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COMMON CAUSE

VOICE OF "COMMON CAUSE"

ONE MORE CHEER FOR PENSIONERS

Although our writ petition on restoration of pension commutation is still pending in the Supreme Court the Government has conceded in principle that they will stop cutting the commuted value of pension in the case of old pensioners. A statement to this effect was made by the Attorney General in the court on 20th March. The Government has now given up the insistence on limiting the benefit only to pensions upto Rs. 500 and on calling it ex-gratia payment instead of restoration. To the extent that the Government has agreed to discontinue the deduction of pensions, this is another victory for the cause of pensioners.

It is unfortunate, however, that this decision of the Government which has been taken "as an act of goodwill to the pensioners and to extend to them some measure of relief in the evening of their lives," has been hedged round with clauses which render it very unwelcome, particularly to defence pensioners. The important clause of the formulation is that full pension will start being paid on completion of 15 years from retirement or on completing the age of 70 years, "whichever is later". The date for giving effect is proposed to be 1st April 1986; we had asked for it from the date of our petition three years ago. We had suggested : 12 years, or completion of 70 years, "whichever is earlier". We had in view those defence pensioners, of lower ranks, who retire early, in their 40's and even 30's. Under the formulation given by Government these pensioners will have to wait for nearly 30 years before they will get the full pension. This would obviously be unacceptable. We pointed out this problem, and the Hon'ble Court asked the Attorney General to get the matter re-examined by the Government, to avoid problem arising for the defence pensioners.

We have since raised this matter at various forums, directly and through the Indian Ex-Services League and other sources, for reconsideration by the Government. We earnestly hope that this problem will get suitably rectified. Next date in court is 23rd April for the statement by the Government of India. Arguments on behalf of COMMON CAUSE have already been completed, by our esteemed counsel Mr. Anil Diwan, who won the major case of pension liberalisation for all per-1979 pensioners. In this issue we have elsewhere presented the main points which were urged by our counsel.

With the restoration of full pension the old pensioners will heave a sigh of relief. We will have the satisfaction of having served them once again. We are grateful to them for their offer of sending us their contributions of one month's restoration of the commutation. They are welcome to send it through cheque or money order or postal orders, to COMMON CAUSE (office address : 32 Anand Lok, New Delhi-110049).

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Budget And Our Recommendations

It is heartening that quite a few of the recommendations we made to the Finance Minister two months before the 1986-87 budget have found place in it. Obviously, these recommendations embodied the requirements and demands of the middle classes, and their acceptance shows they were proper aud justifiable. We give below information about the specific recommendations we made and the corresponding provisions which have appeared in the Budget.

One of the very important recommendations made by us, in relation to Income Tax, related to the inequity of taxing notional income in respect of self-occupied property. We felt that this imposition was totally unjustified as the self-occupied property did not yield any income and despite this a notional income was assessed for purposes of determination of income tax payable by the owner. Our recommendation to do away wiih this notional income has been accepted. This exemption will benefit hundreds-of thousands of assessees who are owners of self-occupied properties. It is a pity that thisu important concession escaped the notice of the media when, analysing and presenting the main features of the budget, they omitted fo mention anything about this important exemption.

Second impo rtant recommendation we had made was that the standard deductio should be increased from Rs. 6000 to Rs. 10,000 to cover the increased costs. This recommendation has been totally accepted. The enhancement of standard deduction provides benefit to all salaried and fixed income assessees. In effect in relation to all such assessees the exemption limit of income tax has thereby got increased. subject to enhancement of the percentage from 25 to 30 percentage of the salary income. This measure is expected to benefit 3.5 lake tax payers.

In relation to income tax we had also recommended that the costs on medical care are increasing and that appropriate deduction, relative to the increased cost of medical care, should be permitted. Provision has been made in the budget to allow sucn deduction, subject to limits, in respect of salary earners and self-employed persons, and also to allow deduction for payments made towards medical insurance policies.

In relation to Capital Gains Tax, which is causing considerable problems due to continuing inflation and consequent escalation of values of property, we had made certain recommendations. In particular, we suggested that the date 1.1.1964 for assessmnt of of gain was much too ancient in the context of inflation and that it should be brought forward to 1.1.1979. In the budget the date has been brought forward to 1.1.1974. We had also suggested that the iimit of initial deduction should be increased from Rs. 5000 to Rs. 25000. The limit has been increased in the budget, but to Rs. 10,000.

In connection with wealth tax we had inter alia urged reconsideration of the problem of assessment of market values of as sets including residential house, shares and

jewellery. The importance of matter has been recognised in the budget and it has been stated that for eliminating the controversies and litigation arising from valuation of these assets the Government proposes to frame simpler rules and that these rules will be notified.

We had also pointed out the harassments that are at present caused to the buyers of any immovable properties by the indiscriminate issue of notices from the acquisition authorities of income tax department threatening acquisition of the properties on the allegation of under-valuation. It has been provided in the budget that government will exercise the pre-amptive right for purchase of properties which carry value of Rs 10 lakhs and above, located in the metropolitan cities, and that honest seller will not be hurt by this measure.

Another area in which our recommendations have found acceptance in the budget is that of gift tax. We hade made specific recommendations for alterations in it in case the government was disinclined to scrap it altogether, Our suggestion was that the limit of tax-free gift should be increased from Rs. 5000 to Rs. 25000. This limit has been increased to Rs 20,000. Secondly, we had urged that aggregation of gifts in respect of previous years was a noxious provision and unjustifiable. This provision has been deleted in the budget.

In effect, therefore, there is cause for us to feel that to the extent of acceptance of these recommendations in this year's budget we have reason to be gratified.

Prospects of Judicial Reform

The law Commisson of India has, under the leadership of its new chairman Mr. Justice D.A. Desai, taken up the task of overhauling the judicial system of the country with the objective of making it more in consonance with the requirements, to provide access of justice to the weaker sections, and to make justice available expeditiously and and inexpensively. Work has been started by the Commission in accordance with the terms of reference which have recently been prescribed by the Government of India. This matter is obviously of great importance, firstly, for providing a statutory base to the LOK ADALATS which have been given great fillip in the recent months under rhe guidance and inspiration of Mr. Justice P.N. Bhagwati, Chief Justice of India, secondly, for working out the reforms required in the judicial procedures and relevant laws governing the procedures and thirdly, for evolving the various aspects of recruitment and training of the cadres of of judicial officers for strengthening the base of judical administration.

COMMON CAUSE has been taking keen interest in the work of LOK ADALATS and in the areas of judicial reform. We reproduce below an article on the subject by the Director of COMMON CAUSE and also excerpts from the views submitted by COMMON CAUSE on the subject of panchayat nyayalas which have been proposed by the Law Commission.

Justice Through Lok Adalats

The Chief Justice of India, Mr. Justice P. N. Bhagwati, will go down in history as the person who gave real push to the concept of expanding justice through the machinery of Lok Adalats. He has now stated that legislation is being prepared for providing statutory base to this machinery as a part of the concept and development of legal aid and that the contemplated law may be passed in the current Budget session of Parliament. This will undoubtedly be a matter of great fulfilment for him and for the country.

Lok Adalats have been in the news since this Chief Justice of India took over some some months ago. Almost every week there is news of Lok Adalats having been orgonised at some place or the other in the country During the last few months the programme of Lok Adalats has received welcome momentum, and practically every High Court has started initiating the programme of holding Lok Adalats in its area of jurisdiction. Till recently Lok Adalats were being held mainly in the Gujarat State where Mr. Jusiice P. N. Bhagwati initiated this experiment when he was in the Gujarat High Court. Success of this mesure was demonstrated in Gujarat where over 10,000 cases where settled through the Adalats. Some work was also in Tamil Nadu and Maharashtra. Now in the last few months this programme is coming in evidence practically everwhere. Adalats have been held, with conspicuous success, in Delhi, Uttar Pradesh, Orissa, Shimla, Bombay, Rajastan etc. Thousands of cases have been settled in these Adalats.

THE CONCEPT

The concept of Lok Adalats is nothing new. It is pure and simple the translation into practice of a machinery for mediation and conciliation. It is the means to bring about sattlement between disputants out of Court through the intermediacy of persons of status and experience who operate as conciliators. It is replication of the system of Panchayats which for ages have operated in the villages of India.

Through the Lok Adalats settlements are arrived at between parties who have taken the disputes to courts but are willing to get settlement effected though this machinery. Where the matter has not yet gone to court, one party submits application in the Lok Adalat, stating the dispute and giving address of the other party. The Adalat calls the parties before it and attempts to bring about conciliation which is then recorded and takes the shape of an agreement resolving the disput Where the matter has already gone to the court the parties are called before the Adalats, on the initiative of either or both, or on reference to the Adalat by the court. Conciliation effected between the parties is recorded and remitted to the court which then issues the consent decree, making it legally binding on the parties.

Lok Adalats are being termed people's courts for want of better equivalent translation. In fact, these donot operate as courts nor for that matter do they operate as Adalats. They serve the purpose of settling disputes and not adjudicating the disputes which inevitably lead to the holding of one party in the right and the other party in the wrong. The mode of adjudication inevitably leads to trail of

bitterness. The process of mutual settlement, through conciliation and mediation, is separate and distinct from the operation of law courts.

SPECTACULAR RESULTS

It is a heartening experience to watch the operation of Lok Adalat and to participate in this programme. Disputes are settled before the Adalat in minutes where the cases would take years in the courts to be settled. Delhi Legal Aid & Advice Board organised a big programme of Lok Adalats in the beginning of October 1985 at Delhi for dealing with a number of claims under the Motor Vehicles Act which had been pending in courts for upto five years. The claimants and representatives of the General Insurance Company appeared before the Adalat. Literally, within minutes each case was settled ; 137 cases were finalised within one day, involving aggregate payment of claims to the extent of Rs 40 lakhs. Cheqes for payment of the settled claims were issuse by the Insurance Company within a couple of days thereafter and delivered to the claimants. These particular Adalats were presidend over by retired High Court judges and district judges, but it has been our experienee that the Adalats can as well be conducted by other persons of status and experience; they need to possess the patience and tact of dealing with disputants and bringining them round to settlement in the spirit of give and take. Presence of lawyers is not required in these processes of conciliation and settlement; they are not, however, debarred from attending.

Before the Lok Adalat the dispute is not dealt with on the basis of court procedure, nor is evidence of witnesses recorded though the Members of Adalat may hear the witnesses if they are led by the either partly to substantiate its claim. If there are any documents which support the claim of either party and which are relevant to the settlement of the dispute, the Adalat Members examine the documents. Originals of the documents do not need to be placed on the file of the Adalat, copies are put on record, after reference to the originals where necessary. Objective of the entire proceedings of the Adalat is, as started above, not to adjudicate on the dispute but to bring about a compromise through mediation and conciliation after hearing both parties and exploring the avenues of bringing about conciliation.

Each Adalat needs to have two or three Members to preside over it. It is not necessary that they should be persons of judicial background, though of course it is preferable if at least one of them has such knowledge and backg ound. It would be appropriate if one of the Members is a lady. Initiative needs to be taken by the welfare or other social, non-political organisations to set up such Adalats in their areas, with the approval and collaboration of the district judge and under the over-all guidance and approval of the High Court of the state. Where the District Legal Aid & Advice Board has been established, its assistance and co-operation should be sought; some funds for operating the Adalats can also be forthcoming from the Board, under the general auspices of the Central Committee for Implementing Legal Aid Schemes which functions at Delhi under the chairmanship of the Chief Justice of India.

COURT ARREARS

The courts of the country are choked with accumulated arrears of cases, with the result that justice within a reasonable period has become impossible to secure. Such clogging of the avenues of justice has created a very serious problem for the entire judicial system of the country; faith in this system, which is one of the paramount pillars of the functioning of

the society, is seriously jeopardized. The figures of accumulated arrears in the courts are frightening indeed. Latest available statistics show that in the lower civil and criminal courts of the country there are not less than one crore cases pending (about 70 lakhs criminal cases and 35 lakhs civil, including original and appellate); evary year about 83 lakh criminal cases and 30 lakh civil cases are instituted, with disposal failing to keep pace even with fresh institution; in High Courts of the country the pendency list is of the order of over 12 lakhs, with institution every year of about 7 lakh cases and disposal lagging behind at about 5.5 lakh cases; and in the Supreme Court itself the pendency file has reached the figure of about 1.5 lakh cases including regular hearing matters, admission matters and miscellaneous cases. These figures are very disturbing indeed. It is the experience of everybody that civil disputes which should normally not take more than years to dispose of keep pending for five to ten years, and criminal cases, which should normally be disposed of in six months, often remain pending for two and more years. It is a serious reflection on the administration of justice that there have been instances where in criminal cases the accused have languished for years in jails without trial and that the High Court at Allahabad has had recently to lay down that where a criminal case has been pending for more than ten years since its original institution it will be taken to have failed. In the context of this state of affairs of the courts of India, the only remedy lies in the establishment and expansion of the programme of Lok Adalats.

District Judge in each district. with the concurrence of the Chief Justice of the High Court, needs to take the initiative of operating the Lok Adalats with the help and co-operation of raliable voluntary welfare non-political organisations, and where possible, under the auspices of the District Legal Aid & Advice Board. Expenditure on this programme can be kept to the minimum by operating LoK Adalats on the basis of voluntary assistance of selected persons of status and experience who operate as Members of the Adalats and hold the Adalats in schools on holidays or in community halls etc., which will not necessitate expenditure on the hiring of accommodation. The expenditure will primarily need to be incurred on the preparation and issue of notices to the parties, on stationary, printing, cyclostyling and postage etc. This expenditure can often be raised by local voluntary effort where assistance may not otherwise be available.

FUNCTIONING OF ADALATS

The experience in operating the Lok Adalats has been that there are certain type of disputes which are more readily amenable to the effort of conciliation and mediation. These are small money claims of Individuals as well as banks, claims tor compensation of land acquisition, compensation for accidents, claims of wages, railway claims relating to goods, municipal claims, compoundable offences, traffjc offences etc. Effort initially needs to be made to encourage the reference of such pending cases from the courts, under the initiative of the district judge, to the Lok Adalats. As the work expands, and evidence of effectiveness and utility of Adalats expands in the area, cases involving other disputes can increasingly be brought up for effecting conciliation,

One important hurdle which is at present being experienced by those operating the Lok Adalats is the reluctance of defendants of money suits etc to appear before the Lok Adalats. Where the defendants consider that they can frustrate the operation of regular courts by manipulations to avoid appearance, they on their own or on the advice of their lawyers prefer to avoid appearance before the Adalats. It is the general experience that in about 50%

cases, which are referred to the Adalats by courts, the defendants do not appear whereas the plaintiffs almost always appear. This handicaps the process of conciliation. The Lok Adalats donot at present have the authority to compel attendance; they cannot issue coercive processes; they can at best request the parties to appear. The establishment and expansion of the work of Lok Adalats is, however, at present in an innovative phase. As the work gathers momentum, and the people come to develop confidence that cases can be quickly settled in these Adalats through processes of give and take, and that concrete benefits arise to both parties from such adjustment, there will be greater readiness on the part of the parties to appeal before the Adalats.

PROPOSED LEGISLATION

In this context it is heartening to know that efforts are already afoot to give the Lok Adalats a statutory base. It is hoped that the contemplated legislation will prescribe that certain notified types of cases. civil as well as criminal, will initially have to be taken to the Lok Adalets and cannot be filed in the regular courts, and that they can be entertained in the regular courts only on the certification of Lok Adalats of the area that compromise cannot be effected. Such laws exist in certain countries and it will be worthwhile to benefit from this experience. Provisions of this nature will give statutory authority to Lok Adalats; the summons and notices issued by them for appearance will have the backing of Law; and the reluctance of a party to agree to conciliation of the dispute will inevitably weigh against such party in regular trial in court. With the enactment of such legislation the burden of courts will start being substantially reduced and the role of iustice in in the country will start being revived.

We give below our views and comments regarding the specific suggestions embodied in Law Commissions Working Papar about the system of Nyaya Panchayats which is sought to be introduced for carrying justice to the grass-roots :—

(i) Panchayats have over the decades since independence got highly politicised. This is very unfortunate, but the fact is that politics had entered the vitals of Panchayats. They were seen by the political leadership at the level of states as rival centres of power and consequently were reduced to the state of anaemia through the statutes and their application. Elections to the Panchayats have become the vehicle for bartering influence and patronage. Panchayats and Zilla Parishads etc. have been arbitrarily superseded; Panchayat raj which was sought to be introduced has been crippled. The word "Panchayat", which had since times immemorial developed connotation of elderly wise persons operating in the interests of the village and settling disputes, has now become almost an anathema, allied to power brokerage and oppression of the weak. Therefore. our suggestion is that the concept of grass-roots forum of justice should not be given a name which would be linked to the word "Panchayat". In this context, we suggest that it would be much better to call these Lok Adalats (the word Adalat carries in north of the country the historic connotation of administration of justice) and Lok Nyayalas (the word Nyayala carrying the same concept in southern states of the country), Any other names, Jan Panchayats, Nyaya Panchayats, People's Courts, etc. will prove handicaps. It would be desirable to be definite in this regard and not leave this matter to local predilections and preferences.

(ii) For effectively reaching out to the people

it may be necessary to establish two or three Lok Adalats in each Tehsil/Taluka. Expenditure on establishing these will be justifiable when it is considered that they will lead to speedier resolution of disputes and correspondingly reduce the burden of work in the higher courts.

(iii) We endorse the suggestion that each Lok Adalat should be presided over by a judicial officer of the type of Munsif who should preferably be called Lok Judge. The Lok Judges should be recruited on the basis of appropriate selection, and be members of regular service, from which they should be eligible for promotion to the the posts of Sub-Judges and District Judges. In the hierarchy of jndicial officers the Lok Judge will be below the Sub Judges who is already below the District Judge. Each Lok Adalat should have Lok Judge and two Lok Members. The Lok Members should be, as suggested in the working paper, from a penal of 10 to 20 persons drawn up by the District Judge in consultation with the District Collector and approved by the High Court. There must not be any provision for election of the Members of Lok Adalats, becanse they must be safaguarded from the depredations of politicization.

(iv) These Lok Adalats will largely be mobile and parapetitic courts, though they will hold sessions also at the Tehsil/ Taluka headquarters. It is envisaged that on the average these Lok Adalats will operate in the villages for atleast fifteen days in the month. They will operate on the basis of pre-determined and publicized programmes so that the concerned villages are made aware in advance of the dates of visits of the Adalats. It would be necessary that the Lok Judge should be provided a vehicle of the nature of Jeep : the Lok Members who will be coming from the villages of particular circuits, would need to be provided out-of-pocket allowance including cost of travel and stay etc. There would be need at most of providing a clerk to each Lok Adalat for maintaining record of the evidence and proceedings in the local language.

(v) A simplified form should be adopted for enabling the plaintiff or complainant to submit his case to the Lok Adalat. It can be sent through registered post to the Lok Adalat at its headquarters, or submitted during its visit to the village. The form should provide for submission of basic information about the dispute or offence, and the names and addresses of the parties. These petitions should not be burdened with any court fees.

(vi) Lok Adalats will function as vehicles for mediation and conciliation, and failing that, as the courts for adjudication. Procedures will need to be so adopted that the conciliation arrived at between the parties is reduced to writing in such shape that they obviate possibility of subsequent revival of the dispute. Provision should be made that where a case is adjudicated, an appeal, on point of law, lies to the Distt. Judge

(vii) Jurisdiction of Lok Adalats will need to be carefully determined, in respect of civil matters as well as criminal offences. In the field of criminal offences the jurisdiction will obviously be limited to those which are compoundable and non-cognizable. In the case of civil matters it will need to be provided as to which types of cases, and upto what limits, would be outside the scope of Lok Adalats. It needs, however, to be emphasised that in the areas which are determined for jurisdiction of the Lok Adalats, they should be cloathed with exclusive jurisdiction in order to make them effective instruments of judicial administration at that level.

(viii) The Lok Adalat should, as a form of proce-

dure, pronounce the decision on the spot where the case is compounded or compromised and also where the decision can be directly implemented at the village level. Where, however, the decision may involve the possibility of heavy fine or imprisonment, the decision should preferably be announced at the headquarters of the Tehsil/Taluka for ensuring its appropriats appropriate implementation.

(ix) In consonance with the prescription of jurisdiction of Lok Adalats it would be appropriats that all original pending cases in the lower courts, of such jurisdiction relating to the respective areas, should be transferred to the Lok Adalats. They should initiate their operations with these lists of the pending cases.

(x) As a matter of principle the procedures should be so adopted that the lawyers are discouraged from appearing befor the Lok Adalats at the grass-roots level, though it would obviously be difficult to debar their presence. They should be permitted to appear only with the approval of Lok Judge.

(xi) The Lok Adalats are proposed in the working Paper to be started primarily in the rural areas. We howevar, feel that they are equally needed tar dealing with the problems of poor and uhe under-privileged of the urban areas including big cities. It is necessary to ween the litigants away from the existing courts of adversary litigation, and to refer their disp' es, in defined areas of jurisdiction, to the machinery of Lok Adalats which sould operate also in the cities on continuing basis, with similar objectives.

These in essence are our comments and suggestions in regard to the proposals embo died in the Working Paper of the Law Commission. We feel that the Law Commission should also simultaneously start bestowing attention to the other requirements of judicial reform, as envisaged in the terms of reference since entrusted to it, including particularly the need of redevising the procedures and overhauling ihe Civil Procedure Code, Criminal Procedure Code, Evidence Act, etc, for making them more in consonance with the present day requirements of the people and for making justice in the courts available more easily, expeditiously and inexpensively.

OUR MEMORANDUM TO 4th PAY COMMISSION

All pensioners in the country, whether they are of the central government, state governments, public sector enterprises, institutions, organisations, or private sector enterprises, would be interested in the outcome of deliberations of the 4th pay Commission in the areas of pensions. The problems of present as wall as past pensioners have by a recent notification been entrusted to the Commission besidas the problems of pay structure and pensions of existing personnel which formed its original terms of reference. The resolution of problems of pensioners of central government, civil as well as defence, will inevitably influence the decisions relating to pensioners of state governments, and these will also have some impact on pensioners of public sector and private sector enterprises and tne pensioners of various institutions and organisations.

COMMON CAUSE has submitted a memorandum to the 4th pay Commission dealing with the problems of past and present pensioners. In making our recommendations we have restricted these primarily to those problems which are of major importance and we have attempted to make only such demands and suggestions which we feel are realistic. We have since had the privilege of receiving copies of the memoranda submitted by numerous other organisations of pensioners as well as by individuals. Some of these contain detailed analysis of the respective problems and the recommendations made in them range over wider fields. We earnestly hope that the Commission will give due weight to all these suggestions and recommendations, and eventually make recommendations to the government taking into account the difficulties that are being experienced by the pensioners and to enable tham to spend their remaining years in some little comfort and with dignity.

We reproduce below the memorandum submitted by COMMON CAUSE to the Commission

COMMON CAUSE, a non-political and non-profit registered Society established by some public spirited citizens, has been concerned inter alia with various problems of pensioners. We have felt strongly that these senior citizens of the country, who have given best years of life to the cause of service and building up of the country, should not stay neglected as has hitherto come about. Their problems must not be disregarded and must be given proper consideration.

It would be pertinent to point out that it was at the initiative of COMMON CAUSE that the three major problems of the pensioners, namely, (i) the discriminations caused against the previous pensioners by 1979 liberalisation, (ii) the discriminations caused in the matter of family pension to pre-1964 retirees, and (iii) the restoration of pension commutation, after the refusal of he Government to redress the grievances of pensioners in these matters, were taken to the Supreme Court. Verdicts were given by the Supreme Court in our favour in the former two cases; the third is at the final stages of hearing and decision at the time of submission of this memorandum. Besides these three major problems, COMMON CAUSE has been concerned about various other matters of pensioners including, for instance, the question of restoration of two months' remuneration related to contributory family pension scheme, problems caused by merger of D.A. in pay for purposes of pension calculation, problem of railway pensioners vis-a-vis provident fund optees, problem of public sector pensioners, discrimination between employees and pensioners regarding the application of dearness relief, discrimination in relation to quantum of gratuity, and the fixation of quantum of family pension etc. From time to time we have been taking up these and various other causes of the pensioners for rectification of their difficulties. Against the background of handling these various problems of pensioners we present in this Memorandum specific major problems for submission of our views and suggestions before the IVth Pay Commission.

SIZE AND NATURE OF THE PROBLEM

For developing a proper perspective of the problem in its totality it is necessary to form an idea of its size and nature. These will be evident from certain facts which need to be kept In view. These facts are :

There are presently about 25 lakh pensioners of the central government alone. Addition to this number is coming about every

year at the rate of about one lakh pensioners. 60% of the central government pensioners are from defence forces. Besides these there are not less than almost equal number of the pensioners of state governments, and then there are pensioners of municipalities, banks, insurance, public utilities, public sector undertakings and private companies. Total number of pensioners in the country, by rough estimates, will not be less than about 70 or 80 lakhs. When it is considered that the welfare of problems of each pensioner directly affects 5 or 6 of the family it is evident that almost about 4-5 crore people, practically 1/15th of the total population of the country, have direct interest in the problems of pensioners.

They are dispersed all over the country, a smaller number in the rural areas and lager concentrations in the towns and metropolitan areas. In the urban areas, therefore, the percentage of population directly concerned about the problems of pensioners would be much more, may be of the order of 1/10th.

Problems of central government pensioners are presently the subject matter of this Memorandum, but it is evident that these problems and their solutions have inevitable repercussions on the pensioners of state governments, which have largely been following the pension rules of the central government, and also on the pensioners of other sectors which too get influenced by these.

Pensioners constitute the core of senior citizenary; they devoted their life time to serve in their respective areas and responsibility; they are the heads of families; their welfare or neglect directly affect their families. They have over the years gathered the feeling that their interests are disregarded by the government, that they are thrown on the scrapheap after having been sucked dry. Their morale inevitably affects their kith and kin; it affects the society.

Background of the Problem

There are certain basic facts and fundamentals which need to be kept in view in considering and solving the problems of pensioners, past and future. We attempt to present these fundamentals and facts in the following :

In the scheme of existing dispensation the pensioners have generally hitherto been regarded as a burden, the expenditure on them an unproductive drain, and the attempt has throughout been to keep this unproductive expenditure to the minimum. It was undoubtedly recognised that the pensioners need help and relief, but in their case it was generally recognised that the measures required to be adopted were relief against hardship to them, it was not recognised as a right of the pensioners, and obligation of the state to provide for them. In the case of past pensioners it was inevitably felt that whatever was to be given to them was out of bounty, as an act of grace on the part of the State.

In all dispensations of adjustment against the rise in cost of living index the requlrements of pensioners were not considered as though it was obligatory and indispensable; this is evidenced by the fact that in all the deliberations of the three previous Pay Commissions the problems of past pensioners sneaked in only on the attempt of the pensioners themselves and those did not constitute their terms of reference. Anxiety of the Pay Commissions was concentrated invariably on the problems and prospects of the employees, including the pensionary benefits they would be entitled to on retirement and they did not concern themselves with conditions under which the past pensioners, who were still alive, were ekeing out their existence. At most, it was felt by the succe-

ssive Pay Commissions that a certain minimum of pension should be laid down for the past pensioners. The anxiety invarialy was to protect the interest of serving employees and to devise ways and means how their pensions, on retirement, would be prevented against erosion of the rupee value. It was incidental that in solving the problems of future pensioners, some crumbs fell to the advantage of the past pensioners. Obviously, at every stage, the existing employers, in the deliberations of Pay Commissions and outside, felt that the available resources of the kitty should be utilised to their best advantage and that the sharing of available resources with the past pensioners would reduce the size of the kitty which would be detrimental to their interests.

It was against the background of these fundamentals that wherever any measure of relief through liberalisation was devised for the pensioners, the application thereof was determined invariably for the future entrants to the ranks of pensioners and not for the past. The liberalisations effected from 1.1-1973, 1.4.1979. and 1.4.1985 are standing examples of this approach. The application of family pension benefits only to post 1.1.64 pensioners was another such example. Retrospectivity of these measures was never considered necessary. Never did it apparently enter the minds of policy makers that all pensioners must be considered as one class and that what was contemplated for the future pensioners should also be made applicable to the past pensioners.

The concept of equality of all pensioners, as their all belonging to one class, evolved in clear terms on the pronouncement of the historic and landmark judgement of 17.12.84 on the writ petition filed on the initiative of COMMON CAUSE. The Supreme Court enunciated: "Pension is a right. It is not a bounty nor a matter of grace depending on the sweet will of the employer. It does not depend upon the discretion of the government but should be governed with well defined rules, formed with due regard to the relevant articles of the constitution of India". This pronouncement of the Supreme Court for once gave heart to the past pensioners, they now felt that they counted, that they could not be disregarded. For the first time they realised that they could legitimately claim it their right to be compensated for the difficulties caused by the rise in the cost of living index which were not of their making.

It is necessary to visualise and to quantify the discrimination so far perpetrated against the past pensioners for considering what remedial measures can be taken to effect redressal. Emoluments of various lower levels of personnel, both in defence as well as civil services, including the pay, dearness allowance and interim relief, have over the years, particularly between 1953 and 1984, increased eight-fold. For past pensioners there was no such increase. At best, out of sheer munificience of the government, certain minima of pensions were from time to time prescribed; pegging the minimum pensions to Rs. 40/- with effect from 1.3.1970, Rs. 150/- effective from 1.4.1982, and Rs. 160/- from 1.1.1984, the last being at present in force. The pensionary benefits of future entrants to the ranks of pensioners were every time prescribed, but this consideration was not paid to the requirements of past pensioners, with the result that the pensionary emoluments of earlier pensioners, say those who retired between 1953 and 1961, differ markedly from those who retired from same posts in subsequent years. A blatant case of injustice exemplifying this discrimination is that a sepoy who retired between 1953 and 1961 gets today only the prescribed minimum of the pension i.e. Rs. 160/-, whereas the sepoy retiring now gets Rs. 269/-, including the element of Rs. 29 as pension equivalent of gratuity. Similar is the case of Class IV civil pensioners: a person who retired prior to 1961 gets only the prescribed minimum

pension whereas a person retiring now from the same post gets pension of Rs. 382 including Rs. 49 as the element of pension equivalent of gratuity. Similar position goes all along the line; discrimination between those who retired earlier and those who retired later is very marked indeed.

It is no surprise, therefore, that amidst the the pronounced concept of equality between the pensioners having sunk deep amidst the past pensioners, and it having been held by the highest court of the land that liberalisation of pensionary benefits must be made applicable to all pensioners irrespective of the dates of their retirement, there is wide-spread dissatisfaction among the past pensioners against the various dispensations of the government whereby they feel discriminated against, They cavil at, for instance, not being compensated for the liberation that was effected from 1-1-1973 and has caused them deprivation upto 1-4-1979, the deduction of two months' emoluments for eligibility to family pension benefits which deduction was deleted from 22.9.77, the differential of dearness relief to pensioners vis-a-vis serving employees, the merger of dearness allowance as pay towards calculation of pension. and the latest dispensation whereby the retirees after 1-4-85 have been given additional benefits of total marger of dearness pay and remuneration of limit etc., which have been deprived to previous pensioners.

Another fundamental problem to be borne in mind is the fact of atrocious complexities which over the years have been caused in the rules and regulations concerning the determination of pension, gratuity, relief etc. Volumes of these rules and regulations have got compiled and the complexities have with every fresh quantum of liberalisation and interpretation, got more confounded. It would be really educative in this context to read, for instance, the latest order (F. 42-16-Pension/85 dated 4-9-85 issued by the Ministry of Personnel & Training, Department of Pensions and Pensioners' Welfare, which is annexed at Annexure 'A'). For any person the complexity of this order, for the calculation of pension, would be really mind boggling. These increasing complexities, which have been continuing for many years, have reached a stage that they totally clog any decisions, resulting in exasperations and frustrations to the pensioners, and leading to the accusation that these are ostensibly formulated to suit individual cases or groups, disregarding the benefits of larger mass of pensioners.

Among these various fundamental factors we would also include two other matters, namely. the total present inadequacy of the quantum of family pension in the existing circumstances, and the need of replacement of the existing concept of pension commutation. These will also feature in our recommendations that follow.

RECOMMENDATIONS

Against the background of the above, keeping in view the dimensions of the problem and the necessity of bringing about a realistic solution to the difficulties and complexities because of the aberrations and distortions of the previous years, we offer following concrete recommendations :

FUTURE PENSIONERS

To mitigate the difficulties and complexities of calculations, and the rules and regulations connected therewith, our definite recommendathon is that it should be explicitly laid down that in future the pension will comprise 50% of the basic emoluments drawn by the individual at the time of retirement, the basic emoluments in this context to be clearly defined as the salary and dearness allowance and dearness relief, excluding the other allowances like house rent allowance, city compensatory allowance, etc. The entitlement of full pension of 50% of emoluments will be earned after 30 years or

more of service in the case of civil pensioners; lesser service will proportionately reduce the quantum of pension. In the case of pensioners of defence services it will be appropriate that for the respective ranks the maximum of service should be prescribed for entitlement of 50% pension and it should likewise be laid down that the quantum of pension will be proportionately reduced for lesser service than the prescribed maximum for the particular grade.

In the context of the possibilities of further increases in emoluments of the serving employees in the coming years it may be prudent to lay down that at the time of determination of any future increases of emoluments, and in consideration of the circumstances operative at that time, the government will reserve the right to lay down a maximum limit on the pension which at present has been lifted.

The family pension till now has been woefully inadequate. It has been completely overlooked that the family of the pensioner has also an inherent right to be looked after by the State. This has been brought out in the judgement of the supreme Court on the relevant writ petition of COMMON CAUSE which States : "Where the government servant rendered some service to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension, as a matter of right". We suggest that family pension should be available to the spouse on demise of the pensioner and in the absence of the spouse to the minor children, as at present prescribed. The quantum of famiiy pension should, however, be 50% of the pension-before-commutation (where commutation is applicable) upto Rs. 500, 40% of the balance upto next Rs. 500 of the pension, and 30% of the balance, with no prescription of the maximum, which in any event will be governed by the over-all limit on pension which will be operative when imposed.

Corresponding adjustments should be effected in the matters relating to extraordinary pension, disability pension etc., in relation to which we have not considered it necessary to go into details.

In view of the substantial increase in the quantum of gratuity, and the introduction of other facilities such as encashment of leave, provident fund-linked insurance and group insurance, as well as possibility ol further enhancement of these facilities according as circumstances may necessitate in future, and the present easier availability of finance for house construction, and keeping particularly in view the serious deprivations that have been caused to past pensioners in this matter, we are of the definite view that the system of "commutation of pension" should be done away with altogether. If an amount is needed by a pensioner for meeting particular social obligations, he should be at liberty to take a loan against the pension which should be made available at special concessional rates of interest, the term of the loan can be determined in the light of life expectancy, if required.

For compensating against increases in the cost of living index the present system of dearness relief, of a percentage increage of the pension-before-commutation fo every prescribed increase in the index should continue, but it must be made uniform for serving empolyees as well as pensioners and no ceiling limit should be imposed on the pension in this connection. The compensation of dearness relief should also apply on same terms for the family pension.

The concept of minimum pension should apply uniformly for the normal pension as well as in connection with family pension because

there cannot be any justification for prescription of a separate minimum pension in connection with the family pension. This concept needs to be modified to the extent that the minimum pension, inclusive of the dearness relief, should not be less than the minimum wage as prescribed from time to time in the concerned area.

In the interest of simplification and rationalisation and also for avoidance of any difficulties and harassment to the pensioners, where they have till recently had to pay monthly visits to the local treasuries for receiving the pension and where the widows have to suffer avoidabie hassels, we strongly suggest that as the Post Office savings facilities and bank branches are now available practically everywhere, in the urban and rural areas, arrangement should be so made that pension (normal pension, family pension or any other type of pension) should get automatically credited to the account of the pensioner in the beginning of the month, preferably in a joint either-or-survivor account, and that the pensioner should have to furnish a life certificate every six months in the concerned Post Office or bank. There should be no question of any pensioner having to knock about to any treasury or other offices for collecting payment of the pension. We hope that computerisation will soon get introduced in the system of calculation and disbursement of pensions, that decentralisation will be effected to the maximum extent possible, and that the present excruciating delays which take place in offices of AGCR and CAD (Pensions) will be obviated by evolving suitable procedures.

All classifications of pensioners, on the basis of years or periods of retirement, as for instance mentioned in the Annexure 'A', should be totally done away with. This measure is absolutely necessary for bringing about semblance of rationalisation and simplification in the pension rules and regulations. All decisions in relation to pensions in future should be so taken that differenciations of this nature are never again introduced and are scrupulously avoided.

We are definitely of the view that the element of pension in income should be exempt from the imposition of income tax. This will be of some help to them. In particular, we strongly recommend that in the case of pensioners above the age of 65 years the element of pension should be exempt from income tax. This exemption should be available both to the past as well as future pensioners.

PAST PENSIONERS

Comprehending the enormity of the task of effecting any change in the pension calculation already recently effected for the hundreds of thousands of existing pensioners and the problems further accentuated by the causation of additional discrimination by the new liberalisation effective from 1-4-1985, we prefer to avoid suggesting the calculation of pension of past pensioners on the same basis of 50% of the last pay drawn which has been suggested to operate for the future pensioners. We also feel disinclined, on the same grounds, to suggest payment of any differential to past pensioners on account of increases in the gratuity which have been effected over the past years, or of reufnd of two months' emoluments which were deducted from 1977 pre-pensioners towards contributory family pension, or of paying to pre-1.1.73 pensioners the benefits of liberalisation effected from 1-1-73 which have so far been denied to them. These are undoubtedly legitimate demands of the past pensioners, but in consideration of the stupendous task which will be entailed in the reference to previous records and resultant calculations, we prefer to seek an alternative way of finding a simpler method of compensating in relation to these demands.

We recommend, firstly, that pensioners, past as well as future, should be accorded the same quantum of dearness relief as is being given to

the serving employees. There cannot be any justification for differential between the pensianers and serving employees in this matter; it is discriminatory and violative of the principles of Article 14 & 41 of the constitution of the country, This matter could have in fact been taken to court but the pensioners have deliberately avoided taking it there in the hope that the government will see the unreasonableness of this differentiation and remove it on its own accord. There is no justification whatsoever for the imposition of any limit on pension beyond which the dearness relief will not be available. The limit of Rs. 500 pension for this purpose was imposed when there was a corresponding limit imposed on the dearness relief of the serving employees; as the latter has since been done away with there cannot be any reason why limit on pension, for entitlement of dearness relief, should continue to operate.

Secondly, in order to compensate the past pensioners for the various discriminations and deprivations mentioncd at (i) above we suggest that the best alternative would be to give them the benefit of enhanced dearness relief (making it equivalent to that of the serving employees and without imposition of the limit on the quantum of pension–before-commutation) with retrospective effect, since this dearness relief started being given, entitling them thus to the payment of arrears calculated for the relevant period. This calculation will be very simple; the amount involved will be quite reasonable in proportion to the deprivations caused to them, and it will avoid future litigation.

The pre-1970 pensioners of Defence forces have been feeling aggrieved at not having derived any benefits of the Supreme Court judgement of 17.12.82 and the pre-1973 pensioners have been feeling that the benefits derived by them have been only minimal. The government has since given them ex-gratia payments but these too have been considered to be very inadequate. We feel that this matter deserves further consideration in view of the obvious importance of defence pensioners. This matter is of course linked to the problems of introduction of the elements of gratuity and weightage: and it is singularly unfortunate that these problems have not at any stage been adequately explained to the Defence pensioners by the Governmnnt to remove from their mind the inequity they have felt in this regard. We recommend that the government should consider what measures, over and above the grant of dearness relief to pensioners as equivalent to serving employees and the payment of suggested arrears, need to be adopted to give these pensioners the feeling that they are not deprived of any benefits which were legitimately their due.

A section of railway ratirees have had the problem arising from their remaining deprived of the benefits of enhancement of pension on account of not having been able to exercise their options for changing over from the previously prevalent system of provident fund to the system of pensions because such options were not, at the appropriate time, available to them. This matter has continued to be pursued by them with the Railway Board but to no effect. We recommend that special consideration be given to them and their long standing grievance be removed.

The pensioners have been demanding certain other benefits and concessions. Out of these we would like in particular to refer to the provision of medical facilities because these are obviously important to them on account of old age and infirmity. Where CGHS facilities are available, this matter does not pose any problem because these facilities are available also to the pensioners. The problem arises particularly where the medical facilities are not available. For compensating the pensioners at places

where CGHS facilities are not available we recommend that a special medical allowance, of 1/10th of the pension, be introduced which should be made available to them without the requirement of any certification. This special medical allowance will obviously be terminable when the CGHS facilities in due course get extended to the areas of their residence. Certain other special concessions of the nature of travel concessions etc. are demanded by the pensioners which may need to bo considered on their merits.

Among past pensioners there are quite a few who have reached the years of 70's, 80's and some 90's. On their securing commutation of pension on retirement they became subject to deduction of the pension which continues to be operative throughout life. This is a matter of great hardship to them, because in the process the government has taken back from them two to three times, and more, of the amount they were given as commutation. Inequity of this measure has been repeatedly pointed out to the government. The arguments put forth by the government against acceptace of this demand do not carry conviction. The Parliamentary Committee on Petitions had also recommended restoration of the commutation. We strongly recommend that the government should with grace restore the commuted pension where the period of commutation plus, say two years, has passed or where the pensioner has attained the age of 70 years, whichever is earlier.

AN ALTERNATIVE TO PRESENT PENSION SCHEME

While we have in the above paragraphs made specific recommendations for regulating the pensions of future and past pensioners we would like to put forth, in this part of the Memorandum, suggestions for evolving an alternative to the present system of pensions, which would be more in consonance with the present circumstances, which would be easier to operate, and which would obviate the enormous wastage of labour and resources which at present go into the operation of the present archaic and anachronistic system. Our suggestions in this regard follow :-

A Pensions Trust Fund should be created for the central government pensioners, civil as well as defence. We envisage that similar pension trust funds will in due course be created also by the state governments, banks, insurance companies as well as public sector enterprises etc.

On the retirement of a person, his entire dues of pensionary benefits (other than gratuity, leave encashment, and also excluding the element of dearness relief) should be computed on the basis of acturial tables, taking into account the present level of life expectancy. The calculated dues, in lumpsum, should be straightaway deposited in the Pensions Trust Fund. The Fund should be controlled by a high-level board of trustees which should have on it persons of repute and experience in investment, besides representatives of the government. Investments should be made from the Fund for deriving the maximum benefit to the body of pensioners. Interest at the minimum of 10% on the amount of each pensioner should be guaranteed to the pensioner, and this amount, in monthly instalments should automatically be credited to the account of the pensioner in an account which should be opened in the branch of the bank or Post Office savings account, at the place selected by him. While, thus, the total comprising the lumpsum amount of his pension remains in the Pension Trust Fund, interest accrued on it, as also the dividends arising from investments of the Fund, should continue to be made available to him for utilisation without the hassle of his having to draw his monthly pension in any treasury etc., except that he should produce a

6-monthly life certificate by visiting the bank or Post Ofcfie or submitting an alternative acceptable life certificate.

On the demise of the pensioner the amount at his credit should automatically pass on to spouse/successors nominated by the pensioner. The family should have the option to withdraw upto 50% of the aggregate amount for any requirements, and the balance should remain in lumpsum in the Pension Trust Fund; the interest and dividends accruing on it should, likewise, continue to be made available in the shape of family pension to the spouse/successors. In specific circumstances the family should also have the option to withdraw the entire amount where they so desire, whereafter the obligation of providing family pension will extinguish. This measure will obviate the difficulties arising on the demise of the pensioner and the problem of issue of authorisation of family pension to the spouse/successors.

Any dearness relief sanctioned to a pensioner or in respect of family pension should automatically get credited in lumpsum, for the remaining years calculated on acturial basis, to the amount at the credit of the aggregated pension or family pension, and the benefits of interest and dividends accruing thereon should automatically get reflected in the remissions to the concerned accounts.

The application of this alternative to past pensioners would need to be considered in such measure that it can be applied to them without causing them any difficulty. On recomputation of their pension, including the addition of compensation arising from dearness relief calculated for the previous period, and the application of the principles based on acturial calculation of life expectancy, the amount should likewise be deposited in Pension Trust Fund and similar benefits should be extended to them. In any case, the application of this formula will perhaps act adversely to the interests of the pensioners who have reached the age of 70 years and more. In their cases perhaps it will be desirable to carry on with the present system, unless some formula can be evolved of determining a lumpsum amount, related to their respective pensions, which can be placed in the Pension Trust Fund to their credit, in the shape of gratuitous relief to them as an alternative to pension, which should continue to yield to them at least the present quantum of pension in their accounts.

These in broad outline could constitute the elements of an alternative to the present system and procedures of pension, which, in the existing circumstances, can only be termed as outmoded and archaic. The advantages of this alternative are obvious. Most importantly the amount in the Pension Trust Fund, which will build up to thousands of crores of rupees in a few years, will be available to the country for developmental purposes and will also yield substantial dividends to the pensioners. This money can be utilised for investment in debentures of public sector enterprises which may yield to the pensioners return even upto 14%. Secondly, the arrangements made through this fund will enable automatic remission of payments of monthly instalments to the accounts of the pensioners in the designated branches of the banks and Post Offices, facilities of which are now available all over the country. Thirdly, this alternative will obviate all the rigmarole and the enormous widespread establishments of thousands of staff members whose present operations only cause exasperations and delays to the pensioners. We believe that this alternative, when it is worked out in detail, will help to greatly solve the problems of pensioners, simplifying and rationalising the pensions and procedures of payments, and eventually prove more fruitful to the pensioners in the long run. Our estimate is that initiation of this alternative system will not require funds substantially more than the present funds which are annually budgeted for the payment of pensions. It is our estimate that retirees of the

central government, including civil and defence, total about 1,00,000 a year. If we take the average pension of a retiree at the figure of Rs. 500 per mensem, i.e. Rs. 6,000 per annum, and if the average life expectancy of pensioner is taken as 15 years, the amount required for being contributed to the Pension Trust Fund every year will be of the order of Rs. 900 crores. which will be comparable to the amount of Rs. 700 crores which is at present being budgeted for the payment of pensions.

Consumer Amidst Jungle of Laws

There is literally a plethora of laws aimed at protecting the intrests of consumers. The fact, however, is that he is hitherto far from being protected. He feels lost among the maze of the laws; he believes that the manufacturers wholesalers, retailers, advertisers and all the marketers, are vying with each other to do him down.

A score of these laws can be counted: Prevention of Food Adulteration Act; Essential Commodities Act; Prevention of Black Marketing and Maintenance of Supplies & Essential Commodities Act; Agricultural Products (Grading & Marking) Act; Sales of Goods Act, Drugs Control Act; Drugs & Cosmetics Act; Dangerous Drugs Act; Drugs & Magic Remedies Objectionable Advertisement Act; Poisonous Substances Act; Weights and Measures Act and Packaged Commodities Rules; Indian Standards Institution Certification Marks Act; Trade & Merchandise Marks Act, Emblems and Names Prevention of Improper Use Act; Essential Services Maintanance Act; Monopolies & Restrictive Trade Practices Act; Industries Development & Regulation Act; Household Electrical Appliances Quality Control Order; Fruit Products Order; et la.

MANY STATUTES

These various Acts have been on the Statute Book for many years, some of them originating from period prior to 1947 whereas most of them have been promulgated since then. Each of these aims at achieving specific objectives, all attempting to avoid exploitation of the consumer. Food Adulteration Prevention Act seeks to protect the consumer against hazards of food adulteration. Essential Commodities Act provides for the production and supply of essential commodities which include coal, petroleum products, sugar, cement, kerosene, foodgrains, vegetable oils, soaps and matches etc. Black Marketing Prevention Act provides for detention of any person suspected of black marketing of essential commodities. Agricultural products Marking & Grading Act provides for proper marking and grading of agricultural products through Agmark which covers several commodities including vegetable oils, ghee, butter, eggs, pulses, chillies etc. The various Acts relating to drugs are for controlling and regulating the quality, distribution. sale, supply and price marking of the drugs, prohibiting advertisements of drugs of certain diseases like blindness, heart disease, paralysis, leucoderma, obesity anc sexual impotency. Weights & Measures Act and Packaged Commodities Rules specify tandards of weights and measures, and in retation to packaged commodities, prescribe strict regulations that name, address, weight of commodity, year of manufacture etc, must be recorded on the package. The Monopolies & Restrictive Trade Practices Act has enter alia banned restrictive trade practices such as tying arrangements, exclusive dealings and price cartels; and under a recent amendment this Act

has given powers for effective action in connection with unfair trade practices such as fictitious discounts. prizes for promoting sales. blandishments for marketing etc.

Besides these laws for the protecting the interests of consumers there are others. Indian Contracts Act embodies provisons dealing with buyers' right to challenge agreements made without free consent and to compensate for loss and damage caused by breach of contract. Indian Sale of Goods Act deals with implied warranties and conditions as to the title, quality or fitness of goods. Specfic Relief Act provides for specific performance relating to contracts and granting of injunctions in certain cases. Carriers Act puts on the owners of carriers the responsibility for loss or damage to property delivered to the carrier. Fruit Products Order relates to licensing of fruit products and quality of processed fruit products as fruit drinks, jams, fruit juices, etc. Hire Purchase Act stipulates conditions of ownership, possession, guarantee etc. in respect of hire purchase transactions. Household Electrical Appliances Quality Control Act makes it compulsory on the part of electrical appliances manufacturers to manufacture domestic electrical appliances strictly according to prescribe standards. Indian Penel Code itself contains certain provisions and provides for punishment for use of false weights and measures, and for adulteration of food, drinks and drugs. Over and above all these the citizen has the right to invoke the provisions of Articles 32 and 226 of the Constitution of India and to approach the Supreme Court or the High Court by filing writ petitions. Article 39 (b) and (c) of the Constitution places obligation on the State to ensure that the ownership and control of of the material resources of the community are distributed for the common good and that the operation of the economic system does not result in the concentration of wealth and the means of production.

With this impressive repertoire of the laws the interests of the consumers should normally be considered to be well protected. Almost every loophole of his being duped or exploited is adequately plugged. There is hardly any aspect of consumer interests, quality of the product, its price, its availability, its adulteration its short weight or measurement etc., which has not been dealt with in these laws. Each one of these laws has provisions of strict action for defaults and offences. Most of these have provisions of appoinment of inspectorate in the field for securing enforcement of the respective laws. Most of these have been made the preserve of the States to enforce. The armoury, thus, is complete.

CONSUMERS EXPLOITED

But, the fact remains that despite all these. despite the host of inspectors and officers for inforcement of the laws, despite the threats that are held out to the manufacturers, wholsalers, traders and the dealers, the consumer continues to be exploited. pushed around, deprived. It is unfortunate that the consumers have not yet sufficiently organised themselves to pose an effective challenge to the exploiters. They are now in the process of organising themselves, and hopefully in the coming months they will bestir and develop into a force to reckon with. They are not even fully aware of their rights; they encounter difficulties in proving claims for injury or damage, securing testimony; they shy away from the delays and harassments of courts' procedures.

A major cause of ineffectiveness of consumer protection, amidst the existing plethora of laws, is that there is utter lack of coordination among the ministries and departments at the centre and in the states, which in the spheres relating to the respective laws are responsible for enforcing and monitoring them. Food Adulteration Act, for instance, is the responsibi-

lity of the Food Departments at the center and in the states, but the Ministry of Helath at the Centre as well as in the States is also involved in the enforcement of this law. In respect of Acts releating to drugs, the responsibility is dispersed over the ministries and department concerned with the Industrial Developments, Chemical Industries and Health. Weights & Measures Act is the preserve of departments of the states which remain unspecified, so do the rules relating to packaging of products. There is of course the civil supplies ministry at the centre and there are civil supply departments in the states. But, neither the central ministry of civil supplies nor the state departments of civil supplies have taken any steps to effect coordination with the ministries and departments concerned with the enforcement of respective laws, with the result that there is virtual jungle of laws in which the consumer feels lost and deprived.

COORDINATION NECESSARY

Some semblance of coordination has been recently initiated at the centre where the Minister in-charge of civil supplies has initiated the process of holding meeting with the ministries concerned with the respective laws, for removing lacunae in them, for making them more effective by shifting the burden of proof of wrong doing on the manufacturers/traders rather on the consumers, strengthening the Law of Torts, and with Ministry of Industry, for instance, for more rigorous enforcement of the Household Electrical Appliances Quality Control Order, to ensure that all electrical appliances bear the mark of quality. At the level of the states there is at present no such coordination and it is of utmost importance that this should come about. One can only hope that some day effort will be made to bring about coordination among the army of inspectors in the field who have the responsibility of enforcing the respective laws and who at present earn the dubious reputation of causing only harassment and corruption.

PROPOSED NEW LAW

The central Ministry of civil supplies has also taken the intiative of formulating proposals of enacting a new law : The Consumers Protection Act. Draft of the Bill was prepared and placed before a big Seminar held at Delhi in January'86 which was attended by representatives of 180 odd organisations of consumers in the country, besides the representatives of state governments and concerned ministries of the central government. The proposed legislation has three-fold objectives : the setting up in each state of a Consumer Protection Council, a Directorate of Consumers Affairs and a Tribunal for deciding on defects in products.

Present proposal is to enact this legislation at the centre for authorising the states to set up this structure for protecting the interests of consumers. The alternative under consideration is to prepare a model Bill and persuade the states to pass such legislation. Action on these lines is expected to be initiated in the coming weeks.

This is a very welcome development. For the first time serious thought has started being given to protect the interests of consumers. Representatives of the organisations of consumers who attended the January seminar, while welcoming the proposed enactment of legislation, strongly emphasised that the proposed legislation should be given "teeth" and should not remain an ineffective and inoperative law. The Directorate of Consumers Affairs in the states should become the nucleus for desired coordination and constitute the nodal authority in relation to the operation of various laws which in one way or the other are related to the interests of consumers. The Director should be given authority to initiate action on the complaints received from consumers and their organisations, enter the premises of defaulters who may be mauufacturers, wholesalers, retailers, stockists or traders, and initiate proceedings under the

relevant laws. Likewise, the Tribunal, which is proposed to be established in each state, should have as chairman a person of the status of a retired High Court judge, and ample authority should be given to the Tribunal to award substantial compensation assessed in relation to the loss, injury or damage caused to the consumer by a defective product.

CONSUMERS' RIGHTS

While, thus, the armoury for protecting the interests of consumers will be adequately complete with the installation of the proposed councils, directorates and tribunals in the states the matter of fundamental importance will still be the need of educating the consumers, informing them of their rights, giving them confidence that they count and cannot be disregarded. They must become aware that they have certain rights :-

(i) The right to safety, that is, to be protected against the marketing of consumer goods which are hazardous to life and property;

(ii) The right to be informed about the quality, quantity and price of goods so as to protect the consumer against unfair trade practices;

(iii) The right to choose, that is, to be assured wherever possible, access to variety of consumer goods at competitive prices;

(iv) The right to be heard and to be assured that consumers' interests will receive consideration in all quarters;

(v) The right to seek redressal against unscrupulous exploitation by manufacturers, wholesalers, retailers and distributors of consumer goods; and

(vi) The right to be provided knowledge about the measures adopted for his protection and the operation of these measures.

CENTRAL ORGANISATION

Most important for the consumers is to get themselves organised. There is need of development and expansion of the consumers, organisations all over the country, in each locality, village, town, city, metropolis, of welding them together at appropriate levels for effective and coordinated functioning, of developing a nodal central organisation which should become the real source of strength for consumers movement and become an effective watchdog for protecting the interests of consumers through the network of local organisations. A beginning towards this objective of bringing together the existing 180 consumers organisation in the country has been made. Draft constitutions of an Indian Council of Consumers Organisations has prepared by common cause and sent to all these organisations for their comments and suggestions. In the coming weeks final shape to the central organisation will hopefully be given.

Our Pension Commutation Case

Pensioners have been very anxiously waiting for the decision of our Pension Commutation Writ Petition which has for almost three years been pending in the Supreme Court. We reported the matter in previous issue of the periodical. Since then this case got listed almost about six times on the "board", but due to certain other important part-heard cases its turn could not come.

Eventually, the case was heard on the 6th March. On behalf of the Government statement was made that the Government stuck to its previous decision of limiting the repayment, on ex-gratia basis, to those whose pension was not more than Rs. 500 p.m. and that the Government would issue orders only if this position was accepted by us. This was not acceptable because commitment could not be

given on behalf of pensioners who are drawing more pension. It was then decided that the case would be heard and could not be settled on this basis. The case was heard by the Bench consisting of Mr. Justice P.N. Bhagwati, Chief Justice of India, Mr. Justice Khalid, and Mr. Justice Oza.

Our counsel Mr. Anil Diwan, who had argued our main pension case and won it for the pensioners in 1982, put forth the arguments on behalf of pensioners, highlighting the inequity involved in continuance of deductions, causing penury and want to the old and infirm pensioners. Thereafter, on the 7th March the Attorney General, appearing on behalf of the Government, requested the Court for an adjournment stating that he wished to take up the matter again with the Government. The case was adjourned to 20th March.

It is probable that the pensioners will have come to know of the final decision before this issue of the periodical reaches them. They would in any case be interested to read the "written submission" which was given to the court on the 6th March, embodying the substance of our arguments. In the written submission certain previous judicial pronouncements have been cited. Lawyer friends would be interested to know about these citations. Our eventual demand is contained in the last two paragraphs which formed the subject of a second written submission which we made on the 7th March.

WRITTEN SUBMISSION

Petitioners have been given in Annexure A particulars of some Central Government Civil & Defence pensioners who got a portion of their pension commuted at the time of retirement and who at their old age of 70's and 80's continue to be subjected to the deduction of the pension. Government has by these deductions taken back from them two to three times the amount they were given on commutation. Civil Pensionres were allowed to get upto 1/3rd of their pension commuted and in the case of Defence Pensioners the percentage was 45%. Corresponding percentage of their pension continues to be deducted and this deduction will continue throughout life.

Prior to 1977 all pensioners who retired had to undergo a rigorous medical examination to ascertain whether or not they were expected to live ten years. On the result of medical examination depended the question whether they would get the commutation amount calculated on the basis of acturial table of the "years of purchase" approximately 10 years, or whether the number of "years of purchase" would be reduced. After 1977, the medical examination has been dispensed with. This petition is mainly on behalf of pensioners who retired before 1977.

SUBMISSIONS

These continuing deductions, terminating with the life of the pensioners, are arbitrary, irrational and violative of Article 14 of the Constitution of India, as well as contrary to the spirit of Article 41 of the Constitution.

Pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It is only for the purpose of quantifying the amount, having regard to service and other allied matters, that it becomes necessary for the authority to pass an order to that effect but the right to receive pension flows not because of any such order but by virtue of the Rules.

1976(3) SCR 360 and
1983(2) SCR 165—181-2

Eight State Governments (Andhra Pradesh, Bihar, Haryana, Karnataka, Punjab, Rajasthan, Tamil Nadu and West Bengal) have already

passed orders restoring the full pension of their old pensioners who commuted their pension on retirement. Information about the orders passed by respective State Governments has been provided in the Petition, where State pensioners after similar commutation have been generally allowed the restoration of full pension on attaining the age of 70 years.

This practice of deduction from the pension has been continuing for years. This Hon'ble Court has, however, held that any law or action which in the past may have been previously considered as non-arbitrary or valid would not necessarily continue to be so always, and that with a change in the circumstances and with the passage of time it can become arbitrary and violative of Article 14 of the Constitution.

AIR 1984 S.C. 121 paras 22 & 23.

Government's argument is that the scheme of pension commutation is an optional facility and has been operated on 'no profit no loss'. basis. It is obviously inequitous that the burden of any loss which may be contended to have been incurred due to early demise of a pensioner after taking commutation, should be borne by the body of pensioners who constitute he weaker sections; this burden should be borne by the community as a whole and be defrayed from the General Revenues of the Government. In any case, it is cruel to make pensioners living upto 70's and 80's subsidise the Government for any loss incurred due to demise of any pensioners who may have died in earlier years. However, the concept of loss in such cases is incorrect because the Government saves on the remaining pension of the pensioners who have died.

Another argument put forth by the Government is that the commuted amount was available to the pensioner for investment on which he earns interest. This argument fails to take regard of the vast majority of poor pensioners who got only about Rs. 3,000/- to Rs. 5,000/- at the time of commutation and had to utilise it for meeting family obligations at the time of retirement. Commutation was in the nature of advance against pension for rehabilitation, comprising as much a social security measure as pension itself.

The Committee on Petitions of the Lok Sabha strongly recommended that in this matter Government should not take merely legalistic stand but should view it as a humanitarian problem. The late Prime Minister also expressed sympathy with this demand as was admitted on behalf of the Government in the Lok Sabha, These facts have been elaborated in the Petition.

The petitioners have not been able to find any stipulation anywhere under which the pensioners can be made subject to deduction of pension throughout life. The action of the Central Government in deducting pension for the entire life-span of the retired employees is therefore patently unreasonable and arbitrary.

The contention of Respondent that as the commutation facilities operated on "no profit no loss" basis, and therefore their action in deducting the pension for the entire life span of the retired employees is valid is, it is submitted, untenable for the reasons that :

(a) There is no question of the Government incurring a loss on the premature death of a retired employee since only a part of the pension is paid on communication and the Government saves balance of the pension which it would otherwise have had to pay in the event the retired employee had lived longer.

(b) It is inequitous and unfair that any loss caused by untimely death of a pensioner be born only by the body of pensioners who have opted for commutation, and

(c) The experience of eight States would show that it is not justifiable for the Government to deduct pensions for the entire life span of pensioners to compensate itself for the loss incurred on the death of a few pensioners prior to their anticipated life-span.

1981 (2) SCR 516 @ 58D

The right to life enshrined in Article 21 cannot be restricted to a mere animal existence. It means something more than which is physical survival.

The right to life includes the right to live with dignity aud all that goes along with it, viz. the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, etc. Of course, the magnitude and content of the benefits of this right would depend upon the extent of the economic development of the country.

ibid P. 529 B-D

This Hon'ble Court has accepted the principle of the affirmative obligations on the part of the State in order to make the exercise of Article 21 of the Constitution effective and meaningful.

1979(1) SCR 192 @ 203-F
204-D, 208 G-H

Similarly, in the context of rights under Article 30 of the Constitution, this Hon'ble Court has held that it would amount to a violation of those rights if the per sons are prevented from effectively exercising them or omit to take measures as a result of which the fundamental rights cannot be effectively exercised.

IN Re : The Kerala Education Bill
1959 SCR 995 @ 1057-8, 1060
1065, 1067-8

Article 41 of the Constitution specifically directs that the State shall, within the limits of its economic capacity and development, make effective provision in law for securing public assistance in the case of unemployment, old age and disablement etc.

This Article is an interpretative tool to Article 21 of the Constitution. It therefore follows that—

(a) Article 21 of the Constitution as interpreted in the light of Article 41 enshrines in the concept of "liberty" the right to such social security measures as would, within the limits of the economic capacity and development of the State, be reasonable ;

(b) The State is under an affirmative obligation to provide such social security, and the failure to provide reasonable social security would constitute breach of Article 21,

It has been recognised by this Hon'ble Court in D.S. Nakara Vs. Union of India (1983 (2) SCR 165) and Devki Nandan Prasad Vs. State of Bihar (CMP 28306 of 1983 in WP 3053 of 1980), that pension provisions are to some extent the legislative response to the constitutional expectations under Article 41.

It is therefore submitted that in restoring full pension to retired Government employees. the State discharges its obligation under Article 21 read with Article 41 of the Constitution.

Government employees, the state discharges its obligation under Article 21 read with Article 41 of the Constitution.

It is submitted that the present scheme under which a person has to repay to the Government amounts for in excess of that received by him on commutation is unreasonable, oppressive and unjust and therefore violative of Article 21 of the Constitution,

Taking into account the fact that the Civil Petitioners normally retire at 55/58 years, and the Defence personnel retire much earlier (in some cases even before 50 years of age), our suggestion would be that the commuted portion of the pension may be restored after completing 10+2 years (12 years) from the date of commutation or on attainment of 70 years age, whichever is earlier. This will obviate the necessity of reference to the records of each pensioner in relation to the commutation.

We also suggest that if the Hon'ble Court may arrive at the conclusion that this claim of the pensioners has merit, the restoration may be given effect from the date or this Writ Petition. The restoration should be made effective irrespective of the quantum of pension.

* Pensioners have been feeling disturbed by the fact that the Government of India, while recently effecting further liberalisation of pensions and enhancement of gratuity, have chosen to limit these benefits only to post 31-3-1985 pensioners. Representations have been made from various quarters to the Government on this matter. It has also been incorporated in the memoranda submitted to the 4th Pay Commission.

We have since seen substance of the Judgement of Gujarat High Court, dated 31-10-85, on a petition (CW No. 4694 of 1985) submitted by Mr. R.C. Gupta, retired Chief Commissioner of Income Tax. The Gujarat High Court has held that orders issued by the Government of India, whereby the benefits of further liberalisation and enhanced gratuity have been limited only to post 31-3-1985 pensioners, are violative of the constitution.

We have taken up this matter with the Government of India. Copy of the judgement of High Court has been forwarded to them. We have asked the Government to inform us as to what action they propose taking in the light of this judgement of the Gujarat High Court. A reminder has since been sent. In the light of further developments in this regard we will determine what appropriate steps need to be taken. Meanwhile, this matter has also, as stated above, been highlighted in the presentation made to 4th Pay Commiseion.

Benefits For Legislators

There are voices that instead of the government being "of the people, by the people, for the people", it has now been hijacked and is now "of the legislators, by the legislators, for the legislators". This is being said particularly in the context of the privileges, perks and benefits which the legislators, both at the centre and in the states, have appropriated to themselves through legislation enacted by them for themselves. The salaries and perquisites of the members of Parliament now comprise the following, after the passage of the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, which was recently passed in record time. It was passed by Lok Sabha on December 19 last year, by Rajya Sabha on the next day and came into effect from December 26.

A member of Parliament now receives a monthly salary of Rs. 1000, a "contituency allowance" of 1250, and a daily allowance of Rs. 75 during a session or sitting of Parliamentary committee, the daily allowance being drawable for three days immediately preceding or succeeding the session and for two days preceding or succeeding a committee sitting.

For travel the member enjoys the facility of 16 single air journeys each year between his place of residence and New Delhi, without limitation about their use. For each journey the MP is paid an amount equal to one and one-fourth of the air fare. If the journey is performed

by rail an amount equal to one first-class fare plus one second class fare is paid, irrespective of the class by which the member may choose to travel. Where the journey is by road, the road-mileage is paid at the rate of Rs. 1.40 per km. For tours abroad, in the discharge of his duties, the member is paid the travelling allowance as well as daily allowance. Member's spouse is also entitled to travel benefits while accompanying the member to New Delhi and back, either air fare or free first-class railway pass. In addition, every member is provided with one free non-transferable first class pass entitling him to travel at any time by any railway in the country, during the term of his membership. A first class railway pass is also provided for one person to accompany the member when he travels by rail. Teere is also "spouse railway pass" issued to the member on request for the travel of his spouse during his membership.

As for housing a member is entitled to a rent-free flat or hostel accomodation in New Delhi throughout his term of office. He is provided free supply of water aud electricity. For additional facilities required by him, such as furniture and electrical equipment, he need pay only 75% of the charge payable for them.

The member is entitled to two telephones, one in Delhi and the other at his normal place of residence. No rental or installation charges are to be paid. He is entitled to make 15000 calls per annum (or 1250 per month) free of charge from each of these telephones.

The member is entitled to an advance upto Rs. 20,000 for purchasing a conveyance. The amount along with interest at the rate fixed for such advance to central government employees, is recoverable in 60 equal instalments.

The member gets full medical facilities for himself and his family from the Central Government Health Scheme on payment of just Rs. 2.50 per month.

For putting in the term of five years the member also gets entitled to receive a pension of Rs. 500 per month throughout life, with addition of Rs. 50 for every year served in excess of five years. There is no ceiling on this pension.

It will be interesting to readers to make rough evaluation of how much the salary, perks and privileges of each member of Parliament, during the term of office aggregate to, and how much the exchequer has to pay for the life-time of the members who may have completed two or three terms. Privileges and perks of similar nature, though not necessarily of same quantum, are available to members of states legislatures. It will be interesting if the readers could kindly collect, and tranmit to us, the details of all such facts of salary, perks, privileges and pension applicable to members of their respective legislatures.

MISCELANEOUS

* In the previous issue of this periodical we had reproduced a letter which was addressed by COMMON CAUSE to the Minister of Communications pointing out the inequity of the charges levied by the Telephone Department for various types of telephone attachments, including auto dialler, imported telephone instrument, imported instrument with memory dialling facility, etc. Telephone users would be glad to know that the Minister has announced, and the Telephone Department has since confirmed through press note, that no licenses will henceforth need to be taken for any of these attachments. We have reason to feel gratified that these levies, which were being charged for years, have now been done away with, on the matter having been taken up by COMMON CAUSE.

* Similarly, we took up with Minister of Railways and the Minister of Communications the problem which was being encountered for long about the non-attachment of a bogey with a particular train for movement of mail between north and south of the country, which was causing delays in the delivery of mail. The Minister of Communications forthwith took up this matter at personal level with the Ministry of Railways and the matter has been satisfactorily resolved within a week of the issue of our communication.

* **RENT CONTROL LAW.** Large number of letters keep coming to us from all over the country asking whether and when the proposed Bill for amending the existing Rent Control law of Delhi is coming up

before the parliament. There is no possibility of giving any authentic answer to these enquiries. As far as Ministy is concerned it appears that they have been ready with the proposals for amendment for a long time. It is for the Minister to ensure that further delay is not allowed to occur, but apparently no steps are being taken at that level for imbibing any sense of urgency in this matter. We from COMMON CAUSE have written letters to the Minister, to Mr. Arjun Singh Vice President of AICC and Mr. K. C. Pant, the to latter two in their capacities as members elected to the parliament from Delhi. There is assiduous silence on their part even to sending replies to requests for meeting them. This is indicative of how the representatives of the people show their inability to deal with a major problem affecting hundreds of thousands of houseowners and tenants.

* Two recent decisions relating to House Tax assssment by Delhi Municipal Corporation will be of interest to the houseowners. These have relevance to the procedures adopted by the Corporation. One of these relates to the problem where construction of premises has taken place in stages. COMMON CAUSE filed an Application in the Supreme Court seeking clarification on this point arising from the pronouncement made in the Supreme Court judgement of 12.12.84.

This Application is expected to be heard soon, but meanwhile in an appeal which came up recently before an Additional District Judge of Delhi it has been held that according to the pronouncement on this point by the Supreme Court the price of land cannot be counted twice over where the construction has taken place in stages. The construction of a house in this particular case had come about in two stages, ground floor in the first phase and first floor in the subsequent phase. In assessing the rateable value of the house the MCD had taken the price of land for the earlier construction, and again adopted the escalated land price for the first floor construction. This was struck down by the District Judge as being contrary to the law enunciated in the above mentioned judgement. The price of land in this case, which related to a lease-hold colony, was also taken on the basis of price originally paid by the owner, and was not allowed to be taken on the basis of auction price which had ostensibly been adopted by MCD. The case was decided by Mr. B.S. Chaudhry, Additional District Judge, Delhi, on 27-1-86 and is on appeal no : 271/85 of Mr. A. C. Murgai, of 6/18 Shantiniketan, New Delhi.

Second case, decided by Mr. P.K. Jain, Addl. District Judge, on 17-8-1985, on an appeal by MCD in case of MCD vs. Mrs. Kundan Kaur, of N-13 Greater Kailash, New Delhi, relates to to the question whether the assessment finalised in respect of a particular year will be applicable also for subsequent years. It has been held in this judgement that the subsequent assessment or demand, based on earlier rateable value which has been held to be wrong and struck down, would correspondingly be wrong. This position would ostensibly hold good even if during the subsequent years objections were not filed against the assessments.

* As a special gesture we are sending this issue of the periodical also to those members who have not hitherto got their membership renewed as well as to those who had previously been given the benefit of concessional membership at Rs. 10/- per annum. It may kindly be noted by them that no further issues of the periodical will be sent to those who have not renewed their membership. We have already previously communicated that the concessional membership of Rs. 10/- is no longer operative and that annual membership subscription is Rs. 25.

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