COMMON CAUSE UPDATES

Supreme Court:

Right to Clean Air, Adoption of Electric Vehicles: Common Cause, along with Centre for Public Interest Litigation and Sitaram Jindal Foundation, filed a writ petition in Supreme Court, demanding the implementation of the plans and policies for the adoption of electric vehicles to tackle air pollution and challenges arising out of climate change. To spell it out, it asks for the implementation of the FAME-India scheme and NITI Aayog's recommendations, as well as adoption of internationally recognised best-practices for integration of usage of electric vehicles. The petition WP 228/2019 was filed on February 2, 2019 and registered on February 22, 2019. It brings to attention the National Electric Mobility Mission Plan, 2020, brought out in 2012, making several recommendations for adoption of electric vehicles. To implement the plan, the government promulgated the FAME-India Scheme in 2015, which provided subsides to consumers but failed to mandate demand and charging infrastructure.

The petitioners allege that while a modest target of the sale of 7 million electric vehicles was set by the 2012 plan, only 0.263 million vehicles have been sold as of January, 2019, revealing "a total failure of that scheme." The petition points out that the government has thus far allocated less than Rs 600 crore over seven years towards the entire scheme, despite the 2012 plan calling for an investment of Rs 14,500 crore to spearhead the demand and creation of charging infrastructure. This matter was taken up on March 3, 2019 when the Court said that further orders in the matter will be passed after the Government of India informs the Court about the steps taken in implementation of the Faster Adoption and Manufacturing of (Hybrid &) Electric Vehicles in India (FAME) scheme. The next date of hearing is May 6. 2019

Fair Working Conditions for Domestic Workers: Common Cause, along with the National Platform for Domestic Workers (NPDW), an umbrella unit of 36 unions and federations, and social activist Aruna Roy, has filed a writ petition in the Supreme Court praying for directions by the Court to ensure fair and humane working conditions for domestic workers.

The petition filed on November 15, 2018, seeks urgent intervention of the Court to acknowledge domestic help as a "service for pay," lay down guidelines for protection of their human rights and issue appropriate directions to the government. The prayers also include ensuring notification of minimum wages, compulsory weekly and annual paid leaves, and extension of maternity leave benefits. The petition argues that until a law is brought in place, interim guidelines should be issued for safeguarding rights of domestic workers, in line with ILO Convention 189. The petition also prays that domestic workers be included under the Minimum Wages Act, 1948. Other prayers include setting up of a committee of experts, under Supreme Court's supervision, to suggest means to regulate employment agencies of domestic workers, terms and conditions of their dignified employment, as well as formulating a mechanism for dispute resolution. On December 7, 2018, in the course of hearing, the Bench sought clarification from the petitioners on the aspect of enforcement of the rights of domestic workers, especially in light of the increasing concerns for right to privacy. The petitioners agreed to make submissions on the aspect of enforcement, and the matter was directed to be listed after six weeks. There are no further orders of listing.

Challenging the Arbitrary Removal of CBI Director: Common Cause, in its quest to uphold transparency and integrity of public institutions, filed a petition in the Supreme Court challenging the removal of CBI Director Mr. Alok Verma. The petition prayed for quashing of the order dated 23.10.2018, issued by the Central Vigilance Commission, vide which Mr. Verma was illegally divested of all the responsibilities related to the Director, CBI, for malafide reasons. The petition also sought quashing of the order dated 23.10.2018, issued by the Appointment Committee of Cabinet, vide which Mr. M Nageswara Rao, Joint Director, CBI, was handed over the charge of Director CBI in gross violation of the law. In addition, the petition sought a direction for the removal of the CBI's Special Director Mr. Rakesh Asthana from the organisation in light of serious corruption cases pending against him. Further, Common Cause prayed for the constitution of a Special Investigation Team (SIT) to look into the recent unprecedented events and also to investigate allegations of corruption against the senior CBI officials and submit the report before the Supreme Court. On Jan 8, 2019, SC reinstated Mr Verma as the Director of CBI and set aside the appointment of Mr Rao as interim CBI Director.

Wrongful Appointment of CBI Interim Director: On February 19, 2019, the SC decided not to interfere and dismissed the Common Cause petition challenging the appointment of Mr M Nageswara Rao as interim director, CBI. A bench of Justices Arun Mishra and Vineet Saran said no further interference was required as the relief to the petitioners had already been granted with the appointment of a full time CBI Director. The petition stated that the appointment of Mr Rao was not made on the basis of recommendations of the high-powered committee, as mandated under the Delhi Special Police Establishment Act. On January 10, 2019, the Committee appointed Mr Rao "as per the earlier arrangement" which had since been quashed by the SC during the hearing in Alok Verma's case. However, the government still invoked its earlier "quashed" order to once again appoint him as the interim director. The CJI as well as Justices Sikri and Ramana had during the course of the hearing recused themselves on various grounds.

Curative Petition in CBI Special Director Case: Subsequent to the review petition being dismissed by the SC, a curative petition was filed on March 27, 2018 and registered on July 4, 2018. This was dismissed on December 11, 2018 by the bench vide the following order:

"We have gone through the Curative Petition and the connected papers. In our opinion, no case is made out within the parameters indicated in the decision of this Court in the case of *Rupa Ashok Hurra v. Ashok Hurra & Another*, reported in 2002 (4) SCC 388. Hence, the Curative Petition is dismissed."

Miscellaneous Application in Large Scale Govt advertising: A Miscellaneous Application has been filed in pursuance of an IA filed by another petitioner in WP 13/2003. The MA which was filed on July 30, 2018 and registered on August 17, 2018 supports the IA that government has been incurring large expenditure despite the SC judgment to the contrary. The respondent states have been given time to file their responses and the matter is listed for April 3, 2019.

Writ for Police Reforms: The battle for police reforms has been going on for the last 22 years. The Supreme Court took 10 years to give a historic judgment in 2006, in the petition filed by Prakash Singh, Common Cause and NK Singh. Since then it has been a struggle to get the Court's directions implemented. On July 3, 2018, responding to an interlocutory application filed by the Ministry of Home Affairs (MHA) regarding the appointment of acting Director General of Police (DGP) in the states, the Supreme Court gave a slew of directions to ensure that there were no distortions in such appointments. It laid down that the states shall send their proposals to the UPSC three months prior to the retirement of the incumbent DGP. The

UPSC shall then prepare a panel of three officers so that the state can appoint one of them as DGP. To curb the practice of appointing Acting DGPs by the states, the Court directed that the UPSC should ideally empanel officers who have at least two years of service left, giving due weightage to merit and seniority. It also held that any legislation/rule framed by the states or the central government running counter to the direction shall remain in abeyance. On Jan 15, 2019, the Secretary, UPSC, was directed to inform the Court about the empanelment of IPS Officers for promotion to the rank of DGP in different states. On Jan 16, 2019, Rakesh Kumar Gupta, Secretary, UPSC affirmed that as directed in the Prakash Singh Case, a UPSC committee has set a definitive process in motion. The committee, consisting of representatives of the UPSC, the central as well as state governments have drawn up a panel of eligible officers belonging to the rank of DGP or Additional DGP in 12 states. The SC held that the order dated July 3, 2018, in Prakash Singh case is wholesome and dismissed the applications filed by Punjab, Bihar, Haryana, West Bengal and Kerala against it.

Contempt Petition on Non-Appointment of Lokpal: The Common Cause petition for the appointment of Lokpal was disposed in April 2017 with the court maintaining that the Lokpal Act was a perfectly workable piece of legislation. However, the government failed to appoint the Lokpal nine months after the Apex Court verdict. Common Cause filed a contempt petition seeking directions against the government's wilful and deliberate failure to fully comply with the judgment. The matter was taken up on February 23, 2018 and thereafter in March, April and May, 2018. The Centre had on May 15, 2018 informed the Court that senior advocate Mukul Rohatgi has been appointed as an eminent jurist in the selection committee for Lokpal appointment. The Supreme Court on July 2, 2018 directed the Centre to apprise it within 10 days about the time frame for Lokpal appointment. As the selection committee was scheduled to meet on July 19, 2018, the Bench fixed the matter for further hearing on July 24, 2018, without passing any orders. On July 24, 2018, the Attorney General (AG) submitted an affidavit stating that a meeting of the selection committee was held but the names for the search committee were not finalised and therefore another meeting would be held soon. Expressing dissatisfaction over the Centre's response, the Bench directed it to file a fresh affidavit giving relevant details of the search committee within four weeks. On January 4, 2019 the SC directed UOI to place on affidavit all steps taken since September 2018 to set up a search committee for the appointment of Lokpal. On January 11, 2019, Common Cause filed an IA, to place on record that the Search Committee had not held any meetings before December 13, 2018. The matter was listed for March 7, 2019. During the hearing on March 7, 2019, the AG informed the Court that the Chairperson of the committee vide communication dated February 28, 2019 forwarded three panels of names to be considered by the Selection Committee for appointment of the Chairperson, Judicial Member(s) and Non-Judicial Member(s). In this background, the AG suggested that since the deliberations of the committee were complete and it was "in seisin of the matter, the contempt petition may appropriately be closed".

Mr. Prashant Bhushan, counsel for CC, however, submitted that further steps needed to be taken in the matter of constitution of the Lokpal. He proposed that the names enlisted should be put in the public domain. He drew the attention of the Court to Section 4(4) of the Lokpal and Lokayuktas Act, 2013 which states that the committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal. However, the Court deemed it proper to not issue any directions in this regard and left the matter for a just determination by the committee as and when its meeting was convened. It requested the AG for information on the possible

date of convening the meeting to finalise names for Lokpal constitution, within 10 days from March 7, 2019. However, after dragging its feet for so long, the government appointed members of the Lokpal, headed by former SC judge, Justice Pinaki Ghose as the first Lokpal of India hastily on March 19, 2019.

Introduction of Electoral Bonds Challenged: Common Cause and the Association for Democratic Reforms (ADR) have challenged the introduction of Electoral Bonds, which was done by amending Finance Act 2017. These bonds have not only made electoral funding of political parties more opaque, they have legitimised high-level corruption on an unprecedented scale by removing electoral funding limits for big corporates and foreign lobbyists. The PIL seeks direction from the Supreme Court to strike down the amendments made through the Finance Act, 2017, and the Finance Act, 2016. It is also alleged that such wide- ranging amendments to the Representation of People's Act, 1951, the Reserve Bank of India Act, 1934, the Income Tax Act, 1961 and the Companies Act were brought in illegally as a "Money Bill" in order to bypass the Rajya Sabha. This matter was taken up on October 3, 2017, when notice was issued to the Union of India and other respondents. There are no further orders of listing. However, on February 2, 2018 our petition was tagged with the petition filed by Communist Party of India (Marxist) who approached the Court challenging the Centre's decision to introduce the electoral bond scheme. It said that this move "undermines democracy"; and will "lead to greater political corruption."

No hearings were held since October 3, 2017. However, in another matter on July 2, 2018, the Supreme Court Bench of Chief Justice Dipak Misra, Justice AM Khanwilkar and Justice DY Chandrachud issued notices seeking the central government's response on a plea challenging the amendments to Foreign Contribution (Regulation) Act. The petition, filed by ADR and Mr. EAS Sarma, a retired IAS Officer and a former Secretary to the Government of India, argued that the amendments were introduced to bail out the BJP and Congress parties after the Delhi High Court held them guilty of taking foreign funding. The retrospective amendments changed the definition of what constituted a foreign company in such a way that key beneficiaries would not face legal scrutiny for donations, with effect from September 26, 2010. The BJP and Congress had challenged the High Court judgment in the Apex Court, only to withdraw it later. Instead, the government undertook legislative steps to circumvent the ruling and legitimise the funding received from abroad. On March 14, 2019, the Centre in its affidavit filed in the SC claimed that electoral bonds would "promote transparency in funding and donation received by political parties." The matter was again taken up on March 26, 2019 when the Election Commission of India red flagged the bonds scheme, conveying that it had expressed concerns about it even in 2017. The EC in its affidavit said that the electoral bond project and removal of caps on the extent of corporate funding would have "serious repercussions/impact on the transparency aspect of political finance/funding of political parties." The matter is now listed for April 2, 2019.

Undoing the Mala fide Favours to RIL in K G Basin: The petition seeks appropriate writs to the UOI to undo the mala fide favours shown to RIL 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. On December 3, 2018, the CJI refused to hear the case, saying it would rather look into more important cases. The case will likely be listed on April 4, 2019.

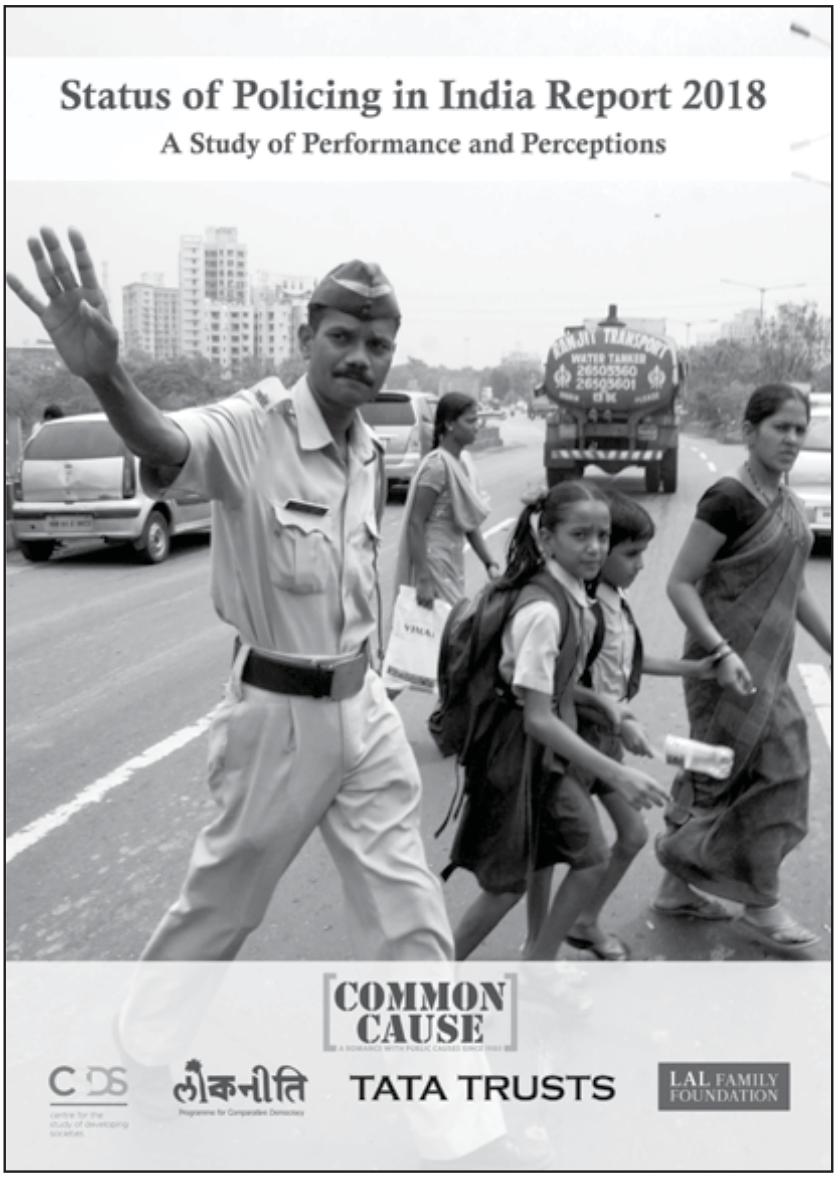
Illegal Mining in Odisha: There has been much progress since the final judgment on August 2, 2017, when the Court imposed 100 per cent penalty on companies indulging in illegal mining (mining without forest and environmental clearances, mining outside lease/ permitted area and mining in excess of permissions). In September 2017, Common Cause filed an application for clarification of issues arising out of the judgment. The Central Empowered Committee (CEC) formed by the SC, and featuring Former Justices GS Singhvi and Anil R Dave, was asked to ascertain whether there had been any violation of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 and violation of Rule 37 of the Mineral Concession Rules, 1960. Subsequent to the Court's judgment on the IA/ objections on November 12, 2018, which held SMPL guilty of illegal mining in Odisha, the matter was taken up on January 16, 2019. On that day, the time to complete the task of reviewing the National Mineral Policy, 2008 and announce a new National Mineral Policy was further extended till April 30, 2019. In the course of hearing, the issue of deleterious effect of mining on vegetation in the area came up before the bench. It's a fact that mining results in complete elimination of grass cover, which results in absence of fodder for herbivores. The Court was informed that re-grassing technology is in existence. It was also made aware that mine owners would be willing to bear the cost of re-grassing upon termination of mining activities in the area, since it is in the larger interest of the environment.

The Court requested the counsel appearing for the respondent (State of Odisha) to look into the matter and make appropriate suggestions to implement the re-grassing proposal, once the mining activities are terminated. The UOI said that re-grassing would also be included as part of the National Mining Policy 2019, being formulated by the government. It was pointed by our counsel that the report of the CEC was awaited. The Registry was directed to find out the time period within which the aforesaid report is expected to come and apprise the Court of the same thereafter. The matter was directed to be put up after four weeks and is likely to be taken up on April 5, 2019.

Delhi High Court:

SIT on Over-invoicing Requested by CPIL, Common Cause: Common Cause and Centre for Public Interest Litigation (CPIL) approached the Delhi High Court seeking a direction for a thorough investigation by a Special Investigation Team (SIT) into the over-invoicing of imported coal and equipment. The over-invoicing was carried out by various private power companies as detailed by Directorate of Revenue Intelligence (DRI) in several of its investigative reports. In the last few years, major instances of such over-invoicing have been unearthed by the DRI, which involved several prominent and influential companies. The matter was taken up on October 11, 2018, when the petitioners were directed to file a response within three weeks to the status report filed by the DRI. In addition, the DRI would be filing its response to the additional affidavit filed by Common Cause within the stipulated time. Also, it was directed that the report filed by the CBI on April 28, 2018 be furnished to all the petitioners. On December 4, 2018, the CBI was ordered to produce their original records/ investigation files relating to the two preliminary enquiries and regular case as mentioned in their affidavits/reply filed on April 28, 2018 in sealed cover, if necessary. On January 31, 2019, the Court directed the DRI counsel to produce the four adjudicating orders concerning various entities. It also directed the CBI counsel to file the status report and produce relevant records, duly flagged together with a comprehensive note vis- a-vis each one of them. The matter is listed to be heard next on April 5, 2019.

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



Jointly prepared by Common Cause and its academic partner, Centre for the Study of Developing Societies (CSDS), the report is a study of the performance and perception of the police in India. It covers about 16000 respondents in 22 states on parameters like citizens' trust and satisfaction levels, discrimination against the vulnerable, police excesses, infrastructure, diversity in forces, state of prisons and disposal of cases etc.

The study combines mixed methodologies to present a slice of life of policing in India. It also analyses official data and CAG reports along with an all India perception survey conducted by the Lokniti team of CSDS and their partners in the states.

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

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