker." according to Mr. Achary..[31]

In 2011-12, seven MPs of SP, JD(U), RJD and LJP were suspended from Rajya Sabha and physically thrown out of the House to facilitate the passing of Women's Reservation Bill. There have been many other instances when the Upper House has punished members by way of suspension or expulsion**.**

IV. Disruptions & Disciplinary procedures in other democracies

Parliaments are rich institutional contexts with embedded norms and conventions. Disruptive behavior in each legislative setting will have their own institutional, historical and cultural specificities as to form, severity and frequency of disruption. Individual parliaments may differ in their response to disruptive performances some choosing to punish disruption more severely while others adopting a more accommodative and informal approach. Comparing disruptive acts across different institutions raises the question of why disruptive performances are tolerated in some parliamentary contexts while not in others. Following is an overview of the disciplinary powers of the Speakers and the incidence of parliamentary disruptions in other jurisdictions. [32]

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[31]Speaker

's powers to suspend members "suffers constitutional infirmities", The Hindu, Sep 10, 2013, available at http://bit.ly/1OUm4HO (Last visited on Nov 19, 2015)

[32]Democracy in Practice: Ceremony and Ritual in Parliament, By Shirin M. Rai

[33]Parliamentary procedures for the disciplining and expulsion of Members- Contribution from Ian Harris, Clerk of the House of Representatives (Australia) to the general debate on parliamentary procedures for the expulsion and disciplining of members, Geneva session, 2007

[34] Parliament of Australia, Politics and Administration, available at http://bit.ly/1HE1FRc (Last visited on Nov 19, 2015)

[35] Parliament of Australia, Infosheet 3-The Speaker, available at http://bit.ly/1l3zW0M (Last visited on Nov 19, 2015)

1. Australia

The Australian Parliament no longer possesses the power to expel one of its Members.[33]The authority for the rules of conduct in the House of Representatives is derived from the Australian Constitution. The members themselves have broad responsibility for their behaviour in the House. However, it is the role of the Speaker or the occupier of the Chair to ensure that order is maintained during parliamentary proceedings.[34]

For a minor infringement a Member may merely be called to order or warned. For a more serious offence, a Member may be ordered to leave the Chamber for one hour (sometimes unofficially referred to as 'sin binned') and, for a major offence or persistent defiance of the Chair, a Member may be 'named' by the Chair and a motion for the Member's suspension (usually for 24 hours) may be moved.[35] Since its introduction in 1994, the 'sin bin' has become the disciplinary action of choice for Speakers.[36]

No motion or action is required by the House but if a member fails to leave the Chamber immediately or continues to behave in a disorderly manner they may be named and the House can then suspend them.[37] Between 1901 and 1913, there have been 1, 352 instances of disorderly behaviour in the House of Representatives. [38]

2. United Kingdom

The House of Commons' ultimate power of discipline over one of its own Members is expulsion, thereby creating a vacancy and subsequent by-election in that Member's constituency.[39]

The British Speaker has wide powers to check disorder, irrelevant speech and unparliamentary language and behavior.[40] If a situation of grave disorder arises in the House, the Speaker may, adjourn the House without question or suspend the sitting until a time of his or her choosing. Suspensions of sittings are of varying length - in the past they have been of between 10 and 30 minutes.[41]

Mrs Margaret Thatcher's tenure as Prime Minister was one marked by high disruptiveness in the House of Commons compared to the decades before and after. There were more suspensions of the Sittings and more punishments meted out to individual MPs than at any other time in modern British politics. The 1990s and 2000s were marked by a relative lack of disruptions in Commons, probably because the dominant parties represented in the House of Commons were constitutional parties, who accepted the importance of procedural conformity and members are constrained by a belief system about the propriety of adherence to the rules of the House. [42]

3. United States of America

Obstructing the work of Congress is a crime under federal law and is known as contempt of Congress. Each chamber has the power to hold individuals for contempt, but can only issue a contempt citation, with the judicial system pursuing the matter like a normal criminal case, and in case convicted, any individual

[36]*Supra 46(Parliament of Australia)*

[37]*Ibid*

[38]*Ibid*

[39]Disciplinary and Penal Powers of the House Department House of Commons ,UK, Fact sheet, sep, 2010, available at http://www.parliament.uk/documents/commons-information-office/g06.pdf (Last visited on Nov 19, 2015)

[40]World Constitution - A Comparative Study: Political Science, By VishnooBhagwan, VidyaBhushan

[41]http://www.parliament.uk/documents/commons-information-office/g06.pdf (Disciplinary and Penal Powers of the House Department House of Commons ,UK, Fact sheet, sep, 2010

[42]Democracy in Practice: Ceremony and Ritual in Parliament,

by Shirin M. Rai, available at, http://bit.ly/1NfsukQ (Last visited on Oct 28, 2015)

found guilty of contempt of Congress may be punishable by a maximum $100,000 fine and a maximum one-year sentence in federal prison.[43]

The Speaker of the House of Representatives, unlike Indian, Australian & British speakers, does not possess disciplinary powers over members of the House. He cannot expel a member who is rowdy and does not obey the Chair. Only the House can take action against the recalcitrant member.

The United States has a rich history of legislative violence on both Capitol Hill and in the various states' assemblies. A more discreet form of parliamentary disruption takes place quite regularly via the Senate practice called a filibuster. Used to this day, a filibuster involves a Senator speaking endlessly, on and on, until the time set down for the debate runs out. The record is held by the late and then-Democratic Senator, Strom Thurmond, who spoke in 1957 against the Civil Rights Act for 24 hours and 18 minutes. A process known as 'Cloture' is used to bring the filibuster to an end, but while it's underway it's as disruptive as any regular brawl. Thurmond's filibuster had no effect – the Civil Rights Act passed anyway.[44]

Conclusion

In this study we have attempted to collate facts and figures about the functioning of the Indian Parliament. The trends show that the sheer frequency of disruptions and non- functionality has surpassed all norms of even a boisterous and chaotic democracy, and that the intransigence is fast leading to a parliamentary paralysis inimical to any country's interests.

While the Australian Parliament does not sanction expulsions any longer, the British and US Houses do, but the kind of en masse disruptions, rowdiness, irreverence and logjams which the Indian Parliamentarians and Legislators subject their august Houses to, is unbecoming of a country aspiring to emerge as an economic superpower.

Even if one were to grant that political clashes and disruptions could be a result of legitimate disagreements on government policies or a rebuff to unilateral decisions, the nation cannot allow that at the cost of the public faith in the institution of Parliament. The onus is on all political parties and parliamentary institutions to manage dissent in order to minimize disruptions. The parties and their leaders should not be allowed to reverse roles on the basis of winning or losing elections. In the 15th Lok Sabha, the Opposition endorsed parliamentary obstructionism as a legitimate parliamentary tactic and the blame game replicates in the 16th.

One possible solution is a law, maybe even a constitutional amendment, to prevent obstructions to lawmaking processes even though it is fraught with problems. It must be noted that punitive measures, don't always have a restraining influence as the main opposition party, the Indian national Congress (INC), demonstrated in both Lok Sabha and Rajya Sabha in the monsoon session 2015.

Another possible solution, going by the global experiences, is reserving a day in the week for the Opposition to set the agenda for Parliament. This is the custom in the UK Parliament – 20 days of every session has the Opposition spell out the parliamentary agenda. Out of these 20 days, 17 are assigned to the principal Opposition party and the remaining three to the others. In Canada, the Opposition sets the parliamentary agenda on 22 days every calendar year.

The advantages of this mechanism are evident– the government can't shy away from discussing issues inconvenient to it; the Opposition won't be smarting as it would get ample opportunities to vent its

[43]What is contempt of Congress, Politics on NBC.com, available at http://nbcnews.to/1Hc5u3y (Last visited on Oct 28, 2015)

[44] Parliamentary Disruptions- Chris Gibbons, Aug 28, 2015, available at http://www.chrisgibbons.co.za/parliamentary-disruption-shit-happens-get-used/ (Last visited on Nov 19, 2015)

[45] The Parliament Logjam, The Kashmir Monitor, Aug 11, 2015 http://www.prsindia.org/media/articles-citing-prs/the-parliament-logjam-4019/ (Last visited on Nov 19, 2015)

anger or put the government in the dock. At least, on all other days, the legislative work of Parliament won't suffer, and bills won't be passed in a hurry without adequate discussion.

Yet another solution could be to spread out the parliamentary proceedings to round-the-year, Monday to Friday, instead of the three sessions, as is the current practice. Episodic meetings are bound to create episodes, so to speak. Parliamentarians want to appropriate time to raise issues dear to them. These are not necessarily the priorities of the government, which might be keener on creating a legislative framework for executing its policies in the limited time it has than, say, discussing a railway accident. It is this divergence of views which leads to deadlocks'.[45]

However, no mechanism can ever reverse the declining performance of Parliament as long as there is no consensus on the issue that a minister on facing charges of impropriety, financial or otherwise, ought to resign first before being proven innocent. The other view is that this obviously goes against the principle, 'innocent until proven guilty in a court of law.' A major problem is that the ruling parties do their best to reason but are caught doing the same thing they abhor while in the Opposition. Hence, deadlocks are inevitable unless some consensual ground rules are made by all political parties. It is also about political outfits rising above their narrow interests to maintain high ethical standards.

That the onus is on the political parties is clear by the fact that even the Supreme Court refused to be drawn into this debate when it dismissed a petition in August 2015, which had sought guidelines to end the logjam on the ground that intervention in the parliamentary affairs would amount to crossing the *'lakshmanrekha'.*

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After extensive tests, a person was told that his hearing ability was well above average. The technician was curious to know why anyone with perfect hearing would undergo these procedures. 'Well,' he replied sheepishly, my wife sent me because she claims I never hear a word she says.'

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It was their second anniversary; The husband sent her flowers. He told the florist to write on the card; Happy Anniversary! Year Number 2. Love.' She was thrilled with the flowers, but not pleased about the card. It read, Happy Anniversary. You're number 2.'

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When his fourth son was born, the father invited his friend to join the celebration and choose a name for his newborn child. 'What names have you given to the three elder boys?' asked his friend. One is Rahmat Elahi (God's kindness), the second Barkat Elahi (God's grace) and the third Mahbub-e-Elahi (beloved of God),' replied the proud father. The friend pondered over the names for a while and replied, 'I suggest you name your fourth son Bas Kar Elahi (God that is enough).'

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'Me sleep with Daddy last night,' the kid told her kindergarten teacher. 'I slept with daddy last night,' the teacher corrected. 'Then you must got into bed after I fell asleep,' the child answered.

POLICE REFORMS : A CHRONOLOGY

Shakeb Ayaz

The issue of police reforms: Overview

Democratic governance requires democratic policing where people trust the police and approach them without fear. Many countries, including India have failed to provide the general public with an honest and efficient police force which can ensure safe and secure environment to the people. Police indulges in human rights violations, torture, unprovoked firing, extra-judicial killings & practices discrimination. It arouses public fear and anger across communities in India. The level of distrust in the police in India may be more among minorities, dalits and other poor sections of the society. In United States and Europe, the Blacks and the immigrants are often on the wrong side of policing.

On April 7, 2015, 20 woodcutters from Tamil Nadu were gunned down by Red Sanders Anti-Smuggling Task Force in Chittoor. Andhra Pradesh government condemned them as ''smugglers''. The state DGP claimed they attacked the forces with axes and sickles, prompting them to open fire in ''self-defense''[1]. Contrary to his claims all the bodies had bullet wounds in the abdomen, chest, face and back of the neck. Some of the dead laborers had burn marks on the arm, raising suspicions of torture.

A bulletin of the renowned civil liberties watchdog Peoples' Union for Civil Liberties (PUCL) thus commented: ''Eye witnesses testified (that they were) taken to a remote location and there, reportedly shot dead. The hands of some of the dead bodies were said to have rope marks indicating that the hands were tied to the back before being shot; the bullet wounds also indicated that perhaps the dead persons were shot at close range.''[2]

On October 20, 2015, the Delhi High Court came down heavily on Delhi Police for custodial death of one Shahnawaz Chaudhary. A media report quoted the HC bench as: "One of the reasons why torture and custodial deaths are endemic in India on a large scale is that the police feel they are immune from (sic) the rigours of the law and are confident that they will not be held accountable, even if the victims die in custody and even if the truth is revealed."[3]

Asian Centre for Human Rights in its report, 'Torture in India 2011'[4] pointed out that a total of 14,231 persons i.e. more than four persons per day died in police and judicial custody in India from 2001 to 2010. This includes 1,504 deaths in police custody and 12,727 deaths in judicial custody from 2001-2002 to 2009-2010 as per the cases submitted to the National Human Rights Commission (NHRC). Maharashtra topped the table with 250 deaths in police custody during the period 2001-10. It was followed by Uttar Pradesh and Andhra Pradesh.

From 2004-2005 to 2013-2014, this report counts 16,465 cases of custodial death (with 1,389 deaths in police custody, 15,076 deaths in judicial custody; 10,900 deaths in "encounters" including 1,654 deaths involving police and 2,527 deaths in police firing.[5]

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[1] http://bit.ly/1Yvxnba The Color of Cold Blood; Madhavi Tata; April 20, 2015 (Last visited on Nov. 24, 2015)

[2] http://www.pucl.org/bulletins/2015/PUCLmay2015.pdf (Last visited on Nov. 24, 2015)
Challenges before the Human Rights Movement Today; V Suresh; PUCL bulletin, May 2015 (Last visited on Nov. 24, 2015)

[3] http://bit.ly/1IiA7PT HC on NandNagri incident: Police feel they are imm une from rigors of law; Indian Express; Oct 21, 2015

[4] http://www.achrweb.org/reports/india/torture2011.pdf (Last visited on Nov. 24, 2015)

[5] http://bit.ly/1NdSL0X The State of Right to Life in India; ACHR Press release; Aug 25, 2015 (Last visited on Nov. 26, 2015)

The worst victims of police brutality continue to be the disadvantaged sections such as the tribals, dalits, slum dwellers, rural poor and the minorities. Many commissions of enquiry instituted after communal riots have concluded that the police have remained mute spectators while politically motivated mobs have gone around attacking people with virtual impunity. The Nanavati Commission report on the anti-Sikh riots of 1984 indicted Delhi police for massacres in the capital, "It was also felt that the Delhi Police was not only negligent in protecting the Sikhs and their properties but probably connived at or instigated such attacks." The commission concluded that "the attacks on Sikhs were organized by the Congressmen or their supporters…"[6] Many citizens commissions and fact finding reports that have probed Gujarat communal massacres of 2002 have concluded that the men in uniform were partisan, communal and, instead of providing assistance to the victims they even "taunted them & forced them towards the rioting mob & death."[7]

Such incidents prove that police force in the country have not been able to perform their role in an impartial manner. Three DGPs Sanjeev Dayal, Deoraj Nagar and K. Ramanujam had in 2013-14 prepared a report called "Strategy for making police forces more sensitive towards minority sections". The report concluded that there is a trust deficit among Muslims, who see the police force as "communal, biased and insensitive…. ill-informed, corrupt and lacking professionalism".[8]

Attitude of political class towards police reform

What complicates the issue of police attitude towards the vulnerable sections is that human rights violations do not appear to be a priority for the political parties and political executives. They do not buy the idea that good human rights record is the surest index of good governance. Summing up the attitude of the political executive towards police reform, Justice Rajinder Sachar said "It is a common perception that human rights violations will continue to persist as long as there are no significant police reforms."[9] He was pointing out the reluctance of the political class to reform the police force for narrow political interests. Pre-independence the British rulers used the police force to perpetuate colonial rule, and post-independence the political parties continue to use the police force to further their partisan and divisive agenda.

One of the recent examples of a top police officer complaining about 'undue' interference in discharging his duty in an impartial manner is former Bundi SP Pankaj Chaudhary. The IPS officer who now heads 11th battalion of Rajasthan Armed Constabulary in New Delhi, recently accused Rajasthan's Vasundhara Raje government of targeting him for acting against Bajrang Dal and VHP rioters last year in Bundi where he was posted as police chief and there was pressure from "all levels of government."[10]

"The morale of the force had plummeted. The team I had led would call me and say that the rioters had become emboldened and were challenging the police to act against them now that they had succeeded in getting the SP removed," Chaudhary said. Commenting on the fate of Chaudhary, former top cop and a big votary of police reform Julio Ribeirio wrote in his blog: "As long as the political class dictates the transfers and appointments of police chiefs and police officers at different levels politicians will continue to play their games. Politicians are bothered about their votes and their power struggles. Policemen are supposed to bother about the law and the Constitution. But as long as the politician dictates the terms of service IPS officers should know that their goose is cooked if they do not toe political lines." [11]

[6] http://bit.ly/1OhMCBG Justice Nanavati Commission of Enquiry (1984 Anti-Sikh riots) Report; Introduction

[7] http://bit.ly/1NdSvPx (Protest Petition MsZakiaJaffriVsNarendra Modi and Others) (Last visited on Nov. 24, 2015)

[8] http://bit.ly/1zKYtQ4 Muslims think we are communal, corrupt:Police; Indian Express; July 17, 2014

[9] http://www.pucl.org/Topics/Police/2002/reforming.htm PUCL; Reforming the Police by Rajinder Sachar

[10] http://bit.ly/1QHQdaT Indian Express, Sept 17 (Last visited on Nov. 24, 2015)

[11] http://bit.ly/1NuOMiz Julio Ribeiro 's Blog; Indian Express; Sept 20, 2015 (Last visited on Nov. 26, 2015)

Paul Brass, a distinguished political scientist who is known for his path-breaking work on India said while commenting on the role of the police in the communal conflict in Uttar Pradesh: ''The police are seen as an instruments of the party in power at the state and district level…police operates under order of those who control the government, who in turn operate to harass their political opponents, protect their supporters, and deny protection to latter's supporters.''[12]

It is important to note that politicians, irrespective of parties and affiliations, feel that their interests are best served by using the police and para military forces as their private armies rather than as professional forces. Says Brass: "The politicians do not talk about professionalization of the police because control over police is at the centre of political conflict in a deeply and increasingly bitter divided society. The proverbial spoils of office in India include not only control over distribution of economic resources but control over distribution of protection and safety. As the political struggle becomes more bitter, so does the struggle for safety for oneself and one's supporters.''

Challenging Indian conditions

Zuber Khan, a beat constable in Delhi's Jamia Nagar area works for more than 14 hours a day, and that too without weekly offs. (A beat is a territory that a policeman patrols). He is stationed at a small police post (chowki) with not more than two or three policemen on duty. But, he most of the time alone mans the entry point to Jamia Nagar area from the New Friends Colony side. His area covers roughly about a square kilometer with a population of 45,000. Khan divides his time between manning the entry point and patrolling besides assisting the Jamia Nagar police station which, at times, deputes him to other special duties in other parts of the city.

On the face of it, the beat constable's description of his enormous responsibility or his duty without breaks or weekly offs, seems to be a routine matter. But his admission is something which has been brought up in an official study conducted by the Ministry of Home Affairs in August 2014. The research 'National Requirement of Manpower for 8-hours shift in police station' conducted by retired IPS officer Kamal Kumar involved extensive field survey including as many as 12,156 police station staff, 1,003 SHOs and 962 supervisory police officers from 319 police districts in the country, spanning 23 States and two Union Territories. "It brings out that nearly 90% of police station staff, across the states and across various police station types, presently work for more than 8 hours a day. Further, according to more than 68% of SHOs and over 76% of supervisory officers, staff members of their police stations have to remain on duty for 11 hours or more per day. As many as 27.7% SHOs and 30.4% supervisory officers even reported that their staff worked for more than 14 hours a day," the study said.[13]

"All this, in turn, takes a toll on the morale, motivation and self-esteem of staff. The overall frustration manifests itself in the offensive conduct and behavior with the public by many of them, which leads to erosion of societal image of the police and alienation of the public. Since public cooperation is an essential ingredient of effective policing, all this causes an enormous adverse impact on the quality of police service," the government research report observed.[14] The police force in India is also underperforming due to other factors besides politicization, which include low manpower, low self-esteem and deployment for VIP protection at the cost of common people.

According to the reply received in 2013 on an RTI query by activist, Vihar Durve, out of 48,969 policemen on duty in Mumbai, 27,740 are deployed for security of VIPs, which leaves only 20,000 cops for the security of over 2 crore residents of the city.[15]

[12] http://bit.ly/1HoWYhP The Production of Hindu Muslim Violence; Page 376; Paul Brass (Last visited on Nov. 24, 2015)

[13] http://bit.ly/1BaANIU National Requirement of Manpower for 8-hours shift in police stations; Page v

[14] http://bit.ly/1BaANIU National Requirement of Manpower for 8-hours shift in police stations; Page vi

[15] http://bit.ly/1IceHco NDTV; Aug 24, 2013; Out of 48969 policemen in Mumbai, 27,740 are on VIP duty

In Delhi, where a gang-rape of a paramedical student named 'Nirbhaya' by an English daily shook the entire nation in December 2013, the VIPs enjoyed heavy protection at the cost of common people. There were 427 VIPs guarded by 5,183 police personnel, which made over a dozen guarding each of them.[16]

According to the Bureau of Police Research and Development (BPR&D), a wing of the Ministry of Home affairs, an understaffed and overworked police force is protecting VIPs, mostly politicians, while the country's streets remain unsafe. The police personnel population ratio in India is 1: 761 according to the BPR&D figures, which means that as many as 47,557 cops protect 14,842 VIPs across the country or at least three police personnel protecting every VIP.

Need to redefine accountability

One of India's known crusaders for police reforms and retired DGP, Prakash Singh, whose efforts led to Supreme Court's landmark intervention, believes that the biggest challenge to police reform is to redefine accountability and insulate the force from any kind of external pressure, including political. In his view a policeman's behavior towards common man will be ensured by police's accountability but in actual practice the forces are accountable to the executive – the political establishment and the bureaucracy. In such a situation it is only natural that the police are only looking at the support and the approval of the bureaucracy and the politicians. ''The political class forced them to carry out their illegal orders. Such power - to punish the police officer, to transfer them, and to suspend, to control their promotions were retained by the Indian political class,'' said Prakash Singh.

Why the system worked post-independence?

Post-independence the system worked because the political class, police officers and the bureaucracy were full of passion to work for the country. "Great leaders and statesmen like Jawaharlal Nehru, Sardar Patel, Abul' Kalam Azad, Rajagopalachari, Govind Ballabh Pant, Rafi Ahmed Kidwai, K. Kamaraj, Roy and Sri Krishna Sinha provided an atmosphere of dignity and sense of direction for the civil services to function honestly and efficiently,'' the second report of National Police Commission observed. [17]

''The phenomenon of political interference appears to have assumed larger dimensions particularly after 1967 when the continued stability of some of elected government in some states got disturbed and a period of political instability started. Increased political interference in such context meant the increased division of police personnel into different cliques and groups with different political leanings,'' it said. According to Prakash Singh, this attitude reached its zenith, when Congress led Indira Gandhi's government imposed an emergency in the country in 1975-77 and police force on the orders of its political masters committed humongous atrocities on the people and the political opponents.

The brazen manner in which the police were misused during the emergency of 1975—77 to subvert lawful procedures and serve purely political ends is brought out in Chapter XV of the Interim Report II dated 26th April, 1978, given by the Shah Commission of Inquiry. "The decision to arrest and release certain persons were entirely on political considerations which were intended to be favorable to the ruling party (then Congress). Employing the police to the advantage of any political party is a sure source of subverting the rule of law. The Government must seriously consider the feasibility and the desirability of insulating the police from the politics of the country and employing it scrupulously on dudes for which alone it is by law intended,'' the panel said. [18]

[16] http://bprd.nic.in/showfile.asp?lid=1047 Data on police organization; Ch 10, Page 115 (Last visited on Nov. 24, 2015)

[17] http://bit.ly/1Q0nnE0 Page 33, Second Report of National Police Commission (Last visited on Nov. 24, 2015)

[18] http://bit.ly/1Q0nnE0 Page 42; Second National Police Commission Report (Last visited on Nov. 26, 2015)

INDIAN POLICE THROUGH THE AGES

The modern police system was created by the British rulers. Sir Charles Napier is known as the father of Indian police system. After Sindh was 'conquered', in 1843, Napier then governor of Bombay Presidency introduced a separate force for policing assignments which did not have any military and revenue functions. According to JY Umarinikar, IPS, the Indian police force "was modeled, not on the prevalent English system but on the Irish constabulary, which was more akin to an occupational force than a people oriented police." [19]

"An opportunity to give the new nation a policing system to suit the democratic ethos of a welfare state was sacrificed on the altar of expediency," writes Umarinikar in his book Police Reforms in India.[20] The book was based on a research project conducted by the author for Yashwanrao Chavan Academy of Development and Administration, Pune. Says Umarinikar, "The outcome could be seen and experienced every day. Popular alienation and judicial distrust are sapping the vitality of the police while the archaic laws and Oedipal fascination with militarism, prevent the police force from becoming a modern service provider rather than a reactive law enforcing agency."

Indian Police Act: 1861

The current force is governed largely by 1861 Indian Police Act that was a culmination of political developments of 1857 that nearly removed the British from helm of affairs in India. The result was Government of India Act 1858 that not only transferred power from the East India Company to the British Crown, but called for new mechanisms to check such rebellious tendencies that would challenge the British authority in future. The brutal Police Act 1861, that still is a guide for our forces, could be seen in this context. Thus the role assigned to the police in 1861 (the year the act was enacted) was of different nature from the contemporary times. Many states have enacted their own versions of the Police Act since independence but the basic structure remains largely unchanged. The government failed to implement the recommendations of the expert panels, prompting non-governmental actors to pitch in 1990s by building up pressure through judicial interventions.

Indian Police Commission: 1902

After running the Indian administration for over 40 years based on the statutes of Indian Police Act 1861, the British government in India felt the need for certain changes in the functioning of the police. It appointed a commission under the chairmanship of AHL Fraser to examine the system and suggest changes during the tenure of Viceroy Lord Curzon (1899-1905). Curzon is known for partitioning Bengal into East (Muslim dominated) and West (Hindu dominated) apparently under Divide and Rule policy to break the backbone of the national movement. The move prompted popular protest against him.

The Fraser panel suggested many measures, but it certainly failed or deliberately ignored certain provisions of the 1861 Act (that were supposed to be rectified) that was "essential" to command suzerainty of the Indian population towards the British rule. Thus the colonial system of policing was allowed to exist for obvious reasons. In its report the Fraser panel made some interesting observations on the police force. "The Police is far from efficient, it is defective in training and organization, it is inadequately supervised, it is generally regarded as corrupt and oppressive and it has utterly failed to secure the confidence and cordial cooperation of the people," said AHL Fraser[21]. The words ring true even today, over 150 years later.

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[19] Police Reforms in India; U mranikar; pp29 (Last visited on Nov. 24, 2015)

[20] http://bit.ly/1jkVZ6O Police Reforms in India; JY Umranikar; pp21 (Last visited on Nov. 24, 2015)

[21] http://bit.ly/1Q0oJyy Myths and Realities of Police Reforms in India; Indian Police Journal; pp4 (Last visited on Nov. 26, 2015)

Development of intelligence system to spy on Indian revolutionaries: The basic structure of Indian intelligence was developed during the governor generalship of Lord Curzon. Department of Criminal Intelligence (DCI) was set up in 1904 under the central government following the Police Commission Report 1902-03, and remained the most important such organization till 1947. At the provincial level CID (Criminal Investigations Department) emerged in all the provinces of British India. "In the period 1907-1917 the Raj faced serious threat from Indian revolutionaries; this threat was a major stimulus to the growth of British Intelligence operations on a global level," writes Richard J Poppelwell in his book Intelligence and Imperial Defence (British Intelligence and the Defence of the Indian Empire 1904-24). "In the period 1914-16 it appeared to the British that the main threat to the continuance of their rule in India came from terrorists (read freedom fighters) whose activities were centered on bases both within the subcontinent and in many parts of the world," Poppelwell added.[22]

This intelligence infrastructure was used by the British government in later years to keep tabs on the Indian national movement.

State Police Commissions: 1960s

During early 1960's when the government and policy makers realized that the country's police force is not performing at a desirable level, various state governments appointed police commissions to examine the problem and suggest measures to improve on the functioning of the force.

Gore Committee on Police Training: 1971

Amid continuing pressure for police reforms, the central government on November 10, 1971 constituted a committee, known as Gore Committee of Police Training. Its chairman was former TISS director social scientist Prof MS Gore, while its vice-chairman was former IB official MML Hooja. The mandate of the Gore Committee was to suggest objectives that should govern arrangements for training of police officers, point out shortcoming and drawbacks**.** The Gore panel suggested revolutionary changes in police training methods. It suggested that police force, besides training for maintenance of law and order and crime prevention should develop sensitivity for understanding human behavior. It should also develop right attitudes for promotion of service oriented activities.

National Police Commission: 1977-81

On November 15, 1977, the new Janata Party led central government appointed National Police Commission with retired governor DharamVira as Chairman. Its members were retired Madras HC judge NK Reddy, Ex-BSF DG KF Rustamjee and Prof MS Gore among others. This was by far the most important effort for police reform. Its **second report** clearly mentioned the need to insulate the police from external pressure and check its politicization. It reviewed the working of the country's national level police system taking into account far reaching changes that had taken place in the country after the Indian Police Act 1861, Indian Police Commission report 1902 and various reform initiatives taken after independence. The commission was asked to recommend institutional measures to "prevent misuse of power by the police" and "misuse of police by administrative or executive instructions, political or other pressure, or oral orders of any type, which are contrary to law". It's fairly wide terms of reference involved the police's fresh examination as an institution that performs the work of a law enforcement agency and an institution that protects the rights of its citizens. The NPC submitted eight reports between February 1979 and May 1981. It is common knowledge that widespread excesses were committed by the then government of Mrs Indira Gandhi with the help of the police and para military forces.

[22]http://bit.ly/1Ot4Cay Intelligence and Imperial Defence; Richard J Poppelwell ; Page 1(Last visited on Nov. 24, 2015)

[23]http://bit.ly/1QIMk8q Police Reforms in India – A Historical Perspective; Prakash Singh (Last visited on Nov. 24, 2015)

How the recommendations were derailed?

The very existence of the commission came under threat when Mrs Indira Gandhi returned to power in January 1980. By the time its first two reports had finished, Janata government, which had appointed the body, was voted out of power. Secondly, the commission had quoted from the Shah Commission report which criticized the Emergency excesses committed by the Congress government. The panel's member secretary was CV Narsimhan, who was CBI's chief, when the agency had arrested Indira Gandhi. Thus, he was removed from duty on April 19, 1980, and for the reasons mentioned above, the panel was folded up in May 1981.

In March 1983, the remaining seven reports - from second to eighth reports were released (the first one was released by the Janata Government in 1979). In the first report, the NPC had recommended radical changes in the working of the constables, who constitute more than 85% of the force. It suggested that constables should be properly trained to exercise discretion and judgment during duties. It also called for internal grievance redress mechanism. The second report of the commission expressed grave concern on the misuse of police by illegal or improper orders or pressure from political executives or other extraneous sources. It recommended the setting up of a statutory body called the 'State Security Commission' in each state and also that the chief of police should be assured of a minimum prescribed tenure.[24]

The third report asked for giving full powers to SPs in the postings of SHOs, inspectors and constables while the SPs' transfer and posting be the exclusive prerogative of the DGP. The fourth report dealt with the issue of coordinating the functioning of the investigating staff with the prosecuting agency. It suggested reforms in procedural laws with a view to facilitating judicious conduct of investigations.[25] On the subject of enforcement of social legislation, the Commission laid down the parameters of police involvement. The fifth report dealt with the recruitment of constables and sub-inspectors and laid emphasis on their proper training. The sixth report recommended police commissionerates in large cities with a population of 5 lakhs so as to make policing efficient. It also suggested measures on how to handle communal riots. The seventh report dealt with the internal management of the police force. It suggested that this should be entirely under the purview of the SP. The eighth report pitched for arming the State Security Commission the power to evaluate police performance in both qualitative and quantitative terms.

Indira Gandhi govt rejects major recommendations of the NPC

When the central government shared the report with the state governments, they were informed that "at some places" in the 2nd report, the commission has cited from the Shah Commission report to come to conclusions. "Government strongly repudiate all such conclusions," the remark said, adding that the "Commission has been unduly critical of the political system or of the functioning of the police force in general. Such general criticism is hardly in keeping with an objective and rational approach to problems and reveals a biased attitude. The government was of the view that no note should be taken of such observations".[26] The advisory was a clear direction to the state governments to put the suggestions about police reform in cold storage. The NPC had pitched for insulating the police force from illegitimate political and bureaucratic interference which was unpalatable for the entrenched interests.

Prakash Singh and others approach the Supreme Court : 1996

Two former DGPs Prakash Singh and NK Singh, with Common Cause, filed a PIL in the apex court for implementation of the recommendations of the National Police Commission. The petition argued that "the present distortions and aberrations in the functioning of the police have their roots in the colonial past, the structure and organization of the police which have remained basically unchanged during the

[24]http://bit.ly/1QIMk8q Police Reforms in India – A Historical Perspective; Prakash Singh (Last visited on Nov. 24, 2015)

[25]http://bit.ly/1QIMk8q Police Reforms in India – A Historical Perspective; Prakash Singh (Last visited on Nov. 24, 2015)

last nearly 135 years, and the complete subordination of the police to the executive – an arrangement which was designed originally to protect the interests of the British Raj but which unfortunately continues to this day". The PIL sought to draw the attention of the court on following broad issues including frequent postings and transfers, political recommendations in police recruitment and usage of intelligence for political purposes.

Letter of the Union Home Minister to state governments: 1997

The key suggestions of NPC were never implemented, prompting the then union Home Minister Indrajit Gupta to write a letter on April 3, 1997, to State chief ministers asking them to look into the issue of police reforms. Gupta asked the chief ministers to "rise above any narrow and partisan considerations to insulate the police from the growing tendency of partisan or political interference in the discharge of its lawful functions…" The then union home minister, whonever got any response from any state, further warned that if the executive fails to take any action on the issue, it will pave the way "when the judiciary would intervene decisively to force such socially desirable changes down the throat of the political executives". Even his party ruled West Bengal (then ruled by Left front) sat on his letter.

The Riberio Committee on Police Reforms: 1998

The apex court set up Ribeiro Committee, headed by former DGP Julio F Ribeiro, while it was deliberating over the Public Interest Litigation filed for police reforms. The Court wanted the Committee to examine if the National Police Commission's recommendations, which formed the core of the PIL (1996), were still relevant or that it needed any other modifications.

Padmanabhaiah Committee: 2000

The central government set up yet another committee on Police Reforms in January 2000 with former Union Home Secretary K Padmanabhaiah as Chairman. The committee was given the mandate to examine and point out the challenge that police face in contemporary times, gaps between police response and public expectation, rural police and hi-tech criminals. It was also given the mandate "to devise methods of insulating the police from politicization and criminalization". The panel said that "Lack of a proper tenure policy for posting of officers at different levels and arbitrary transfers have been used by politicians to control and abuse the police for their own ends." To deal with this problem the panel pitched for fixation of two years of tenure for officials besides setting up police establishment board to decide transfer and posting of personnel up to the post of Deputy SP. It also suggested for establishment of "a body headed by the Chief Justice of the State High court as Chairman, State Chief Secretary and an eminent public person as members to recommend a panel of two names for appointment to the post of the Director General of Police." Commenting on the menace of VIP security it said that "The concept of VIP security has been grossly, blatantly and brazenly misused. The entire concept of personal security needs a careful review and dismantling."[27]

Malimath Committee: 2003

The Committee, headed by Justice V.S. Malimath, former Chief Justice of the Karnataka and Kerala High Courts, had the task of examining the fundamental principles of criminal law so as to "restore confidence" in the criminal justice system. This involved reviewing the Code of Criminal Procedure (CrPC), 1973, the Indian Evidence Act, 1872, and the Indian Penal Code (IPC), 1860.[28] The panel began work in November 2000 and submitted its report on April 21, 2003. The Malimath panel had suggested significant changes in the Criminal Procedure Code to expedite the disposal of cases and in the Evidence Act to facilitate securing of convictions.

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[26] http://bit.ly/1Ne6Yeo The National Police Commissions; CHRI (Last visited on Nov. 24, 2015)

[27] http://bit.ly/1R7OMEU Summary of Recommendations made by Padmanabhaiah Committee on Police Reforms; Human Right Initiative (Last visited on Nov. 24, 2015)

The Police Act Drafting Committee submits its Model Police Act : 2006

The central government on October 2005 set up a "Police Act Drafting Committee" (PADC). It was also known as the Soli Sorabjee Committee which was tasked to draft a new model Police Act. The panel was given the mandate to give suggestions on the changing role of the police and assess the challenges before it, which was meant to work as a reference book for the States, when they would come out with their own legislation.

The PADC submitted the model police act to the central government on October 30, 2006. The Commonwealth Human Rights Initiative (CHRI) expressed concern about certain provisions in the Model Police Act. In a letter CHRI said that in Chapter 9 large parts of which are in the nature of an emergency law, has no place in a Police Act. "Similarly, CHRI is of the view that the police should not have powers to remove people from their homes and cities, thus interfering with their fundamental rights. The judiciary alone should exercise such powers. Furthermore, definitions of certain words including terrorist activity, militant activities, insurgency and the like should be precise and narrow without any scope for abuse," CHRI told Member Secretary PADC in a letter.[29]

The Supreme Court intervenes: 2006

The writ petition of Prakash Singh and others was heard by the Supreme Court over a period of 10 years. Taking into account "the gravity of the problem" and "the urgent need for preservation and strengthening of Rule of Law… we think that there cannot be any further wait, and the stage has come for issue of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations," the apex court said.

It laid down seven directives for the states to kick-start police reforms. The Supreme Court exuded "hope that all State Governments would rise to the occasion and enact a new Police Act wholly insulating the police from any pressure whatsoever, thereby placing in position an important measure for securing the rights of the citizens under the Constitution".

"It was forcefully argued (before the Supreme Court) during the pendency of the petition that the continuance of the colonial pattern of policing had contributed to disasters at the national level. In 1984, there were anti –Sikh riots in Delhi in which about 3,000 persons were killed. The Delhi Police, barring some honourable exceptions, remained a mute spectator to the carnage because the rioters were instigated by politicians of the ruling party," said Prakash Singh.

In 1992, the Babri Masjid in Ayodhya was demolished despite the presence of state police forces and the formidable presence of central paramilitary forces. These forces were immobilized because the political masters were not keen on preventing the karsevaks (volunteers) from vandalising the mosque, the petitioners argued before the apex court.

In 2002, during the riots in Gujarat, the politicians played a dubious role and are alleged to have instigated the rioters at certain places. Police officers who tried to uphold the rule of law were punished by the executive. The National Human Rights Commission recorded that "there was a comprehensive failure of the State to protect the constitutional rights of the people of Gujarat", they said.[30]

Seven directives issued by the apex court

The Supreme Court in a landmark judgment on September 22, 2006, issued seven directives, to kick-start police reform. The move aimed at insulating the police from extraneous influences, giving it

[28] http://bit.ly/1IcgVZt Rights and Criminal Justice; Frontline; Aug30-Sept12, 2003 (Last visited on Nov. 26, 2015)

[29] http://bit.ly/1T6o3ac Letter of CHRI to member-secretary PADC (Last visited on Nov. 24, 2015)

[30] http://bit.ly/1QIMk8q History of Police Reforms – A Historical Perspective (Last visited on Nov. 24, 2015)

functional autonomy and ensuring its accountability. The seven directives included orders regarding setting up of three institutions - SSC (State Security Commissions, PEB (Police Establishment Board) and PCA (Police Complaints Authority) at the state level with a view to insulate the police from extraneous influences.

1. **Constitution of State Security Commission (SSC)**: The apex court pitched for creation of SSCs to ensure that the state governments do not exercise unwarranted influence or pressure on the police. The panel should be "able to function independent of government control". It aimed at insulating police from external pressure. It envisaged that the executive will have power to appoint only 50 per cent of the members. This watchdog body was supposed to lay down policy matters and act as a buffer between the police force and the executive.

2. **DGP appointment through transparent merit based process**

   It was suggested that a UPSC panel will shortlist three names to be sent to the Chief Minister or state government which can then chose any one among them as the next state police chief. The apex court also called for fixing the tenure of DGP for at least two years.

3. **Fixation of tenure for SPs and SHOs**

   It was suggested that the police officials on operational assignments should have fixed tenure for at least two years. Officers like SHO, SP, DIG and IG too should have fixed tenure so that policing is not hampered.

4. **Separation of investigation and law and order functions**

   The apex court called for complete separation of investigation and law and order functions of the police force. This is one of the major factors that seriously hampers the efficiency of the force as same set of officers are engaged in both kind of duties.

5. **Setting up Police Establishment Board (PEB):** The court also asked for establishment of PEB to take care of transfers, postings and promotions related issues of police officers at the district level. The PEB will decide on transfers and postings of constables, inspectors, SHOs and Deputy SPs. For the posting and transfer of senior officers – SP, IG and DIG this panel will send recommendations to the government, which it can accept or reject.

6. **Setting up of Police Complaints Authority (PCA):** The PCA will investigate into public complaints against police officers for misconducts like rape, death in custody and graft charges. The police complaints authority will be two-tier - at district level as well as state level. Complaints till deputy SP will be handled by the district level panel, while complaints of misconduct against SP and above will be addressed by the state level panel.

7. **Setting up a National Security Commission (NSC):** The court directed for creationof a panel for selection and placement of Chiefs of the Central Police Organisations (CPO) like CISF and CRPF with a minimum tenure of two years.

States reluctant to implement the directives

The seven directives were supposed to be implemented by December 31, 2007. Eight states - Andhra Pradesh, Gujarat, Punjab, Jammu & Kashmir, Karnataka, Maharashtra, Tamil Nadu and Uttar Pradesh had filed review petitions before the apex court. These were dismissed on August 23, 2007. The

[31]http://bit.ly/1QIMk8q Police Reforms in India – A Historical Prakash Singh (Last visited on Nov. 24, 2015)

[32]http://bit.ly/1NdVg3s Status of Compliance of Supreme Court Directions (As on March 31, 2014)

petitioner filed a contempt petition against Gujarat, Rajasthan, Jammu and Kashmir, Tamil Nadu and UP in the apex court but the SC showed unwillingness to issue contempt notices.

The apex court on May 17, 2008 made a monitoring committee under Justice KT Thomas to oversee the implementation of its directives in the states and UTs. It was also given the task to study the legislations enacted by states to see if they had abided by the directives in letter and spirit. Thomas committee informed the apex court in August 2010 that "practically no state has fully complied with those Directives so far, in letter and spirit". It also expressed its "dismay over the total indifference to the issue of reforms in the functioning of Police being exhibited by the States".

Union government also non-committal on police reform

Though police and policing is a state subject the union government too showed reluctance to implement police reform. The panel headed by Mr Soli Sorabjee, a former Attorney General was asked to draft a Model Police Act by the union government as mentioned above. The Committee broadly followed the pattern already recommended by the Supreme Court. The Government of India gave assurances on the floor of the parliament that a Model Police Act on the lines of Sorabjee Committee's recommendations would be tabled in the near future, but the promise has not been kept so far.[31] If the union government was keen, it would have simply implemented the directives and Soli Sorabjee panel report in UTs like Delhi, Chandigarh, Lakshadweep, Puducherry, Dadra and Nagar Haveli, Daman and Diu, and Andaman and Nicobar which were directly under its command and then asking the states to follow.

Current Status

Following the directives of the apex court, 15 states - Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tripura and Uttrakhand) have drafted new laws. But experts point out that these laws have been made in ways to circumvent the directives of the apex court. Other states too have delayed the adoption of apex court directives. Some states have set up state security commissions, police establishment boards and complaints authority but did not give enough powers to them by altering the composition to suit their vested interest.[32] Many states are not consulting the UPSC in the appointment of DGPs. Even the fixed tenure directives are not being followed. Policemen on operational duties are transferred arbitrarily. On the other hand, the union government is yet to pass a Model Police Bill.

Conclusion:

Both, the central and state governments have failed to show any urgency for police reforms despite specific directions issued from the apex court. The Constitution has placed police in the State List under Seventh Schedule. The central government could have enacted a police act on the basis of Model Police Act of Soli Sorabjee panel. Then under Article 252 of the Constitution it could have asked the states to carry out similar legislation, which in the words of Prakash Singh "would have ensured a fair measure of uniformity in the Police Acts of a number of states". The central government still continues to be indifferent towards reforms. Some experts have suggested that police should be brought into the Concurrent List from State List. But some oppose it on the ground that it would amount to a violation of the federal spirit of the Constitution. None of the political parties are ready for police reforms as that would free the forces from their control. To escape the apex court's directives which would have led to freeing police from external pressure, the states committed "intellectual dishonesty". At least 17 states passed new police acts virtually retaining everything from the old provisions.

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CINEMATIC EXPRESSION : TOO MANY WATCHDOGS?

***Pallavi Sharma**

This has been a strange year for my freedom of expression. I was told early this year that my freedom of online expression was upheld by the Supreme Court which found Section 66A, the impugned provision of the IT Act to be sweeping and vague[1]. The Court said what could be considered 'grossly offensive' changed form and shape with the moral and social perception of the reader.And as such, a provision, damning the freedom of expression on a vague ground was nothing less than an arbitrary exercise of power by the State, it felt.

Interestingly, this landmark decision followed in tow the controversy over the one infamous 'AIB-Roast', showcased for an audience that was perhaps familiar with the format of the programme and the style of the performers[2]. Format-wise, the AIB shows defy genre and poke fun at the powers that be and serve the public interest in their own unique way through jibes and risqué humour. The show was subsequently uploaded on video portal Youtube with a warning that the content might be unsuitable for some and viewers must exercise discretion. The episode set the insolent cat among easily offended pigeons and what followed was a spate of obscenity charges slapped at the crew and passionate debates over the state of censorship in the country[3].

A little earlier the same year, I witnessed much furor over a list of objectionable words issued by the Central Board of Film Certification (or the 'Censor Board') for feature and short films to be screened in the country[4], under the directions of the new Chairperson Mr. Pahlaj Nihlani. A film-maker, of arguably B-grade films, Mr Nihlani was appointed after his predecessor, Ms. Leela Samson,[5] quit the Board rather unceremoniously alleging political arm-twisting to pass a controversial film 'Messenger of God'[6] produced by the writer-director-hero and self-styled godman Gurmeet Ram Rahim Singh of Dera Sacha Sauda fame. I had also witnessed, earlier in the year, an ideological tussle over the ban on Leslee Udwin's 'India's Daughter.'

Recently, the Supreme Court, respecting the idea of adulthood and autonomy over choice, refused to proscribe pornography as long as it was not a public nuisance[7], only to be shortly followed by the notification from the Ministry of Communications and Information Technology banning 857 pornographic and humor websites in an attempted crackdown on online child pornography. However, the following week, the Government in a dramatic flip-flop withdrew the complete ban, extending it only to child-pornography based content and providers, echoing the Supreme Court's observation on private viewing of porn[8].

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[1]*Shreya Singhal v Union of India,*Writ Petition (Criminal) No.167 of 2012, March 24, 2015.

[2]AIB Knockout: As video goes viral, VinodTawde orders probe into 'abusive' content, February 3, 2015, http://bit.ly/1NIBCby,accessed on October 15, 2015.

[3]AIB knockout: Twitterati divided on Ranveer Singh and Arjun Kapoor's'roast'-ing, February 3, 2015, http://bit.ly/1HSCIFw , accessed on October 15, 2015.

[4]Here's a list of words banned by the Censor Board of India , February 13, 2015, http://bit.ly/1ICp7Cj, accessed on September 19, 2015. This list was subsequently withdrawn in light of objection by other Board members.

[5]PahlajNihalani appointed Censor Board chief, January 20, 2015, http://bit.ly/1Tyw6wL, accessed on September 19, 2015.

[6]MSG fails to get Censor Board clearance for fear of fanning communal tension, January 13, 2015, http://bit.ly/1ICpbC3 , accessed on September 15, 2015.

[7]Can't stop an adult from watching porn in his room, says SC, http://bit.ly/1TpAX4h , accessed on September 20, 2015. KamleshVaswani v Union of India &Ors., Writ Petition(Civil) No. 177/2013, July 8, 2015.

Chiming in the series of 'crackdowns' on content, the Censor Board has recently restricted the eligibility of films certified as for adult viewing to be screened on television despite edits to make it universally viewable[9].

I, the average Indian consumer of internet, cinema and satellite TV, am left befuddled in the cornucopia of laws, statements and policies, wondering if I have the right to write what I want but not watch it, or watch it in a theatre but not on television! I am compelled to wonder how my right, as an adult, to express opinion online is isolated from my right to access content of my choice, online or offline. This essay overviews the web of laws and authorities that govern various forms of creative visual expression- movies, music videos, documentaries, satellite TV, news, advertisements and theatre, and sanitize them for appropriate viewership, in order to highlight the discrepancy in parameters of censorship. I would also briefly discuss why the world of 'online entertainment' follows different rules than the offline counterpart, questioning the basis of this implied inequity.

Cinema

The Cinematograph Act of 1952 is the central act governing public exhibitions of films, trailers and music videos in the country. It constitutes the 'Board of Film Certification', for the purposes of sanctioning films for public exhibition[10]. This Board functions as an executive body under the Ministry of Information and Broadcasting with members and Chairperson appointed under the auspices of the central government.

Interestingly, the Board was initially called the 'Board of Film Censors'. However, in 1983, the Act was amended to replace 'censor' with 'certification'. The marginal note to the relevant provision the Act however, retains the original name of the Board, casting a cloud on the very nature of the function of the 'Censor Board'.

The Board after examination may refuse sanction to a film[11] or grant it with certificates namely for unrestricted public exhibition (U), with endorsement of parental consideration (U/A), for exhibition to adults only (A) or restricted exhibition to members of a profession or a class of people apropos the nature, content and theme of the film[12]. If the Applicant is aggrieved by the certificate granted, an appeal may be made within 30 days of certification order to the Film Certification Appellate Tribunal appointed by the Central Government and chaired by a retired High Court judge[13] .

The Act prohibits a film to be certified for public exhibition if it, wholly or in parts[14], is

- *against the interests of the sovereignty and integrity of India*
- *the security of the State,*
- *friendly relations with foreign States,*
- *public order, decency or morality, or*
- *involves defamation or contempt of court or*
- *is likely to incite the commission of any offence*

[8]We are not a totalitarian state and cannot be asked to moral police: AG tells SC in the Porn Petition, August 10, 2015, http://bit.ly/1R7AhSc, accessed on September 20, 2015. See also Supreme Court women lawyers contest government stand on porn, http://bit.ly/1ONIFoI, September 21, 2015, accessed on September 21, 2015

[9]PahlajNihalani Has Essentially Barred Adult Films From Being Aired On Television

, July 10, 2015, http://huff.to/1TywgnN accessed September 19, 2015.

[10] Section 3, Cinematograph Act, 1952

[11] Section 4(1)(iv)

[12] Section 5A

[13] Section 5C

The Central Government may also prescribe additional guidelines to be followed in addition to bearing in mind the above principles. The Act also grants the Central Government plenary powers to suspend or revoke the certificate of a film at any point except when the matter is pending before the Tribunal.[15] Additionally, the Lieutenant Governor or the Chief Commissioner in a Union Territory, as the case may be and the District Magistrate of any district may suspend the exhibition of the film for two months within his jurisdiction and deem the film to be uncertified during that duration if it is likely to cause a breach of peace[16]. This period may be extended on orders of the Central Government. Evidently, despite the Board being an expert body, the State exercises more than dominant control over visual media through the means under the Cinematograph Act, in addition to the powers lend by the Penal Code, Information Technology Act and various state policing acts.

The Cinematograph Rules, 1983 lay down further procedure for operation of the Board and specify that in addition to the principles and guidelines prescribed in the Central Act, the Board should bear in mind that

"the objectives of film censorship are to ensure that the medium of film remains responsible and sensitive to the values and standards of society; that artistic expression and creative freedom are not unduly curbed and that censorship is responsive to social change"[17]

They mandate that the examiner recommending the certificate to be satisfied that the film has been judged "*in its entirety from the point of view of its overall impact and examined in the light of contemporary standards of the country and the people to which the film relates"*[18].

Television

The television broadcasting industry functioned in a legal vacuum until 1994 when the Cable Television Network Rules, 1994 ("Cable Rules") were notified, drawing from the Cable Television Networks (Regulation) Ordinance passed the same year. Subsequently, in 1995, the Cable Television Networks (Regulation) Act, 1995 ("Cable TV Act") came into force in order to create a license regime for broadcast on cable networks.

Section 20 of the Act empowers the Central Government to prohibit the operation of any cable television network in public interest if it deems fit in interest of

- *sovereignty or integrity of India; or*
- *security of India; or*
- *friendly relations of India with any foreign State; or*
- *public order, decency or morality, or*
- *contravention of the Programme Code under Rule 6 of the Cable TV Rules.*

The Cable Rules under Rule 6 prohibit a programme to be carried in a cable service if it[19]:

- *Offends against good taste or decency;*
- *Contains criticism of friendly countries;*

[14] Section 5B

[15] Rule 6

[16] Section 13

[17] Cinematograph Rules, 1983, Form VIII

[18] Cinematograph Rules, 1983, Form VIII, Part B

[19] Rule 6(1)

- *Contains attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes;*
- *Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half-truths;*
- *Is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes;*
- *Contains anything amounting to contempt of Court:*
- *Contains aspersions against the integrity of the President and Judiciary:*
- *Contains anything affecting the integrity of the Nation,*
- *Criticizes, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country;*
- *Encourages superstition or blind belief,*
- *Denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals;*
- *Denigrates children;*
- *Contains visuals or words which reflect a slandering, ironical -and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups:*
- *Contravenes the provisions of the Cinematograph Act, 1952.*

Further, the Rules advise that operators should try and telecast programmes that project women in a *positive, leadership role of sobriety, moral and character building qualities*[20].

As there does not exist a parallel institution as the Censor Board for television, the Cable TV Act authorized the competent authority to prohibit any cable operator from telecasting any programme or channel if, it was found to be not in conformity with the prescribed Programme Code[21]. In 2005, State and District Level Committees were constituted to facilitate the task of content regulation under the Act[22].

In 2011, the Indian Broadcasting Foundation ("IBF"), a consortium of television broadcasters in India, introduced the Broadcasting Content Complaints Council ("BCCC") and associated Guidelines to self-regulate content broadcasted on television. The Guidelines thematically cover national interest, racial and religious harmony, ill treatment of children, social values, sex and nudity, violence and crime, gambling, drugs, smoking, tobacco consumption, alcohol, defamation, harm and offence. Viewers can directly complain to the BCCC. In the event of non-compliance of a directive by a channel even after the matter is escalated to the IBF possibly causing expulsion, the case may be referred to the Ministry of Information and Broadcasting ("MIB") for appropriate action.

Similar bodies, namely Advertising Standard Council of India and News Broadcasters Association perform self-regulation for advertisements and news respectively.

This said, television is not free from influence of the Censor Board as the above exclude from the purview movies, music videos including songs and their lyrics, and trailers need to be vetted by the Board before being screened on television. This function of the Censor Board has lately been under the media scanner and has originated a fair share of controversy.

[20] Rule 6(2)

[21] Section 19

[22] Ministry of Information & Broadcasting, Government of India order No. 2301/7/2003-BC-III, September 6, 2005

The Programme Code prohibits from broadcasting on television any content that has not be certified as 'unrestricted for public exhibition' by the Board. However, the Board had been, until recently, re-certifying films with 'A' and U/A' to make them eligible for satellite exhibition with appropriate cuts. The issue was brought to the fore in 2012 when the MIB canned the screening of an A-certified movie, re-certified with edits as U/A in prime time on national television, indicating that such movies should be reserved for the late-night slots (post 11 pm) when parents are home to supervise their children[23]. While the IBF guidelines prescribe that 'Restricted Access 'R' Programmes which may not be suitable for Children & Young viewers to be scheduled for telecast between 11 PM and 5 AM, no such categorical directions have been given by the MIB, leaving the law murky on the subject. Further, the very act of re-censorsing of movies by the Board has been called into question before court as the Board purportedly lacks legal authority to re-censor movies. This lack of clarity in law has resulted in discontentment in the cinematic fraternity, leading to allegations of arbitrary exercise of powers by the Board[24] and economic unviability of producing movies with thematically adult content[25].

Interestingly, despite the BCCC, the MIB constitutes an Intern-Ministerial Committee on Regulation of Content comprising largely of bureaucrats[26] to monitor adherence to the Programme Code by the broadcasters. An Electronic Media Monitoring Centre (EMMC) has also been set up to monitor and record upto 300 channels on a 24x7 basis to enable the Ministry to suo motu initiate action without depending on the recordings provided by the channels which were subject to manipulated by the channel[27]. In addition to the above, State and District level Monitoring Committees exist to facilitate enforcement of the Programme Code locally, empowering the authorized officer to take appropriate action as per Section 19 of the Act if the content telecasted on local cable or satellite TV channels has local implications. When the impact of the content is national, jurisdiction would be retained by the MIB[28].

Regrettably, the state complaint procedures do not always work in tandem with each other, so as to maintain the autonomy and integrity of a system of self-censorship and not state-censorship. For instance, what should ideally have been an appellate procedure or last resort, became the forum of first instance in the case of Comedy Central in 2013, when the IMC, by-passing the BCCC process, issued a show-cause notice to the channel for broadcasting content that "offended good taste and decency", barring the telecast of the Channel for 10 days[29].

Other than these codes for digital media, the obscenity laws in the Indian Penal Code[30] determine the threshold for post-exhibition censorship and offended viewers are in their right to approach the courts with jurisdiction alleging obscenity in the showcased content. However, theatrical performances are not insulated from pre-censorship as some states have chosen to retain their archaic colonial laws for censoring and canning 'objectionable theatre'[31]. In 2014, the Supreme Court came down heavily upon the Tamil Nadu Dramatic Performances Act, 1964, which was used in support of law enforcement authorities disrupting the performance of the controversial and highly acclaimed play 'The Vagina Monologues' in Chennai[32]. These laws feature in the list of obsolete laws by the Law Commission and have been recommended for repeal for being incongruous to contemporary social standards[33].

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[23] Order against screening of 'The Dirty Picture', Ministry of Information & Broadcasting, Government of India order No. 804/66/2012-BC.III, April 20, 2012.

[24]'Come clean on what's unclean' , June 28, 2012, http://bit.ly/1ICpixl, accessed on September 21, 2015.

[25] Ibid, No more screening of U/A films on TV?, September 7, 2015, http://bit.ly/1QtlUWU , accessed on September 21, 2015.

[26] Ministry of Information & Broadcasting, Government of India order No. 3101/1/2011-BC.III, November 11, 2011. See also Apar Gupta, MIB's arbitrary bans,http://bit.ly/1ONIN7w , accessed September 20, 2015.

[27]Extract from Annual Report of Ministry of Information &Broadcasting : 2011-2012, Content Regulation of TV Channels, http://bit.ly/1ONIOs9, accessed on September 20, 2015.

[28] Ministry of Information & Broadcasting, Government of India order No. 2301/7/2003-BC-III, September 6, 20005.

Online content

Web-episodes or webisodes and online audio-visual content meant exclusively to be streamed or downloaded on the internet has gained ground in the last decade as a preferred format over television and regular broadcasting. In India, such content is regulated by the Information Technology Act, 2000[34] along with the overarching obscenity and public order provisions in the Penal Code[35]. However, pre-censorship of content is non-existent as the internet allows anyone to create and publish content and unlike traditional formats, the broadcasters (Internet Service Providers in this case) have minimum control over the content being uploaded[36] and State reaction is more often than not solicited post-publication by drawing attention to the content by offended viewers as happened in the AIB case mentioned above.

A cursory glance through the above rules is sufficient to understand that despite having expert bodies for certification and censorship, the State remains heavily involved in regulating the content of visual media in the country.

The growing discontentment in the industry about excessive state involvement may not be without reason. Bureaucracy, though deft in administration, may not have the cinematic and artistic assessment of a work that is needed to sit in adjudication over the legitimacy of a complaint. Equating 'contemporary' moral standards with that of those who speak the loudest may be damaging to artistic and creative freedom. Similarly, when an opaquely appointed Board exceeds its mandate of certification and uses censorship by strictly determining appropriate content for different age groups, it may be pushing the limits of freedom of expression.

Self-censorship has been often hailed in as the alternate to State censorship, by giving the creator the freedom to decide the limits of their own work. For instance, in the United States, visual media works are rated on an 'advisory' system, by private institutions who have the backing of the industry. The Motion Picture Association of America rates movies that are submitted to it according to appropriate viewership. Even though there is no mandatory requirement to be rated (like 'certification' for public exhibition in India), theatres may not be willing to exhibit movies commercially without a rating. However, cable television sees a fair bit of censorship by the Federal Communications Commission, a government authority.

While there are obvious advantages of being censored internally, the experience in Indian television industry may not be very encouraging. After crackdowns by the ministry on supposedly distasteful content, channels have erred on the side of caution to the extent of being ridiculous. Other than arbitrary pixelating of innerwear in mainstream commercial family cinema[37] to muting 'uterus' from a popular English sitcom[38] and changing 'hell' to 'inferno' in the subtitles[39], the fear of Big Brother is pushing TV channels to exhibit the muted and beeped ghouls of what was once cinematic expression of ideas.

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[29]Not funny: Comedy Central channel banned for 10 days for offending good taste, May 26, 2013, http://bit.ly/1Tywnj7 , accessed on September 21, 2015. Channel ban unfair: Broadcasters' panel, http://bit.ly/1QtlWy5, accessed September 21, 2015.

[30] Section 292 and 293

[31] See for instance, The Karnataka Dramatic Performances Act, 1964.

[32]India's Supreme Court breaks police stranglehold on theatre, http://bit.ly/1N9iRkq, accessed September 21, 2015.

[33] Law Commission Of India Report No. 248 "Obsolete Laws : Warranting Immediate Repeal" (Interim Report), http://bit.ly/1ICpr4c, accessed on September 21, 2015.

[34] Section 67, 67A, 67B

[35] Section 292, 293, 294, 295

[36]AnirudhRastogi, RishabhSinga, Does The Law Have A Sense Of Humour? And Why Comics Need to Know the Answer, http://huff.to/1SLND4n, accessed on October 15, 2015.

[37] 'Queen', the commercial success of 2014, when telecasted in primetime on national television saw the protagonist's nnerwear arbitrarily pixelated though it was it was contextually not offensive or lascivious.

Understandably, it is difficult in a democracy to establish uniform standards for 'appropriateness' or even advocate the idea of abolishing the Board completely in a society vulnerable to motivated violence. However, it would be perhaps useful to take a hard look at how certification and censorship play out in the industry. While self-censorship may have its own flaws, it may flourish without compromising on artistic liberty if the State re-evaluates the understanding of 'contemporary' and is willing to restrict its interference to extreme cases. The Board should instead focus on banning content that can cause disruption of peace and communal violence instead of engaging into a futile exercise of dictating the sense of morality for an entire nation. The intended mandate of 'certifying' motion pictures should be reclaimed over the assumed function of censoring content from artistic works.

Similarly, for the small screen, parameters of 'offensive' need to be understood as inherently subjective and content needs to be judged in light of the taste of the audience it specifically caters to. For instance, those who may be offended by extremely repressive depiction of women in mainstream soaps may not feel the same way while watchinga gig on Comedy Central as viewing the two through the same lense would be like comparing apples and oranges. If 'corrupting' young minds is the driving concern behind restrictions on art, may be the burden should be shared between the State and the guardians and the 'graveyard slot' of 11 pm to 5 am may be reserved for screening thematically adult content instead of subjecting the work to indiscriminate cuts and edits without requisite sensitivity or authority.[40]

Lastly, one must understand that with the digitization movement and access to the internet, presuming that content of visual media can be sanitized is merely deluding oneself. More often than not, unsupervised access to internet by minors vitiates the State's argument of only telecasting 'universally viewable' content on television in the interest of protecting young children from an overdose of sex and violence.

One must also remember that bans and gags have historically incited curiosity in the audiences, creating a sneaky buzz in the showbiz market. From Deepa Mehta's award winning 'Fire' and 'Water' to AIB's controversial web-episode, active or passive censoring of creative art andwrenching the videos down has only led to more publicity and internet downloads.

After this lengthy enquiry, I believe that the Cinematograph Act is inherently weak and ambiguous. Television, even though working on a self-censorship model, is timid and over-skeptical in the fear of the State backlash. Online content is free from all rules and norms, unless attention is called to it, in which case, the loudest voice will, in all likelihood, emerge victorious irrespective of soundness of their arguments. It is, however, encouraging that amidst the scuttle for protecting the 'fragile' society, the judiciary has struck a chord of reason upholding the guiding spirit behind the freedom of expression-'Don't like it, Don't watch it'[41], even though somewhat inconsistently. May be, that is the only logical escape from the web of laws spun around my freedom of expression.

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[38] The word was muted in the telecast of the popular sitcom 'Friends' on Romedy Now.

[39] See generally http://bzfd.it/1N9iTZy, accessed September 19, 2015.

[40]Delhi HC to hear PIL against Censor Board nod to 'Grand Masti', http://bit.ly/1PUPDK3, accessed on October 16, 2015.

[41]'Don 't Like It, Don't Watch It, September 3, 2014,' http://bit.ly/1NDN7FI, accessed on October 16, 2015.

RADIATION EXPOSURE – ARE THE LIMITS SAFE?

**** Swapna Jha***

India is the world's second largest mobile user market. The development in mobile telephony has resulted in installation of towers all around us. In an attempt to provide better connectivity, the operators mount the towers close to residential and office buildings. These towers emit harmful Electro Magnetic Frequency/Radiation (EMF/EMR) which entails a variety of health hazards. The population in close proximity to these towers is vulnerable to radiation exposure. EMRs are reported to produce long as well as short term biological effects, which are of great concern to human health especially in the light of increased use of such devices in our daily life. The imbalance in the pace of growth of mobile telephony vis a vis regulatory policies has resulted in a lacuna in the policy domain and its implementation mechanism.

Exposure to radiation from cell phone towers and cell phones and its harmful effects on human health has been a matter of great concern to the masses. When appeals to the executive did not yield results the judiciary was approached in the hope of getting some respite. A Public Interest Litigation requesting setting up of an independent body to regulate radiation from cell phone towers was filed with the Supreme Court in 2012. The petition requested the court to direct the government to ban installation of cell phone towers in highly populated areas, protected natural areas and spaces where endangered species lived as well as making environment impact assessments mandatory. The Court felt that at the initial stages the executive and legislature should be given a free reign and told the petitioner, "You have to give the executive and legislature a free hand at the initial stages. Later if they fail we can step in."[1]

However, in July 2013, the Supreme Court refused to interfere with a Rajasthan High Court order directing the state government to remove mobile phone towers from near the schools, hospitals and densely populated localities. The bench of justices H L Dattu and C K Prasad noted "For the time being remove those towers from private and government schools. The order which benefits (the school children)... We will not interfere with it".

In addition to the above, several cases have been filed in various high courts across the country requesting for removal of these towers from residential areas. In one of such cases, the court ordered the petitioner to prove conclusively that the harm caused was a result of radiation from the towers. It is not feasible for an individual to get such a study conducted; moreover ensuring the safety of citizens is the responsibility of the state.

Alarmed at the increasing number of towers, electronic and print media, residential welfare associations and number of independent activists raised concern and tried to bring the adverse effect caused by EMR to the notice of the authorities. Common Cause in September 2015 sent letters requesting the authorities to issue directions for immediate compliance with safety norms and steps suggested by the government Expert Committee on the ill effects of mobile towers.

The makers of the Constitution tried to ensure social and economic welfare of the citizens by way of two specific provisions in the form of fundamental rights and the directive principles of state policy. These principles have specifically been provided to establish social and economic democracy in the country. For example, Article 47 states "….The state shall endeavour to bring about prohibition of the use except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

Dr. Magda Havas, of Trent University, Canada and an expert in EMR effects, draws a very interesting parallel between cigarette smoking and use of cell phone. She says that both industries debunk

[1] As reported in NDTV (http://www.ndtv.com/india-news/cellphone-towers-supreme-court-refuses-to-intervene-503318)

unfavourable study results and continue to promote their products despite awareness of the significant dangers to public health. Looking at the issue from the point of view of the high revenues collected by the governments by way of taxes, she points out that there is a conflict of interest because the governments tend to look the other way when harmful effects are brought up. Both industries use expensive, effective marketing strategies to target every segment of society, including children. She believes that there is a massive amount of scientific data proving beyond doubt the direct link between these products and life-threatening damage to the human body and both the products are addictive in nature. More information may be accessed at http://articles.mercola.com/sites/articles/archive/2010/02/04/cell-phones-are-the-cigarettes-of-the-21st-century.aspx

Now it has been established that smoking kills. However, the tobacco industry's continuous resistance to strong anti-tobacco laws citing distorted economic issues related to tobacco production and control as well as over emphasizing employment issues of workers associated with tobacco control led to delay of implementation of anti-tobacco laws. It was only in 1975 that the Act mandating statutory health warnings on all tobacco products was passed. Recently the rule which mandated that 60% of display area on cigarette packs be covered with pictorial health warning and 25% for textual health warning was put in cold storage due to this reason. The Committee on Subordinate Legislation on the concerned subject matter, in its interim report, referring to the adverse impact of this rule on the livelihood of people involved in the tobacco industry, and recommended that the notification be kept in abeyance. It was only after the intervention of the Court that the government in September 2015 re-notified the rule, which is scheduled to come into effect from April 1, 2016. It is evident that the beneficiary industry has been able to buy time and defer the implementation of the rule which would have benefitted the citizens and certainly lead to a loss of profit to the industry.

Right to life and liberty is a fundamental right guaranteed to the citizens under the Constitution of India. The increase in number of towers has resulted in increased exposure to radiation. The population within ten meters of these towers receives signals, which are several thousand times stronger causing potential harm to them. There is at present no law in place to protect the hapless citizens from radiation exposure. The state is under an obligation to ensure the safety of the citizens from the harmful effect of EMR.

Though this has been a matter of public concern for long, the government has failed to act suo moto. Eventually, the increasing distress of citizens forced the government to think on the lines of evolving alternative means to deploy mobile telecom network in line with international best practices. An IMC of the Ministries of Commerce & IT was set up in August 2010, to look into the ill effects of EMR from base stations and mobile phones.

The IMC examined the environmental and health related concerns and adjudicated that most of the laboratory studies were unable to find a direct link between exposure to radio frequency radiation and health. It also opined that the current scientific studies had not been able to confirm a cause and effect relationship between EMR and health. According to this report, the effect of emission from cell phones was not known with certainty. Significantly, the report did not categorically state that these radiations had no ill effect.

Pursuant to the IMC recommendations, a Committee was constituted in Department of Telecommunication (DoT) to deliberate on issues relating to uniform guidelines on setting up of Base Transceiver Station (BTS) towers, structural safety for towers on roof-tops, identification of location in master plan for installation of mobile towers and solutions for the future expansion of telecom network in the country.

In its report submitted in May 2012, the Committee recommended that installation of towers within school and hospital premises be avoided, compliance to the prevailing radiation limits be ensured, suitable

means to prohibit access of public to BTS be adopted and traditional BTS be augmented with micro, pico and femto cellular solutions for better and ubiquitous mobile coverage.

The Expert Committee constituted by the Ministry of Environment, Forest & Climate Change to study the possible impacts of communication towers on wildlife, including birds and bees, was given the following mandate:

"Comprehensive study of ill effects of mobile towers on animals, birds and insects, assess the likely impacts of the growth in the number of mobile towers and suggest possible mitigatory measures, formulate guidelines for regulating the large-scale installation of mobile towers in the country and identify areas for conducting further detailed research."

After considering all aspects, the Expert Committee recommended that EMF be recognised as a pollutant/regular auditing of EMF should be conducted in urban localities/educational/hospital /industrial/ residential/recreational premises and around the protected areas and ecologically sensitive areas; introduction of a law for protection of urban flora/fauna in urban areas; use of clear signs to depict dangers of cell phone tower and radiation emitted from it including visual daytime markers in areas of high diurnal raptor or waterfowl movements; steps to avoid bird hits; independent monitoring of radiation levels, including overall health of the community and nature surrounding the towers; easy procedure for removal of existing problematic mobile towers particularly in and around protected area or urban parks and centres having wildlife; controlled installation of mobile towers near wildlife protected areas to ensure conservation of wildlife; consultation with public and forest department on case basis be made mandatory before installation of towers and no new towers within a radius of one kilometre of existing towers.

Subsequently, the Standing Committee on Information Technology (2013-14) considered the subject of "norms for setting up of telecom towers, its harmful effects and setting up of security standards in expansion of telecom facilities". This Committee presented its 53rd report on the subject on February 12, 2014 with the following observations:

- In the absence of any regulatory framework, telecom towers have proliferated across the country in a haphazard manner, especially in urban areas.
- For want of a uniform national policy, state governments and local authorities have adopted their own criteria to grant permission for installation of telecom towers.
- The issue of jurisdiction of DoT vs. local authorities or state governments in the setting up of telecom towers to be re-examined by the central government and a national policy on jurisdiction of DoT vs local authorities be evolved.
- The DoT guidelines on grant of clearances for the installation of telecom towers being advisory in nature, did not address the issue of removal of illegal telecom towers, nor were they binding on existing towers.

The following observations/recommendations were made by the Committee:

Since safety aspects of telecom towers had been given scant attention by the central and state governments, it recommended imposition of a penalty for breach of the safety norms as a deterrent measure.

- The sharing of towers was suggested as it could help in restricting their numbers, reducing service costs and expanding telecom coverage.
- Considering the seriousness of health concerns raised by some stakeholders, the Committee recommended that the government conduct a scientific study on the issue through a reputed government organisation.

- It suggested more stringent radiation norms for areas like schools, hospitals, playgrounds, etc.
- That the government frame a comprehensive policy on setting up of telecom towers in densely populated, urban residential areas.
- DoT to explore the option of utilising low power radiating technologies in urban areas.
- DoT to work towards the development of a centralised monitoring system.
- That DoT finalises and implements the safety standards for mobile handsets at the earliest.
- Existing grievance redressal mechanism of DoT was inadequate and urgent efforts were needed to extend it to all major cities. The Committee strongly recommended the formation of state and district level telecom committees to effectively address public grievances.
- Despite the security risk posed by imported telecom equipment, the DoT had not conducted any study on this subject.
- DoT should establish a telecom testing and security certification centre in the country at the earliest.

The Department Related Parliamentary Standing Committee on Science & Technology, Environment & Forests presented its 266th report on E Waste and E Radiation to the Rajya Sabha in July 2015. The Committee recommended that the DoT should consider framing suitable regulations and guidelines regarding the location and inspection of mobile towers. The Committee also suggested that comprehensive scientific studies be undertaken to conclusively establish the level of risk and adverse health effects of EMR of cell towers. The Committee observed that Indians were more vulnerable to radiation risk as compared to Europeans due to the difference in body mass index and fat content. It also wanted the recommendations of the expert committee constituted by the Ministry of Environment and Forests be implemented so that the harmful effects of EMR may be minimised. With regards to the supervision by telecom enforcement resource and monitoring (TERM) cells to ensure compliance of BTS guidelines, the committee has recommended that apart from self-certification, random checking and inspection reports should be made public.

Even the World Health Organization (WHO) (2011) after reviewing the studies published during the period 2000-2011 classified the radio frequency electromagnetic radiations/field emitted from wireless phone under group 2 B-carcinogen category. Recently, in May 2011, the WHO's International Agency for Research on Cancer (IARC) has classified electromagnetic fields from mobile phones and other sources as "possibly carcinogenic to human" and advised the public to adopt safety measures to reduce exposures, like use of hand-free devices or texting.

The largest retrospective case-control study to date on adults, Interphone, coordinated by the IARC, was designed to determine whether there are links between use of mobile phones and head and neck cancers in adults. The international pooled analysis of data gathered from participating countries found no increased risk of glioma or meningioma in case of more than ten years users of mobile phone. There was some indications of an increased risk of glioma for those who reported the highest 10% of cumulative hours of cell phone use. The researchers concluded that biases and errors limit the strength of these conclusions and prevent a causal interpretation. Based largely on these data, IARC has classified radiofrequency electromagnetic fields as possibly carcinogenic to humans (Group 2B); a category used when a causal association is considered credible, but when chance, bias or confounding cannot be ruled out with reasonable confidence.

The committees mentioned above have made recommendations regarding static continuous testing/ measuring centres, self-certification, creation of a national data base, use of low power micro cell transmitters and long term research on the health aspects of EMF radiation exposure. In the light of the IARC's finding, these recommendations should be implemented without further delay.

Indian Council of Medical Research (ICMR) has submitted its short report on national activities on electromagnetic frequency for 2015 to the WHO.[2] The report by Gandhi and Komal says that in people residing within 200 meters of cell phone towers in comparison to control group there is an increase in various kinds of health symptoms (i.e. headaches, blurred vision, skin and cardiovascular problems, dizziness, depression, nausea, memory loss, tinnitus, loss of appetite, feeling of discomfort and bowel disturbance)[3]. Similar adverse observations have been made in the report submitted for 2014 by ICMR.

The intensity of EMF is strongest at the source and becomes weaker gradually as distance increases. Thus distance and duration of exposure to radiation play a vital role in the harmful impact of radiation. There is an urgent need to refine the Indian standard on safe limits of exposure to EMR, keeping in view the available literature on impacts on various life forms. As the costs of mobile phone technology have fallen, their use has increased dramatically and the overall levels of exposure of the population as a whole have therefore increased drastically. However, there is at present no continuous monitoring system in place to check whether the EMF radiation level from telecom towers is being kept within the prescribed limits. The TERM Cells) of) the DoT) are required to conduct) test audit up) to) 10%) of) the) BTS) sites at random) based on) the) self-certification furnished by the service providers. The objectivity of such random tests is in question on account of the fact that the instrument for these tests is provided by none other than the service providers. In any case, failure to adhere to the prescribed norms by the service providers is only punishable with fine. However, in case it is established that these radiations are indeed responsible for causing deadly diseases, it would hardly be possible to compensate for the human suffering already inflicted.

Considering the high population density, difference in body mass index and fat content of an Indian and a European and the local specific absorption norms or values reported to be in the range of 1 watt/kg, we should adopt stringent standards for our country more in tune with the standards set by the Federal Communications Commission. While the scientific debate on this issue maybe inconclusive, the government and its private partners need to demonstrate complete absence of risk due to radiation exposure.

Undoubtedly, telecom is an important tool for economic growth as well as human connectivity. The objective of the National Telecom Policy is to deliver world class infrastructure at affordable prices. One must also admit that imposing constraints that hamper the development of infrastructure leading to poor connectivity would be bad for the interest of the industry or the consumers. Thus, in the light of the above mentioned facts it is imperative for the operators to install towers at convenient places within their service areas in order to maintain quality services. However, unless it is conclusively proved that these radiations have no ill effect, a precautionary approach with stricter norms should be adopted to minimize the exposure levels, without compromising on optimum performance of the networks.

The readers may like to read more on this topic in the following articles:

Adult and Childhood Leukemia near a High-Power Radio Station in Rome, Italy (http://aje.oxfordjournals.org/content/155/12/1096.full)

Brain tumor mortality risk among men with electrical and electronics jobs: a case-control study.(http://www.ncbi.nlm.nih.gov/pubmed/3474455)

Radiation Exposure, Socioeconomic Status, and Brain Tumor Risk in the US Air Force: A Nested Case-Control Study J. Kevin Grayson (http://aje.oxfordjournals.org/content/143/5/480.full.pdf)

Cell Phone Dangers for Pregnant Women (http://www.spiritofhealthkc.com/wp/wp-content/uploads/2014/03/PREGNANCY8-Cell-Phone-Dangers-for-Pregnant-Women.pdf)

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[2] http://www.who.int/peh-emf/project/mapnatreps/INDIA_NIR_activities_2015.pdf

[3]Gandhi and Komal. Residential proximity to mobile phone base stations and non -specific health symptoms – A cause for concern? Current Trends in Technology and Science, 3: 337-342; 2014.

APPLICATION FORM FOR MEMBERSHIP OF COMMON CAUSE.

1. Name: _____
2. Father's Name: _____
3. Mother's Name _____
4. Date of Birth: _____
5. Educational Qualification: _____
6. Occupation: _____
7. Permanent Address: _____

   _____
8. Mailing Address: _____

   _____

(a) Email ID : _____

(b) Phone :_____Mobile: _____

9. Next of Kin (Name & Address): _____
10. Membership Sought. (Tick any one block):

Categories	**Ordinary**	**Life**
Individual (with voting rights)	Rs. 500.00 P.A. ☐	Rs. 2500.00 ☐
Associate (without voting rights)	Rs. 100.00 P.A. ☐	Rs. 500.00 ☐

11. Why do you wish to join COMMON CAUSE (up to 80 words)

_____

_____

_____

_____

_____

_____

12. Your expectations from COMMON CAUSE (up to 40 words)

_____

_____

_____

_____

Place & Date: Signature

COMMON CAUSE
ANNUAL REPORT FOR THE YEAR 2014-15

The last one year has been remarkable and eventful for Common Cause. It witnessed a change in its Governing Council and the executive leadership. The changes were smooth, meticulous and well thought out, heralding a new motto: continuity with change. The Society persisted with the ideas and values of the founder Director, Mr. H. D. Shourie, and made many significant interventions. Its initiatives in advocacy and PILs yielded a fair measure of success in making focused interventions and initiating improvements in governance. The Society engaged, and teamed up, with many institutions and like-minded organizations/activists in its many initiatives.

Building on the good work done over the years, Common Cause now has a new face to connect with the outside world in the form of its new website (www.commoncause.in). Apart from a fresh look and feel, it organizes ideas and information in easy and contemporary ways. A new Common Cause Case Library makes its past and present cases quickly available along with summaries, orders/ judgments and writ petitions. Besides our existing and potential users, particularly of the younger generation, even the staff, members and friends of Common Cause can now access year-wise documents quite easily. The website is meant to grow as an accurate, interactive and user-friendly medium of information and updates on our activities and interventions.

Following are the activities of the organization over the past year:

I. Advocacy initiatives

a. Police Reforms

Common Cause has held several rounds of interactions and brainstorming sessions with like-minded organisations keen to collaborate on various aspects of police reforms. These include Commonwealth Human Rights Initiative (CHRI), Association for Democratic Reforms (ADR), Transparency International, Lokniti and Centre for the Study of Developing Societies (CSDS). The ideas discussed included collaborations on ASPR and also a Police Performance cum Perception Index. It is felt that the need is to work towards making the police force responsive and effective for the ordinary citizen, particularly those belonging to the weaker sections. Common Cause seeks to launch the ASPR Survey as a valuable tool for advocacy and generate time series data on the satisfaction levels of the citizens to monitor its impact on the ground.

b. Initiative for making the Right to Education a reality

The team has had a series of meetings with Video Volunteers, who under their campaign “Pass ya Fail” have shared about 60 videos with us. These videos cover approximately 60-70 districts of Bihar, Jharkhand and UP. They document lack of access to clean drinking water, separate toilets for girls and boys, proper mid-day meals and safe buildings, libraries and playgrounds. The idea of the collaboration is to evolve an effective strategy for advocacy and legal interventions. Similar meeting have also been held with Karnataka-based Citizens Voluntary Initiative for the City (CIVIC) to work out a plan for a possible legal intervention to include a protocol in the RTE Act to arrest the alarming drop-out rates in the Indian school system. A draft petition is being prepared on the basis of these interactions for more focused consultations in future.

c. Representation to the Rajya Sabha Select Committee on the Real Estate (Regulation and Development) Bill 2013

Common Cause made a representation to the Rajya Sabha Select Committee on the Real Estate (Regulation and Development) Bill 2013 through its director, in person and in writing. It has also

participated in the civil society deliberations on the subject and supported the written submission made by the Federation of Apartment Owners Association (FAOA). However, in our own representation we emphasized that the legislation has far reaching consequences for the ordinary citizen whose life's earnings are at stake and any unintended ambiguity or lack of clarity in the text might allow the unscrupulous among builders to use the law against the very citizens whose interests it aims to protect.

In addition to the FAOA submissions, Common Cause response noted that the Bill must include measures which will encourage flat/ house owners in running their own affairs on cooperative basis and in the spirit of participatory democracy. This will only happen when the builders exit after completing the project and hand over the reins to the owners' associations without exception. It also suggested that the new law needs to protect the interests of the consumers from an unregulated industry and therefore every effort must be made to ensure that it is in agreement with the competition law and that it does not allow the builders to use any ambiguity in the rules and regulations which may go against the consumers and which are followed by different state governments.

Common Cause also suggested to the Rajya Sabha Committee that in the spirit of Prime Minister's Swachchh Bharat Mission, every housing society must include service areas like toilets, drinking water and clean waiting facilities for the service staff like maids, servants, guards and drivers before receiving the completion certificate which should be made mandatory before occupation begins. Its suggestions included clearly defining the term Builder-Buyer Agreement (or contract) unambiguously and capping of the escrow account at 95% all over the country and making it non-negotiable. We also submitted that the cases of builders not fulfilling their agreement to buyers must be treated as cheating and should attracts criminal proceedings.

d. Tackling radiation hazard caused by telecom towers

Common Cause submitted representations before the Minister of Housing & Urban Poverty Alleviation and to the Secretary, Department of Telecommunications, Ministry of Communications and IT drawing their attention to the hazards of radiation emission by mobile telephone towers installed all around us. Our contention was that these towers emit harmful Electro Magnetic Frequency/Radiation (EMF/ EMR) having thermal as well as non-thermal effects and that the population within ten meters of these towers receives signals, which are several thousand times stronger. This makes them vulnerable to exposure to radiation entailing a variety of health hazards.

It was requested that unless it was conclusively proven that the emissions have no ill effect, a precautionary approach with stricter norms should be adopted to minimize the exposure levels, without compromising on optimum performance of the networks. It was further requested that in the larger interest of the citizens, the administrative authorities may be directed to comply with the recommendations of the Standing Committee and the service providers be directed to abstain from mounting towers adjacent to schools, parks, hospitals and densely populated places. It may also be made mandatory for mobile companies, to print on the handset, health advisory regarding ill effects of prolonged use of mobile phones.

e. Multi-level Marketing & Ponzi Schemes:

Common Cause has been pursuing the issue of pyramid schemes functioning under the garb of MLM companies and also corresponding with the authorities concerned. Under the *Prize Chits and Money Circulation Schemes (Banning) Act, 1978, the practice of camouflaging money circulation schemes as direct-selling schemes for distribution of goods and services has become firmly established.* Common Cause has also been collaborating with Vidhi Legal Centre with a view to collating information on international best practices in the regulation of multi-level marketing and

direct selling operations. It was decided to wait and watch before filing a writ petition when it was learnt that the Government under the Ministry of Consumer Affairs, Food and Public Distribution, has already established an Inter-Ministerial Committee to examine the global best-practices and other relevant issues in consultation with all stakeholders.

Common Cause has filed an RTI application seeking a copy of the Report. It has been decided to follow up the matter and take action on need basis. Regarding ponzi schemes, it is learnt that in a recent meeting chaired by Union minister of State for Finance, a Permanent Central Coordination Mechanism, to act against money deposit and collection frauds is purported to be set up. As reported in the media, the government wishes to devise a coordinated and comprehensive strategy to deal with the illegal activity as also to ascertain the risks posed by such frauds to the country's financial system.

f. Prevention of accidents caused by uncovered manholes, etc.

Despite repeated admonitions and directions from the Courts, fatal accidents caused by open manholes, sewers, pits and drains have continued unabated. The National Crime Records Bureau puts the death toll across India in the year 2013 at 1981. There have been recurrent fatalities in the National Capital region as well. In this context, the civic authorities concerned have been requested to place in the public domain full information on the safety measures instituted by them for preventing accidents of this kind and to enforce the accountability of the officers responsible for the upkeep and maintenance of the manholes in the areas under their jurisdiction.

g. Financial assistance to Nishthaa India Trust

Common Cause extended a seed financial assistance of Rs 5 lakh to Nishthaa, a newly constituted trust of media persons, lawyers, public intellectuals, corporate honchos and other professionals to assist whistle-blowers, to highlight unaddressed issues in the media, and to work on aggregation of information on corruption through social media and new technologies among other things. Nishthaa's overall thrust, besides highlighting issues largely unaddressed in the media, is on whistle-blowing and aggregation of citizens' grievances through the use of social media and other Internet based platforms.

h. Applications filed under the RTI Act

(a) Right to Education:

It had been reported in the media that the Delhi Government had acquired land in 98 places across the city to set up schools. In light of these reports applications were filed before the relevant departments in the Delhi Government seeking details such as number of plots acquired so far, number of schools sanctioned for construction, time frame for completion of such construction, number of plots lying vacant against land already acquired, etc.

Information on the above has been received from the authorities.

(b) Functioning of Gram Nayayalayas as established under the Gram Nyayalayas Act, 2008

With reference to the 67th report of the Department-Related Parliamentary Standing Committee (on Infrastructure Development and Strengthening of subordinate Courts), an RTI Application was filed before the Department of Justice, Ministry of Law & Justice. Information was sought in respect of the time frame for the establishment of 5000 Gram Nyayalayas (mentioned in a report cited by the Committee), copies of file notings and correspondence and instructions if any, relating to the processing of the said report by Standing Committee. Besides, we also sought a copy of the Action Taken Report on the recommendations of this Committee and the latest state- wise break up of Gram Nyayalayas notified and operationalised all over India.

File inspection was carried out and the relevant information has been received from the concerned department.

(c) Financial Services for the poor

What happens to all the accounts that are closed because of non-performance or dormancy? What are the guidelines stipulated by financial institutions, insurance companies and Insurance Regulatory Authority, regarding accounts that are closed/inoperative/lapsed or deposits remaining unclaimed for more than 10 years? Are there any norms which would allow the money to be expended/utilized for the benefit of the account holders?

To seek answers to the above questions, Right to Information Applications were filed before Reserve Bank of India (RBI), Insurance Regulatory & Development Authority of India (IRDA) and Life Insurance Corporation of India (LIC).

Information on the above has been received and is being collated.

(d) RTI with Department of Banking Supervision, Reserve Bank of India on counterfeit banknotes

The issue of wide circulation of counterfeit notes in the market, its adverse impact on our economy and the apathy of the regulating agencies was brought to the notice of Common Cause by a life member.

After due it research it was found that in June 2013 RBI had issued notification to the heads of all scheduled commercial banks regarding its monetary policy statement of 2012-13 for streamlining of the system of the banks for detection of counterfeit notes. Reference was made to a previous circular of the RBI, which directed the banks to bear the cost of counterfeit notes rather than the common man. The circular also stated that failure on the part of the banks to impound counterfeit notes detected at their end would attract penalty and would be construed as wilful involvement of the bank concerned in circulating counterfeit notes. The banks were also directed to file monthly reports with the RBI.

In this regard, an RTI application was filed with the **Department of Banking Supervision,** Reserve Bank of India on counterfeit banknotes. The application requested for copies on monthly reports so filed, complaints against the banks and action taken by the RBI as per its circulars/policy/notifications on the subject. Common Cause was denied information. First appeal has been filed.

(e) RTI on accidental deaths of pedestrians and cyclists

Bicycles and motorcycles constitute a significant proportion of vehicles in India and their riders a large percentage of road accident victims. As per the information released by Ministry of Home Affairs, out of a total of 1,37,423 road accidental deaths in 2013, the percentage share of cyclists and pedestrians was 1.9 % (2,587) and 9% (12,385) respectively.

In view of this, RTI Applications were filed before Ministry of Road Transport and Highways seeking details of steps taken by the Ministry to ensure safety of cyclists and pedestrians in the country.

(f) RTI on Land Acquisition of Village Common Lands

It was brought to our notice that in its efforts to locate lands free of cost for its various institutions and other uses, Governments have started acquiring Panchayat Shamlat or commons land. Significantly, the landmark SC judgment by Justice Markandey Katju and Gyan Sudha Misra in the 2011 had ruled: "*We cannot allow the common interest of the villagers to suffer merely*

because the unauthorized occupation has subsisted for many years. ..... In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. ***In our opinion all such Government orders are illegal, and should be ignored***." (emphasis added)

In context of this order, Common Cause filed RTI Applications before six states seeking status of compliance following the order.

In Himachal Pradesh, there were reports of commons land being acquired for construction of a Central University Project and a Vidhan Sabha project in Kangra. In light of this, information was sought from the concerned authorities seeking some specific details pertaining to total area of land being acquired in the villages of Sakoli, Patola, Kand and Kardiana.

(g) RTI- Censorship

Recent months have seen substantial public reaction to arbitrarily imposed restrictions on the freedom of speech and expression. Cinema, television and online entertainment, despite being various means of visual expression, are governed by different regulations, which are more often than not embedded with subjectivity and discretion. As State has significant control over the exhibited visual content through pre-and post-censorship measures, the morality of the ruling government determines the limits on freedom of expression, leaving a possible room for oppression of creativity. Common Cause has filed RTIs with the Board of Film Certification and Ministry of Information and Broadcasting seeking information on the basis of appointment of members to the Board to identify if there are minimum qualifications for these.

I. Public interest litigation

Significant developments in the writ petitions and applications filed by the Society are summarized below.

Supreme Court Cases

1. ***Appointment of Lokpal and Lokayuktas: WP(C) 26/1995-*** The writ petition pertained to enactment of the Lok Pal Act and ensuring appointment of Lok Ayuktas and Up Lok Ayuktas under the Legal Services Authorities Act. The petition was dismissed on April 30, 2015 for having become infructuous in view of the enactment of the Lokpal and Lokayuktas Act, 2013 and as another petition seeking inter alia the implementation of the said Act has already been filed before the Apex Court.

2. ***Crime and Violence on TV:WP(C) 387/2000-*** The petition seeks to curb the excess of crime, violence and sex on TV. The Secretary, Ministry of Information & Broadcasting, has been forced to submit a personal affidavit on the compliance of various directions given by the Court in the matter, which stands tagged with a bunch of petitions, including our PIL WP 880/2013 (serial no. 16 infra). The Court directed the Government on September 29, 2014 to file an affidavit showing the steps it intended to take to address the issue and indicate the time frame by which an analogous policy, if any, was to be implemented. There are no further orders of listing.

3. ***Slaughter House Pollution: WP(C) 330/2001-*** The petition prays 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. The Court had directed the Central and State Pollution Control Boards and the Animal Welfare Board to confirm compliance with the laws for prevention of cruelty to animals and environment protection. The Ministry of Environment & Forest filed a compliance report on August 27, 2013 along with guidelines to be followed by the State Committees for ensuring effective supervision of slaughter houses.

The Apex Court requested the High Courts in January 2014 to nominate retired District Judges to act as conveners of the state level committees constituted to monitor the implementation of the Court orders as well as the regulatory framework prepared by the MOEF. The Committees would submit quarterly reports to the Court. Deploring the inaction of the state governments, the Court directed the defaulters at the hearing on September 2, 2014 to ensure compliance of its orders within four weeks. At the hearing on March 27, 2015, the counsel for Union of India informed the Court that an 'Expert Panel' was constituted to look into the issue. He submitted that the last meeting of the Panel was held in July 2014 and another was to be held 'shortly'. The Court, not convinced with the submission, imposed cost of Rs. 5,000 on the Ministry of Consumer Affairs, Food and Public Distribution for unnecessary adjournments and deferral in the matter.

In a previous hearing, the Court had also nominated the Secretary, Urban Development as the nodal officer for monitoring the functioning of the State Committees and directed him to file an affidavit on whether all the State Committees have been set up within 4 weeks. He was also directed to report on the enforcement of the Prevention of Cruelty to Animals (Slaughter House) Rules, 2000, and the implementation of the broad framework prepared by the Ministry of Environment and Forests for the State Committees for slaughter houses. However, as the affidavit had not been filed till the day of hearing, a cost of Rs. 5,000 was imposed on the Ministry of Urban Development as well for the delay. The matter is likely to be listed on November 27, 2015.

4. Large Scale Advertisements: WP(C) 13/2003- In a landmark judgment delivered on May 13, 2015 in a public interest litigation filed by the Society against self-congratulatory government advertisements in the print media, the Court laid down guidelines for publicly funded government advertisements misused ostensibly to promote political leaders and parties in power. The Apex Court bench comprising Justice Ranjan Gogoi and Justice P. C. Ghose prohibited the use of photographs of ministers and other political leaders in government advertisements with the exception of the President of India, the Prime Minister and the Chief Justice of the Supreme Court of India.

However, in months following the said decision, some State Governments allocated huge funds for government advertisement towards advertising for personal political gain, through television, radio and print media. Similarly, in stark violation of the prescriptions of the Apex Court, certain states continued to publish photographs of political functionaries in governmental ads, outside the exceptions carved in the judgment.

The Society on August 14, 2015, filed a contempt petition against the State Governments of Uttar Pradesh, Tamil Nadu and Delhi for derogating from the letter and spirit of the Apex Court's guidelines regarding large scale advertisements. The petition is at the stage of being examined by the Registry.

Governments of Tamil Nadu and Karnataka have separately filed review petitions against the May 2015 decision of the Apex Court, praying for a stay on the said order. Notice has been issued on the review petition and the matter is to be listed on October 27, 2015 for hearing and final disposal.

5. Living Will: WP(C) 215/2005- The petition sought the enactment of a law on the lines of the Patient Autonomy and Self-determination Act of the USA, which sanctions the practice of executing a 'living will' in the nature of an advance directive for refusal of life-prolonging medical procedures in the event of the testator's incapacitation. The matter was disposed of on February 25, 2014. Without pronouncing any order on the specific prayer made in our petition, the Court invited a Constitution Bench to resolve the inconsistencies between the Division Bench judgment in Aruna Shanbaug (2011), which allowed passive euthanasia under certain safeguards, and the Constitution Bench judgment in Gian Kaur (1996), which held that the right to life does not include the right to die.

The matter was taken up by the Constitution Bench on July 16, 2014. Notice was issued to all States and Union Territories in view of the prayers made in the writ petition, particularly, the prayer

to declare 'right to die with dignity' as a fundamental right within the fold of right to live with dignity under Article 21 of the Constitution.

6. ***Speedy Justice: WP(C) 122/2008-*** Filed by Janhit Manch, Common Cause and two others, the PIL offered a multi-pronged and comprehensive strategy to expedite the dispensation of justice and liquidate the backlog of court cases. Regrettably, the Apex Court by its order dated December 10, 2014 summarily disposed of the petition, relying on the Solicitor General's statement that most of the issues raised in the petition were also involved in the pending Criminal Appeal nos. 254-262/ 2012 *Imtiyaz Ahmad Vs. State of U.P. & Ors*. The Court also observed that the Judiciary had already considered most of these issues independently and finally. An application for the recall of this unwarranted order was filed by Common Cause on behalf of the petitioners on February 16, 2015. The Recall Application was also however summarily dismissed by the Registrar on grounds that the order disposing the writ petition was passed in presence of counsel for the parties and the application for Recall did not disclose a reasonable cause to be entertained.

7. ***Safety Concerns in Nuclear Energy Programme: WP(C) 464/2011-*** We have challenged the constitutional validity of the Civil Liability for Nuclear Damage Act (CLNDA), 2010, and sought a safety reassessment, and a comprehensive analysis of the long-term cost-benefits, of Indian nuclear plants. The petition also prays for the establishment of an independent atomic energy regulatory authority in the interest of people's rights to life and clean environment. After protracted deliberations, the Court partly admitted the petition to the extent of the challenge to the *vires* of the CLNDA. It stands tagged with the PIL at serial no. 10.

8. ***Combating the Criminalization of Politics: WP(C) 536/2011-*** Public Interest Foundation, Common Cause and two others filed this PIL for debarring persons charged with serious criminal offences from contesting elections and expediting the disposal of pending criminal cases involving members of Parliament and state legislatures. The petition also challenged the constitutional validity of Sec. 8(4) of the Representation of the People Act, 1951, which provided that in the event of conviction of a sitting member the ensuing disqualification would be stayed if an appeal was filed within 3 months.

   The UOI filed its response in October 2013.Taking shelter behind the Parliamentary Standing Committee's rejection of the ECI's recommendation for disqualification of persons charged with serious criminal offences, the government claimed that the issue of electoral reforms stood referred in its entirety to the Law Commission for consideration and examination. The Court thereupon posed two questions to the Law Commission: first, whether, in addition to conviction, filing of a charge-sheet with allegations of commission of a serious offence should result in disqualification; second, whether filing of a false affidavit by a candidate under Section 125 A of the Representation of the People Act should be a ground for disqualification.

   After considering the response of the Law Commission, the Court passed an interim order on March 10, 2014 to the effect 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, and if a lower court was unable to complete the trial within a year, it would have to submit an explanation to the Chief Justice of the High Court concerned and seek an extension of the time limit.

   At the hearing on February 17, 2015, the petitioners pressed for the effective implementation of the Court's landmark order of March 10, 2014 for time-bound disposal of pending criminal cases against sitting legislators. The Court was informed that the lead petition had requested the Registrars of the Supreme Court and the High Courts in June 2014 to lay down appropriate procedures and regulations with an in-built monitoring mechanism to ensure compliance of the Court's order by all the subordinate courts under their jurisdiction. Regrettably, these letters did not elicit any response. The Court was

urged to put in place an effective monitoring mechanism to ensure the implementation of its order which can go a long way in combating the scourge of criminalisation of politics in India.

As regards the prayer for debarring persons charged with the commission of serious offences from contesting the elections, the Court seemed disinclined to assume the legislative role of Parliament. The arguments in the matter are continuing. The matter is likely to be listed on October 27, 2015.

9. RTI Rules of the Allahabad High Court: WP(C) 194/2012- The petition challenges the *vires* of the Allahabad High Court (RTI) Rules, 2006, which were found to be the most obstructive of all the High court rules examined by Common Cause. In November 2012, the High Court sought and was granted two months to amend the deviant rules. A gazette notification was issued on April 4, 2013 for the amendment of Rule 4 relating to application fees. Common Cause filed an additional affidavit on July 15, 2013, highlighting a deliberate ambiguity in the wording of the amended rule.

The PIL has now been clubbed with Lok Prahari's PIL on the same issue, which has been transferred from the Allahabad High Court. Notices to the unserved respondents are to be issued afresh.

10. Safety issues in Kudankulam Nuclear Plant: WP (C) 407/2012- As a corollary to our PIL challenging the *vires* of the CLNDA, CPIL, Common Cause and others filed a writ petition to ensure that suppliers of the Kudankulam nuclear power plant in Tamil Nadu are bound by the 'Polluter Pays' and the 'Absolute Liability' principles, and that in case of an accident the victims can sue the reactor suppliers for damages, even if the Government and the plant operator choose not to sue. The petition seeks a further declaration that the suppliers are bound by the said Act, irrespective of any bilateral agreement to the contrary, and challenges the rule framed by the Government to scale down the liability of suppliers as *ultra vires* the Constitution and the parent Act.

The Court has reserved its judgment in the matter.

11. Illegal allocation of captive coal blocks: WP(C) 463/2012- The petition sought a court-monitored investigation into the allocation process and prayed for imposition of punitive damages on the allottees for false declarations and breaches of the conditions of allotment, cancellation of the permission granted to captive coal block users to divert surplus coal for other purposes, and recovery of the windfall profits obtained by the allottees through direct or indirect sale of coal blocks.

The PIL highlighted the arbitrary manner in which the Central Government alienated a scarce natural resource in favour of a few select private companies to the detriment of the public exchequer and deferred the introduction of competitive bidding. The petitioners urged that as per the law propounded in the 2G Case and the subsequent Presidential reference, the coal blocks in question be resumed and auctioned as per Section 11A of the Mines and Minerals (Regulation & Development Act.

In a landmark judgment delivered on August 25, 2014, the Court ruled that neither the Coal Mines (Nationalisation) Act, nor the Mines & Minerals (Development & Regulation) Act, empowers the Central government to allocate coal blocks. The Court also undertook a judicial review of the entire process of allocation and concluded that the allocations made on the recommendations of the Screening Committee as well as the allocations made through the Government Dispensation Route between 1993 and 2009 were arbitrary and illegal. Coal blocks, where competitive bidding was held for the lowest power tariff for Ultra Mega Power Projects, were excluded from the purview of the verdict. However, the Court, at the instance of our counsel, directed that no diversion of coal for commercial exploitation will be permitted from the blocks allocated for UMPPs commercial exploitation.

The Court held further hearings to determine the consequences flowing from its verdict. The UOI accepted the inevitability of auctions for the blocks held to be illegally allocated, but sought an exemption for 46 blocks, where mining leases have been granted, or the end use plants are nearing

completion. The Court delivered its final order on September 24, 2014, cancelling 214 of the 218 allocations made in favour of private entities and joint ventures during the period from 1993 to 2010.

Common Cause had filed an interim application in September 2014 underlining determined efforts by the then Director CBI Mr. Ranjit Sinha to subvert the investigation and prosecution of the Coal Scam cases and requesting for a court-monitored investigation by a Special Investigation Teams or by the Ant-corruption Bureau of Delhi Police in the entire matter. The application also sought recusal of Mr. Sinha from the ongoing investigations and prosecutions related to the coal blocks allocation case. Mr. Sinha subsequently moved an application on November 17, 2014 praying for registration of an FIR for perjury against Kamal Jaswal, Common Cause and Prashant Bhushan for false statements made in the affidavit and in course of the Court proceedings. The said case was however dismissed in a welcomed order of the Apex Court on May 14, 2015. The Court observed that that under the circumstances it was difficult to hold that there was any intention to mislead the Court in any manner on the part of Mr. Bhushan, Common Cause or Mr. Jaswal. In the process, the Court also made several adverse observations on the manner of conduct of inquiry by the CBI. The arguments tendered by the CBI that any adverse order in the matter would irreparably damage its credibility was termed “fallacious” by the Court and rejected. Holding the meetings in the absence of the investigating officer or team as completely inappropriate the Court found it necessary to look into the question whether any one or more such meetings have had any impact on the investigations and subsequent charge sheet/closure reports filed by the CBI.

A high level committee headed by former CBI Director Mr. M.L. Sharma has been constituted by the Court for the purpose of ascertaining whether the investigations conducted by CBI have been influenced in any manner by Mr. Ranjit Sinha in respect of the accused in the case. The matter is listed to be heard on November 16, 2015.

Mr. Sharma had sought the Court’s permission to access the original Visitor’s Register maintained at the residence of Mr. Sinha, the list of the names of 23 personnel and the names of four CBI constables working at his residential establishment which had been directed to be kept in a sealed cover by the order passed on September 8, 2014. The Court was of the opinion that the documents sought should be handed to Mr. Sharma at the earliest to facilitate the enquiry. The matter has been directed to be placed before the Bench that had passed the order of September 8, 2014 for consideration. It is listed to be next heard on October 30, 2015.

12. Internet Freedom: WP (C) 21/2013 -The alarming spurt in cases of abuse of the sweeping powers given to enforcement agencies under the Information Technology Act as amended in 2008 underlined the urgency of judicial intervention to ensure that citizens were not deprived of their freedom of speech and expression and personal liberty for opinions expressed on social media networks. In this context, Common Cause approached the Supreme Court to challenge the constitutional validity of Sections 66A, 69A and 80 of the Act. The matter is due for final disposal. There has been no hearing after September 30, 2013.

Affirming the value of free speech and expression, the Supreme Court Bench of Justice Rohinton Nariman and Justice Chelameshwar, in a landmark decision on March 24, 2015 struck down in its entirety Section 66A of the IT Act as unconstitutional. Referring to the government’s argument that the possibility of abuse does not render a law invalid, the Court held that section 66A, which was otherwise invalid could not be saved by the ASG’s assurance that the law would be administered flawlessly. “Governments may come, and governments may go, but the law will remain”, observed the judges.

The Court, however, upheld the law related to blocking, section 69A, and the connected Rules, in its entirety. As for the Intermediary Rules, the court has upheld section 79 of the IT Act, and the

Intermediary Rules subject to reading down both provisions to allow for a requirement whereby a court order is required before an intermediary is required to take down information if it was related to subject matter covered by Article 19(2).

No observation was made on Common Cause's challenge to the constitutional validity of Section 80 under which an arrest can be made on the basis of intention to commit a crime depending on the discretion of the police officer.

13. ***Inquiry against Chairman, NHRC: WP (C) 678/2013-*** Our PIL seeks a writ of mandamus to the Union of India to comply with the Court's order of May 10, 2012 in our PIL WP (C) 35/2012 by making a reference for holding an inquiry against Shri K. G. Balakrishnan, Chairman, National Human Rights Commission. We have comprehensively rebutted the specious arguments advanced by the UOI in support of its contention that there was no misbehavior on the part of Justice Balakrishnan, either as a judge, or as Chairman, NHRC.

In the hearing on September 16, 2015, our counsel brought to the Court's notice that regrettably, the prayer seeking the removal of Justice Balakrishnan as chairperson of NHRC had become infructuous since he had already demitted the office in May 2015. He urged that this instance raised serious concerns regarding the accountability of judiciary in the country and that the Court should direct the CBI to register a preliminary enquiry into the charges of disproportionate assets against Justice Balakrishnan under the Prevention of Corruption Act. The Court was reluctant to delve into the allegations of 'benami' properties allegedly acquired by him but observed that source of income had not been duly examined by the Income Tax authorities and the issue could be looked into. The matter is now listed for November 17, 2015.

14. Mala fide favours to RIL in KG Basin contract: WP (C) 728/2013- The petition seeks appropriate writs to the UOI to undo the *mala fide* favours shown to Reliance Industries Limited and its associate, NIKO, in the working of the Production Sharing Contract for KG Basin Gas Block and a thorough court monitored SIT inquiry into the collusion between the establishment and the said entities. It prays for cancellation of the RIL lease and an appropriate penalty for its failure to adhere to its commitments and deliberate under production. The matter has been tagged with a similar writ petition filed by Shri Gurudas Dasgupta, M. P. At the final hearing on March 4, 2014, the Court ruled that the implementation of the government's decision on the revision of natural gas prices would be subject to the orders of the Court.

There had been reports that the Ministry of Petroleum & Natural Gas had moved a draft note for seeking the approval of the Cabinet Committee on Economic Affairs for amending the Production Sharing Contract with RIL with a view to allowing it to retain certain oil and gas fields which it was obliged to relinquish. Hence, we filed an application for interim directions on April 21, 2014 to foil this move. The IA sought a direction to the UOI not to amend the PSCs with Reliance as proposed in the draft CCEA note and a further direction to the contractor to relinquish the oil and gas fields that it ought to have surrendered.

At the hearing on January 16, we filed an IA requesting the Court to take on record the final report of the CAG on the operation of the PSC between the Government and RIL in respect of the KG Basin D6 Block, which was tabled in Parliament on November 28, 2014. The UOI filed its latest gas pricing guidelines. During the hearing on March 30, 2015 the apex Court granted time to RIL to file their response to the CAG report filed earlier by Common Cause. The solicitor general requested for time to study the report of the PAC on the recommendations of the CAG report. The Court granted time to the UOI to file a status report regarding the proceedings, if any taken pursuant to the said C.A.G. report. There are no further orders of listing.

15. Guidelines for appointment of CAG: SLP(C) 24328/2014- A PIL filed by Mr. N. Goplaswami, former CEC, and 8 former senior public servants, including the Director, Common Cause, for a transparent, broad-based and objective procedure for appointment to the Constitutional office of the CAG of India was dismissed by the Delhi High Court on August 13, 2014. The Court held that the appointment of Mr. S. K. Sharma as the CAG was neither in violation of the principle of institutional integrity, nor arbitrary. Differentiating the matter from the CVC case, the Court refused to undertake what it termed as a merit review of the appointment, as opposed to a judicial review. It also refrained from issuing any directions to the Government for framing objective criteria for future appointments to the office of C & A G.

In view of the importance of the issues raised in the PIL, an SLP had been filed in the Supreme Court to secure the desired reliefs. At the hearing on February 11, 2015, a forceful plea was made on behalf of the appellants for prescription of an objective and transparent procedure for appointment to the high Constitutional office of the CAG. Unfortunately, the Chief Justice's bench was unwilling to deviate from the literalist position taken by the Apex Court while disposing of the two earlier PILs on the subject and dismissed the SLP.

16. *News broadcast by private radio stations: WP (C) 880/2013-* The PIL prays for quashing of the unreasonable provisions in the policy guidelines and grant of permission agreements of the Ministry of Information & Broadcasting, which prohibit the broadcast of news and current affairs content on private and community radio stations. The Court has tagged this petition with our PIL on Crime and Violence on TV and some other matters relating to the right to freedom of speech and expression. At the hearing on September 17, 2014, the Court directed that the matter be listed after completion of service on all the respondents in the petitions tagged with this case.

17. Illegal Mining in the State of Odisha: WP(C) 114/2014-Our petition to curb the rampant illegal mining in Odisha as highlighted by the Central Empowered Committee and the Justice M. B. Shah Commission was taken up on April 21, 2014. The Court issued notice to the respondents and directed the CEC to submit a report on the averments made in the PIL and provide a list of mines involved in illegal mining. On May 16, 2014, in the light of the CEC's report on the status of mining leases and approvals in Odisha, the Court granted an interim stay on the operation of 26 mines, which were being worked on the basis of second and subsequent deemed renewals of lease, and directed the State Government to dispose of all renewal applications as per the law within six months.

This matter was taken up by the apex Court on March 25, 2015 on an IA filed by Sarda Mine's pleading permission to resume mining operations which had been suspended since April 2014. The Court directed the petitioners to file a rejoinder within a week, which has since been filed. This matter is next listed on November 5, 2015.

18. Mismanagement of Defense Lands:WP(C) 204 /2014- The CAG had submitted several reports highlighting the rank mismanagement of defence lands. Common Cause and CPIL filed a PIL on February 20, 2014 to seek the intervention of the Court to remedy this situation and protect the national patrimony constituted by the vast tracts of lands under the management of the Defence Ministry from further erosion. The petition seeks systemic reforms in the management of Defence lands, a comprehensive audit and Court-monitored investigation into the irregularities in their administration and resumption of defence lands under commercial exploitation or unauthorized use of private parties.

The Union of India has filed its additional affidavit in the matter and a rejoinder was filed by the Society refuting the contentions in August 2015. This matter is likely to be listed on November 17, 2015.

19. Challenge to the Lokpal Search Committee Rules: WP(C) 245/2014-The rules notified by the Union Government on January 17, 2014 to give effect to the long awaited Lokpal Act undermined the independence of the institution of Lokpal by restricting the field of selection to the hand-picked nominees of the Government and giving undue advantage to senior bureaucrats, in appointment as non judicial members of Lokpal. This was a blatant abuse of the device of delegated legislation. Hence, a PIL challenging the arbitrary Search Committee rules was filed in the Supreme Court on March 5, 2014. Subsequently, we filed an IA to foil the outgoing government's last ditch bid 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.

At the hearing on August 22, 2014, the CJI's Bench pulled up the government for delaying the process of constituting the Lokpal. The government notified the amended Lokpal search committee Rules on August 27, 2014. The amended rules provide that the search committee may, for the purpose of short-listing of persons, adopt such short-listing norms as it may consider appropriate. The words, *'from amongst the list of persons provided by the Central government in the Department of Personnel and Training',* have been omitted. Thus, one of the two reliefs sought in our PIL has already been secured.

The matter is likely to be listed on November 11, 2015.

20. Preventing the export of logs of red sandalwood: WP(C) 976/2014-The intervention of the Supreme Court was sought to foil a determined bid by the Government of Andhra Pradesh to export a huge quantity of confiscated red sandalwood, an endangered species, in the form of round logs fancied by international traders. This move flies in the face of international conventions, express provisions of the Import-Export Policy and repeated admonitions of the Ministry of Environment & Forests. It also runs counter to a commitment made by the DGTD in the High Court of Madras. The Government of India has done a complete volte face and actively collaborated with the State government. The auction lot is far in excess of the State government's own estimates of the global annual demands.

In response to the notice issued by the Forest Bench, the Government of Andhra Pradesh filed its counter. We have filed our rejoinder refuting the averments made therein. There are no further orders of listing.

21. Extension of audit jurisdiction of the C & AG of India to NOIDA, G.Noida Authority and Yamuna Expressway Authority: WP No. 221/2015-The CAG had been requesting the Government of U.P. to entrust the audit of NOIDA and Greater Noida Industrial Development Authority to it as the extant audit by Examiner Local Fund Accounts has proved to be totally inadequate. These requests had been turned down by the Government of U.P., taking shelter behind the provisions of the Uttar Pradesh Industrial Area Development Act. Against the backdrop of recurrent reports of massive land scams in these authorities and scathing comments by the higher courts, on March 10, 2015 a PIL had been filed in the Supreme Court to seek the extension of the CAG's audit jurisdiction to NOIDA, Greater Noida Industrial Development Authority and Yamuna Expressway Industrial Development Authority.

The PIL was however dismissed as withdrawn with liberty to approach the High Court of Allahabad on February 24, 2015. A petition has been duly filed before the High Court on September 1, 2015 seeking a writ of mandamus for a direction that an audit of the income and expenses of Noida, Greater Noida and Yamuna Expressway Authority should be carried out by the Comptroller & Auditor General of India under the provisions of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. (See Allahabad High Court, *infra*).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 recent judgment in *Sunita Bhardwaj Vs. Smt. Shiela Dixit* 203 (2013) DLT 743, where it was held that the Competent Authority was free to accord a hearing to a public servant reported against by the Lokayukta. It was also held that if the Lokayaukta was aggrieved by the Competent Authority's decision, the only recourse available to him is to draw up a Special Report which has to be laid in the Legislative Assembly for such action as is deemed appropriate. The Court drew a parallel between the provisions of the Lokayukta Act and those of the CAG Act and the Commissions of Inquiry Act to demonstrate that there are other Constitutional offices or powerful bodies whose reports also are only for the consumption of the legislature. Refusing to sit in appeal over the decisions of the Competent Authority, it expressed its helplessness in addressing the inherent weakness of the legislation which had made the Lokayukta a powerless body.

The Court, however, granted a token relief to the petitioner by way of the direction that the formality of laying the Lokayukta's Special Reports in the Assembly, where it had not yet been done, should be completed within six weeks.

4. Evidence of corruption by Shri Virbhadra Singh: WP (C) 7240/2013 - Our counsel, Shri Prashant Bhushan, had requested the CVC and the CBI in January 2013 to act on the unrebutted documentary evidence of corruption against Shri Virbhadra Singh, former Union Minister. The Society followed up the matter with letters to the CVC and the Director, CBI urging them to discharge their statutory responsibilities. As no satisfactory response was forthcoming, Common Cause filed a PIL, seeking a court-supervised probe by the CBI/Director General, Income Tax (Investigations) into the allegations.

Mr. Virbhadra Singh's counsel had been challenging the maintainability of the PIL on the ground that it was motivated by our counsel's alleged animosity with his client. At the hearing on January 29, 2015, opting not to adjudicate as to the *bona fides* of the petitioner, the Delhi High Court discharged Common Cause and appointed two amicus curiae to assist it in assessing whether there was any public interest in the petition and to suggest the future course of action in the matter.

As the Court has now taken the case on its own motion, it dismissed the arguments raised on maintainability by the Respondent in the hearing on September 1, 2015. The Court in the said hearing also directed the CBI and Income Tax Authorities to submit within four weeks status reports on the action taken in the matter. The said reports have been submitted to the Apex Court and will be examined in the next hearing on November 4, 2015, if it deems necessary.

5. *Petition on electrocution by live wires: W.P.(C) 7241/2015 -* A petition under article 226 was filed in the Delhi High Court on the issue of recurring deaths due to live wire electrocution, especially during monsoon. Common Cause had earlier made representations to the executive authorities concerned for taking corrective steps well in time and fixing responsibility for electrocution deaths. As there was no response, it was decided to approach the judiciary. Our PIL highlights the sorry state of electric poles and wires as well as the callous attitude of the distribution companies (discoms). The petition seeks to safeguard the Right to Life guaranteed under the Constitution and make the officers of the state agencies and discoms accountable for their failure in taking adequate precaution to save lives.

The Hon'ble High Court was pleased to issue notice in the petition. The matter will be taken up on November 4, 2015.

Allahabad High Court:

Extension of audit jurisdiction of the C & AG of India to NOIDA, G.Noida Authority and Yamuna Expressway Authority: WP (C) 48416/2015-A writ petition has been filed in the Allahabad High Court on September 1, 2015 seeking the extension of the audit jurisdiction of the Comptroller & Auditor General of India to NOIDA, Greater Noida Authority and Yamuna Expressway Authority. These entities have been established by the State of Uttar Pradesh under the provisions of the U. P. Industrial Area Development Act, 1976. The proposal is actuated by the imperative of improving the standards of financial accountability and probity in these bodies and securing the right to good governance, which forms part of the right to equality and the right to life.

Notice has been issued in the petition and counters have been filed on behalf of all the respondents. Rejoinder has been filed by the Petitioner and the matter is next listed to be heard on October 29, 2015.

Orissa High Court:

Discretionary allotment of plots to VIPs in Odisha: WP (C) 9095/2014- Following the dismissal of WP (C) 1096/2013 by the Supreme Court on February 21, 2014, Common Cause and Mrs. Jayanti Das filed a PIL in the Orissa High Court to challenge the abuse of discretionary quota in the allotment of plots to persons of influence in Odisha. The PIL was listed before the Chief Justice in May 2014, but could not be taken up due to his elevation to the Supreme Court. Subsequently, the matter was listed on two occasions, but deleted each time at the last minute. Our counsel lodged a strong protest with the registry against the inexplicable deletions from the cause list at various instances. The PIL was eventually taken up on September 8, 2014 and the counsel was asked to file the background of the order passed by the Supreme Court in the original petition by the next hearing after the Pooja vacation. The matter was not listed thereafter and suddenly, an order was passed on January 19, 2015 noting that since none had appeared on behalf of the petitioners, the matter be listed after four weeks in the interest of justice. It was also made clear that if the petitioner remained unrepresented on the next date, the petition would be dismissed for non-prosecution. However, the counsel for the Petitioners could not appear on the next date of listing on February 24, 2015 for the want of prior information and the petition was dismissed for non-prosecution. The Registry ignored the request for accommodation made by our counsel and on purpose listed it for the 24th instant, when he could not be present.

J. Finance and Accounts

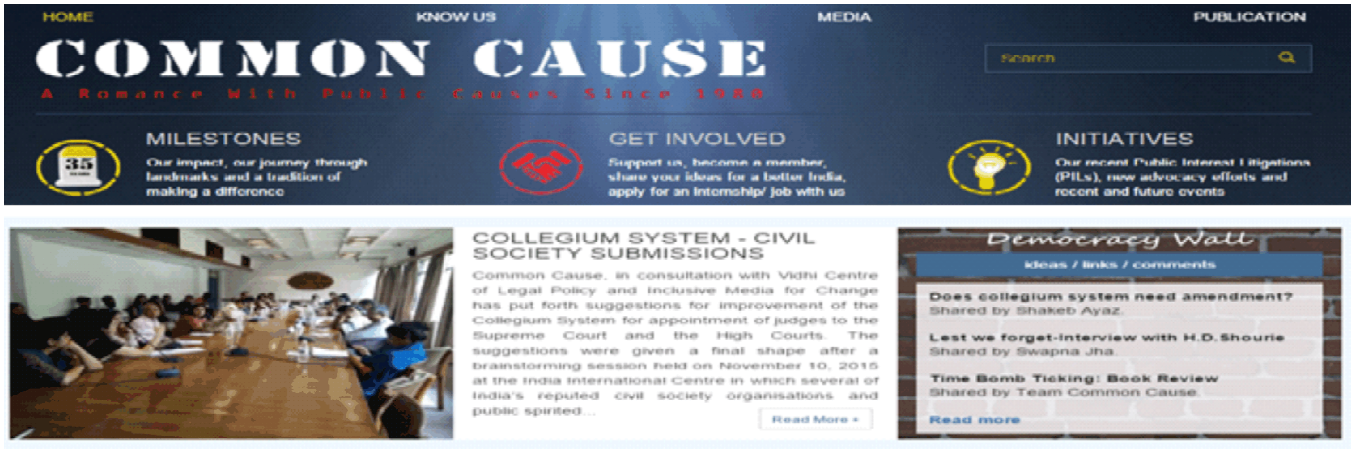
The Audit Report on the Annual Accounts of Common Cause Society and Common Cause Trust for the year ending March 31, 2015 has been received. The Governing Council has accorded its approval to the documents on September 29, 2015. Briefly, the expenditure during the year was Rs. 79.62 lakh against Rs. 50.69 lakh recorded in the previous year. The income during the year was Rs. 108.30 lakh compared to Rs. 52.41 lakh during 2013-14. Thus, there was a surplus of Rs. 28.68 lakh during the year as against a surplus of Rs. 1.72 lakh in the previous year. Overall, the financial results have been satisfactory.

A patient was anxious after a prolonged bedside discussion by hospital doctors. When the head doctor came to see him he asked, ‘There must be a lot of doubt about what is wrong with me.’ ‘Where did you get that idea?’ the doctor replied. ‘All the other doctors disagreed with you, didn’t they?’ ‘To some extent, but don’t worry,’ said the doctor consolingly. ‘In a similar case, I stood firm on my diagnosis, and the post mortem proved me right.’

Common Cause 2.0

In the spirit of 'continuity with change', we take up this opportunity to introduce to our readers the new Common Cause website (http://www.commoncause.in/commoncause/) that presents in a friendly format the Common Cause journey and interventions since its inception in 1980.

You can now look at the significant achievements made by the Society in 35 years and the interventions through public interest advocacy and litigations by simply clicking on the **MILESTONES** and **INITIATIVES** tabs on the website. If you wish to collaborate with Common Cause or raise an issue of public interest, you can get in touch with us by just clicking on GET INVOLVED or share your thoughts by clicking on **'ideas/links/comments'** in the **DEMOCRACY WALL**.



Our readers can now access the rich repository of public interest litigations filed by Common Cause over the years, along with the significant orders passed in each case by accessing the **COMMON CAUSE CASE LIBRARY**. The cases have been organized according to the year of filing for ease of reference. Pending PILs can be also accessed separately and users can click on the **KEYWORDS** to see latest developments in the cases.

The litigation and advocacy initiatives can also be accessed thematically under **GOVERNANCE**, **ENVIRONMENT** and **HUMAN DEVELOPMENT** at the bottom of the page. There the users will also find of interest regularly updated **MUST WATCH** videos that touch upon burning issues of public concern.

Please feel free to send us your feedback by typing your message in the **FEEDBACK** section at the bottom of the page or writing to us at feedback@commoncause.in.

Common Cause Team

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