

## Analysis on the Efficiency of Commissions of Inquiry in Exposing Scams in India

Ananya Sharma

### ABSTRACT

India as a country has time and again been marred by the rising cases of corruption among bureaucrats, ministers and people place responsible for running this country. The Commission of Enquiry was thus brought into force through a statute in order to scrutinize the actions of high profile people.

However there have been instances where various politicians and bureaucrats have escaped the scrutiny of these commissions. The aim of our paper is to analyse the factors encumbering the various Commission Inquiries set up under the State and Central Governments from performing their duties at full efficacy.

Furthermore, this paper aims to closely look into the powers vested upon the commissions and the weightage given to the reports turned in by these commissions. We have tried to put forth a brief analysis of the prominent scams like the Saradha chit fund scam where the findings of the Commission set up were not given sufficient limelight and were not considered to penalise the offenders. Such instances have not only been a slap on the face of justice but have defeated the entire purpose behind setting up of the Inquiry Commissions.

Taking into consideration all of these factors and instances, our paper aims to not only expose the truth behind the working of these commissions but also aims to put forth a set of recommendations pertaining to the powers and appointment of the commissions which if incorporated can exponentially increase their efficacy.

Keywords: commission, scam, appointment, efficacy

## INTRODUCTION

The duties and functions vested upon an administrative body are multifarious and in order to meet the changing needs of the society, it is necessary that they are bestowed with proportionate amount of discretion and power as well. In order to deal with certain specific problems, an administrator can undertake investigations or appoint bodies for the same and initiate remedial measures on the basis of the findings of such bodies.

Commission of Inquiry Act of 1952 is an example of a statute which enables the State or Central Government to set up inquiry commissions in order to acquire information on matters of public importance. Matters of public importance here would include areas where the interests of the public are involved or the money of the public are involved. In the recent past there have been numerous scams involving large sums of public money like the Saradha or the fraud in Dalmia-Jain companies which have caused immense economic troubles in the country.

The appropriate thus appoints such commissions in order to enquire into the misdeeds of the holders of public offices. The misdeeds can relate to abuse of power as well and the most prominent commission which has been appointed in India for this purpose was the Shah Commission which was constituted in 1977 in order to enquire into the malpractices and excess abuse of power by Government officials during the era of Emergency.

Though the Government cannot be mandated to appoint inquiry commissions, such appointments have proved to be immensely helpful and their recommendations have turned out to be quite effective too. The powers of the Commissions of Inquiry along their limitations and roles in exposing high profile scams have been discussed at length in the subsequent chapters.

## CHAPTER 1: APPOINTMENT AND FUNCTIONING OF COMMISSIONS OF INQUIRY UNDER THE COMMISSION OF INQUIRY ACT 1952

### Appointment of Commissions of Inquiry

The Government before the enactment of the Act<sup>1</sup> used to set up various committees and commissions for different purposes through executive orders. The Government is given the power to appoint committees and can make either any or all the provisions of the Act applicable on the committees.<sup>2</sup> These committees which are set up to enquire into “matters of public importance” are thus converted into Commissions of Inquiry when a notification is passed under Section 11 of the Act. The Commission of Enquiry Act confers an array of powers on the Government to appoint commissions to enquire into a variety of subjects including cases of ministerial corruption and scams which affect the interests of public at large. Till date the most prominent subjects for which commissions have been appointed are investments made by LIC, irregularities and frauds committed by certain persons, misuse of powers by ex-ministers and chief ministers and other economic conditions.<sup>3</sup>

The 1952 Act does not lay down any category of persons to whom it is applicable but it does mention that the appropriate Government can appoint a commission inquiry in definite matters of public importance.<sup>4</sup> The Supreme Court in certain prominent cases<sup>5</sup> elucidated the term “of definite public importance” clearly stating this expression means that the Act would apply to any individual or company or a group of individuals that assume a dangerous position or pose threat to the public well-being. Such conduct would constitute a matter of definite public importance and can call for a full inquiry.

### Purpose of Setting up Commissions of Enquiry

The crucial purpose for appointment of these inquiry commissions is to ascertain facts for the information of the company as well as the public so that the malpractices affecting their interests can be brought to notice and appropriate measures or actions can be taken against them by the concerned Government. As already mentioned, these enquiries are held to protect the interests of public therefore, it is important that the same is brought to the notice of the public too.

<sup>1</sup> The Commission of Enquiry Act, 1952 (Act 60 of 1952).

<sup>2</sup> *Id.* at s.11.

<sup>3</sup> M.P. Jain and S.N. Jain, *Principles of Administrative Law* (Lexis Nexis, 7<sup>th</sup> edn, 2017).

<sup>4</sup> *Supra* note 1, s.3.

<sup>5</sup> *Ramkrishna Dalmia v. Justice Tendolkar*, 1958 AIR SC 538.

The Apex Court thus has observed<sup>6</sup>, that the notification of appointment of the commission of inquiry must be published in the Official Gazette. Publication was seen as an indispensable element as it gave publicity to the notification and also gave authenticity to the contents of the notification. However, the appointment of such a commission cannot be made an obligation on the Central and the State Government as it falls within the discretion of the Government and they cannot be compelled to appoint a commission. But if a resolution for appointment of a commission of enquiry is passed by the Legislature, it however becomes binding on the Government to appoint the same.<sup>7</sup>

The appointment of such commissions becomes an issue when they are set up against a minister or an ex-minister.<sup>8</sup> In the case of Krishna Ballabh Sahai, the appointment of the commission was challenged on the ground that it was set up a result of political and personal rivalry between the Shri Maha Maya Prasad Sinha and Shri Krishna Ballabh Sahai and was thus ultra vires. The Courts however did not consider these grounds and made it very clear that a statutory body authority exercising its powers for the purpose authorized by law cannot be said to be ultra vires.

### **Powers given to the Commission under the Act**

A commission has been vested with the powers of a civil court when it comes to summoning of witnesses, production of documents, examining the summoned person on oath and receiving the requisite evidence in the matter.<sup>9</sup> The powers of the commission are not restricted and the Government can vest other powers upon it through a notification.<sup>10</sup> It is however imperative to note that despite the powers of Civil Court vested upon the Commission, it is never referred to it as a Court in the Act. The CI Act thus confers power on the commission as a fact-finding body and ensures that the Commission is able to work with as much independence as possible. We will delve into the aspect of efficiency of these commissions in the subsequent chapters.

The powers of a civil court have been vested on the commissions in matters which have been described as offences under Sections 175, 178, 179, 180 and 228 of the Indian Penal Code.<sup>11</sup> In addition to that the proceedings of the commissions are given the powers of that of judicial

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<sup>6</sup> *Shammbhu Nath v. Kedar Prasad*, [1972] AIR 1515.

<sup>7</sup> *B Jegnathan v. State of Tamil Nadu*, [1990] AIR Mad 69.

<sup>8</sup> *Krishna Ballabh Sahai v. Commission of Inquiry*, [1969] AIR SC 258.

<sup>9</sup> *Supra* note 1, s.4.

<sup>10</sup> *Supra* note 1, s.5.

<sup>11</sup> *Supra* note 1, s.5(4).

proceedings within the meanings of sections 193 and 228 of the Indian Penal Code.<sup>12</sup> The government after appointment of the commission does not have a lot of control over the commission except for the fact that it can close it down or stop the inquiry<sup>13</sup> which ensures more independence on the part of the commission.<sup>14</sup>

Furthermore, the Commissions are entitled to appoint and utilize services of officers and other investigating agencies<sup>15</sup> as well to investigate a particular matter and these appointments of officers to collect material and record statements do not fall within the ambit of “*delegatus non potest delegare*”. The commissions are also given the liberty to appoint persons possessing special knowledge which may help in enquiring the matter.<sup>16</sup> The Commissions are vested with the elaborate powers to regulate its own proceedings and procedures.<sup>17</sup>

### **Evidentiary Value of Statements Given Before Commissions**

We already know that the Commissions are vested with the powers to summon a person and record his evidence but we also need to understand the evidentiary value of the same. The Act lays a provision which encourages people to come forth and give evidence before the commission without apprehending that they will be subjected to civil or criminal proceedings as it ensures that the evidence given is not used against the person in civil and criminal proceeding. But in case, false evidence is given by a person on purpose, he can be subjected to prosecution for perjury. The provision however clearly lays down the two conditions under which the evidence will not be used against the person. Firstly, the statement must be given as a reply to the question posed by the commission and Secondly, when the given statement is relevant to the subject-matter of the inquiry.<sup>18</sup>

However, there have been various judicial interpretations to this provision where the Courts. Initially, the Bombay High Court gave a strict interpretation of the provision<sup>19</sup> saying that the statements made by persons before the commission can be used merely to controvert the testimony of the person given later in a criminal trial as it would not amount to “using against the person

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<sup>12</sup> *Supra* note 1, s.5(5).

<sup>13</sup> *Supra* note 1, s.7.

<sup>14</sup> *State of Madhya Pradesh v. Ajay Singh*, [1992] INSC 221.

<sup>15</sup> *Supra* note 1, s.5A.

<sup>16</sup> *Supra* note 1, s.5B.

<sup>17</sup> *Supra* note 1, s.12.

<sup>18</sup> *Supra* note 1, s.6.

<sup>19</sup> *Sohanlal Pahladrai Vaid v. State*, [1965] AIR BOM 1.

making the sad statement". The Apex Court later cleared that the limitations of section 6 apply only to oral statements.<sup>20</sup>

In the case of *Raja Narayanlal v Mistry*<sup>21</sup>, the Honorable Supreme Court laid down clarifications on the intersection between self-incrimination<sup>22</sup> and the statements produced before the Commissions that no protection can be sought in cases of investigation or inquiry. Since the Commission of Inquiry is merely a fact-finding body, Art. 20(3) would not apply and moreover the Apex Court also made it very clear that such protection can be sought only by a person accused of an offence and no other person merely giving statements before the commission.

### **Procedure Followed by the Commission During Enquiry**

Commissions of Inquiry set up by the Government are vested with powers to frame their own procedures and the Act also enables the appropriate Government to make rules pertaining to the manner in which inquiries must be conducted and the procedures which must be followed in the same.<sup>23</sup> The Commission of Inquiry appointed may consist of a number of members but in case a vacancy occurs, the Commission may continue with the enquiry from the stage where the change took place and a fresh inquiry need not commence.<sup>24</sup>

The Commissions have time and again been regarded as fact-finding bodies and not adjudicatory bodies whose report though may not be binding but adverse observations made against an individual or body or group of individuals can affect their reputation and lead to even dire consequences. Hence the Act, keeping in mind the interests and rights of the affected person also provides for an opportunity for him to produce evidence in his defence.<sup>25</sup> This provision was inserted to comply with the principles of natural justice that no person should be punished without being heard.

The Commission further grants certain rights to the person whose reputation is at stake and the provision in the Act entitles him/her to cross-examine the witnesses<sup>26</sup> who are produced before the Commission, address the Commission and also be represented by a legal representative. These

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<sup>20</sup> *Supra* note 3.

<sup>21</sup> [1961] AIR SC 29.

<sup>22</sup> The Constitution of India, art.20(3).

<sup>23</sup> *Supra* note 1, s.12(b).

<sup>24</sup> *Supra* note 1, s.8A(1).

<sup>25</sup> *Supra* note 1, s.8B

<sup>26</sup> *Supra* note 1, s.8C.

provisions have been inserted in the act to ensure smooth functioning of the commissions and to elicit as much truth as possible.

A very important question which needs to be addressed is whether the giving of false evidence before the Commission of Inquiry would amount to perjury or not. The Supreme Court cleared this point of contention in the case of *Baliram Waman Hiray v Justice B Lentin*<sup>27</sup> where it replied in negative emphasizing on the fact that the commission is given the power of a civil court only for purposes of s. 179, 180, 193 and 228<sup>28</sup> and not for the purposes of s. 195.<sup>29</sup>

### Effect of Amendment in the Commission of Inquiry Act

A sub-section<sup>30</sup> was inserted in section 3 of the C.I Act in the year 1971 which directed the Central or State Government as the case may be to lay before either the Lok Sabha or the State Assembly the report of the commission appointed along with a memorandum of action taken on the report within a period of 6 months from the date of submission of the report to the Government. This additional clause promoted the concept of open government as it brought important matters to the notice of the public and also created an invisible pressure on the Government to take actions on the report as it would have been scrutinized by the Legislature.

However this amount of weightage on the reports was not acceptable to the Government and a subsequent sub-section was added in 1986 which authorized a Government not introduce the report of the inquiry commission before the Legislature if it was satisfied that the report concerned “sovereignty and integrity of India”, or the security of the State.<sup>31</sup> But this notification issued by the Government of not to present the report was also made subject to the scrutiny of the Legislature. The notification could gain effect only if was approved by a resolution of concerned House<sup>32</sup>. Hence we see that there has always been a tug of war for power between the Commission and the Government. The Government under certain circumstances is found reluctant to take actions on the basis of the report especially when it is against an ex-minister or serving minister.

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<sup>27</sup>[1988] AIR 2267.

<sup>28</sup> The Indian Penal Code, 1860 (Act 45 of 1860).

<sup>29</sup> Code of Criminal Procedure 1973.

<sup>30</sup> *Supra* note 1, s.3(4).

<sup>31</sup> *Supra* note 1, s.3(5).

<sup>32</sup> *Supra* note 1, s.3(6).



## CHAPTER 2: LEGAL STATUS OF COMMISSIONS OF ENQUIRY

The commissions of inquiry have time and again been subjected to certain legal controversies especially when there has been conflict of interests between the public concerns and rights of individuals. Therefore, most of the legal controversies have arisen with regards to functioning of the commissions and procedures followed by them.

### Constitutionality of Commissions of Enquiry

The basic question pertaining to constitutionality of the commissions was brought to notice in the case of *RK Dalmia v Justice Tendolkar*.<sup>33</sup> It was contended that the Commission Inquiry Act 1952 fell beyond the scope of legislative competence of the Parliament. Various contentions were raised referring to the entries 94 in List I and entries 45 in List III<sup>34</sup> read along with Article 246 of the Constitution on the grounds that the Parliament was vested with the power to appoint a commission only to ascertain the facts with a view to undertake some legislation and not for any of the administrative purposes. Further it was also argued that the appointment of such a commission to enquire into the wrongs committed by individuals in order to punish them led to usurpation of the judicial function of the court and that the Act must thus be declared *ultra vires*.

The Supreme Court however rejected both the arguments and for the first contention it stated that Parliament was empowered to appoint such commissions not only for legislative purposes but also for administrative purposes. For the second contention pertaining to usurpation of judicial powers, the Apex Court stated that the commission was not an adjudicatory body but merely a body to enquire on a matter and make a report mentioning its recommendation.

The commission does not have the power to pass any order which can be enforced *proprio vigore* and thus a clear distinction was seen drawn between a decision which has no penal effect and a decision which becomes immediately enforceable through some action. In addition to this, the Court also mentioned that the recommendations given by the Commissions with regards to punishments for wrongs already committed as “*ultra vires*” the scope of the Act.

### Legal Questions Regarding Appointment of Commissions

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<sup>33</sup> [1958] AIR SC 538.

<sup>34</sup> *Supra* note 22, sch VII.



Another interesting question with regards to the jurisdiction of the Centre and the States to appoint Commissions of Inquiry was raised in the case of Border Security Force (B.S.F) v State of Meghalaya<sup>35</sup>. In this case, the State of Meghalaya had appointed a commission in order to enquire about the instances of firing undertaken by BSF. This was however challenged by the BSF on the ground that it was an armed force which was only under the control of the Central Government and that the State had no power to inquire into its actions. The Court overruled the contention of the BSF on the ground that the State Government as an “appropriate government”<sup>36</sup> was given power to appoint a commission of inquiry<sup>37</sup> in matters covered under list II or III of the Constitution.

There have further been several questions raised on the appointment of commissions to enquire into the misdeeds of the ex-ministers and this issue was brought to notice in the case of State of Jammu & Kashmir v Bakshi Gulam Mohammed<sup>38</sup>. Here, the state of J&K appointed a commission to look into the actions of the ex-chief minister pertaining to the pecuniary advantages enjoyed by him by virtue of his official position. This appointment was challenged on the ground that a minister is responsible to the legislature and thus an enquiry can be directed on a minister only on the insistence of the Legislature. The Supreme Court rejected such contentions stating that at the time of appointment of the commission, the petitioner was no longer a minister and his arguments pertaining to being responsible to the Legislature did not stand any ground. Furthermore, the Court cleared that a successor in the Ministry may take into account the glaring charges and order an inquiry accordingly.<sup>39</sup>

### Commissions Quashed by the Courts

There have been few instances where the Courts have quashed the governmental action of appointing a commission for inquiry on the ground that the charges to be enquired into were ambiguous or vague. A similar condition was discussed in the case of P.K Kunju v State of Kerala<sup>40</sup> where a commission was appointed in order to enquire into the allegations made by two members of the legislature against the finance minister of the state. These allegations though supported by letters of the Speaker and Chief Minister were not appended to the notification for the appointment of the

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<sup>35</sup> [1989] AIR Gau 81.

<sup>36</sup> *Supra* note 1, s.2.

<sup>37</sup> *Supra* note 1.

<sup>38</sup> [1967] AIR 122.

<sup>39</sup> *Krishna Ballabh Sahay v. Commission of Inquiry*, [1969] AIR 258.

<sup>40</sup> [1970] AIR Ker 252.

commission and the allegations in the notification were very vague. The Court thus had to quash the appointment of the commission.

Similarly in the case of *Orient Paper Mills v Union of India*<sup>41</sup>, a commission of enquiry was appointed by the Central Government to investigate into the matters of allegations pertaining to the Birla Group. The Calcutta High Court on analyzing the case found that the allegations or matters to be enquired into were neither “definite” nor “matters of public importance” and moreover they were absolutely vague which under no circumstances called for the constitution of a commission.

### Grounds for Challenging the Appointment of Commission of Inquiry

Though the Government has been vested with broad and discretionary powers to appoint a commission<sup>42</sup>, it is subject to certain restrictions with regards to the exercise of discretion.

#### Mala fide

This is the most common ground for challenging the action of the government on appointing an Inquiry Commission. However, in order to quash the appointment, the element of mala fide on the part of the Government has to be established without an iota of doubt. This ground has till date been successfully established only in the case of *PK Kunju*<sup>43</sup> where the Kerala High Court quashed the appointment of the commission on the ground that it was mala fide and discriminatory.

#### Non-Application of mind of the Government

This ground can be cleared through the case of *State of Madhya Pradesh v Arjun Singh*<sup>44</sup> where the Supreme Court quashed the appointment of commission of inquiry as no relevant matter was prima facie available before the State Government which would lead to its “subjective satisfaction” to appoint a commission. The Court cleared on the point that appointment of the commission must be on the basis of objective or real material and not on some vague ground or hearsay evidence.

#### Bias

Bias is yet another important ground used to challenge the appointment of the commission as the presence of prejudice in the composition of the commission would entirely defeat the purpose of the commission. This point can be well understood through the case of *The Statesman v Fact Finding*

<sup>41</sup> [1969] AIR 48.

<sup>42</sup> *Supra* note 1.

<sup>43</sup> *PK Kunju v. State of Kerala*, [1970] AIR Ker 252.

<sup>44</sup> [1993] AIR SC 1239.

Committee<sup>45</sup> where it was argued that the composition of the commission was likely to be prejudiced and biased but the Calcutta High Court did not find much merit in the argument and rejected the same.

## Violation of Principle of Natural Justice

This ground is used to challenge the report submitted by the commission and not exactly the appointment of the same. Though the commission is not a quasi-judicial body, it is bound to follow the principles of natural justice while collecting evidence against the person against whom the inquiry is initiated.<sup>46</sup> This principle was well established in the case of *Re Pergamon Press Ltd.*<sup>47</sup> The stance of the Indian judiciary on commissions following principles of natural justice was cleared in the case of *Bakshi Gulam Mohammad*<sup>48</sup> where the Court made it clear that principles of natural justice must be followed while enquiring into the allegations of an individual. Furthermore, these principles have been incorporated in the Commission of Inquiry Act itself.

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<sup>45</sup> [1975] AIR Cal 14.

<sup>46</sup> *Supra* note 1.

<sup>47</sup> [1971] CH 388.

<sup>48</sup> *Supra* note 35.

## CHAPTER 3: SCAMS EXPOSED BY COMMISSION OF INQUIRIES

When there is a suspicion of a scam, or irregularities with respect to functioning of a certain sector, or a particular incident of financial fraud, the governments often choose to set up Commissions of Inquiries to inquire into the matter. These reports are tabled before the parliament and often expose the nature and extent of the scam, which help in either kick-starting the process of investigation, or just bringing the matter to light. However, a commission of inquiry report alone doesn't lead to conviction. It is one of the initial steps, followed by further investigations by specialised agencies. The use of commission of inquiries in such scams has changed overtime. Here is an analysis of a few scams spread across several decades to judge the efficacy of such commissions.

### The Mundhra scam

India faced its first post-independence financial scam in 1957. Haridas Mundhra was an industrialist and Stock speculator. The Life Insurance Corporation of India (LIC) invested a large nearly 1.27 crore rupees into buying shares of several troubled companies owned by Mundhra. This was the largest single investment by the LIC since its nationalisation.<sup>49</sup> Additionally, it was done under 'governmental pressure' without consulting LIC's investment committee. The questionable nature of this transaction was brought to notice of the parliament by Feroze Gandhi, the son-in-law of the then Prime Minister Jawaharlal Nehru. The Prime Minister then appointed a single-member commission of inquiry to look into the matter.<sup>50</sup>

Justice MC Chagla worked not only fast, but in an extremely transparent manner and filed a report in just 24 days. The inquiry was held in public. The report suggested that the transactions were not in line with business principles. He called Mundhra 'an adventurer' whose 'passion was to swallow as many firms as possible'. Instead of buying shares on the prevailing prices, the prices had been negotiated with Mundhra.<sup>51</sup> As a result, the finance minister, TT Krishnamachari and the Finance Secretary, HM Patel resigned. The Chagla commission was followed by a multi-member board of inquiry and then a subsequent inquiry by the Union Public Service Commission (UPSC). As a result of these inquiries, even though HM Patel was acquitted, the chief of LIC, GR Kamat was fined.

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<sup>49</sup> Inder Malhotra, "The Mundhra affair" *The Indian Express*, Dec. 12, 2008 available at: <http://archive.indianexpress.com/news/the-mundhra-affair/397317/1> (last visited on November 8, 2020).

<sup>50</sup> Independent India's First Big Financial Scam: Mundhra Scandal, *The Logical Indian*, 19 March 2016 available at: <https://thelogicalindian.com/news/independent-indias-first-big-financial-scam-mundhra-scandal/> (last visited on November 8, 2020).

<sup>51</sup> *Supra* note 49.

Secondly, Mundhra was found guilty and was eventually sent to jail.<sup>52</sup> Therefore, the commission of inquiry played a crucial role in bringing the irregularities to light, that kick-started the process of inquiry and investigation. The transparency and speed adopted by the commission has been heavily praised.

## **The Dalmia scam**

Another similar scam came up in 1958 when a wealthy industrialist and owner of the Bharat Insurance Company, Ramkrishna Dalmia was held guilty of misappropriating around 2.2 crore rupees. This came after Feroze Gandhi raised the issue of insurance fraud by private insurance companies. The government of India set up a commission of inquiry to look into the affairs of certain person who controlled a number of Dalmia-Jain companies. The scope of inquiry was fairly wide, where the commission was asked to look into any irregularities, frauds or any action in disregard to honest commercial practices.<sup>53</sup> The formation of such a commission was challenged, on the grounds that there was no ‘definite matter of public importance’ and that the time for submitting a report was not specified. The court rejected these arguments and upheld the commission. It was also the first case to state that a commission of inquiry can be appointed for inquiring into conduct of an individual.<sup>54</sup> On the basis of these inquiries, Dalmia, even though he was one of the richest industrialists in India, was sentenced to jail for a time period of 2 years.<sup>55</sup>

## **The Nagarwala scandal**

This has remained to be one of the most unique scandals in Indian history. On the 24<sup>th</sup> of May, 1971, the chief cashier of the state bank of India (SBI) branch of parliament street in Delhi got a call from the Prime Minister’s office directing him to dispatch 60 lakh rupees for a ‘top secret’ matter. Ved Prakash Malhotra, the chief cashier, complied with the request but later when he went to collect the voucher receipt, he was informed that no such request had been made. He then went to the police. The police took immediately started tracking down the caller. The same evening, they apprehended

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<sup>52</sup> Ashok H Desai, “Afterthoughts on the Mundhra Affair” *The Economic Weekly*, July, 1959 available at: [https://www.epw.in/system/files/pdf/1959\\_11/28-29-30/afterthoughts\\_on\\_the\\_mundhra\\_affair.pdf](https://www.epw.in/system/files/pdf/1959_11/28-29-30/afterthoughts_on_the_mundhra_affair.pdf) (last visited on November 8, 2020).

<sup>53</sup> *Supra* note 3.

<sup>54</sup> *Supra* note 5.

<sup>55</sup> “A brief history of Indian Scams” *The New Indian Express*, Jan. 19, 2009 available at: <https://www.newindianexpress.com/opinions/2009/jan/19/a-brief-history-of-indian-scams-18994.html> (last visited on November 8, 2020).

the accused, Nagarwala. When arrested, Nagarwala immediately confessed before the Judicial Magistrate, after which he was held guilty. This was one of the fastest trials in Indian history.<sup>56</sup>

However, Nagarwala later appealed, stating that Malhotra was involved in the fraud and so they should be tried jointly. The court rejected this appeal and upheld his conviction. He then went for revision in the sessions court and then the Delhi High Court, both of which were denied. During this time, he wrote a letter to his lawyer stating that he would 'reveal the truth'. Unfortunately, Nagarwala died in mysterious circumstances in 1972.<sup>57</sup> A new government took over in 1977, and set up an inquiry commission under the chairmanship of Justice Jagmohan Reddy. The commission reported that there were 'several lacunae' in the investigations, and facts had been established by 'conjectures and speculation' rather than evidence.<sup>58</sup> It went on to state that ideally, the confession should not have been accepted as it was unsubstantiated. They also found evidence of existence of a series of letters that implied some relationship between Nagarwala and the then-Prime Minister, Indira Gandhi.<sup>59</sup> Additionally, they pointed out that Gandhi did not have an account in that bank.<sup>60</sup> However, the new government fell shortly after, and no further action was taken in this case. This highlights a major lacunae of commissions of inquiry. Since they are not binding, a report can be conveniently ignored if the government so desires.

In late 2008, IPS officer Padam Rosha, who had presented himself before the Reddy Commission, filed an RTI asking for the transcript of evidence presented by him. This request was turned down by the Ministry of Home Affairs (MHA), stating that they did not have to give information which was more than twenty years old.<sup>61</sup> However, the Central Information Commission (CIC) called this reason 'misleading' and ordered The MHA to furnish the information.<sup>62</sup>

<sup>56</sup> *RS Nagarwala v. State*, 1972 RLR 73.

<sup>57</sup> "The Nagarwala case: Is the truth buried?" *India Today* Apr. 30, 1977 available at: <https://www.indiatoday.in/magazine/cover-story/story/19770430-the-nagarwala-case-is-the-truth-buried-823665-2014-08-06> (last visited on November 8, 2020).

<sup>58</sup> Krishnadas Rajagopal, "Nagarwala case: mystery returns after three decades" *The Indian Express*, Dec. 21, 2008 available at: <http://archive.indianexpress.com/news/nagarwala-case-mystery-returns-after-three-decades/400972/1> (last visited on November 8, 2020).

<sup>59</sup> P Jagmohan Reddy, "Commission of Inquiry, regarding the Nagarwala case: report" (23 October, 1978).

<sup>60</sup> *Supra* note 58.

<sup>61</sup> CIC tells MHA to give details of 1971 nagarwala fraud case, *Zee news*, 19 December 2008 available at: [https://zeenews.india.com/news/nation/cic-tells-mha-to-give-details-of-1971-nagarwala-fraud-case\\_492323.html](https://zeenews.india.com/news/nation/cic-tells-mha-to-give-details-of-1971-nagarwala-fraud-case_492323.html) (last visited on November 8, 2020).

<sup>62</sup> Central Information Commission, *Ms. Bindu Khanna v Directorate of Education* F. No.CIC/MA/A/2008/01117 (15 September 2008) available at: [https://ciconline.nic.in/cic\\_decisions/MA-15092008-10.pdf](https://ciconline.nic.in/cic_decisions/MA-15092008-10.pdf) (last visited on November 13, 2020).



## The Fodder Scam

In this infamous scam, the then Chief Minister of Bihar Lalu Prasad Yadav, along with a few others was convicted for misappropriating funds meant for the animal husbandry department. This was first pointed out in 1996, and the matter came to light by auditor general reports.<sup>63</sup> During this time, the state government of Bihar (still headed by Lalu) set up a commission for inquiry headed by the State Development Commissioner, Phoolchand Singh. However, this was aborted shortly after when Singh found his own name in the charge sheet. Due to this, a second commission for inquiry was set up, headed by Justice Sarwar Ali.<sup>64</sup> However, a BJP leader then filed a petition in the Patna High Court requesting a Central Bureau of Investigation (CBI) probe in the matter, to which the court agreed.<sup>65</sup> After this, the commission of enquiry was not required. Here, it is important to note that since commissions of inquiry are appointed by the government, there is a fair chance that they are biased in such cases where the government itself, or a public officer is a party to the case. Secondly, the CBI is seen as an alternative to commissions of inquiry, which means their domain of responsibility is overlapping. In such a case, as is seen in cases nowadays, CBI is preferred over a commission of inquiry.

## The Saradha scam

This was chit fund scam that came to light in around 2013. Saradha Group was an umbrella company launched in the early 2000s. It provided attractive schemes to small investors, promising large returns. It also used extensive marketing techniques like celebrity brand ambassadors and sponsoring cultural events.<sup>66</sup> In 2010, Saradha started offering schemes where investors were not told where their money was invested but were promised high returns. On seeing the questionable nature of these schemes, Securities and Exchange Board of India (SEBI) ordered them to stop all such schemes and

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<sup>63</sup> V Krishna Ananth, "Fodder Scam, Lalu, and the Conviction" 48 no 43 *Economic and Political Weekly* 12 (2013) available at: [https://www.jstor.org/stable/23528830?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/23528830?seq=1#metadata_info_tab_contents) (last visited on November 10, 2020).

<sup>64</sup> "The fodder scam: a recap" *The Hindu*, May 8, 2017 available at: <https://www.thehindu.com/news/national/fodder-scam-a-recap-and-timeline/article18408968.ece> (last visited on November 9, 2020).

<sup>65</sup> *Sushil Kumar Modi v. State of Bihar*, 1996 SCC Pat 100.

<sup>66</sup> "Saradha scam: CBI summons wife of former FM Chidambaram" *Business Standard*, Mar. 4, 2016 available at: [https://www.business-standard.com/article/news-ani/cbi-summons-nalini-chidambaram-in-saradha-scam-116030400154\\_1.html](https://www.business-standard.com/article/news-ani/cbi-summons-nalini-chidambaram-in-saradha-scam-116030400154_1.html) (last visited on November 9, 2020).

bring further schemes only with their permission. Saradha nevertheless continued its business till its collapse in 2013.<sup>67</sup>

In 2013, the company started defaulting in its payments, which agitated the investors. They then protested outside Saradha's office. The final blow came when Sudipto Sen, the chairman of the group, wrote an 18-page confessional letter and then absconded. He alleged that several top politicians had been blackmailing him and even threatened to commit suicide.<sup>68</sup> Pursuant to this, the then chief minister Mamata Bannerjee set up a commission of inquiry under the chairmanship of Justice Shyamal Sen. The objective of the commission was to identify the key players in this scam and to devise a method to return money to the investors. The government also asked the commission to look into activities of other chit fund companies.<sup>69</sup> The commission received several applications from investors, not limited to Saradha; the investors hailing from all classes of society.<sup>70</sup> The finance department, by a notification, set up a scheme specifically for compensating persons affected by the Saradha scam, in which it gave all authority to the commission to decide parameters and compensate investors.<sup>71</sup> The commission submitted its report in 2014. They recommended selling off assets of the Saradha group. The money collected from that, along with the funds provided by the government were used to compensate investors.<sup>72</sup>

However, the commission compensated only a fraction of the investors – those who had invested less than Rs 10,000. Therefore, merely 23% of the applicants were given some payment. This discriminatory approach was highly criticised and also challenged before the Calcutta High Court.<sup>73</sup>

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<sup>67</sup> “All about the Saradha chit fund case that triggered CBI-Mamata row” *Hindustan Times*, Feb. 9, 2019 available at: <https://www.hindustantimes.com/india-news/all-about-saradha-chit-fund-case-that-triggered-cbi-mamata-row/story-RQ3f1nppbjT2n90wFZNtfl.html> (last visited on November 9, 2020).

<sup>68</sup> “Chit fund scam: Full letter Sudipta Sen wrote to the CBI” *DNA*, Apr. 27, 2013 available at: <https://www.dnaindia.com/india/report-chit-fund-scam-full-letter-that-sudipta-sen-wrote-to-the-cbi-1826768> (last visited on November 10, 2020).

<sup>69</sup> “Shyamal Sen commission wound up; job unfinished” *Hindustan Times* Oct. 22, 2014 available at: <https://www.hindustantimes.com/india/shyamal-sen-commission-wound-up-job-unfinished/story-07YLIk47hwg2S2WufOOQ6O.html#:~:text=The%20Shyamal%20Sen%20Commission%20that,achieving%20either%20of%20the%20objectives.&text=The%20commission%20got%20more%20than%2017%20lakh%20applications%20for%20return%20of%20money.> (last visited on November 10, 2020).

<sup>70</sup> Probal Basak and Namrata Acharya, “Sen panel to recommend selling of Saradha assets” *Business Standard* Aug. 6, 2013) available at: [https://www.business-standard.com/article/current-affairs/sen-panel-to-recommend-selling-of-saradha-assets-113080500214\\_1.html](https://www.business-standard.com/article/current-affairs/sen-panel-to-recommend-selling-of-saradha-assets-113080500214_1.html) (last visited on November 11, 2020).

<sup>71</sup> Finance Department, Government of West Bengal, “Notification Fno.WB(Part-I)/2013/SAR-391” (23 September, 2013).

<sup>72</sup> “Sen commission submits report on chit funds” *The Economic Times*, Oct. 23, 2014 available at: <https://economictimes.indiatimes.com/news/politics-and-nation/sen-commission-submits-report-on-chit-funds/articleshow/44913533.cms?from=mdr> (last visited on November 12, 2020).

<sup>73</sup> *Supra* note 70.

The court then asked the commission to give a report stating the reasons for such discrimination.<sup>74</sup>

The commission, however, was wrapped up. It did expose a few other companies like the Pailan Group. It was due to this commission that other chit fund scams such as the Saradha one came to light.<sup>75</sup> But the masses as well as politicians were dissatisfied by its work because it did not fulfil its essential function of compensating those who suffered a loss in the Saradha scandal. One of the reasons for this can be the fundamental error in reasoning behind setting up the commission on the first place that money lost in a transaction between individuals and a private financial agency cannot be compensated by the state's funds.

Around the same time as the commission, a special investigation team (SIT) was also appointed by the West Bengal Government, which looked into the matter. Eventually, it was taken up by CBI, and a number of other politicians were also named in the scam. Sudipta Sen was sentenced to three year imprisonment by a district court.<sup>76</sup> He was also fined.<sup>77</sup> The matter has come to light again as other charges against Sen are still being investigated. Other people have been arrested and even the Supreme Court is looking into certain aspects of it.<sup>78</sup>

The MB Shah commission and mining scams

The Central Government set up a commission of inquiry in November 2010 to look into the suspected illegal mining in states. The commission was asked to see if the mining complied with the Mines and Minerals (Development and Regulation) Act, Forest (Conservation) Act, Environment (Protection) Act and other rules and guidelines issued with regard to illegal mining. It was also expected to look into illegal transportation and export of iron ore and manganese. Lastly, it was supposed to recommend remedial measures to prevent such mining and trade.<sup>79</sup> Since it was set up

<sup>74</sup> "Saradha more equal than others Court seeks annual report" *Telegraph*, Apr. 22, 2014 available at: [https://www.telegraphindia.com/1140422/jsp/frontpage/story\\_18265512.jsp](https://www.telegraphindia.com/1140422/jsp/frontpage/story_18265512.jsp) (last visited on November 12, 2020).

<sup>75</sup> Suvojit Bagchi, "Small investors question closure of Shyamal Sen commission" *The Hindu*, Nov. 20, 2014 available at: <https://www.thehindu.com/news/cities/kolkata/small-investors-question-closure-of-shyamal-sen-commission/article6617267.ece> (last visited on November 12, 2020).

<sup>76</sup> Romita Datta, "Saradha chairman Sudipta Sen sentences to three years in jail" *Mint*, Feb. 22, 2014 available at: <https://www.livemint.com/Politics/TcKgleKIFyp7mP3htIMUsL/Sudipta-Sen-sentenced-to-3-years-in-jail.html> (last visited on Nov. 12, 2020).

<sup>77</sup> Kanchan Chakraborty, "First of many: Sudipta Sen gets 3 yrs in jail in PF case" *The Indian Express*, Feb. 22, 2014 available at: <https://indianexpress.com/article/cities/kolkata/first-of-many-sudipta-sen-gets-3-yrs-in-jail-in-pf-case/> (last visited on November 12, 2020).

<sup>78</sup> Dhananjay Mahapatra, "Supreme Court seeks reply from Rajeev Kumar on CBI's arrest plea" *The Times of India*, Nov. 30, 2019 available at: <https://timesofindia.indiatimes.com/india/supreme-court-seeks-reply-from-rajeev-kumar-on-cbis-arrest-plea/articleshow/72301553.cms> (last visited on November 12, 2020).

<sup>79</sup> "Justice MB Shah Commission of Enquiry for Illegal Mining of Iron Ore & Manganese – Volume 1" (June, 2013) available

by the Central government, it was not limited to any particular state. This commission proved to be instrumental in exposing scams primarily in Odisha and Goa.

## Odisha

In 2011, CNN-IBN investigated Odisha's Keonjhar district to reveal the possibility of a huge mining scam. Three companies were caught conducting illegal operations in districts where work had been suspended by the Odisha Assembly in 2009. The State Vigilance Commission (SVC) framed a charge sheet against these companies, estimating a loss of Rs 2,352 crore, which started the unravelling of the scam.<sup>80</sup> The Indian Bureau of Mines also issued a show-cause notice to these companies but no further action was taken. An activist filed a Public Interest Litigation (PIL) requesting a CBI inquiry in the matter. The government then asked the vigilance department to conduct another inquiry but it soon realised that the department was not fully equipped to conduct an inquiry at such a large scale.<sup>81</sup>

The MB Shah report's first volume dealt exclusively with illegal mining in Odisha. It was released in June, 2013.<sup>82</sup> This was the first of a series of reports that exposed the large-scale scam in the state, something that had been going on for years, as well as the involvement of prominent politicians and officials. The commission suggested that minerals worth Rs 60,000 crore were illegally mined in Odisha during 2008-11. The districts majorly affected were Keonjhar and Sundargarh. The report also highlighted the adverse effects of these activities on the resident Tribal communities. They were displaced and forced to stay in 'pathetic and miserable conditions'. It also alleged the involvement of big traders, political entities and high-rank officials. Lastly, it recommended a CBI inquiry in the matter.<sup>83</sup> Additionally, it stated that 94 of the 192 iron ore mines did not have the mandatory

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<https://mines.gov.in/writereaddata/UploadFile/First%20Report%20of%20Shah%20Commission%20on%20Odisha%20E2%80%93%20Vol%20I.pdf> (last visited on November 12, 2020).

<sup>80</sup> "Ballery-like mining scam unearthed in Orissa" *The New Indian Express*, Sept. 27, 2011 available at: <https://www.newindianexpress.com/states/odisha/2011/sep/27/ballery-like-mining-scam-unearthed-in-orissa-295162.html> (last visited on November 12, 2020).

<sup>81</sup> Mother of all mining scams in Odisha: Rs 30,00,00,00,00,000, Firstpost, available at: <https://www.firstpost.com/politics/mother-of-all-mining-scams-in-odisha-rs-300000000000-94088.html> (last visited on November 11, 2020).

<sup>82</sup> *Supra* note 80.

<sup>83</sup> "Shah Commission says Rs 60k cr lost to illegal mining in Odisha." *Business Standard*, Feb. 10, 2014 available at: [https://www.business-standard.com/article/current-affairs/shah-commission-says-rs-60k-cr-lost-to-illegal-mining-in-odisha-114021000801\\_1.html](https://www.business-standard.com/article/current-affairs/shah-commission-says-rs-60k-cr-lost-to-illegal-mining-in-odisha-114021000801_1.html) (last visited on Nov. 12, 2020).

environmental clearances and 75 of them extracted more than permitted. It directly held both Central and state government liable for these violations.<sup>84</sup>

An NGO, Common Cause filed a PIL in the Supreme Court asking for further inquiry into the matter, either by CBI or by setting up an SIT.<sup>85</sup> The court gave its first judgement in 2017. It clearly defined 'illegal mining' and held that a 'retrospective environmental clearance to a mining project was not acceptable. It directed mining companies and leaseholders engaged in illegal mining to compensate the full value of the illegally extracted minerals.<sup>86</sup> It also relied on a report by a Centrally Empowered Commission (CEC) made in response to a petition filed in 1995.<sup>87</sup> The court further ordered the pending show cause notices to be decided, and directed the government to look into the National Mining Policy, which was almost a decade old.<sup>88</sup> Pursuant to this, a new National Mining Policy was formed in 2019.<sup>89</sup> In 2020, another order was issued by the court, wherein it condoned the delay in payments, allowed the mining operations to resume and ordered the competent officers of the state to conduct a joint verification.<sup>90</sup> The Supreme Court also directed centre to ensure that mining leaseholders undertake re-grassing of all areas affected by their illegal or legal mining operations within three weeks. This was after the concern that mining leads to complete elimination of grass in an area, which deprives herbivore of food.<sup>91</sup>

Although the commission report helped in bringing out the issue and reforms have been made in that regard to prevent such illegalities, it is important to note that people responsible for it have not been held liable. The Comptroller and Auditor General of India (CAG) had conducted a performance report audit which revealed irregularities in Odisha's mining administration, which have caused

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<sup>84</sup> Nitin Sethi, "Half of Odisha's iron ore mines lack clearance: panel" *The Hindu*, Dec. 25, 2013 available at: <https://www.thehindu.com/news/national/half-of-odishas-iron-ore-mines-lack-clearance-panel/article5498482.ece> (last visited on November 12, 2020).

<sup>85</sup> Anupam Chakravarty, Odisha mining scam: petition in SC seeks closure of illegal mines, Down To Earth, available at: <https://www.downtoearth.org.in/news/odisha-mining-scam-petition-in-sc-seeks-closure-of-illegal-mines-43474> (last visited on November 12, 2020).

<sup>86</sup> *Common Cause v. Union of India*, (2017) 9 SCC 499.

<sup>87</sup> *TN Godavarman v. Union of India*, (2008) 3 SCC 182.

<sup>88</sup> *Supra* note 86.

<sup>89</sup> Ministry of Mines, Government of India, National Mining Policy 2019 available at: <https://mines.gov.in/writereaddata/Content/NMP12032019.pdf> (last visited on November 12, 2020).

<sup>90</sup> *Common Cause v. Union of India*, (2020) SCC SC 640.

<sup>91</sup> "In Key Judgement, CJI Bobde Puts Centre's National Mineral Policy 2019 Under Scanner" *The Wire*, Jan. 10, 2020 available at: <https://thewire.in/law/supreme-court-mining-new-mineral-policy-2019-scanner> (last visited on November 12, 2020).



losses up to nearly Rs 9,000 crore.<sup>92</sup> As of now, even though the Odisha government have admitted that irregularities had been committed, they have not taken any concrete action. Since the opposing parties have not raised the issue, it has been forgotten, despite striking evidence of huge losses.<sup>93</sup>

## Goa

Another major scam that the MB Shah Commission brought to light was the Goa mining scam. After an interim report, the final report was released in October, 2013. It revealed several irregularities and violations.<sup>94</sup> The report revealed that the state and central government agencies, along with powerful mining operators had facilitated ‘unrestricted, unchecked and unregulated export of iron ore to China’. It specifically accused former Chief Minister Digambar Kamat and other mining companies that have ‘flouted the law’. It recommended stopping all mining activities with immediate effect, and even transportation without approval or clearance.<sup>95</sup>

The Supreme Court took up this matter pursuant to a PIL filed by the NGO Goa Foundation. It acted on the recommendations and banned mining operations in Goa in September 2012. This was after the government of Goa had suspended all mining operations after the commission report was tabled in the parliament.<sup>96</sup> It also appointed a Central Empowered Committee (CEC) to look into the matter and submit its report.

Meanwhile, an electricity department employee, Kashinath Shetye, filed a complaint in the Crime Branch, but they did not take any action. He then filed a petition in the Bombay High Court asking the scam exposed by the commission to be investigated. Pursuant to this, the court directed the state

<sup>92</sup> Dilip Bisoi, “CAG finds Rs 9,000 cr scam in Odisha; says 17 mining companies made undue gains” *Financial Express*, Sept. 29, 2016 available at: <https://www.financialexpress.com/economy/cag-finds-rs-9000-cr-scam-in-odisha-says-17-mining-companies-made-undue-gains/396501/> (last visited on November 12, 2020).

<sup>93</sup> Akshaya Kumar Sahoo, “Odisha: Fate of probe into mining scams hangs in the balance” *The Asian Age* May 27, 2019 available at: <https://www.asianage.com/india/all-india/270519/odisha-fate-of-probe-into-mining-scams-hangs-in-the-balance.html> (last visited on November 13, 2020).

<sup>94</sup> “Third Report on Illegal Mining of Iron Ore and Manganese Ores in the state of Goa: Justice MB Shah Commission of Enquiry for Illegal Mining of Iron Ore and Manganese - Volume 1” (October, 2013) available at: <https://goenchimati.org/wp-content/uploads/2016/06/Shah-Commission-Report-on-Goa-Part-III.pdf> (last visited on November 13, 2020).

<sup>95</sup> “Goa mining scam worth Rs 34,935 crore: Justice Shah Commission” *Hindustan Times* Sept. 7, 2012 available at: <https://www.hindustantimes.com/india/goa-mining-scram-worth-rs-34-935-crore-justice-shah-commission/story-EbEV7zhxNhuQQwwICmQ7dN.html> (last visited on November 13, 2020).

<sup>96</sup> “SC bans mining in Goa; sale, ore export also stopped” *Hindustan Times* Oct. 6, 2012 available at: <https://www.hindustantimes.com/india/sc-bans-mining-in-go-a-sale-ore-export-also-stopped/story-ktjY9nLFAhhkZ5Rv5dbo3L.html#:~:text=The%20Supreme%20Court%20on%20Friday,in%20the%20last%2012%20years.&text=This%20is%20the%20second%20instance,has%20come%20before%20the%20SC.> (last visited on November 12, 2020).



government to file an FIR against all persons who seem to have committed offences and have practiced illegal mining within 6 weeks.<sup>97</sup> However, no action was taken.

On 11<sup>th</sup> November 2013, the Supreme Court appointed an 'Expert Committee' to determine what should be the annual iron ore excavation ceiling for Goa, which submitted its report on 14<sup>th</sup> march 2014.<sup>98</sup> On 21<sup>st</sup> April 2014, the Supreme court stayed the order of the Bombay High Court. it also lifted the ban on mining, allowing it with an annual cap. It asked the Ministry of Environment to identify 'eco-sensitive areas' around wild life sanctuaries and national parks, and directed that no lease would be granted in these areas. The court also pointed out certain fallacies in the Shah Commission report on the basis of the CEC report. However, it did not squash the report.<sup>99</sup>

In February 2018, the Supreme Court declared all mining leases illegal and directed the state government to issue fresh ones instead of renewing the old ones. It also directed the state to ensure that a Special Investigation Team looks into the matter and submits its report at the earliest. It also directed the state to take 'necessary steps' to recover dues from the mining lease holders.<sup>100</sup> It is important to note that here too, no concrete action has been taken to hold the offenders liable. Rather, the courts have taken measures to reform the current situation and prevent illegal mining in the future.

<sup>97</sup> "HC asks Goa government to file FIR in mining scam" *The New Indian Express*, Mar. 26, 2013 available at: <https://www.newindianexpress.com/nation/2013/mar/26/hc-asks-go-a-government-to-file-fir-in-mining-scam-462279.html> (last visited on November 13, 2020).

<sup>98</sup> *Goa Foundation v. Union of India*, (2014) 6 SCC 738.

<sup>99</sup> *Goa Foundation v. Union of India*, (2014) 6 SCC 590.

<sup>100</sup> *Goa Foundation v. Sesa Sterlite Limited*, (2018) 4 SCC 218.

## CHAPTER 4: EFFICACY OF THE COMMISSIONS OF INQUIRY

With regard to exposing scams in India, Commissions of Inquiry have played a significant role. One of the biggest advantages is that such commissions can be appointed even if there is a mere suspicion of a scam. For example, the Shah commission was asked to examine the illegalities regarding mining in various states based on suspicion of such activities in Odisha. Therefore, in cases where there is not enough evidence to take investigative action, Commissions of Inquiry can be set up to bring the actual issues to light. Another advantage of such commissions is their wide scope. While inquiring upon a particular issue, the reports often delve into similar issues in other areas, thereby exposing other scams too. For example, the Shah Commission exposed scams in Goa and Karnataka too. The Shyamal Sen commission for the Saradha scam exposed similar dealings by other chit fund companies.

However, there are two sides of a coin. One of the major problems with Commissions of Inquiry is the fact that they are not binding. While it is understandable that the purpose of such commissions is to inquire and not to adjudicate, inquiry reports are often ignored. For example, Odisha and Goa have failed to convict anyone for the irregularities and violations in the mining sector even after nearly 7 years of the report. It is also important to note that in both these cases, the investigations which led to the reforms in law were initiated by PILs and petitions by socially active citizens. The government had not taken any action despite the Shah Commission report giving evidence of huge losses due to irregularities. Secondly, the commissions are extremely time-taking and often submit reports after the matter has died down.

Another matter which requires attention is the requirement of such commissions (especially in the case of scams) in an age where there are specialised investigative agencies like CBI, SEBI, ED, and the like. As noted before, a Commission of Inquiry report itself cannot lead to conviction and has to be followed by some other investigation by one of these bodies or ad-hoc bodies like SITs or CECs. In such a case, the commission reports often seem unnecessary. Lastly, the commissions are often used as tools to gain political mileage. This is because in a number of scams, the government that appoints the commission is party to the scam. For example, Chief Minister Lalu Yadav appointed a commission of inquiry to look into the fodder scam, where he was the prime accused. This defeats the purpose of inquiry because then it is tainted.

## CONCLUSION AND RECOMMENDATIONS

The project covers powers and purpose of commissions of inquiry before delving into their roles in exposing scams. The act was made in 1952 and needs to be updated. Although the purpose is not to adjudicate but the Commission report should be made binding in some respect. There can be a specified time period for the state or central government to take suo moto action on the issues raised in the report. Increasing the value of the report will also put a responsibility on the commission to ensure accuracy.

Transparency and efficiency should be promoted. Much like the first commission of inquiry in the Sundhra scam, reports should be tabled at the earliest and swift action should be taken. Extensions should be discouraged. Where reports are too tedious, they can be released in volumes, like the Shah Commission report. In cases where other agencies are also looking into the matter, a provision should be made to avoid overlap. For example, if the CAG is making a report on a particular financial scam, the Commission of Inquiry for that should be disbanded.

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