**Minutes of the Meeting of the Governing Council of Common Cause**

**Date:** February 5, 2013; 4.30 p. m.

**Venue:** AIHDA, 5th Floor, Core IV A, India Habitat Centre, New Delhi.

**Participants:**

Mr. Vikram Lal                         President

Maj. Gen. (Retd.) J. P. Gupta     Vice President

Dr. Ashok Khosla                      Member

Mr. Prakash Singh                     Member

Ms. Madhu Kishwar                    Member

Dr. B. P. Mathur                        Member

Mr. Lalit Nirula                          Member

Mr. Paranjoy Guha Thakurta        Member

Mr. Kamal Kant Jaswal               Director

Mr. Surjit Kishore Das                 Special Invitee

**Minutes**

1. **Confirmation of the minutes**

Minutes of the Governing Council meeting held on December 1, 2012 were confirmed.

1. **Confirmation of Circular Resolutions**

Resolution dated December 18, 2012 regarding approval of the Annual Report of Common Cause Society & Trust for the year 2011-12 and Resolution dated December 26, 2012 regarding incorporation of the Society's present address in the Registration Certificate for the purpose of the Foreign Contributions Regulation Act were confirmed.

1. **Presentation of the Society’s activities**

Reviewing the Society’s activities since the last meeting, the Director apprised the Council of the progress of the PILs filed in the Supreme Court and the Delhi High Court.

**New PIL**

*PIL on Internet Freedom*

Of late, there has been an alarming spurt in cases of abuse of the sweeping powers given to the enforcement agencies under the Information Technology Act, 2000 as amended by the amending Act of 2008. The detention of two young girls in Maharashtra for their innocuous Facebook posts on the shut-down of Mumbai after Balasaheb Thakre’s death 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 and Somnath Bharti have filed a PIL in the Supreme Court, challenging the constitutional validity of Sections 66A, 69A and 80 of the Information Technology Act, 2000. The petitioners have contended as follows.

* The phraseology of Section 66A is vague and the terms constituting an offence under the Section have not been defined either in the General Clauses Act or in any other legislation. The provision being susceptible to wanton abuse falls foul of Articles 14, 19 (1) (a) and Article 21 of the Constitution.
* Section 69A is vitiated by the failure to provide any effective remedy against blockage of information hosted on any computer resource.
* Section 80 is violative of the Constitution as it gives unbridled and arbitrary powers to a police inspector to arrest any person at any public place on the apprehension that he is about to commit an offence under the Act. The Section fails to lay down any criteria which could serve as a pragmatic guideline for giving effect to the intent of the legislature.

The PIL was taken up on January 24, 2013 along with Rajeev Chandrashekar’s PIL on a related issue. The Court has issued notice to the respondents and fixed the hearing for April 15, 2013.

**Developments in earlier PILs**

*Follow up action on the order of the Supreme Court in WP(C) 35/2012*

Common Cause had filed a petition under Article 32 of the Constitution seeking a writ of mandamus to the Union of India to make a reference to the Supreme Court under Section 5 (2) of the Human Rights Act, 1993 for holding an inquiry against Justice K. G. Balakrishnan, Chairman, National Human Rights Commission. Disposing of the PIL, the Supreme Court in its order dated May 10, 2012 requested the competent authority to take a decision on the complaint dated April 4, 2011 addressed by the Campaign for Judicial Accountability and Reforms to the President of India. The Court directed that if in the aforesaid determination the allegations were found to be unworthy of any further action, the petitioner should be informed accordingly. Alternatively, the President of India, based on the advice of the Council of Ministers, may proceed with the matter in accordance with the mandate of Section 5(2) of the 1993 Act.

Since there has been no communication from the Union of India pursuant to the judgment, Common Cause filed an interlocutory application in the Supreme Court with the prayer that the competent authority be directed to take a decision on CJAR's complaint within 30 days and inform the petitioner about the outcome. The IA came up for consideration on January 24, 2013. It was ordered that the IA be listed before the bench which had heard the original writ petition. The Registry was directed to ascertain the convenience of the judges concerned and list the IA expeditiously.

*PIL on Irregularities in Allocation of Coal Blocks for Captive Mining*

Common Cause and five eminent citizens had moved the Supreme Court for quashing the allocations of coal blocks made in favour of private companies since 1993 together with the joint venture agreements between private companies and public sector allottees. The PIL was taken up on January 24, 2013. The respondents have filed their counter affidavits. The matter has been listed for March 12, 2013 for filing of rejoinders.

*PIL on Decriminalisation of Politics*

In spite of several opportunities, the Union of India and the Election Commission of India have not filed their replies in the PIL filed by Public Interest Foundation, Common Cause, Transparency International and Gandhi Sewa and Satyagrah Brigade, which contains the following prayers.

* Issuance of appropriate guidelines to ensure that those charged with serious criminal offences are unable to contest elections to Parliament and State legislatures.
* Fixing a time limit of six months for conclusion of trials of elected representatives charged with heinous crimes.
* Declaring Section 8(4) of the Representation of the People Act, 1951 as *ultra vires*.

The PIL came up for hearing on January 2, 2013.  Responding to a pointed query from the Supreme Court bench, the Advocate for the Election Commission stated that the Commission had a positive position on the petition before the Court.  The Court directed the EC to confirm its position in writing within four weeks. The Union of India was given a last opportunity to file its reply in the same time. The matter has been listed for hearing on February 8, 2013.

*PIL challenging the obstructive RTI rules framed by the Allahabad High Court*

At the last hearing in November 2012, the Allahabad High Court had sought and was allowed two months’ time to amend the deviant rules to bring them in consonance with the provisions of the RTI Act. The matter was listed for February 1, 2013, but has been posted for April 22, 2013. A positive outcome in this initiative should go a long way in securing the reform of the RTI rules of other courts.

**Advocacy Initiatives**

*Money Circulation Schemes*

The multi-pronged campaign against money circulation schemes masquerading as Direct Selling/Multi Level Marketing companies seems likely to show tangible results. The Ministry of Corporate Affairs has with the approval of the Ministry of Finance circulated model rules under the Prize Chits & Money Circulation Schemes (Banning) Act, 1978, which provide a blueprint for operationalising the intent and purpose of the Banning Act. Their adoption by state governments should go a long way in strengthening the capacity of state agencies to fight the menace of fraudulent money circulation schemes camouflaged as Direct Selling/ Multi Level Marketing companies.

*Police Reforms*

In response to the public notice issued by the Justice J. S. Verma Committee inviting suggestions for amendment of the laws to deal with the scourge of growing sexual violence against women, Common Cause, in concert with Commonwealth Human Rights Initiative (CHRI), Foundation for Restoration of National Values (FRNV) and Manushi Sangathan, made a joint submission to the Committee underlining the urgency of comprehensive police reforms. It was emphasized that enhancement of the penalties for offences against women would not serve any purpose in the absence of a revamp of the criminal justice system, of which policing is a key component. The submission also cautioned against any dilution of the Constitutional guarantees and the principles of natural justice.

The Council was gratified to note that police reforms have been accorded the pride of place in the recommendations of the Committee, which has chosen to give an expansive interpretation to its terms of reference. However, some of the recommendations of the Verma Committee, which had to operate within severe time constraints, call for a wider debate and a dispassionate scrutiny. The Council regretted that the ordinance promulgated by the Central Government does not address the imperative of streamlining the criminal justice system. A concerted civil society initiative will be needed to bring this issue on the agenda of Parliament when the ordnance comes up for consideration.

By way of a small step in this direction, a team put together by Common Cause and FRNV is engaged in creating ‘content’ for a mobilisation campaign on police reforms on social media. The campaign will initially endeavour to motivate the youth to demand police reforms.

**4. Proposal for the establishment of Scamwatch**

Mr. Paranjoy Guha Thakurta outlined his proposal for establishment of a website to collate information on corruption in India. Members of the Council appreciated the underlying concept:  a comprehensive database on corruption would be a valuable resource for anti-corruption crusaders. It was, however, felt that the energies of Common Cause should remain focused on bringing about systemic improvements in governance. Hence, it would not be possible for the Society to take the ownership of the website. It would also not be feasible to allocate office space for this initiative in view of the plans for establishment of a conference facility on the third floor and the constraints of parking in Common Cause House.

**5. Instrumentality of PILs in securing good governance**

The Council welcomed the proposal to prepare a database on the PILs addressing significant issues in governance with a view to promoting a measure of coherence in the disparate and uncoordinated initiatives in public interest litigation, enabling effective follow-up action and fostering new initiatives in domains as yet untouched. It was agreed that as a prelude to this undertaking, a consultation should be organized to draw up a blueprint for good governance, onto which the PILs past and present could be mapped.

**6.   Any other item with the permission of the Chair**

*News Broadcasts on Private FM Radio Stations*

The Council was informed that under the extant regulations, private FM radio stations are not permitted to broadcast news. This policy can be challenged on the grounds of being arbitrary and discriminatory. Mr. Paranjoy Guha Thakurta undertook to furnish a detailed note on the subject.

*Date for next meeting of the Governing Council*

The next meeting of the Council will be held on Saturday, March 9, 2013 at 10.00 AM at Common Cause House.

The meeting ended with a vote of thanks to the Chair.

(Vikram Lal)

President