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COMMON CAUSE

VOICE OF "COMMON CAUSE"

PROBLEMS OF HOUSEOWNERS

Numerous problems have over the years emerged for houseowners in our urban areas. These include, in the order of exasperations they are causing; Property Tax, Rent Control, Conversion of Lease-hold into Free-hold, Urban Land Ceiling Act, Apartments Ownership Act, and Building Byalaws, besides various other headaches of electricity billing, telephone complaints etc. We are in close touch with these various problems and have been doing our utmost to help solving them and providing guidance. Let us briefly mention the present position in regard to the major problems.

PROPERTY TAX

To this vexed problem we have devoted close attention for long. The Property Tax (PT) levy presently assessed by Delhi Municipal Corporation and New Delhi Municipal Committee is replete with anomalies, discriminations, aberrations and distortions. A house constructed 20 years ago has Rateable Value (RV) of Rs 10,000 and is assessed to PT in MCD area to, say, Rs 1000. The adjacent house, of exactly same dimension and on same sized plot is saddled with RV of Rs 1,00,000 and PT of Rs 20,000 because it was constructed last year amidst highly escalated land price and construction cost. A house rented out at Rs 1000 p.m. 20 years ago for five years, later self-occupied, and now rented out again at high rental will be assessed, according to present law, on original cost basis, say at PT of Rs 1000; the adjacent house of same size on same sized plot constructed at the same time 20 years ago, previously not rented but now rented at Rs 20,000 p.m. will carry PT of Rs 30,000. In a government constructed colony of DDA built 20 years ago the PT based on cost of flat is Rs 300; in the neighbouring DDA colony built recently the PT, for same sized flat, may be Rs 3000. In the walled city of Delhi the prices of property have escalated beyond measure, but they have largely escaped PT because their RV is very low and below the exemption limit of Rs 1000.

It has so far not been possible to get this matter sorted out by courts. It can be solved only by pressure of public opinion at the political level. The outdated conceptions and provisions of the statute must be replaced. We have for long been advocating that PT must be based only on objective, mathematically calculable and empirically visible facts, which exclude all elements of discretion, subjectiveity as well as variables which can in any way be manipulated or concealed.

We have worked out the system based on area of land and area on construction thereon which should form the basis of assessment and calculation of PT. These will have relationship with though not totally commensurate with the quantum of municipal services. We have prepared this proposal in all its basic essentials. It has been sent to the Lt Governor of Delhi, Home Ministry of the Government of India, Municipal Corporation of Delhi and New Delhi Municipal Committee. We have also circulated the proposal to all organisations and associations of houseowners of Delhi inviting their comments and suggestions. Those individuals who are interested to secure a copy of the comprehensive proposal are welcome to write to us for it.

1. Considering the importance of Property Tax we have given detailed suggestions for its restructuring. Readers should kindly study these carefully. If they agree they should send their views to Lt Governor of Delhi and Home Secretary, Government of India.

2. COMMON CAUSE has been given a special award by Government of India. Credit for this goes to the members for their support to the causes we have espoused.

3. Kindly note the change of address if not already done; A-31, West End, New Delhi-110021

4. We still receive membership fees on old basis.

RESTRUCTURING OF CONSTITUTION
MALFUNCTIONG OF BLOOD BANKS
FOR PENSIONERS
RENT CONTROL

Regd. No. RNI 39331/82

RENT CONTROL

Rent Control laws have done more damage to the housing problems in the country than any other provisions. Long ago people used to construct houses for renting; nobody does it any more, with the result that interests of prospective tenants suffer. People now keep their houses and flats vacant rather than give them on rent and face problems. It was recently reported in the newspapers that nearly three lakh flats and house are lying vacant in Bombay. Similar is the position in other urban centres. Housing stock in the country has greatly deteriorated in the absence of repairs. Litigation has multiplied to an anormous extent. Rent control was envisad only as a short term measure; for serving political purposes it has been perpetuated.

Government of India in the Ministry of Urban Development has recently publicized that a comprehensive law on rent control has been prepared. We will later have occasion to comment on the proposals. These are stated to contain provisions inter alia for fixation of "standard" or "fair" rent, protection to tenants against presurres of rapacious owners, obligations of owners to properly maintain the premises, rights of owners in matters of recovery of rent and eviction of tenants in specific situations.

URBAN LAND CEILING ACT.

This Act too has done enormous damage in regard to urban housing besides breeding corruption and fraudulent dealings in real estate. Its purpose was to ensure that "surplus" land in urban areas was properly utilised. Such surplus land was expected to be acquired and utilised for developing housing for the underprivileged. The effort backfired; over a hundred thousand hectares of land were notified as surplus but acquisition was only of a meagre quantity countable in hundreds. In the process the prices of urban land soared high and the purpose of controlling the use of urban land was frustrated. The Ministry of Urban Development has now been contemplating overhauling and drastically amending the Urban Land Ceiling Act. We have also communicated to the Ministry our suggestions for the amendments. Our main suggestion is that there should be a moratorium on the surplus land for five years i.e. no surplus land should be acquired for this period after its being declared surplus and the owner should be provided opportunity of developing and utilising it within this period. Where any land has been declared vacant an annual graduated tax be levied and collected by the State Government for use as a Shelter Fund for providing shelter to the weaker sections. Any surplus land already acquired should be released on such conditions for use by the owner.

APARTMENTS OWNERSHIP ACT

This enactment was enforced for Delhi more than three years ago. It was stipulated in the Act that all flats, residential and commercial, in multi-storeyed buildings, including those which have even more than three flats, should be got registered and Deeds of Apartments be given to the owners. Time period of not more than six months was specifed for this to be done. It was felt necessary to do this because presently in Delhi the owners of such apartments do not exercise ownership rights, for transfer or even bequeathing Statutory authorities were specified under the Act for expeditiously completing this task. Even after the expiry of three years nothing has yet been done to effect implementation of the Act. We filed a writ petition in the Delhi High Court on this subject; nothing concrete has yet emerged because the Government of India and Delhi Administration have not so far submitted their reply. Meanwhile, there have been reports in the newspapers that the Government proposes withdrawing this Act.

BUILDING BYELAWS.

In the past few years there has been great increase of activity on the part of builders to demolish some existing buildings and to raise high rise buildings on the plots for making fast money through sale of flats in such buildings. Often the constructions are made in violation of buildings byelaws and with concurrence of the supervision staff of the municipal bodies. The neighbourers have been feeling utterly helpless against such depredations. During the past few months, however, with the encouragement provided by COMMON CAUSE, the neighbourers and the associations of houseowners in Delhi colonies have effectively taken up the matter and through writ petitions in the Delhi High Court have focussed attention on such illegal activities; the municipal authorities have also stirred up and there have been quite a few cause of sealing and demolitions of unauthorised structures. This is a very healthy development.

A FRESH LOOK AT THE CONSTITUTION

B.K. NEHRU

The very first objective of any proposal for Constitutional reform must be to ensure that the system provides a stable government both at the Centre and in the States. I rate stability high in the factors required for good government; instability leads to weakness and weak government leads to chaos. We have been fortunate that since Independence we have had only two periods of instability at the Centre -1977 to 1979 and 1989 to 1991. This relative stability is not a product of our consitutional system; it is the product of history on the one hand and accident on the other. The long continued struggle for independence with the Congress as its leader gave it a loyalty throughout the country which took some time to wear off. The accident was that we had two powerful personalites almost succeeding each other in the office of Prime Minister so that it was the personality rather than the insititution which caused the stability.

The States have not been so fortunate. The historical role of Congress was forgotten earlier there than at the Centre. As the towering personalities of the pre-Independence period who ruled the States disappeared one by one and were replaced by ordinary politicians, the instability inherent in the system became apparent. Ever since the elections of 1967, there has been more or less instability in the governments of most of the States of India. Even when a party has come to power with a substantial majority, there is no assurance of stability. For not only is to the Chief Minister develops within the party by those who feel they have not had their fair share of the loaves and fishes of office. The day after a Chief Minster is sworn in, there develops a group of dissidents who, if the party in power is an all-India party, are running constantly to Delhi to complain to the High Command about his misdeeds and asking for his removal. The result is that most of the time of the Chief Minister, which should be devoted to the good governance of his State, is taken away in fighting off the intrigues of his opponents. There is story that Jawaharlal Nehru once upbraided a Chief Minister for not doing enough for the benefit of his people. The Chief Minister's reply was revealing. He said, "Panditji, both my hands are fully occupied in holding on to my chair; with which hand can I work?"

It is hardly necessary to point out the dangers of instability particularly at the Centre. No concerted policy can be followed nor can any policy by implemented, for the entire effort of government is devoted to keeping itself in the seats of power. The situation that we are faced with in Kashmir, the Punjab and Assam is in no small measure due to a lack of policy and a lack of the persistence in pursuing any policy to deal with the discontents that were manifesting themselves. The economic mess in which we now are, which has made us dependent on outside authority and unable to resist its demands. A strong government taking action two years ago to correct a situation that anybody could see was fast developing whould have prevented our country from having the kind of economic set back we are now facing and the political set back that our total dependence on the foreigner has caused.

My second objective is to improve the quality of the men and women who govern us. It is sometimes said that there is nothing wrong with the Constitution; what is wrong is only with the people

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We reproduce above substance of the lecture which the distinguished and highly respected personality Mr B.K. Nehru gave at Delhi recently in the memory of Mr S. Ranganathan the first President of COMMON CAUSE. The thoughts emerging from this lecture touch the core of basic changes that need to be brought about in the constitution and system of governance of this country. There are in these thoughts the seeds of change that our body politic needs. These should provoke us to ponder the little contributions that each one has to make to bring about the change that the system needs.

who exercise power. The trouble is that the Constitution is such that it must almost inevitably and increasingly catapult into the seats of power the more undersirable elements in our society. The proportion of criminals and history sheeters in the legislative assemblies of the country has been increasing from election to election. There have been instances in which criminal charges have actually been pending against Chief or orther Ministers in office. There is no shortage of decent, honourable, honest, public-spirited and highly competent people in the country; but the constitutional system is such that it makes it almost immpossible for them to enter political life. I should like at this point to pay my tribute to that group of people who have all these qualities and have nevertheless had the courage to overcome the hurdles in their way. Without them our political life would have deteriorated even faster than it has. And from the many critical remarks I shall make about politicians as a class this category must be rigidly excluded.

The third objective is to ensure that the executive government is strong enough and willing and capable enough to address itself to solving the major problems of this country even though the measures required for their solution may, for the time being, be unpopular. The basic problem in India, of which almost all the troubles that manifest themselves from day to day are the facets, is the growth of our population. Even when we became independent, the population-resource ratio was less favourable in India than in many countries of the world. The population since then has more than doubled; by the end of the century it will have tripled. The population-resource ratio is, therefore, very much worse and is worsening every day.

True it is that as a result of better technology, we have been able to increase production from our limited resources slightly faster than the rate at which the population has grown. Prosperity has, therefore, increased and poverty decreased. But the rate of economic growth has been much lower than the rate of the growth of expectations. If the former has to be increased to approach the latter, the measures required, both in regard to population and in the economic field will, in their immediate consequences, be highly unpopular. The present system makes it impossible to take any unpopular decision, for the vote has become our God. In fact, political decisions are taken which are quite clearly contrary to the national interest because the ruling party of the moment thinks that by taking them it will be returned to power at the next election or even help in getting it more votes at the next by-elections.

The fourth objective is to reestablish the Rule of Law. There is no shortage of laws in this country. Every session of Parliament adds a dozen or more them. The British Government in India passed no more than a little over 400 laws in the 90 years of their rule between 1857 and 1947. The indpendent Government of India has passed in the 44 years since Indpendence almost 5,000 Acts at the Centre alone: it is only a minority of them that is actually implemented. Every single one of the British laws was implemented; one of the major considerations in enacting a piece of legislation was whether it was possible, given the limitations of the administrative apparatus, to enforce it. If a proposal for legislation was such that it would be impossible to enforce it, it was considered preferable not to have it, no matter how desirable, than to bring the whole system of law into disrepute by laws being violated with impunity.

Laws today are passed without adequate thought and almost without any discussion. The Prime Minister or the Chief Minister of the day, gets a brain-wave one day that a certain law is desirable. It is drafted the next day, is passed by the State Assembly or by both House of Parliament on the third day and sent up to the Head of State for assent. Furthermore, when legislative business is before the House, there is hardly ever any quorum; legisiators who are supposed to have been elected to legislate have no interest in legislation.

The reason why they have no such interest is that they know very well that the laws do not matter. Increasingly, the will of the Chief Minister, or the individual Minister and of the local MLA is being substituted for the laws of the land. The Civil Services, whose duty it is to implement the law and

not the will or the whim of Ministers or legislators, have been subjected to such enormous pressures that they have no alternative but to forget the law and carry out these wishes.

The fifth objective is to ensure that the elected representatives of the people who make the laws actually represent the people. The MLA or MP should represent every section and every interest of the electorate; under our present system of first-past-the-post elections, the legislature does not reflect the real wishes of the people. The Congress Party, which has been governing us for most of our Independent existence, has not, except on two occasions, had the support of more than half the electors. The number of voters in the country opposed to the policies of the Congress has, for most of these 44 years, been larger than the number of people who support those policies. But under our system, the views of these people are not represented in Parliament as adequately as they should be. The consequence is that instead of disputes and differences being settled through debate and compromise in Parliament, which is the democratic method, they are taken into the streets with increasingly more violence.

The sixth objective is to ensure that local problems are settled and local development takes place, not in accordance with the wishes of the State legislature or even Parliament itself, but according to the wishes of the people of the locality, insofar naturally as their wishes, desires and actions do not come into conflict with the interests of the people of other localities. The system today is - of power concentrated in the hands of the State Assembly or in Parliament. The local bodies, the municipalities, the zila parishads, the village panchayats etc. exist almost at the will of the State Government. They do not have enough resources to meet their obligations and, what is very much worse, if they take actions which the party in power at the State level does not like, the local body is suspended or superseded. This is true not only of territorial bodies such as those I have mentioned but the craze for power is such, and the safeguards against that power being misused so few, that nominally autonomous bodies such as universities, cooperative societies and the like are infiltrated and dominated, much to their detriment, by appointees of political parties.

Finally, the objective is to reduce the ever-rising tide of corruption which threatens not only to overwhelm the administration, which is serious enough, but what is even more serious, to destroy the moral fibre of the country. Eleven years ago I made a speech in Madras which attracted considerable attention in which I traced the roots of corruption to the enormous sums of money required for an election under the our present constitutional system. The amounts have grown since then; they were then and are now, so large that there is no possible honest method by which that kind of money can be raised. Political parties and individual legislators are compelled to raise that money; the only way they can reimburse themselves or their financiers is to extract that money, with usurious interest, from the administrative system. Corruption is therefore, not only encouraged but the honest officer is virtually compelled both by peer pressure and by the pressure of the bosses to become as corrupt as they are.

My proposals for constitutional reform are based on the essentiality of the sepration of powers. It has now for several hundred years been a well-recognised principle of democracy that the three powers of the State, the Executive, the Legislative and the Judicial, should be kept entirely separate from each other. This separation is necessary because each of the three branches of government serves as check on the others leading to a balance in the final direction in which government moves. In the parliament system there is a confusion between the Legislative and Exccutive powers. The Chief Minister or the Prime Ministers must be a legislator, and so must all the Ministers in his Council of Ministers. In all parliamentary systems, the extent of the confusion is limited to the Ministers being members of the legislature and so is it theoretically in our Constitution. Article 102 of the Constitution in regard to the Centre and Article 191 in regard to the States says that "a person shall be disquallfied for being a chosen as, and for being, a member of "either of Central or the State legislature, "if he holds any office or profit under the Government of India or the Government of any State." Unfortunately, the same

sentence goes on the to say "other than an office declared by" the legislature concerned" by the not to disqualify its holders." Both the Central legislature as well as every single State legislature has an enormous list of offices, every single one of which is "under the Government" and is not only of legal profit but often of great illegal profit, to the holder, as being an office which does not disqualify him from the membership of the legislature. In the case of the Mother or Parliaments, whose rules and conventions we think we follow, it took the representatives of the people almost 200 years to get rid of what were known as the "King's Men", whose loyalty had been bought by the Crown by giving them all kinds of offices.

EXECUTIVE:

We have at one stroke destroyed that essential safeguard of democracy. Once a Chief Minister is appointed, all that he has to do to keep himself in office is to give an office of profit to every single member of is party. Whence it is, that the number of Ministers goes on forever shamelessly increasing. The result is that subjects which should be, and were, dealt with by Under Secretaries now have an full Ministers to take the same decisions as the Under Secretary used to take. When this sub-division of subjects goes so far as to pass the point of absurdity in that further sub-division is impossible, those left out of the ministerial list are made into Chairmen of Public Sector Corporations or Commissions. If there are not enough corporations in existence to satisfy officeless legislators, more corporations are created overnight. In fact it is becoming increasingly clear that our great devotion to socialism is based not on any understanding of, our commitment to, socialsim, which we never had, but on the fact that under our system it produces enormous profits for legislators no matter what losses it produces for the tax-payer. If unfortunately even this shameless creation of offices is not enough, the legislators still left out are kept happy with being given government contracts. The life of the Chief Minister is thus ensured for the statutory term of the legislature.

The price of stability in our system seems to be the transformation of democracy into a Kleptocracy. The only danger that remains is that important legislators may be dissatisfied because they had not been rewarded with a "lucrative" enough portfolio. The term" lucrative portfolio" now current in our political parlance is our contribution to the theory of democracy! Here fortunately the Anti-Defection Law stands in the way but careful Chief Ministers take out an even better insurance policy. They grant to every single member of the legislature, irrespective of party, the right to transfer a given number of officials from place to place within his constituency. What happens to law and order, to education, to development, and to the numerous other services that government is supposed to provide to the people is nobody's concern. Furthermore, ruling party legislators are permitted, encouraged and indeed expected, to issue orders to the district administration. If they are disobeyed, the official is subject to the dire wrath of the minister. The confusion between the legislative and executive powers is complete; the casualities are the Rule of Law and good administration.

My first proposal is, therefore, to separate entirely the legislative from the executive function by making it impossible for any member of the legislature to hold any office of profit under the Government, including a Ministership. The Chief Executive of the country or the State, i.e. the President or the Governor as I would prefer to call them, will be elected seprately and will appoint such Ministers as he may wish from outside the legislature. There will be no authority under the Constitution to give anybody the right to waive this prohibition.

The effect of this will be immediately and automatically to reduce drastically the attraction of becoming a legislator. The scores of thousands of people who seek tickets from the party they believe most likely to win do so not because they are interested in legislating but because they are interested in governing. If a member of the legislature cannot exercise any executive power, the only people who will stand for election to a legislature whose only function it is to legislate, will be those who are interested

in making good laws. This will automatically raise the quality of the persons wanting to be Members of Parliament or of the local Assemblies and improve the quality of legislation by having greater attention paid to it by men and women interested in legislation and having the competence to legislate. It will secondly, and very importantly, improve the quality of the Ministers because the chief executive will be able to recruit the best men for the job irrespective of whether or not he has the capacity to wheedle votes out of an ill-informed electorate.

My second proposal is that the President or the Governor will hold office for a fixed term of years without any possibility of his removal during that term-except by impeachment for acts of moral delinquency. Not being dependent from day to day for his own existence on a whole horde of rapacious legislators he will be able to purpose unpopular policies and take unpopular actions in the interest of the country. He should have a tenure long enough to be able to give effect to the policies which he considers desirable, say seven years in the case of the President and five years in the case of the Governor but, very importantly, he should be limited to a single term of office. This limitation is essential because otherwise he will fall a prey to the same temptation as our present politicians, of seeking popularity in order to remain perennially in office and in following more and more populist policies which give immediate pleasure to the voter but harm the long-term interests of the country.

The fixed term of the Chief Executive ensures stability in the executive government. The President or the Governor does not have to waste any time at all in placating the desires for power and pelf of the memebrs of the legislature. They can be discontented with him, they can abuse him, they can run to the High Command complaining against him, but all this will have not effect. He will continue to remain in power till the earth has completed the prescribed number of orbits round the sun. The futility of these efforts will soon become apparent and the enormous amount of time and energy wasted in the effort will hopefuly be put to better use.

Theoretically the best way to elect the President or the Governor would be to have him directly elected by all the adult population of the country or the State. But our country is so vast and the population so great that the expenditure involved for any candidate would become colossal. Once again this would lead exactly to that corruption which it is one of our objectives to eliminate.

The next best alternate is for the President or the Governor to be elected by a college of electors who themselves represent the people. It is the general belief that the President of the United States is elected by the direct vote of the people. But this belief is legally and constitutionally wrong. The people vote to elect memebrs of the College of Electors; it is this College which elects the President. The Founding Fathers of The American Constitution prescribed this indirect method because they felt, rightly, that so important a decision should not be taken by the vast number of people who could be swayed by emotion or a pupul[illegible]ppeal or election gimmickry; it should be taken by a very small group of people who, while being representative of their communities, were relatively immune to these unworthy influences and could act in the best interest of the nation. Theoretically members of the College of Electors were not bound by the wishes of the people who elect them to that College. They could theoretically totally disregard those wishes and vote for the person who they thought would be best for the country irrespective of who their electors wanted. The conventions that have, however, developed and have probably by now assumed a legal form debar such a practice.

There is nothing new about the proposal that the Chief Executive should be elected by a College of Electors for the President today is also so elected, the College of Electors being the members of Parliament and the State legislatures. And indeed the Prime Minister and the Chief Ministers are once again elected by a narrow and small College of Electors, that is to say, the members of the majority party in the Lok Sabha or the lower house of the State legislatures. The College of Electors I propose is much wider consisting of not only the Members of Parliament and the Members of the

State legislatures but also of the members of all local bodies down perhaps to the Panchayat level. the electorate will be wide enough to ensure that it reflects the wishes of the people; it will be small enough not to require much expenditure of money to enable it to get to know the qualities and the merits and the policies of the various candidates for the office. This was the method that was adopted in the Constitution of the Fifth Republic of France originally. It is only later that France changed to a two-stage direct election. But France is smaller than our larger States and France is infinitely richer than India. It is therefore, easier for them to expand the constituency of the President than it would be for us.

There is one specific provision regarding the election of the President, which should find a place in the Indian Consitution. India has a peculiar problem, shared by Pakistan and Nigeria as also, in another way, by Canada. It is that there is one region of the country with a distinct linguistic and cultural identity which is so large as to dominate the rest of the country. In Canada, the English speaking part dominates Quebec, in Pakistan, the Punjab has more population and more wealth than the rest of the country put together. In Nigeria, the area which used to be the Nothern Province is larger than all the other provinces combined. In India, it is the Hindi-speaking belt, undoubtedly more backward than the rest of the country but more populous, which has since Independence tended to dominate the governance of the country particularly in the matter of the choice of the Prime Minister. In 44 years, we have had only two Prime Ministes who have not belonged to Uttar Pradesh. Given the fact that some of these seven occupants of the Prime Ministerial office would have occupied it in any case because of their outstanding merit no matter which part of the country they came from, it is nevertheless true that this lerge mass of northern India enjoys an unfair advantage over the rest of the country. The dissatisfaction that arises from the kind of imbalance without adequate safeguards in the Constitution to protect the rights of the other States are clearly visible in Canada and Pakistan. The only country whch has recongnised the problem in its Constitution is Nigeria and I would suggest that we take a cue from what that country has done. In our conditions, I would notionally divide the country into four zones-east, west, south and north- and would require a successful candidate for the Presidency not only to get an over all majority of the votes cast throughout the country but also a specified, relatively small, percentage of votes in all the zones, before he can be declared elected. This is to ensure that we do not get a President whose knowledge of the rest of India is so confined as to think of everyone coming from the south of the Vindhyas as a Madrasi!

LEGISLATURE

The proposals I wish to make about the powers of the legislatures and the methods of their election are so inter-linked with the questions of the devolution of power that it would be preferable if I discuss that first before proposing the mechanism of election.

The States in general are forever wanting more autonomy. the discontents in the Punjab, Assam and to some extent even in Kashmir are traceable to a certain extent to the lack of autonomy. This question has been gone into very thoroughly by Mr. Justice Sarkaria and his Commission. I would agree with his findings that, bearing in mind the interests of the country as a whole, the powers and responsibilities that have been allocated to the Centre and the States under our Constitution do not require any radical change. There may be some adjustments here and there which may be of benefit but these are marginal.

What has harmed and indeed, to a certain extent destroyed, the autonomy of the States are three factors. The moment the country, with general consent. adopted central planning for economic development, it followed that certain powers which the Constitution gave to the States would have to be vested in the Centre. To take but one example, industry under the Constitution is a State subject. But economic planning for India as a whole cannot be done without central control of industiral policy; control over industry was, therefore, transferred to the Centre by the willing consent of the States.

But the most important factor in the destruction of the autonomy of the states has been the extra-constitutional authority that is exercised by the all-India political parties. Under the Constitution, it is for the people of the State freely to choose and elect their own candidates to the legislature and for the members of the legislature to choose the person they like best as their Chief Minister. The Chief Minister then chooses his Ministers and the Head of the State, who is above all political conflict, swears them in. There is no room in the Constitution for any outside interference. However, the existence of all-India parties has resulted in the destruction of this freedom of advice. The Congress gets the principal blame for this for the simple reason that it has been in power for the longest period of time. But the guilt is as much that of all other all-Inida political parties; the Janta Dal or the BJP act exactly in the same manner. The interterence goes to such an extent that even the list of party candidates to the local legislature has to be approved by the central organisation, the Chief Ministers to be elected has to be its nominee, the Minister he chooses and even the portfolios that he gives them are dictated to him by the same authority. One of the great appeals of regional parties is that there is no such interference with them from outside regional parties in power consequently enjoy much greater freedom than governments belonging to all-india parties. No Constitutional provision can be devised to prevent this kind of unconstitutional interference based as it is on the free will of the people; the remedy for restoring the autonomy that the Constitution guarantees to the States lies in their own hands.

The third factor that has operated to weaken the autonomy of the States is the misuse of the instituion of the Governor. It was the clear intention of the Founding Fathers that office should be totally above the political fray and that its occupants would in no way be interested in furthering any political party, In order to ensure that the Governor would not be subjected to the pressure of the Central Government he was given a fixed term of office of five years. The oath of office of the Governor is clear. It says that he will, to be best of his ability, preserve, protect and defend the Constitution and the law and that he will devote himself to the service and well-being of the poeple of the State.

This would involve, as the Sarkaria Commission has pointed out, the appointment of individuals as Governors who have achieved eminence in fields of activity other than politics or who though they may have started as politicians have no further political ambitions or role. However, over the years this concept of an independent and impartial Governor has increasingly become unacceptable to the Central Government. The day after the Sarkaria Commission report was make public, seven appointments of Governors were made of whom six were active politicians belonging to the party in power at the Centre. the concept seems increasingly to be that the Governor is no more than a representative of the Government of India subject to its orders whose function is to serve the interests of the party ruling at the Centre. This concept has been accepted to such a point that the Cabinet of India advised the President to dismiss all the Governors who were in office when they themselves came to power and the President accepted this advice. There could have been no clearer demonstration of the changed character of the Governorship; the Governor had become a political hack not to hold office for the five years which the Constitution required but only till the Government at the Centre changed its colour.

My proposal has the inestimable advantage of abolishing the institution of the Governor as it at present exists thereby removing all threats presented by that office to the autonomy of the State. The new Governor freely elected by the people of the State can cock a snook at the Central Government and tell them to mind their own business. Whether or not he obeys the orders of an all-India political party will depend on him and the wishes of his electors. If, in addition, central planning is abandoned as it is likely gradually to be, the autonomy of the States will be resotred to its original position.

But the devolution of power that I seek is not from the Centre to the States but from the States to its local bodies i.e. the municipalities, the town area committees, the district boards, the village panchayats and the like, which are much closer to the people than the MLAs sitting in the State capitals. All

these bodies now exist but none of them has Constitutional protection. What I would want is that their rights, their obligations, their powers, their resources, their method of election and organisation should all be given Constitutional protection without the right of any authority whether State Government or Centre to supersede or suspend them. If the State Government or any other authority had any objection to any of their actions, it would be for the courts to decided whether the action was intra or ultra vires.

I would hold direct elections only to the primary legislative body, i.e. the village panchayats in the rural areas or the town area committee or municipal committee in the urban areas. These elections should be held with proportional representation on the basis of a single transferable vote in multi-member constituencies so that every caste, creed, trade or calling or other interest would have a fair and equal chance of representation. A village is a small body of people who inevitably know each other intimately. They know who is good and who is bad; they know who is competent and who is incompetent; they know who works for the public good and who is a self-seeker. They can be trusted to elect to their panchayats the best people in the village.

It is often said that giving additional powers to a village panchayat would only mean giving powers to the local strong arm Chaudhri. This may be true in present conditons. But if the panchayat is given Constitutional recognition and its elections conducted under the same safeguards as those to Parliament, I do not see why the panchayat cannot be as true a reflection of the will of the people as it is humanly possible for any elected body to be.

The primary body, i.e. the village panchayat or the town area or the municipal committee would be in may scheme of things the base on which further representative bodies would be built. The next tier of local-self government would be the district board- unless local conditions require yet another intermediate body. This would be elected not directly but by a college of electors. This college could consist of the members of all the primary local bodies in the district. For the next stage of government, namely, the State legislature, there again should be no direct elections; the college of electors being members of the district boards of the State. The final stage would be the election to the Central Parliament for which the college of electors should be the members of the State legislatures.

All these elections should be on the basis of proportional repressentation on the basis of the single transferable vote. The system of the single transferable vote has been in practice in our country since the beginning of our Constitution for elections to the members of the Rajya Sabha. It is by no means unknown to us and should easily be practicable even at the lower levels of elections. It is by far the fairest way of electing a body or an individual which or who reflects in themselves or himself the totality of the interests of the electors. The first-past-the-post system as I have earlier pointed out completely distorts the will of the people and is, to that extent, undemocratic. This system is prevalent only in the United Kingdom and in the countries which at one time were part of the British Empire. In all other democracies, some form of proportional representation is practised. For some reason, the only other form of proportional representaion known in India is the German system of list voting. In that system for half the seats in the legislature the people vote not for individuals but for political parties. The number of seats of a political party depends on the proportion of votes it gets. Which individual actually gets elected depends on the position his name occupies in the party list. This is a method that takes away the power of election from the individual voter and transfers it to the party bosses. In Indian conditions where the party bosses in general have no elective authority, this system would be absolutely disastrous.

The merits of the proposals I make are first that the electorate at every stage is limited to electing the people who are to decided on the issues which are of the most direct consequence to them. The normal villager in an Indian village has neither any concern with nor any knowledge of abstruse subjects such as foreign policy on which, under the present system, he is supposed to vote. He is concerned as a villager with the supply of drinking water or proper working of the school or the

establishment of a hospital or a dispensary, the timely supply of seeds and fertilizers and irrigation water. He could not care less about whether India followed a policy of alignment or non-alignment.

Further, he knows personally the people who want his vote; whether they stand on the symbol of one party or another is irrelevant to him. He will choose the man who in his opinion is the best man and in whom he has the greatest faith.

Similarly at the next tier of government, the likelibood is that the voter would have sophistication enough, knowledge enough and interest enough, to be concerned with the affairs which are the responsibility of the next tier which are wider than the village or the town area. He would in addition be more personallly knowledgeable about the individuals who are wanting his vote than would be the general elector. As this process proceeds, the expectation is reasonable that the level of sophistication, knowledge, and interest will increase. What happens at the moment is quite the reverse. A blitzkrieg overtakes a village or a town at enormous expense asking the voter to vote for the Hand or the Lotus or whatever. All that he may known is the name of the leader of the party and the vote that he gives represents his confidence in that leader rather than in the individual for whom he is voting.

THE SERVICES

Lastly, but very definitely not least importantly, I deal with the services whose position I feel should specifically and clearly be defined in the Constitution. Whereas in the classical theory of the sepration of powers, the Executive is regarded as one undifferentiated whole, modern political theory tends increasingly to divide the executive power also into two seprate branches. There is the political executive whose function it is to direct policy and in the classical words of Harold Laski "to inject a current of tendency into the stream of affairs". These policies, in order to be effective, have to be given shape into laws which have to be approved by the second branch of government, namely, the Legislative. The application of the law in particular cases in not however the function of the expermanent civil service. This group of people are entrusted with the implementation of the law. The Income Tax Act, the contents of wich are a matter of policy, does not vest in the minister of Finance any powers at all; the persons in whom various powers are vested are the Income Tax Officer, the Commissioner of Income Tax etc. Similarly, no Ministers has any function at all under the Criminal Procedure Code; the people who are entrusted with functions under that Code are the District Magistrates, the Superintendents of Police and the like. There is no law, whether in India or in any other democracy which empowers a Minister to decide an individual case; Ministers are merely advisers to the President or the Governor; those whose duty it is to carry out the orders which the Ministers have advised the President to give are the servants of the President which Ministers are not.

The reason why India is increasingly becoming a lawless country is that those to whom the law entrusts its enforcement are not allowed to exercise their powers. The law is replaced by the will of the ministers and, indeed, often by the will of individual MLAs. The law says that the police must take cognizance of a murder, investigate it, and proceed to prosecute the party or parties which it considers guilty. The Minister, on the other hand, says that if the murder has been committed by his henchmen, the case has either not be registered at all or not investigated or investigated improperly or the post mortem report has to be cooked or other steps taken to enssure that the guilty party gets away scot free. Not only that but there have been well-known instances where the Chief Minister has used the police force as his own private army virtually converting it into a gang of outlaws committing murder and rapine. To collect money for his own private purse through the agency of the police force is something that unfortunately is by no means not unkown in our country.

We have gotten to a point at which many parts of the country - and I do not refer to Assam, the Punjab or Kashmir which are sepcial cases _ have no law and order. The only persons whose life

and property can be regarded as safe are those who are the politcal bosses connected with the party in power at the moment or those who are fortunate enough to enjoy their favours.

How is it then that the permanent civil services have abdicated the functions entrusted to them by law? The constitution has provisions which show clearly that the permanent services were supposed to be indpendent of the political executive and not to be swayed by the political bias of whoever happened to occupy the seats of power for the time being. The Public Service Commissions which were supposed to be completely impartial and independent were to recruit the personnel of the services; under Article 311 of the Constitution the public servants once recruited were given special protection; they could not be dismissed or demoted or other disciplinary action taken against them without an elaborate inquiry.

But the provisions of the Constitution did not specifically prevent the Minister from transferring, denying promotion or suspending an officer who was not pliable and performed his duties wihtout fear or favour as he was expected to do. It is these three powers of transfer, denial of promotion and suspension that have been ruthlessly used completely to demoralise the services. In a country where jobs are not easily available, it is nor surprising, though it is tragic, that a larger number of civil servants, including the corps d' elite of the all-India services, namely, the IAS and the IPS should not have been able to live up to the great traditions of independence and impartiality which they inherited.

In virtually all well-run democracies, the civil services have, mostly by convention, a special postion which excludes the kind of pressure that is applied against them in India. In the United Kingdom - and this is true mutatis mutandis of all Erupean democracies- recruitment is made by Public Service Commissions which are truly independent and immune from political influences. Appointments, postings, transfers, promotions or denial thereof, are all decided not by Ministers but by a group of senior civil servants themselves. As the civil servant's future does not depend on whether or not he has been able to please his political master but whether or not has been successful in implementing the law, it is the law and not the ministerial whims which get obeyed.

The idea that the civil services should have autonomy is, of course, anathema to politicians of all kinds and of all parties. The Indian tradition of governance is not through the Rule of Law; the law in our tradition is what the ruler wishes. It is not understood that in a proper democracy there is no ruler in the sense that we have understood the term but that every functionary of government from the highest to the lowest has a strictly limited task ot perform. That task is defined by the Consititution and the laws; the will of any individual no matter how highly placed, cannot prevail against the law. Even if it is the President who breaks the law, he is liable to impeachment. We are all aware that Richard Nixon who had authorised a kind of house breaking and larceny had to abdicate what is perhaps the most powerful office in the world, the Presidency of the United States, as he found himself defenceless against the threat of impeachment. In India even a minor Minister can authorise and does authorise that kind of action without the slightest fear that any authority would take any action against him. Indeed, extortion, bribery, unlawful detention, assault and even murder seem in our political consciousness to be the legitimate rights of the person who regards himself and is often regard as the Ruler.

I suggest that if we do not want to descent into chaos, a major change in our Constitution will have to be to define the respective and distinct function of the permanent and political parts of the Executive branch of government. The conventions on which we were relying for good government under the Constitution have all been broken; they have, therefore, to be replaced by law.

CONCLUSION:

I have attempted to sketch the outlines of a Constitution which, in my view, should replace one if we are again to become a peaceful, honest, just and progressive nation. Each one of the specific proposals I

have made requires to be greatly elaborated after mature thought and wide discussion. I do not for a moment claim a monopoly of wisdom; what I would like to suggest is that these ideas of mine should be discussed for what they are worth more objectively than has hitherto been the case.

The objection that is often raised even to the discussion of this kind of basic constitutional reform is that it is so radical that it is never likely to be accepted by the only people who can change the Constitution, namely the politicians themselves whose present access to power and pelf it will totally eliminate. That is true in normal circumstances. But the body politic is deteriorating at so rapid a pace that it is just possible that within a foreseable future an abnormal set of circumstances will arise where the present day politician will not have the last word in determining the future of our country. Who would have thought only a couple of years ago that the Soviet Union would collapse and be a replaced by something so entirely different. The conventional wisdom was that the power of the rulers of the Union was so formidably entrenched that nobody could ever challenge it. But circumstances are not bodies; it was the force of circumstance, the economic collapse of the system which forced the change. All that I urge is that at least the intelligentsia should discuss these matters and come to some kind of consensus on the shape that we would like the compels the change, we should not face the kind of chaos that has replaced the breakdown of the old system in the Soviet Union.

MALFUNCTIONING OF BLOOD BANKS

There have been reports of inadequacies and malfunctioning of the blood banks in the country. From time to time these inadequacies get highlighted in the Press when cases occur of complications arising in the patients on transfusion of blood which is infected or otherwise not suitable.

We have taken this matter to the Supreme Court in the shape of a writ petition. In the writ petition we have impleaded the Government of India in the Ministry of Health, the Drug Controller of India, and the Departments of Health of all the State Governments in the country. The writ petition came up before the court on the 6th March 1992 and was straightway admitted. Show Cause Notices have since issued to the Government of India and all the State Governments. The case will now proceed further on the service of notices on them and their appearance before the court.

We consider it appropriate that our readers should be aware of the substance of this writ petition. We reproduce it below..

IN THE SUPREME COURT OF INDIA
WRIT PETITION NO: 91 OF 1992

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING FOR ISSUANCE OF A WRIT OF MANDAMUS OR OTHER SUCH WRIT, DIRECTION OR ORDERS DIRECTING THE RESPONDENTS TO ADOPT SUITABLE AND APPROPIRATE MEASURES FOR ENSURING PROPER LICENSING AND EFFECTIVE MONITORING OF THE BLOOD BANKS OPERATING AT ALL PALACES IN THE COUNTRY WITH A VIEW TO ENSURING THE COLLECTION, STORAGE AND SUPLLY OF SAFE BLOOD FOR TRANSUFION PURPOSES TO THE PATIENTS REQUIRING SUCH BLOOD TRANSFUSION, IN STRICT COMPLIANCE WITH THE RULES PRESCRIBED IN THIS BEHALF UNDER THE DRUGS & COSMETICS ACT OF 1940 (ACT NO: 23 OF 1940), THE PRESENT LAXITY IN LICENSING AND MONOTORING OF THE BLOOD BANKS BEING VIOLATIVE OF THE PROVISIONS OF ARTICLE 21 OF THE CONSTITITION OF INDIA.

1. That use of human blood for tranfusion requirements is now an indespensable necessity for medical science. Transfusion has to be given to patients such as in cases of accidents, burns, surgical operations, child birth etc. There is till now no available substitute of human blood for these requirements of transfusion. Quality of blood, for purposes of transfusion, is of paramount importances. Survival of the recipient of transfusion depends on the quality of blood that is given to him.

2. That blood for transfusion can be secured only from human-beings. It is of the greatest importance that the blood taken from the giver is disease free, it is taken in hygenic conditions after making sure about the quality of the blood, it is stored in accordance with the prescribed storage requirements, it is transported in proper conditions, and it is made available for transfusion purposes in conditions which guarantee the maintenance of its quality.

3. That taking into account the importance of the blood and the requirements of its quality and storage etc Rules have been prescribed for ensuring that no compromise is made in respect of essential requirements by the agencies responsible for collecting, storing and supplying the blood. These rules have been issued under part XII of Schedule F prescribed under Rule 12 of the Rules framed under the Drugs & Cosmatics Act of 1940 (Act No: 23 of 1940). The Rules were notified under the notification of the Department of Health of the Ministry of Health & Family welfare vide notification no: F-20-10/45 (h) (1) dated the 21st December 1945. Copy of the part XII B of Schedule F is placed at Annexure 'A' for ready reference. It will be noticed. that this portion of the Rules lays down certain rigid requirements in relation to the Blood Donor Room, Blood Collection Supplies (including haemoglobin determination, temperature and pulse determination), testing of blood for freedom from HIV antibodies, equipment for the laboratory, canteen and emergency purposes, and the qualifications of staff who have to operate the blood bank, and the requirements relating to storage of the blood and its labelling etc.

4. That there have often been complaints about the quality of donors who are generally called for collecting blood in the blood banks and about the standard of hygenic conditions of accommodation as well as of inadequacy of storage equipment etc. The Department of Health of the Ministry of Health & Family Welfare of the Union of India, Respondent No: 1, had commissioned a study through the professional agency of A.F. Ferguson & Co for studying the operation of blood banks. The agency submitted its report in July 1990. Findings of the report, which in assence continue to be largely indicative of the conditions still pravailing are summarised in the sub-paragraphs that follow:-

   (i) There are 1010 blood banks in the country. Out of these 616 are unlicensed. As many as 528 of the blood banks operate under the auspices of State Governments (total of 596). It is reported that not enough efforts are made by the State Governments for initiating licensing procedures and that in the blood banks the accommodation is not adequate.

   (ii) 45% of the supplies are secured from blood banks operated by State Governments, 8% of Central Government, 24% of commercially operating blood banks, 15% of private hospitals, and only 10% from blood banks operated by voluntary effort.

   (iii) Out of the donors 42% are those in which the blood is secured on replacement basis from the patients, 29% operate on commerical basis and 29% on voluntary basis. Professionally operating blood banks are more common in the northern region whereas voluntary effort is more evident in the sourthern and western regions.

(iv) Almost 95% of the blood collected through voluntary agencises is collected from voluntary donors.

(v) Out of commercial blood banks 201 are operating on licensed basis. These collect blood only from profassional donors who are reported to be bled at very frequant intervals, ranging from once a month to once a day, whereas the appropriate interval for taking blood is once in 12 weaks. These professonal centres are reported to be lacking in blood testing standards; many do not perform any tests and issue the blood soon after bleeding; they are largely located in very unhygenic environments and take the blood as well as store it in very dirty conditions. The reports shows that although all these 201 commercial blood banks are lincensed not all of them qualify for the issue of licence.

(vi) It canot be contended that the commercially operated blood banks do not have sufficient funds for effecting improvements. The report has estimated that an average commercially operated blood bank sacures total income of Rs. 15,00,000 against which expenditure is Rs.8,26,600 including payments to donors, testing and storage, yielding profit of Rs 6,73,400 form each bank.

(vii) It is reported that there are 4000/5000 regular professional donors, other than occasional professional donors, concentrated in 18-20 cities. The report has highlighted that most of these professional donors are unfit to donate blood due to ill health, low haemoglobin level and the infections they carry. There is no ban on professional donors in government hospitals; it is reported that there is sometimes nexus between the doctors and commercial blood banks, and the collections through State Government blood banks is low and necessitates reliance on professionally operating banks.

(viii) Concentration of professionally operating blood banks are in Bombay, Delhi, Lucknow, Guwahati, Hyderabad, Calcutta and Patna. The states hich have not banned collection from professional donors are: Andhra Pradesh, Madhya Pradesh, all states of the North-East, Uttar Pradesh, Bihar. The payments to professional donors range from Rs. 25 Rs. 35 in Calcutta to Rs. 80 to Rs. 90 in Delhi.

(ix) The reporting agency contacted 120 professional donors. Their profiles show that they are mostly middle aged, unemployed or underemployed or alcoholics or drug abusers, having indiscriminate sexual habits and comprising high risk groups for Hapatities and for AIDS. In some places, like Allahabad, it was found that professional donors are arranged by a strong middle man who dictates charges and takes heavy commission, his choice of donors being unconnected to their last donation, haemoglobin level, overall health etc.

(x) Out of the blood supplied by professional blood banks, almost 28% is untested, 40% partially tested, and only 32% is tested. For AIDS the blood tested is only 39% in Bombay, 35% in Delhi, whereas in other cities the testing for AIDS is only to the extent of 7-10%.

(xi) Difficulties are experienced in securing blood for transfusion in hospitals of districts and sub-districts. The report shows that in such areas nearest blood bank is more than 50kms on the average; there are no blood bank refrigerators to store blood, there is no appropriately qualified or trained blood bank staff.

(xii) As an instance it is reported that Uttar Pradesh has 95 blood banks, out of these 26 are commercially operated, with no storage facilities, 13 are not doing any tests, and only 3 are doing all tests.

5. That the report prepared by the above mentioned agency has made specific recommendations on matters such as the policy which needs to be adopted by the government, clearly defining the role of private and voluntary sectors, for improving the standard of operations of the blood banks. It has been suggested that initiatives should be taken for bringing about motivation among the people for donating blood on voluntary basis and for organsiing camps for collecting blood, discouraging the policy of paid donors, strictly monitoring the blood banks, raising the standard of storage facilities, and appropriate training of staff. Suggestions have also been made about legislative changes that requires to be made in relation to the licensing and operations of blood banks.

6. That from the findings of this survey conducted by the profesional agency commissioned by the Department of Health of the Ministry of Health & Family Welfare of Union of India, Respondent No: 1, it is aparent that the operations of blood banks in the country in general, and particularly in relation to the blood banks operating on commericial basis, are very unsatisfactory. It is most unfortunate the laxity continues to be in evidence on the part of the Union of India as well as the State Government in the matter of such great importance as the collection, storage and supply of blood for transfusion, which in the present day advance of medical science is the primary source of saving lives in hospitals and medical centres. The inadequacy of operations in almost all the connected fields such as licensing of blood banks, motivating and marshalling voluntary effort in he collection of blood from donors, testing of blood against infections including the dreaded menace of AIDS etc. provision of storage equipment, maintenance of hygenic environments, for ensuring appropriate supply of blood for transfusion purposes, is proving a very serious menace to the patients who have to be administered blood transfusion for treatment in hospitals and other medical centres. These ommissions and inadequacies on the part of Union of India and the State Governments, Respondents No.s 1 to 27 and the non-implementation of the statutory requirements prescribed in this behalf in the Rules promulgated under the Drugs & Cosmetics Act of 1940, constitute a serious dereliction on their part which is a violation of the fundamental right ot life guaranteed under Article 21 of the Constitution of India. Responsibility for the effective implementation of the prescribed Rules obviously lies on the Drug Controller of India and the Drug Controllers of individual States. The implementation will need to be ensured by the Union of India, Respondent No:1, through the Drug Controller of India, Respondent No:2, and by the respective State Governments, Respondents No: 3 to 27 through the Drug controllers of their Departments of Health.

7. That the Petitioner has not filed any other or similar Petition on the same subject before the Hon'ble Supreme Court or any High Court.

PRAYERS

8. It is, therefore, respectfully prayed that the Hon'ble Court may kindly be pleased to:-

(i) issue a writ of mandamus or any other appropriate writ, order of direction, drecting the Union of India and the State Governments, Respondents cited in this Petition, to ensure that positive and concrete steps in a time bound programme are immediately initiated for obviating the malpractices, malfunctioning and inadequacies of the blood banks all over the country, and placing before the Hon'ble Court a specific programme of action aimed at overcoming the deficiancies in the operation of blood banks;

(ii) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the Union of India and the State Governments, Respondents cited in this Petition, to submit to this Hon'ble Court a positive and practical programme aimed at banning the operation of

any unlicensed blood banks anywhere in the country and ensuring proper inspection of the blood banks for effecting renewal of their licences in keeping with the requirements prescribed in the Rules promulgated under the Drugs & Cosmetics Act of 1940;

(iii) issue a writ of mandamus of any other appropriate writ, order or direction, directing the Union of India in consultation with the State Governments, Respondents citied in this Petition, to submit to the Hon'able Court a positive and practical programme aimed at banning the collection of blood from professional donors and simultaneously initiating vigorous efforts of motivation for stimulating, encouraging and facilitating voluntary donations of blood through camps as well as through companies employing organised labour, and institutions like colleges etc; and

(iv) Pass such other and further order or orders or give further or other reliefs as the Hon'ble Court may deem fit and proper in the circumstances of the case.

TAX DEDUCTION ORDERS WITHDRAWN

From COMMON CAUSE we filed a writ petition in early January 92 before the Supreme Court challenging the constitutional validity of the order passed by the Government of India and Reserve Bank with effect from 1st October 1991 whereunder interest accruing on fixed deposits in the banks was subjected the tax deduction at source where the interest amount exceeded Rs 2500 in the year, News about the submission of this writ petition got widely circulated in the newspapers.

The writ petition was scheduled to come up for consideration before the Supreme Court on the 3rd March 1992. It was a very welcome and pleasant suprise that the Finance Minister, in his Budget speech on the 29th February 1992, declared that the orders imposing such tax deduction were being withdrawn. Accordingly, when the writ petition came up before the court we submitted that it had become infructuous in view of the declaration made by the Finance Minister and we withdrew it.

It would be of interest to know the salient features of the submissions which we made before the Supreme Court. The repercussions of the order passed by the Government of India and the Reserve Bank were vast and our estimate was that these orders affected nearly 50 lakhs persons all over the country. Aggregate deposits of the depositors in the banks are estimated to be of the order of Rs 100,000 crores, Taking the average deposit of one person to be about Rs 25,000 it can roughly be surmised that nearly four crore of people in the country have interest in these deposits; if the average is taken as Rs 50,000 the number of depositors will be about two crores. Out of this vast number of depositors, there will be, according to our estimate, atleast 50 percent of such persons, including old pensioners who have deposited their provident fund or commuted pensions, and widows and children who have inherited or been gifted amounts which have been placed in the banks as deposits, who are not liable to tax or whose income during the year will be below the taxable limit.

Even the deposit of an amount of Rs 20,000 will in course of a year earn interest of more than Rs 2500 where the deposit is for more than one year. Hundreds of thousands of persons including the categories such as old pensioners and widows etc, whose interest during the year may be more than Rs 2500 but who are not within the tax bracket, were thus made liable to the tax deduction at source. For avoidance of such tax deduction the depositors were expected to visit the banks for making declarations. Considering the vast number of people, and also that many would be residing in places far removed from the banks and in rural areas, it would be impossible for them to visit the banks for making the requisit declarations, particularly those declarations which also necessitated the attestation by a gazetted officer.

The quantum of tax deduction ordered in this dispensation was 10 percent of tax alongwith 1.2 percent of surcharge, the deduction totatling 11.2 percent. Where the interest was, say, Rs 3000 during the year, the amount of tax deducated by the bank would be Rs 336. The surcharge on income tax comes about only when the income during the year is more than Rs 75,000 in the case of an individual, but unfortunately directions had been given to the banks of effect the deduction at 11.2 percent regardless of the aggregate income of a person or the extent of amount of interest accruing on a deposit.

Where the tax was thus deducted from the interest it would be well high impossible to expect the refund of the deducted tax where as person in non-assessee because income tax retrun would ostensibly have to be submitted by such non-assessee and he would have to continue making efforts to seek the refund. It can thus be surmised that in almost all cases where the persons could not file the prescribed declarations it would be impossible for them to file the tax returns and expect the refund of tax. We estimated, therefore, that atleast 50,00,000 depositors would not be able to secure the refund of their deductions, and if the average deduction was of the amount of Rs 300, the aggregate loss to them would be of the order of Rs 150 crores during one financial year. To this extent, we urged, there would be "unjust enrichment" of the government, which was directly attributable to the directions issued to the banks.

In the writ petition we, on the basis of these facts, urged that the Union of India and the Reserve Bank of India should be directed not to implement the instruction communicated in their letter issued to the banks whereby such tax deduction at source was to be effected, these directions being violative of Articles 14 and 21 of the Constitution of India. We also prayed in the writ petition that the Government of India should be directed to devise suitable aternative scheme by which the objective of checking tax evasion in the matter of concealment of income accruing by way of interest of deposits in the banks could be attained without causing the serious problems of the nature mentioned in the petition.

We are glad that the Fiance Minister favourably reacted to the criticisms of the decision of the Government of India and Reserve Bank of India, and the orders which were likely to create serious problems of vast numbers of people all over the country, were withdrawn.

FOR PENSIONERS

During the past few weeks there have been reports about decision having been taken by the Government of India to accept in principle the demand of "One Rank One Pension". This matter also featured quite prominently in the Budget speech of the Finance Minister. Orders on this subject have not yet been issued from the Government of India for implementation by the concerned departments and offices. These will be studied in detail.

We have received a large number of letters from all over the country. As anticipated, the civil pensioners of all ranks have communicated to us their views that this matter needs to be taken up with the government of India and also before the Supreme Court for seeking parity with the Defence pensioners in the matter of "One Rank One Pension". Repeatedly, the civil pensioners have been stressing that the Supreme Court had clearly enunciated the fact that there can not be categorisation among the pensioners. On this score the civil pensioners feel that they have a legitimate claim for being given similar benefits which are proposed to be given to the defence pensioners.

This matter is of obvious importance. Nothing can at this stage be said whether it can be successfully urged before the Government of India or the Supreme Court. It will entirely depend upon the study of contents and implication of the orders which the Government of India has issues for conveying the benefits of this scheme to the defence pensioners. We will soon examine whether it will be worthwhile to take up this matter in relation to the civil pensioners.

Meanwhile, an important issue has been raised by COMMON CAUSE before the Government

of India in relation to the ostensible discrimination between the employees and pensioners in the matter of the giving them the benefits of dearness allowance/dearness relief. We have expressed that the quantum of dearness allowance/relief has relationship to the cost of living index which equally effects the employees and pensioners of same level of emoluments/pension. We pursued this matter with the Department of Pensions of the Ministry of Personnel, Public Grievances and Pensions of the Government of India. We have received from the Department of Pensions a note wherein they have conveyed justification for the existing position regarding the payment of dearness allowance/relief to the employees and pensioners. We reproduce the entire note hereunder. We would be grateful for detailed study by experienced pensioners and for their comments and suggestions for pursuing this matter further with the Government of India.

Meanwhile, we have received comments from a knowledgeable person (Mr R.K. Shingal) and for the facilitating the consideration of the Government of India note by the pensioners we reproduce his comments herein below.

Note Received From the Government of India

Department of Pension and Pensioner's Welfare

Subject: Retionale for adopting different slabs for regulation of dearness relief on pension as compared to slabs adopted for grant of dearness allowance to serving personnel

The scheme of providing neutralisation against inflation for price rise beyond average CPI 608 interoduced from 1.7. 86 on the recommendation of Fourth Central Pay Commossion provides for grant of dearness allowance to serving employees and dearness relief to pensioners on the following scale:-

D.A. for serving employees:

Pay	%Neutralisation	Rates of DA as from
Upto Rs. 3500	100 %	43%
Rs. 3501 - 6000	75%	32% Mln. Rs 1505
Above Rs.6000	65%	28% Min. Rs. 1920

Dearness Relief to Pensioners

Pension	% Neutralisation	Rates of DR as from
Upto Rs.1750	100%	43%
Rs. 1751 - 3000	75%	32% Mln. Rs. 754
Above Rs. 3000	65%	28% Min. Rs. 960

2. Questions have been raised from time to time as why different slabs have been adopted for regulating dearness allowance to serving personnel and dearnesss relief to pensioners and why 100% neutralisation is not being allowed on pensions upto Rs. 3500/-.

3. The relevant extracts from the Report of the Fourth Central Pay Commission regarding grant of dearnesss relief to pensioners is reproduced below:-

> "At present the dearness relief payable to pensioners has no relation to the compensation for price rise which was admissible to them while they were in service. The relief is also subject to a cieling of Rs. 12.50 for every increase of 8 points in the 12 monthly index average which becomes applicable to all pensoners drawing pension above Rs.500/- per mensem. This has created a number of anomalies in the existing pension structure. We have recommended a regular scheme for compensation against price rise to serving employees in Part I of our report. We are of the view that the pensioners also need to be given relief against price rise as a regular arrangement. We accordingly recommended that the dearness relief in future should provide full neutralisation fo price rise to pensioners drawing pension upto Rs.1750/- per mensem, 75 percent and to those getting pension between Rs. 1751 and RS. 3000 and 65 per cent to those getting pension above Rs.3000 subject to marginal adjustments".

4. It will be seen from the above-mentioned observations of the Fourth Central Pay Commmission that there was no corelation between the scheme of dearness allowance to serving personnel and the scheme of dearness relief to pensioners prior to 1.1. 86. The lack of this corelation had brought in many anomolies in as much as progressive merger of dearness allowance in pay for computation of retirement benefits not only resulted in uneven benefit as between past pensioners and future pensioners but had also resulted in some cases in future pensioners getting less amount as compared to their counter parts retiring earlier. Because of this, at the time of merger of dearness allowance upto CPI 272 from 30.9.77 and CPI 320 from 31.1.1982 options were given to the retirees either to avail of the merger or not. At the time of merger of dearness allowance upto CPI 568 from 31.3.85 a new system of grant of personal pension representing the difference between pension caluclated at CPI 320 plus dearness relief between CPI 320 and 586 on the one hand and pension calculated at CPI 586 on the other was introduced.

5. As a result of the introduction of the revised scheme of dearness allowance to serving personnel and dearness relief to pensioners introduced in 1986 on the recommendations of Fourth Central Pay Commission referred to above, a perfect co-relation has been established between the scheme of dearness allowance to serving personnel and the scheme of dearness relief to pensioners. The pension formula introduced from 1.1.86 provides for computation of pension at 50% of pay for full 33 years qualifying service. The adoption of slabs for regulating dearness relief on pension at 50% of the slabs prescribed for regulating dearness allowance to serving personnel is aimed at ensuring that darness relief on pension is calcuated at the same percentage as is applicable for calculting dearness allowance on pay which is reckoned for calculating the pension. In other words if the dearness allowance on pay of Rs. 5000/- is calculated at 32% the dearness relief on the resultant pension of Rs. 2500/- should also be calculated at 32%. This has been done so that while pension is 50% of pay plus dearness allowance. This system also ensures that in the event of any portion of dearness allowance being treated as dearness pay in future, the pension of future retirees with reference to pay plus dearness pay will be exactly equal to the pension plus dearness relief of the person who retire before merger as will be seen from the table below giving examples:-

Pay	D.A. (1.7.90)	Total	Pension	D.R. (1.7.90)	Total	Pension if DA is Merged in pay.
2500	1075	3575	1250	538	1788	1788
5000	1600	6600	2500	800	3300	3300
7500	2100	9600	3750	1050	4800	4800

If on the contrary the same slabs as applicable for dearness allowance on pay are adopted for dearness relief on pension, the resultant picture in the case of those eligible for pension in the above-mentioned table will be as follows:-

Pay	Pension	D.R.	Total	Pension if DA is merged in pay
2500	1250	538	1788	1788
500	2500	1075	3575	3300
7500	3750	1505	5255	4800

It will be seen from the above table that in the event of merger of dearness allowance in pay, the pension of future retirees will be far less than the pension plus dearness relief in respect of retirees who retire before the merger. It is not desirable to have this situation because it will again lead to old aberrations which are specifically meant to be avoided.

6. It may be seen from the above that the present slab system for grant of dearness allowance to serving employees and dearness relief for pensioners has been adopted following a conscious decision that 100% neutralisation for increase in price level will be allowed for serving employees drawing pay upto Rs. 3500/- and pensioners drawing pension upto Rs.1750/-, who are the counter parts of the serving emplyees drawing salary upto Rs. 3500/-, This also has brought about abosolute co-relation between the pensions and pay so that in the event of merger of dearness allowance with pay, the past pensioners will not get more by way of pension plus dearness relief than the future retirees by way of pension.

7. If it is desired that there should be uniformity in the matter of neutralisation for price-rise both in the case of pay and pension, the only alternative will be to have one single uniform rate of neutralisation for all pay ranges instead of having the slab rates as at present. In that case the same single uniform rate of neutralisation can also be applied to pensioners. In such a situation the merger of dearness allowance in pay not create any anomalies in the total quantum of pension between pre-merer retirees and post-merger retirees. This is, however, a matter of larger policy and will have to be considerd in all its aspects including the aspect relating to resource availability, because it will be bound to put additional financial burdend on the exchequer. So long as it is not done, adoption of seprate slabs for Dearness Relief on pension at 50% of those adopted for Dearness Allowances on pay will alone by rational.

COMMENTS

(i) The pensioners are grateful to the fourth central pay commission that they reaslised the need for giving the pensioners also regular relief due to rise in inflation as has been recommended by them for the employees. The Fourth Central Pay Commission accepted in principle the need for granting dearness relief on regular basis based on the increase in the consumer price index beyond average CPI of 608. They also recommended consideration of this rise after every 6 months that is on 1st july and 1st january every year.

11) The Fourth Pay Commission categorised the employee in three categories of-

a) salary upto Rs. 3500/-p.m.
b) salary between Rs. 3501 to 6000/-
c) higher income above Rs. 6000/-

In other words they made three catagories-

a) low income upto Rs. 3500/-
b) medium income between 3501 to 6000/-
c) higher income above 6000/-

For the low income group they recommended 100% neutralisation, for the medium upto 75% neutralisation and for the high upto 65%.

(iii) Unfortunately the Fourth Central Pay Commission changed the category of low income, medium income and high income case of pensioners, in that whereas the employees upto salary of Rs. 3500/- come into low income group the pensioner upto only Rs. 1750/- comes in this category. Surprisingly the pensioners getting pension between 1751 to 3000/- instead of being categorised under low income have been categorised as middle income although employees in this group still remain in low income group. What is worse, pensioners getting pension between Rs. 3001/- and Rs.3500/- are raised to high income group whereas employees in this category still remain in low income group. This indirectly means that the effect of inflation due rise in consumer price index has been taken as different only because instead of being an employee one is a pensioner. It is here that the Fourth Central Pay Commisssion created an anomaly as by no stretch of imagination effect of the rise in consumer price index can be different for an employee and a pensioner. Once it has been decided that there should be compensation for rise in consumer price index the income ie. salary and pension should be treated as the same. The income tax rules do not make such differentiation and pension is treated as pay and whether one is an employee or a pensioner the rate of income tax remains the same for the same income.

(iv) The pensioner already gets 50% of the salary after his retirement, there should be no justification for changing his based into he consumer price index. Thus there should be only two categories in case of pensioners instead of three for employees for neutralisation against inflation ie. low income group with pension upto Rs. 3500/- and medium income group with pension between Rs.3500 and 6000/- and the neutralisation against inflation should be provided to them on the same basis as for employees. If this is done the anomaly of different dearness allowance/relief to employees and pensioners even when getting the same basic pay/pension will be removed. This will ensure that the same principle is followed for providing neutralisation against inflation both to the employees and the pensioners instead of different cases as was done in the past.

In case the above principle is adopted then also a definite corelationship will remain in grant of dearness relief to pensioners depending on their pension which still has the same corelationship to the salary they were getting at the time of retirement ie. 50% of pay. There is no justification for mixing up the pay and D.A. for fixing the pension and D.R. as the dearness allowance/relief is related to consumer price index and the pension to the salary at the time of retirement. The fixing of pension and D.A. taken together for fixing pension and D.R. on retirement has, therefore, no justification and this only creates amomalous position.

The example shown in the note is rather misleading. Even if the D.A. is merged with pay in future the future pensioner will not be adversely effected as can be seen from below:

PAY	D.A. 1.7.90	TOTAL	PENSION	D.R. 1.7.90	TOTAL	PENSION IF DA IS MERGED
1	2	3	4	5	6	7
2500	1075	3575	1250	535 (43%)		1788 1788
5000	1600	6600	2500	1075(43%)	3575	3300
7500	2100	9600	3750	1200(43%)	4950	4800

In this case it is the column (4) which will become column (7), and as such column (7) should not be compared with column (6) but with column (4) becasue after the merger of D.A. with pay the pensioner will be entitled to a basic pension of 50% of the total pay ie. pay and DA when fuly merged and not pension and DR. He is therefore, getting a higher basic pension and DR if any will be in addition to this basic pension. Otherwise also justice demands that no anomaly should be created today causing injustice to the existing pensioners on the basis of future conjecture. In any case if necessity arises protection can be given to avoid loss to future pensioners in some manner say eg. by stipulating that the minimum of column (7) will not be less than column (6) such a recourse has been adopted many a time.

It may be seen from that above that the formula adopted at present is clearly discriminatory and has caused serious injustice to the pensioners as the same violates the very principle that the neutralisation against inflation is solely to be based on consumer price index and as such the dearness allowance/relief to the employees and pensioners should be the same when the pay of employee and the basic pension of the pensioner is the same. In other words the category of low income, medium income and high income should be the same for employees and pensioners.

RENT CONTROL LAW

There have been reports that the Ministry of Urban Development has prepared a comprehensive law on rent control. It is stated that the Government of India considers the desirability of having a uniform Rent Control law in the country and the comprehensive enactment is proposed to be introduced in relation to this objective. We hope that we would be in a position to shortly give our detailed reactions to the proposals of re-structuring of Rent Control law. The Rent Control Acts presently operating in the States have brought about various problems. These have failed to solve the problems of tenants and have in fact multiplied the problems of houseowners , irnpeding the expansion of construction for renting, depleting the existing housing stock on account of absense of repairs, and multiplying litigation in courts all over the country. It is necessary that the interests of tenants are appropriately protected; the present rent control laws have merely brought about the stranglehold whereunder the more affluent tenants have been able to utilise it to their advantage.

The Delhi Rent Control Act was amended with effect from 1.12.88. One major amendent was that the exemption limit was increased to Rs 3500 p.m. were placed outside the purview of the Act whereas all premises with rentals upto Rs 3500 p.m. continue to remain under the provisions of this Act. Secondly, an amendment provided that rent could be increased by the owner to the extent of 10 percent every three years. A third important amendment was to the effect that all properties constructed after 1.12.88 were considered to be outside the purview of the Act.

There has been considerable argument in relation to the operation of the amended provision whereunder the owner can increase the rent by 10 percent every three years. It is being argued that retrospectivity is not excluded from the clause relating to this provision; i.e. the owner can ask for application of this clause for the entire period since the tenancy was created or agreed rent was decided upon. This matter is of obvious significance and importance. We have referred this matter to the Ministry of Urban Development and the Ministry of Law of Goverment of India for detailed examination and providing clarification whether the argument is sustainable. We proposed issuing a letter to the organisations and associations of houswowners of Delhi for enabling them about the implementation of this provision. Considering that this matter has yet to be elucidated, we have considered, instead, to publish the draft in this periodical for eliciting the suggestions and comments of members. In particular we would be grateful for the comments of legal experts who would be in a position to enlighten us whether the argument contained in the draft is in order. The draft proposed to be issued to the organisations and associations of houseowners of Delhi is given below. There are suggestions that we might have to refer this matter to the Delhi High Court for seeking clarification and enunciation of the law on

this important issue. We will take into account all the factors before adopting the recourse to refer it to the Delhi High Court.

Subject : Rent Control Law

We are issuing this letter, which has necessarily become quite long, with the request to the organisations and associations of houseowners that they should transmit its copies very widely to all the owners of houses and shops who are their members. The necessity of wide circulation of this communication will be evident from its contents.

A large number of houseowners have often been approaching COMMON CAUSE with their serious grievances arising from the operation of Rent Control Law. They seek guidance in relating to their problems arising from the refusal of tenants to vacate the premises (residences as well as shops and commercial premises) after the stipulated period of renting and also in not agreeing to the increase of rent.

Through the present letter we are communicating advice relating to one particular aspect of the new rent control law. They should examine this advice and seek further legal assistance in exploring the utility of adopting it. This advice has relationship particularly to the provisions of Delhi Rent Control Act (DRC Act).

The DRC Act was amended in December 1988. Among the amendments made in this Act there is one particular amendment which is the subject matter of this communication. This amendment consists of the addition of following clause as Section 6A of the DRC Act:-

> **6A Revision of rent.**
> Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent, every three years."

This clause relates to the foregoing Section entitled "Standard Rent" and is aimed at making provisions for revision of rent. It will be observed that this clause has two parts: namely cases where standard rent has been fixed under this provision of DRC Act which implies the fixation of standard rent in accordance with the various relevant provisions of the Act, and cases where the rent was agreed upon between the owner and the tenant. It is only in very rare cases that the standard rent is generally fixed between the owner and the tenant, because standard rent has to be fixed by the"Rent Controller" on application by the owner or tenant, or the standard rent has to be calculated on the basis of provision made inthe Act taking into account the price of land and the cost of construction. By and large, therefore, the rent is fixed in almost all cases as "agreed upon between the landlord and tenant".

The new clause, embodied in secition 6A of the DRC Act, authorises the increase of the agreed rent "by 10 percent every three years". The point on which we have considered it necessary to provide guidance is the advantage that needs to be taken by the owners, of residential and commercial properties, on the basis of this provision of increase of rent "by 10 percent every three years".

One important point worth notice in regard to this provision for revision of rent is that in this clause there is no restriction in respect of retrospectivity of this revision i.e. it is not prescribed in this clause, and can be construed as not being the intention of the legislature, to restrict the revision to any particular future period. According to this clause as it stands, therefore, the rent can be revised on the basis of "10 percent every three years" in respect of the previous years since that tenancy was created on the basis of agreed rent and particularly where no increase has been previously effected. On the reading of the text of this clause it does not appear to have been the intention of the legislature to restrict the revision only for prospective period, i.e. for the future years. That would obviously defeat the purpose of this revision. Secondly, it can be argued that increase of "10 percent every three years" is not such a big increase, particularly in the context of inflation and the behaviour of prices over the last many years.

Another argument in favour of our present interpretation is the existence of the words "Notwithstanding anything contained in this Act...." in the beginningof this new clause 6A of the Act. It can be taken to imply that even though this amending Act has come into force from 1.12.1988, this does not debar the computation of increase over the previous years.

Taking account of these factors we feel that where the premises have been given on rent many years ago, on the basis of the agreed rent, and where any subsequent increase may have been effected on the basis of agreement between the owner and tenant, the owner can now seek advantage of this clause.

For facilitating consideration of the matter by the owners we have prepared a table based on detailed calculations. As it well known a major amendment in the DRC Act has provided that where the premises is fetching rent of more than Rs 3500 p.m. it goes outside the purview of the Act and the restrictions of the Act would not be operative. We have taken the figure of Rs 3500 as the base, and have calculated it backwards, for providing the requisite information and guidance.

As an instance, it will be seen that if a house or shop was given on rent 15 years ago at rent slightly more than Rs 2000 presently the rent of more than Rs 3500 can be demanded from the tenant, and the premises will come outside the purview of the restrictions of DRC Act. If the house or shsop was given on rent at about Rs 1500/- 25 years ago, the present rent calculated on this basis will be more than Rs 3500. Thus the owners who have let out the premises many years ago, and feel that they are enabled by the amended provision to seek increase of rent or which will secure more than Rs 3500, and thus take the premises outside the purview of the Act, will need to take the following action if they feel strong enough to do so:-

(i) The owner of such premises should get notice served on the tenant asking for enhancement of the rent to the figure thus calculated, operative from the date of notice.

(ii) Notice may also, if considered necessary, be served on the tenant for payment of the arrears of rent for the entire period, calcualated on the basis of such increase of "10 percent every three years" from the date of renting or the fixation of any other agreed rent subsequent thereto.

(iii) It can be envisaged that the tenant will prefer to contest these notices and not agree to enhance the rent or to pay the arrears. In such event the owner should equip himself with the legal advice for filing (a) suit for eviction of the tenant under the relevant provision of DRC Act for failure to pay the enhanced rent and arrears of rent and secure possession of the premises, and (b) where the premises on the basis of calculation, goes out of the purview of DRC Act, to file a suit under the Transfer of Property Act to such effect.

It will be seen that these measures will need considerable amount of effort, and inevitable expense. There is no alternative, or short-cut, considering the operations of DRC Act and its provisions which are admittedly operating to protect the interests of tenants, often at the costs of disregard of the interests of the owners. We feel that whereas the legitimate interests of the tenants must be protected against the unscrupulous and rapacious owners, those tenants who donot deserve the protection that the Act gives them, should share the problems with the owners who feel aggireved by the operations of the Act.

Calculation sheet of rent in the previous years, taking Rs 3500 rent for 1992

Year	Rent	Year	Rent
1992	3500	1965	1484
1989	3182	1960	1225
1985	2890	1955	1020
1980	2390	1950	920
1975	2000	1947	838
1970	1750		

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