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COMMON CAUSE

VOICE OF "COMMON CAUSE"

"MAXIMUM" PRICE SYNDROME

Price, besides quality and availability, is one of the most important facets relating to a product or a service which are the paramount considerations from the viewpoint of consumers. On the matter of price the consumers have cause for serious complaint that they continue yet to have a raw deal and the sufficiently effective steps are not being taken by governmental authorities to straighten out and ameliorate the problem.

Recently, when proposals for reduction of excise and customs duties were announced by the Finance Minister the government representatives showed some concern for the consumers by declaring that government would take suitable steps if the benefit of reduction was not passed on to consumers. Some industrial houses and organisations of Industry and Trade have come out with advertisements in newspapers indicating reduction or holding out promise of effecting reduction in prices of their products. Some of these are not convincing enough because they have made stipulations that the reduced prices will become effective in markets only when the existing stocks carrying the previous price marking are exhausted. Some have put out news, obviously inspired, that their industries were already suffering losses and that the reduction in excise and customs will atmost help them to meet the current losses. These moves on the part of industry and trade are unfortunate and are ostensibly based on their feeling that consumers are not organised enough to dislodge them from the market.

'f you have faith in the selfless services of COMMON CAUSE take it as an obligation to get at least five more members. No form is required. Only send name and complete address, with cheque/DD/MO in the name of COMMON CAUSE: Rs.250 for individual Life Membership; Rs.50 for individual annual membership; Rs.200 annual membership for organisations.

There are certain facts in connection with these developments which we would like to bring to the notice of manufacturers and distributors as well as the government. These need to be specially noted by organisation of consumers, and they need to raise loud voice on these. In the matter of reduction of excise and customs duties we have already communicated to organisations of consumers that they should announce boycott of the products on which benefit of excise and customs reduction is not passed on to them. They should also report the matter to the Sales Tax Commissioner of the State and to the Chairman of Central Board of Excise and Customs in the Ministry of Finance,Govt. of India. Following additional points need to be noted by organisations of consumers.

Price printing on packages is a matter of obvious importance. Alteration was effected two years ago, on the initiative of COMMON CAUSE, in the requirement of price printing, altering the relevant Rule to the effect that the price printing should be "MAXIMUM PRICE..... ALL TAXES INCLUSIVE" instead of the previous wording "MAXIMUM PRICE ..... LOCAL TAXES EXTRA". This alteration has, according to government sources in the States, helped to reduce the leakage of Sales Tax Revenue; we have been advocating that the system of levy of Sales Tax should be now altered to impose the levy at "First Point" when the product leaves the factory or enters a State. This measure will greatly help to further stop leakage of Sale Tax Revenue.

Incidentally, it needs to be mentioned that price printing requirement on packages still has to be improved in certain aspects. In the case of drugs and pharmaceuticals, change has been effected only in respect

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of non-scheduled drugs. The words "local taxes extra" are still allowed to be used for scheduled drugs. This has no justification from the viewpoint of consumers and can lead to considerable adverse criticism and misuse. We have taken up this matter with the Ministry of Chemicals & Pharmaceuticals as well as the Ministry of Civil Supply & PDS.

Connected with the problem of price printing on package is another serious problem on which attention needs to be focussed and which consumers' organisations should pick up for pressing the government for safeguarding the interests of consumers. This relates to the word "Maximum" in the legend used in price printing. Under the guise of this word "Maximum" all sorts of unfair practices are presently being adopted by the industry and trade. As an instance, a visit to any shop selling wall paints will show how price printing can dupe the consumers. A four-litre tin of acrylic emulsion bears price printing of Rs.607.80 you ask the shopkeeper and he will be prepared to accept Rs. 515.00 for it. Another four-litre tin of acrylic emulsion by a bigger manufacturer carries the price printing of Rs. 896.00; the seller will be prepared to accept Rs.635.00. Likewise, washable distemper priced at Rs. 272.00 sells at Rs. 175. Another brand marked Rs. 273.53 sells at Rs.175; polyurethene enamel shows price of Rs.586.40 and actually sells at Rs.410.00. Visit a shop selling automotive parts in packages. Prices printed on packages are substantially higher than the prices seller is willing to accept. This means that often unscrupulous elements in the industry and trade are prone to misutilise the word "Maximum" to defeat the objective of this requirement.

We are not asking for imposition of any price control. We are not asking for fixing minimum prices. We are keen that the industry and trade should not be permitted to misuse this provision. We strongly feel that there is now no need to use the word "Maximum" in this context. In other countries where prices are marked on the packages there is no question of word "Maximum" being used. In India too the time has come for the consumers to effectively raise the voice and press the government to modify the Rules, for deleting the word "Maximum" in the relevant provision. This word was apparently introduced in the Rules under some pressure from the industry; at the time when these Rules were framed long ago the consumers did not have any voice. Now they have, which they exercise through their organisations. The consumers' organisations should convey this demand to the Minister of Civil Supplies (Mr. A.K. Antony), giving reasons, supplementing those contained in the above where necessary.

In connection with price printing, particularly in relation to the above-mentioned demand of passing on the benefit of reduction in excise and customs we wish to bring to the notice of consumers' organisations specifically the provisions of Rule 23 of the Packaged Commodities Rules. Substance of Rule 23 is that where taxes are increased in relation to any product packed in a package, or where any fresh tax in imposed on it, the retail dealer cannot charge price beyond the price communicated by the manufacturer, and the manufacturer shall be under obligation to insert at least two advertisements in the newspapers notifying the increased price. Where the tax is reduced in any case, and revised price is lower than that printed on the package, the retail dealer shall not charge any price in excess of the revised price, irrespective of the month in which the product was packed. No retail dealer is authorised under the Rules to "obliterate, smudge or alter the retail sale price indicated by the manufacturer or packer on the package or on the label affixed thereto." The latter clause of the Rules is of obvious importance and consumers should initiate action where the price is altered. Likewise, the consumers can initiate action where the manufacturer or packer does not reduce the price in accordance with the reduction in taxes (which include, for the present purposes, the levy of excise and customs).

The matter of alteration of printed or indicated price on packages needs to be further taken up in connection with a recent decision of the National Consumers Disputes Redressal Commission wherein it is stated to have held that price sticker fixed on a package can be altered. We will take up this matter for reconsideration by the National Commission. It will be worthwhile for organisations of consumers to write to Mr. Justice V.B. Eradi, President of the National Commission, conveying their views on this subject and requesting him to take up this matter before the National Commission suo moto for reconsideration of the decision.

MAKING YOUR WILL

Often we are asked by many people for advice on how to make one's WILL. Long ago we had brought out a note on the subject in this periodical. Consequent upon the renewed demand of the people we reproduce hereunder a note which has been specially prepared for the purpose. It broadly covers all the specific points which arise in relation to the making of WILL. We hope that this note will help people to meet this problem.

A person who normally insists on taking the most trivial decisions concerning his affairs himself avoids most important decision i.e. does not make a 'WILL' during his life-time. Death is inevitable and may come at any age without notice. Hence, the necessity for making a WILL.

Some individuals suffer from superstitious reluctance to discuss or even to refer to the possibility of their dying, making a WILL, discussing with wife & children ways of anticipating and dealing with the problems likely to arise. An effort should be made to overcome these inhibitions.

Succession opens up with the death of a person and property devolves upon his heirs in accordance with the personal law that governs him. For example, on the death of a Male Hindu, his property devolves to the widow, children & mother.

However, the course of succession prescribed by law can be changed by a simple document 'WILL' which is the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

The law recognises the right of a person to dispose of his property as per his wishes whenever he so desires and gives him the right to choose successors to his property who may be total strangers, or one of the several heirs. The heirs who are excluded from inheritance can make no grievance if the WILL is in accordance with law.

The right to dispose of the property by WILL is given to every person of sound mind provided he/she is not a minor.

HOW TO GO ABOUT MAKING A WILL :

In order to be valid, a WILL must comply with the following conditions :

i) It must not have been obtained by fraud or coercion.

ii) The WILL must be signed by the testator i.e. One who is making WILL. If the testator is not able to sign, he may place some mark such as his thumb impression. In the alternative, any person may sign at the request of the testator on his behalf in his presence.

iii) The WILL must be attested by two Witnesses. Each Witness must sign in the presence of the testator.

THE WORDING OF THE WILL SHOULD BE CLEAR :

The wording of the WILL should be clear and leave no ambiguity regarding property in the WILL.

WHO CAN BE A WITNESS :

Any person, even a minor, can be a witness. The witness need not know the contents of the WILL - he is merely a witness to the signature. A beneficiary under a WILL must not be witness. The age of witness should be kept in mind. He should be expected to live longer and should be a person

who will support the WILL and that too when its maker is dead. Hostile and greedy witness should be avoided.

CAN A WILL BE CHANGED :

A WILL can be revoked or changed at any time by the testator by executing another WILL. It must be specifically noted in the new WILL that the previous WILL is revoked. This intention must be made clear, otherwise the later WILL will not necessarily replace the earlier one. All WILLS made before marriage become invalid after marriage. Hence, a new WILL must be written after marriage. In any case, a WILL should be periodically reviewed and updated to reflect changing circumstances and preferences.

TO WHOM CAN ONE WILL ONE'S ASSETS :

There is nothing to prevent a person from leaving his property to a complete stranger, even to the exclusion of his own kith and kin. A person can make a WILL of his own property only. One of the important circumstances which raises suspicions is where testator ignores his near relatives such as wife and children.

WHAT SAFEGUARDS CAN ONE MAKE AGAINST TAMPERING OF A WILL :

There is a genuine fear that lurks in the minds of some persons after they have made their WILL and made known its contents that it may be altered or destroyed after their death by someone who has not inherited under it or not benefited sufficiently under it. Two alternatives are suggested to deal with this situation - one alternative is to appoint a bank/firm of Solicitor as an Executor. In this case, a copy of WILL will be deposited with the bank/firm of Solicitors and the question of altering it or tempering with it is remote. Further the bank/firm of solicitors with the resources at its disposal is better able to prove the WILL in Court or obtain probate if that is necessary. Another option is for the testator to register the WILL with the Registrar under the Registration Act during his lifetime. The testator himself can appear before the Registrar, and if the Registrar records evidence of this fact, the WILL can easily be proved in Court subsequently if this is necessary.

Registration, however, is not necessary. No stamp duty is required.

The WILL should be kept in a safe place and its location should be known to beneficiaries.

WHERE PROPERTY ETC. IS IN JOINT NAMES :

Some people avoid making a WILL because they are under the impression that if all property is in joint names, on the death of the first named person, the survivor will automatically inherit the property by law. This is an entirely wrong notion. Joint names have little meaning, assets can only be inherited by WILL or if there is no WILL by the laws of intestate succession.

WHERE A NAME IS NOTED AS A BENEFICIARY FOR PROVIDENT FUND, GRATUITY, LIFE INSURANCE POLICY :

It is also wrong to believe that because one has nominated one's wife or children as beneficiaries under an Insurance Policy, for one's Provident Fund or Gratuity, there is no need to make a WILL in respect of these amounts. A nominee under an Insurance Policy receives the money only on behalf of the legal heir as a trustee would. If the intention is that the nominees should inherit the money, it is best to provide for this clearly in the WILL. In the case of Provident Fund and Gratuity also, it is best to mention the names of the nominees in the WILL to make sure that they receive as beneficiaries

themselves.

WHAT HAPPENS IF THERE IS NO WILL :

If a person dies without making a WILL the property goes by what is called intestate succession. This means that the law steps into the place of the testator and depending on the community to which the deceased belonged, the property is divided between his relatives as defined by law.

A Draft WILL is given below. This may be modified as required.

DRAFT WILL

1. This is the last will of me ..... Son/Daughter/Wife of ..... aged ..... years, resident of .... made on this ..... day of ..... 199 .

2. I hereby revoke all former WILLS and codicils made by me.

3. I am executing this last WILL and testament of mine voluntarily and without any compulsion or pressure from any source or person and in sound health and disposing state of mind.

4. I appoint my wife and my eldest son/daughter to be the executors and trustees of "WILL".

5. I own the following movable and immovable properties which are all my self-acquired properties built or acquired out of my own earning and income without any assistance of any ancestral estate and have absolute power of disposal of the same.

   (a) House No. ..... situated at Vasant Vihar, New Delhi-110057, built on a plot of land measuring .....sq. yds.

   (b) Life Insurance Policy No ..... for Rs ..... maturing on .....

   (c) Deposits in Public Provident Fund Account No. ..... with the State Bank of India, Vasant Vihar.

   (d) Fixed Deposits for Rs ..... with the Syndicate Bank under Fixed Deposit Receipts Nos ..... for ..... years;

   (e) Post Office National Savings Certificates for Rs .....

   (f) etc., etc., (stocks, shares, with so and so companies).

6. I hereby bequeath all my movable and immovable properties as described above to my wife, Smt. .....(or to my son Shri ..... or any one else) fully and absolutely.

7.(a) I declare that all shares, debentures, securities, Government paper bonds, fixed deposit receipts, Units of Unit Trust of India and other investments whatsoever and bank accounts standing in the joint names of myself and/or my wife ..... and/or my sons ..... (wherever my name stands first) are my own and absolute properties and neither my said wife ..... nor my said son(s) ..... and ..... nor any other person has any right, title, claim or interest therein, here his or their name or their name or names having been joined for the sake of convenience only. I declare and direct that all such properties as aforesaid shall form part of my estate and shall be dealt with accordingly.

7(b) I also declare that whatever nominations have been made by me whether for dues due to me or my estate from Provident fund, Pension fund, Gratuity fund, benefits of Superannuation Pension and Personal Accident Policy receivable from ..... with whom I am presently employed, Post Office Savings Bank Accounts, Cumulative Time Deposit Account, Compulsory Deposit Scheme Account, Public Provident Fund, Life and Accident Insurance Policies have been so done by me only for the sake of convenience and for the sole purpose of facilitating prompt collection of all amounts due to me without any intention of conferring any beneficial interest upon such nominee/nominees and that the person or persons so nominated by me has or have no right nor shall they have any title, claim, charge or interest in the same and they shall hand over and deliver to my Trustees all amounts collected by or paid to them. I declare and direct that all such assets, funds and properties as aforesaid shall form part of my estate and shall be dealt with accordingly.

8. I am entitled, under an Annuity Scheme with the Life Insurance Corporation of India to be paid ..... per month for a period of twenty years from the ..... In case any monthly instalments under the said Annuity Scheme become payable after my death the same shall belong to my wife ..... and my trustees shall see that the same become & payable to my wife every month during her lifetime. In the event of my said wife predeceasing me, I bequeath the said amounts to my sons ..... and ..... in equal shares absolutely or to the survivor of them wholly absolutely.

9. I give and bequeath (free of all duties and taxes whatsoever) all my furniture, fixtures, fittings, carpets, paintings, pictures, drawing and articles of virtue and other household goods, effects and things and all other articles of personal domestic or household use or decoration,consumption or diversion (but excluding my wearing apparel, shares, securities, jewellery and cash) lying and being in Flat No ..... to my wife/son..... absolutely.

10. I also bequeath all my money and other property movable and immovable whatsoever and wheresoever, not otherwise disposed of by this WILL to my wife Smt ..... (or to Shri ..... or to any one else or my son).

11. I give, devise and bequeath both my eyes on my death to an eye bank, which will use them for providing eyesight to any person in need.

In witness whereof, I, the said ..... have put my signature to each sheet of this my WILL, contained in this sheet and in the preceding one (or two or three sheets of paper) on the day and the year first above written i.e. the .....day of ..... 199 .

SIGNATURE OF TESTATOR

DATE :

Signed by the above named Testator in our presence at the same time and each of us has in the presence of the Testator signed his name hereafter as the attesting witnesses.

1. Name Son of
Residential Address

2. Name Son of
Residential Address

DRAFT OF JOINT WILL

We, ... aged ..... years, son of .....and Smt. .....daughter of Shri.....and wife of .....both resident of.....execute this joint will voluntarily and in a sound state of physical and mental health about the immovable property owned by us jointly.

2. This is our last will and testament made of our own free will on this .....day of .....1991. We hereby revoke all the former wills and codicils made by us heretofore.

3. We jointly own house no. .....built on a plot of land measuring .....sq. mtrs., which was sub-leased to us by the Govt. Servants Cooperative House Building Society Limited out of our earnings without any assistance of any ancestral estate and have absolute power of disposal of the same.

4. Presently the house comprises a fully built ground floor and the first floor and a partly built second floor. The ground floor is occupied by us. The first floor is rented out and the partly built second floor is occupied by our son, Shri.....and his family.

5. We hereby bequeath that in event of death of either of us, the half share of the deceased shall devolve upon the surviving owner of the other half of the property with all rights and titles and interests therein including the power of alienation in whatever manner he or she may like. Nobody will have the power or right to object or restrain him or her in the exercise of his or her right in any way.

6. On the death of the surviving joint owner of the aforesaid property and if the property has not been parted with till his or her death or in the event of our passing away simultaneously, the property will devolve upon our son, Shri.....solely and absolutely.

7. Besides our son Shri..... we have two daughters namely Shrimati..... wife of Shri..... resident of..... and Smt. .....wife of Shri ..... resident of ..... They are both very happily married and well placed in life and to whom we have otherwise given adequate part of our movable property and we do not bequeath to them any share in the aforesaid property.

8. We hereby appoint our son Shri .....as sole executor of this will.

9. In witness whereof, we ..... and ..... put in our signature on each sheet of this will contained in this sheet and in the preceding sheet on the day and the year as written above i.e. the ..... day of ..... 199 .

Testator

Signed by the above named testators in our presence at the same time and each of us has in the presenseof testators, signed his name hereunder as the attesting witnesses.

Witnesses 1 2

FURTHER GUIDELINES ON "WILL"

In supplementation of the above general instructions regarding the making of "WILL", we consider it necessary to also reproduce hereunder additional material on this subject which has been taken from another comprehensive paper. (next page onwards)

GUIDELINES ON TESTAMENTARY SUCCESSION

SUCCESSION LAWS:

There are two statutes governing succession to property after one's death, viz, (1) Indian Succession Act, 1925, and (2) Hindu Succession Act, 1956. Since the 17th June, 1956, on which date the Hindu Succession Act, 1956, came into force, the succession to the property of a Hindu (which term has been defined to include a Buddhist, a Jain and a Sikh) is governed by the provisions of that Act. The other communities, such as Europeans, Jews, Christians and Parsis, continue to be governed by the Indian Succession Act, 1925, and the Muslims by their own traditional Muslim laws.

The property of a Hindu who marries a non-Hindu under the Special Marriages Act, 1954, is governed by the Indian Succession Act, 1925. However, if both parties to a marriage under the Special Marriages Act, 1954, are Hindus, the succession to their property will be governed by the Hindu Succession Act, 1956.

Though the Hindu Succession Act, 1956, basically lays down the law relating to intestate succession among Hindus, Section 30 thereof confers testamentary power on Hindus, saying that a Hindu may dispose of his property by will in accordance with the provisions of the Indian Succession Act, 1925. As a result of this provision, the procedures and formalities regarding the execution, revocation, and interpretation of wills and about the grant of probate and legal representation and powers and duties of executors and administrators laid down in the Indian Succession Act, 1925, become applicable to Hindus also. Every Hindu, both male and female, has thus the option of making a disposition of his or her property according to his or her choice by executing a will according to the law laid down in the Indian Succession Act, 1925.

Any person is deemed to die 'intestate' in respect of whole or such part of his property in respect of which he has not made a will, and 'intestate succession' means succession according to the provisions contained in the Hindu Succession Act, 1956. 'Testament' is another name for a will and succession on the basis of a will is called 'testamentary succession'. In legal parlance, there are certain other terms also which are used in relation to testamentary succession, such as 'bequest' which is yet another word for a will, 'legacee' meaning anything which is bequeathed or passed on by a will to a 'legatee' who is a person or persons to whom a legacy is passed on by a will.

The purpose of this note is to give in brief, the basic requirements and procedures for writing a will for the benefit of property owners to be of help to them in a smooth and free-from-dispute devolution of one's property after death. It does not purport to give an authoritative and comprehensive discussion of the law for which a study of the legal treatises on the subject will have to be depended upon.

DEFINITION

The term 'will' has been defined in Section 2(h) of the Indian Succession Act, 1925, as meaning 'the legal declaration of the intention of the testator with respect to his property which he desires to be carried out after his death'. Under the General Clauses Act, a will has been described as any writing making a voluntary posthumous disposition of property.

PURPOSE AND CHARACTERISTICS

A will may be made (a) for the disposal of property after one's death, (b) for appointment of a testamentary guardian under Section 9 of the Hindu Minority and Guardianship Act, 1956, and (c) revoking or altering a previous will.

A will differs from a deed in that while a deed operates from the date of execution, a will can take effect only from the day of death of the testator. During his life time, it remains a simple document having no lawful effect whatsoever. It is a secret and confidential document which the executant can never be called upon to produce. The provision of a will cannot be invoked in any proceedings so long as the testator is alive.

Unlike other deeds a will is a revocable instrument, always liable to be cancelled or revised during the life time of the executant (Section 62). Even if a will is expressly made to be irrevocable it can be revoked by the maker of it. It may, however, be borne in mind that where a covenant is given by the executant to another person not to revoke a will, the covenant is a binding document for breach of which an action can lie for damages. The covenant cannot, however, prevent the person from revoking the will. In other words, a 'will' for consideration cannot be revoked without attracting civil consequences. When two or more persons executed a will, it becomes irrevocable when one of them, on the death of the other has derived benefit under it.

A will does not in any way impinge upon the freedom or capacity of the testator to dispose of any property included in the will during his life time. The disposition made in it will hold good only in respect of the property owned by and belonging to the testator at the time of his death. If anything which had been specifically bequeathed does not belong to the testator at the time of his death or has been converted into property of a different kind before his death, the legacy cannot take effect (Section 152).

BEQUEATHABLE PROPERTY

All property, movable and immovable, of which a person is owner by virtue of its being self-acquired can be disposed of by him by will according to his choice except in the case of Mitakshara HUF properties which will fall under Section 6 of Hindu Succession Act, 1956, according to which only the interest of the deceased in the coparcenary properties could be disposed of by will.

A Hindu woman may dispose of her stridhan by will. Under Section 14(1) of the Hindu Succession Act, 1956, any property possessed by a female Hindu is her absolute property and she is fully competent to make a will about it unless the will or award or other instrument by virtue of which she acquired the property expressly provided for a restricted estate e.g. if she has only a life interest in property. she cannot make a will of it.

CAPACITY TO MAKE A WILL

A testator must, in the language of law, have a sound and disposing mind and memory and must not be a minor. In other words, he ought to be capable of making his will with an understanding of the extent of the property he means to dispose of and of the persons who are the object of the bounty and the manner in which it is to be distributed between them.

If a person is sick, he should, at the moment of executing the will be in his proper sense and fully aware of the effect of what he is doing. He must be conscious of the various claims persons have on his property and must be capable of realising the extent of the property he is disposing of. In such cases it is advisable to provide satisfactory evidence that the executant is in his proper senses. For this purpose it would be best to have the will attested by the medical attendant, who may also append a certificate on the face of the will that he has satisfied himself that the testator is in his proper senses. More old age is no evidence of incapacity to make a will.

GENERAL REQUIREMENTS OF A WILL

The following formalities are prescribed for the execution of a proper will:-

(i) Except in the case of a soldier, an airman or a mariner, a will should be made in writing (Section 63);

(ii) It should be signed or marked by the testator or some other person in his presence and by his direction (Sec. 63);

(iii) The signature or mark of the testator or the signature of the person signing for him shall be so placed that it should appear that it was intended thereby to give effect to the writing as a will. The best place to do so is at the foot or end of the writing (Sec. 63); If the WILL consists of several sheets it is appropriate (though not essential) that the testator signs each sheet for the purpose of identifying it and preventing interpolation.

(iv) When the testator can sign it should bear his signature. If he is illiterate, he will give his mark. If a testator is capable of writing but on account of weakness or other incapacity he is unable to write his signature, he may give a mark and in doing so his hand may be guided by another person. Even a thumb impression is held to be good. A rubber stamp impression where the testator was in the habit of using the rubber stamp was held to be good. Under General Clauses Act, the word 'sign', with reference to a person who is unable to write his name, includes 'mark' (Sec. 63);

(v) The signature at the end must be made or acknowledged by the testator in the presence of at least two witnesses, present together. They, therefore, without separating and without quitting the presence of the testator should sign their names under the attestation clause. The attestation clause should be written at the end of the will.

(vi) All erasures and alterations require the signature of the testator and also of the attesting witnesses (Sec. 71);

(vii) No person to whom or to whose wife or husband any beneficial device or bequeathe is made by the WILL, should be an attesting witness. However, since Section 67 of the Indian Succession Act does not apply to Hindus (see section 57 Schedule III Indian Succession Act) an executor or a beneficiary of a WILL can attest a WILL as a witness.

(viii) A will may be made in any form and in any language. It is not necessary that any technical words or terms of art be used in a will (Sec. 74). The language employed should be simple, clear and unambiguous and easily intelligible to a lay man so that the intention of the testator can be clearly known therefrom. Sometimes a will made by a person who is seriously ill is full of technical words not easily intelligible to a lay man. Such language should be avoided as such a will can be easily challenged on the ground that the testator did not understand it clearly and so also its effect.

(ix) No alteration must be made in the WILL after it is executed. Any change in the WILL must be effected by a new WILL or codicil which must be executed in the same way as a WILL is required to be executed.

(x) Though it is not necessary or essential, the witnesses should be aware of the testamentary character of the instrument.

(xi) To facilitate proof of the WILL, the occupation, and place of residence of each witness be added after their names.

EXECUTOR

It is not essential to appoint an executor of a will. However, in cases where a will covers a variety of assets and properties, stocks and shares, large bank deposits requiring to be apportioned or where there are outstanding dues to the deceased to be collected from other parties or certain liabilities to be discharged from the estate of the deceased, it will be desirable or even necessary to have an executor who alone can apply for a probate of the will and to administer the estate of the deceased prior to assignment of the net assets to the legatees of the will. The previous consent of the executor should be obtained as no one is bound to accept the duties of executor. An additional executor may be appointed as an alternative to provide for the contingency of the executor dying during the life time of the testator or refusing to act. An executor of a will can be a competent attesting witness of a will. There is no objection to the appointment of a beneficiary as the executor or the beneficiary acting as an executor if no executor has been named in the will.

It will be useful to explain here that while an executor acts as the legal representative of the deceased and the property of the deceased vests in him for purpose of administration and representation, and he can in the course of administration even sell any part of the property, he does not become the owner of the property. Unless he also happens to be a beneficiary of the will, he can have no beneficial interest in the property. He holds it only in trust for purposes of administration and representation.

REGISTRATION OF A WILL

Registration of will, which is optional, is provided for in Sections 40 and 41 of the Registration Act, 1908. A will may be presented for registration (a) by the testator or (b) after his death by any person claiming as executor under the will. There is no time limit for presentation of the will for registration.

Mere registration of the will is no proof of the testamentary capacity of the testator. In several cases courts have declined to uphold registered wills. The scope of enquiry before the Registrar who registers the will in the testator's life time does not always comprise all the ingredients which the court considers material when called upon to determine a question of testamentary capacity. When the testator himself appears before the Registrar, the requirements of the Registration Act are satisfied after enquiry by the Registrar under Sections 34 and 3 of the Registration Act as to the identity of the testator appearing before him and as to whether the document was executed by him. An enquiry as to the capacity of the testator becomes necessary only if the executant appears to the Registrar to be a minor or an idiot or a lunatic.

Though not obligatory, it will be prudent to register a will. If the will is registered by the testator himself, it will be a strong circumstance to support the genuineness of the will, to establish the identity of the testator and the fact of execution of the will by him. Another advantage is that in case the original will is lost, a certified copy of the will can be had from the Registrar.

DEPOSIT OF WILL

There are special provisions in Part IX of the Registration Act under which testator may deposit his will in a sealed cover with the Registrar. On the death of the testator, any person can apply to have the will opened and copied in the Register. The court can also require the production of such a will from the Registrar and he will open it and send it to the court after copying it out in his Register No. 3.

JOINT WILL

A joint will is a will made by two or more testators contained in a single instrument duly executed

by each testator disposing either of separate properties or their joint property. An obvious illustration of a joint will is that of husband and wife who may dispose of their property by one joint will. Joint wills are revocable at any time by either of them or by survivor. A joint will may be made to take effect after the death of both testators. Such a will remain revocable during their lifetime by either of them with notice to the other but becomes irrevocable after the death of one of them if the survivor takes advantage of the provisions made by the other.

MUTUAL WILL

A mutual will is the one where two persons by their respective wills confer upon each other reciprocal benefits i.e. where the executants assume the role of both testator and legatee in respect of each other. In other words, a mutual will contemplates two separate will executed on the same day containing similar provisions by two testators conferring reciprocal benefits. Such wills are revocable during the lifetime of testator, though notice of such revocation should be given to the other testator. But such a will becomes irrevocable on the death of one of them, if the surviving testator takes benefit under the will of the deceased.

ONEROUS WILLS

If a will imposes an obligation on the legatee, he can take the will only if he accepts it in full. The legatee has no claim of election; he must accept or disclaim the whole. If he accepts it he takes it with all the benefits and burdens. (Sec. 122). If the legatee unequivocally disclaims it, he cannot afterwards claim it nor can he having once accepted the gift afterwards repudiate it.

A person may bequeath his estate to his son with an obligation attached to it, viz that he would make a monthly or annual payment of certain sum specified by him to his widow, daughter, son or any other person. In such a case if the legatee accepts the bequest he will take it subject to the obligation.

LEGACY TO A CREDITOR

When a debtor bequeaths a legacy to a creditor and there is nothing on the face of the will to show that the legacy is meant as a satisfaction of the debt, the creditor is entitled to the legacy as well as the debt. "Satisfaction" is the making of a donation with the express or implied intention that it shall be taken as an extinguishment of some existing claim which the donee has upon the donor. According to section 177 whether the legacy is greater than, equal to or smaller than the amount of debt, it will not be a satisfaction, unless the will clearly expresses on the face of it that the legacy is given in satisfaction of the debt.

VESTING OF LEGACY

A bequest is said to be vested (Section 139) in interest but not in possession when there is a present indefeasible right to future possession or enjoyment e.g., testator named A bequeathes his house to his wife for life and after her death to his son B. On the date of A's death, his wife gets the life interest in the property but simultaneously his son B acquired a proprietary or 'vested' interest in the property though the right of enjoyment remains deferred for so long as the life interest of his mother remains operative. The intervention of the life interest does not prevent the vesting of the legacy in B who, in legal parlance, is called the "remainderman." If B subsequently dies before his mother, B's vested interest in the property does not get extinguished but is transmissible to B's heirs. Taking another set of circumstances, if testator A bequeathes his house to his wife for life and after her death to his two sons B & C, the date of death of testator A his wife will get life interest n the house and simultaneously his two sons B & C will get vested interest in the property as remainderman. If after

some time, one of the two remainderman say, B, dies before his mother, while she was still enjoying life interest in the property, the vested interest which B had already acquired in the property on the date of the death of A, will not go to C, but to the heirs of B, though the right of enjoyment of the property will come to the heirs of B only after the death of holder of the life interest in the property, i.e. B's mother.

LAPSING OF LEGACIES

A legacy will lapse if the legatee does not survive the testator for no one can claim anything under a will till the testator dies. If the legatee does not survive the testator, the legacy lapses.

JOINT LEGACIES

If a legacy is given to two persons jointly without any indication of giving them any distinct share in it, and if any of them dies before the testator, the other takes the whole of the legacy. If, however, a legacy is given to two persons in words which show that the testator intended to give to each a distinct share in it, then if one of the legatees dies before the testator, the share of the legacy intended for the legatee who has died will go to residuary legatee, if any has been so named in the will. But if no residuary legatee has been named in the will, or where even the residue legacy lapses on account of the death of the residuary legatee before the death of the testator, such residue will go as on intestacy and will be divided among all the heirs of the deceased and exclusion of some under the will will be disregarded. (Section 107 & 108).

STAMP DUTY

A will or a codicil is exempt from stamp duty.

VOID WILLS

A will or any part of it, the making of which has been caused by fraud, coercion or any such importunity or undue influence as takes away the free agency of the testator is void (Sec. 61). A bequest with conditions which are impossible of performance, or are unlawful or are contrary to public policy or morality is also void (Sections 127 and 126).

CODICIL

A codicil is a supplement to a will. When a testator wishes to make some slight alteration in his will, he should do so by executing a codicil to his will, making the addition or alteration and expressly confirming the original will. A codicil is treated as forming a part of the will. When the alterations and additions are considerable, it will be advisable to write a fresh will revoking the former will. Codicil requires the same formalities as a will.

FORM OF WILL

A will is written as a deed poll in the first person. The format of a will can be divided into the following parts in the sequence shown below:

1. Commencement; (essential)
2. Revocation of former wills and codicils, whether existing or not; (essential)
3. Preliminary.
4. Statement of properties which are being bequeathed.
5. Bequest proper;
6. Bequest of residue; (essential)

7. Appointment of Executor (where desirable or necessary)
8. Testimonium or closing part of the will and signature of the testator; (essential)
9. Attestation and signatures of attesting witnesses (essential).

While the words to be used in parts (1), (2), (3), (6), (7), (8) & (9) are more or less set requiring little variation, the parts (4) & (5) which will contain details of property and its disposition by the testator will necessarily vary widely with each testator with reference to his circumstances, his relations (e.g. wife, sons, daughters and others) to whom he would like to pass on the ownership or interest in the property he will be leaving behind and his wishes about the disposal of his property or any part of it in any other way. There is no limit to such variation. Besides passing the property to one's kith and kin, one can, for example, bequeath it to a trust, a charitable or religious institution or give recurring bountees from income from property or invested funds or parcel it out in any manner desired. It is important that whatever be the intentions of the testator, these should be expressed in clear and unmistakable terms and the interest conveyed should be clearly defined. This is particularly necessary in the case of wills in favour of Hindu wives. If the intention is that the wife should take an absolute interest, it should be so stated clearly in the will by saying that she will be "full and absolute owner" of the interest bequeathed to her.

In the specimens of will only three simple forms of bequest have been given, viz., (1) giving all property to wife or any one person fully and absolutely; (2) giving immovable property to wife for life and after her to others and movable property (moneys and deposits to wife and sons/daughters or to other in equal or specified proportions, and (3) in the case of a person having more than one divisible immovable property, giving the principal property to his son or to one of his sons and the other immovable properties and financial interest/income to others.

Executor or Administrator- The executor or administrator of a deceased Hindu is his legal representative for all purposes and all the property of the deceased vests in him as such. The estate of the deceased vests in the executor whether he has obtained probate or not. A Hindu executor has power to dispose of the property of the deceased vested in him. In the case of immovable property, however, that power of a Hindu executor will be subject to any restriction contained in the WILL, unless he has obtained probate of the WILL and also leave of the Court which granted the probate to dispose of such property. So also is the case of a Hindu administrator.

CONDITIONAL BEQUESTS

Bequests can be made contingent on certain conditions being fulfilled. An instance:

I have an unmarried/widowed/divorced daughter D. I bequeath all my property to A, unless on my death D is still unmarried. If D is not married by the time of my death then (the portion of the property to be defined) of my estate will vest in her.

My daughter has no property at the time I make this WILL. If at the time of my death she and her husband don't own any other immovable property then (the portion to be defined) of my estate will rest in her.

LAW AGAINST PERPETUAL SUCCESSION

WILL cannot be in perpetuity, i.e. it cannot contain bequest like:

"I bequeath to A on my death, on A's death it will go to B, on B's death is will go to C, etc."

We are grateful for the first paper to Mr. N. Ahuja, of Prasad Nagar, New Delhi, and to Mr. B.P. Mital, of Vasant Vihar, New Delhi., for the material on Testament Succession.

Following is an article of obvious importance to consumers and the organisation of consumers all over the country. We request that organisations of consumers should now take further initiatives of filing writ petitions in their High Courts, where necessary, for ensuring effective implementation of the orders passed by the Supreme Court as well as for securing directions for removal of the lacunae that still exist in the functioning of the redressal machinery such as in relation to staff, accommodation and allocation of funds etc.

A TRIUMPH FOR CONSUMERS

H. D.SHOURIE

A case of momentus importance for consumers has been decided by the Supreme Court. Judgement was pronounced a few days ago. Through the intermediacy of the Supreme Court, as I had occasion to point out in the Court at the time of pronouncement of the judgement in this case, an objective has been achieved in the interest of the consumers in a period of few months which not have been possible in decades.

The case related to implementation of Consumer Protection Act. This landmark statute was enacted five years ago, in December 1986. For the first time a statute explicitly recognised that consumers, which all of us are, had certain specific rights, that these rights are enforceable, that where there was default on the part of the manufacturers and traders in the provision of any of these rights punishment would be awarded for the default.

Most important provision incorporated in the Consumer Protection Act was that default was punishable both in respect of the products as well as services. Products could be of any description, any goods which are purchased: Foodstuffs, clothing, cosmetics, medicines, hardware, fans, frigidaires, TV sets, cars everything, small items and big. The only qualification imposed was that the purchase should have been made for the use of consumer and not re-sale or for a commercial purpose for which the matter was referrable to civil courts. Likewise, service could be of any description, for tailoring and dyeing of a garment, to conveyance of passengers by railways and airlines, service of telephone, by bank or insurance company, provision of electricity, or of any other type. For the first time, thus, the public sector, reach of which in past decades has penetrated extensively in the lives of the people and which had hitherto escaped any accountability to the consumers, was brought within the network of culpability for any deficiency in the provision of its services.

REDRESSAL MACHINERY

Instruments were provided for in this Act for the enforcement of the rights of the consumers. It was contemplated that quasi-judicial machinery, in the shape of special consumer "Courts~, will be extensively established all over the country for enabling the aggrieved consumers to knock at its doors for ready redress. The machinery was to comprise: District Consumer Forums, in each district of the country, a State Commission for consumers grievances redressal at the level of every State and Union Territory, and the National Commission at the apex level in Delhi. Jurisdiction of these three tiers of quasi-judicial machinery was defined: cases involving compensation upto rupees one lakh to be entertained and decided upon by District Forums; those involving between rupees one lakh and ten lakhs and appeals from decisions of District Forums to be dealt with by State Commissions; and all others, including appeals from State Commissions, to be handled by the National Commission. The District forum was to be presided over by an officer of the level of District Judge, operating alongwith two other persons of standing, including a lady social worker; State Commission to be operated by an officer of the level of the High Court Judge alongwith two others, including a lady social worker; and the National Commission under the presidentship of a Supreme Court judge sitting with four others,

including a lady social worker. Simple procedures for submission of complaints by consumers were prescribed; consumers could themselves file and pursue the cases without the intermediacy of lawyers; no court fee was to be paid; it was laid down in the enactment that cases should be decided within a period of 90 days. Central Government and State Governments were charged with the responsibility of establishing this machinery.

Consumers enthusiastically welcomed these provisions and eagerly looked forward to securing the redressal of their grievances. A number of consumers organisations started coming up at various places in the country. They conveyed to the people what remedies they could seek, what types of cases they could pursue, how they should submit their complaints and how they should be vigilant in regard to the procurement of any goods or services. But, the machinery of consumer courts, promised to them in the statute, for giving them the redressal was not anywhere yet adequately in sight. This is where I took up the entire matter from the platform of public interest organisation COMMON CAUSE.

More than two years had elapsed since the enactment of this important statute. In it an explicit provision had been made that in each district of the country there shall be a District Forum for listening to the complaints of the consumers and giving them compensation for any loss suffered in respect of the defect in the product or deficiency in the service. There are 455 districts in the country. In two years not more than about 30 District Forums had been established and these too only in the bigger cities. There was a general feeling of frustration at this tardy pace of establishment of the primary instrument for redressal of consumers grievances. I collected the facts and filed a Writ petition in the Supreme Court, impleading the Central Government and all the State Governments and Union Territories, highlighting the importance of the Consumer Protection Act for all consumers of the country and the failures in the important matter of expeditious establishment of the District Forums.

COURT'S ORDERS

Supreme Court recognised the importance of this case and came to the rescue of the consumers. Show Cause Notices were forthwith issued to all the respondents. The case went on for two years during which twenty hearings came about. On each hearing the Court took cognisance of the pace of progress of establishment of the consumer "courts" in each of the States and Union Territories. Thirty lawyers represented the Respondents. Taking note of the fact that the State and Union Territories had in general shown indifference to the requirement of expeditious implementation of this Act, and that they had in fact not demonstrated any sense of urgency in this matter, a series of explicit directions were issued by the Court to the Respondents, pointing out their delays and defaults. A stage came when Civil Supplies Secretaries of eight State Governments, where the implementation of provisions of this statute had remained particularly tardy inspite of directions issued to them, were called up to appear in person before the Court to show cause why they should not be punished for the default. These directions and such drastic step of the Court brought about a flurry of activity in the States and Union Territories. These facilitated the achievement of the objective of the consumers. In almost all districts of the country the machinery for redressal of their grievances started taking shape. District Forums started operating forthwith. Intermediacy of the Supreme Court thus achieved something within the period of months which in the normal course would have taken decades to accomplish. The Court has now pronounced its judgement. In it positive directions have been laid down, how the States and the Union Territories shall ensure implementation of the Act in satisfactory establishment and functioning of the District Forums and State Commissions. Substance of the directions embodied in the judgement is :

i) Where the number of complaints in any district remains less than 150 over a period of six months, powers for deciding cases under the Consumer Protection Act can be exercised by the District

Judge, but they must hold court for disposal of these cases at least on three alternate days in a week so that complaints of consumers do not languish. The arrangement for delegating these owners to the District Judges should be limited to the maximum period of one year, whereafter independently operating District Forums, as contemplated in the Act, must be established. In enabling the District Judges to take over this additional responsibility the High Courts have been asked to give the requisite authority.

ii) It was recognised by the Supreme Court that the District Judges were already heavily burdened with their normal load of civil cases and were finding it difficult to devote adequate time to deal with increasing institution of consumer cases. Taking this into account the Court has now ordered that the arrangement of entrusting the work of Consumer protection Act to District Judges, in districts where the number of complaints was small and is below the limit of 150 previously prescribed by them, should not be allowed to continue for more than one year at the most. During this period the State Governments must make the requisite arrangements for setting up independently functioning consumer "courts". It will be for a State Government in consultation with the Central Government to constitute an independently functioning forum by clubbing together two or three districts where the workload of the consumer cases is small.

iii) Where in any district the workload has crossed the limit of 150 cases, the arrangement of operating through the District Judge will not be allowed to carry on for more than six months, and thereafter the State Government must set up an independently operating consumer forum.

Independently operating District Forums have already now started functioning in a large number of districts. The consumers have started becoming aware of the existence of this machinery for their redressal, and increasingly they have started taking resort to them for settling their grievances in regard to all sorts off goods and services where they encounter any defects and deficiencies. By now almost about one lakh cases have already gone to these consumer courts and reports indicate that almost about 80 percent of the cases have been decided in favour of the consumers, awarding to them substantial compensation for the defaults of manufacturers and traders and the public sector undertakings providing various services. There are yet considerable problems being faced in regard to the provision of satisfactory accommodation and adequate staff to the District Forums and State Commissions; consumers and their organisations, latter of which during the last three years have increased to about a thousand, have become vigilant and vociferous in demanding the removal of any bottlenecks in the operations of these courts. The consumer movement in the country has thus gained momentum very fast.

Consumers owe a debt of deep gratitude to the Supreme Court for the series of directions issued to the Central Government as well as the State Governments and Union Territories which have paved the way for expeditious implementation of the Consumer Protection Act in the establishment of machinery for redressal of their grievances. In the process of giving these directions the Supreme Court has in its recent judgement, incorporated the unprecedented award of costs of Rs. 5000/- to be paid by each State Government and Union Territory to COMMON CAUSE for fighting this case.

PROBLEM OF PARKING

The problem of car parking in Delhi has assumed a very important dimension. For considering this problem a big seminar was recently organised. Specialists, experts, sociologists, demographers and administrators attended it. As many as 19 erudite papers were presented in it wherein all the technical, sociological and administrative aspects of the problem, and various facets of the present day vast

expansion of vehicular traffic were brought to focus. Solutions for dealing with the multifarious problems were offered.

Everybody recognises that the problem of car parking has of late become very acute. It is assuming serious proportions practically in all metropolitan cities, and there is no doubt that it needs to be dealt with very comprehensively, effectively and expeditiously. There are, however, certain very important features of this problem and serious lacunae in the law which presently remain unanswered and unattended. It is necessary that people should be acquainted with them. Before we go on to the lacunae of the law let me recount some of the prominent findings relating to this problem.

Number of vehicles in Delhi has now increased to over 21 lakhs, practically one vehicle per household; The number was mere 193,000 forty years ago; this has increased 100 times. In the last ten years alone the number has trebled. The number of vehicles registered in Delhi is more than the total registered in Bombay, Madras, and Calcutta put together. In Delhi there are more 2-wheelers and 3-wheelers than in any other city; they are stated to be generating more pollution than other vehicles. Parking of vehicles occupies space, and the space is limited. Vehicle is parked at both ends of the journey, at the beginning and at the end. It is estimated that out of total of about 9000 hours of the year a vehicle runs only for about 400 hours, and for the remaining 8600 hours it requires parking space in commercial and business centres parking has become even more serious matter; increasingly it is becoming a virtual nuisance in the residential colonies.

There has been palpable failure on the part of administration to introduce mass transport system in Delhi. There have been plethora of studies, plans, proposals and projects. spanning the last 25 years. beginning from 1989, but indecision on the part of the government has prevailed, resulting in enormous escalation of the estimated cost; in 1989 the estimated cost was Rs.700 crores and this has increased to Rs.10,000 crores. Non-implementation of the scheme threatens to render this metropolis a doomed city, as was recently expressed by Mr. Jag Pravesh Chandra previous Chief Executive Councillor. While the project remains under consideration the problems keep mounting and multiplying; choking up of roads, thickening pollution, increasing fatal accidents, severely effecting the quality of life of the citizens.

PRESENT CHAOS

Delhi has the dubious distinction of being the only city of this size which in the matter of public transport is yet depending only on the system of road buses. 6000 buses presently ply on its roads; expected to reach the figure of 10,000 in the next few years, competing with staggering increase of personalised vehicles in the absence of adequate and satisfactory public transport. Certain areas of the city carry such heavy traffic congestion that roads have become impossible, atmosphere lethal, noise level beyond safety limits, rendering travel positively unsafe.

Traffic conditions in the city are inevitably related to the problem of parking. Size and nature of the parking problem will be evident from the fact that in Connaught Place alone as many as 50,000 motor vehicles are parked every day. These include: 13,000 cars, 37,000 scooters and motorcycles. At any one time the vehicles in this area occupy equivalent of 3800 car spaces. In totality, computing the aggregate number of vehicles in this metropolis one can envisage that practically half the entire area of Delhi will soon be required for mere parking of its vehicles.

LACUNAE IN LAW

The serious lacunae in the law for dealing with the problem of parking, which we have referred to

above exist in the statutes which govern areas under the Municipal Corporation of Delhi and New Delhi Municipal Committee. The NDMC operates under the Punjab Municipal Act which was enacted as long ago as 1911 when there was no problem of vehicles and their parking. MCD Act was passed in 1957 when too the problems of traffic and parking were practically non-existent. In both these statutes there are no relevant provisions which directly enable the concerned authorities to effectively deal with this problem NDMC issued on order in 1986 to regulate the parking of cars in Connaught Place area by levying parking fees. It had to resort to some provision of levying "tehbazari" for the purpose. This was challenged in Delhi High Court by the Association of Traders and the Court issued a "Stay" order. This 'Stay" order has since disabled NDMC from doing anything to regulate the parking of vehicles in the entire Connaught Place complex; in the bargain it has been losing revenue of Rs. 8 crores a year. From the viewpoint of citizens it is a most unfortunate fact that no positive effort has been made to get the Stay vacated; the case has been languishing in the court for seven years; the chaos on the roads has kept mounting.

More important is the fact that in the Punjab Municipal Act there is no specific statutory provision to enable NDMC to deal with this problem. The only provisions which can be resorted to related to removal of obstructions on streets and public places; these cannot be directly invoked for regulating the parking and levying of fees for the purpose. In MCD Act, likewise, the requirement of regulating parking and levy of fees for the purpose can be made only in round-about manner of invoking certain provisions of the Act which are not directly concerned with this matter. Section 42(p) of this Act prescribes the mandatory functions of the Corporation wherein there is provision only of removing "obstructions and projections in or upon streets" and Section 304(c) which merely enables acquisition of an area for parking. There is a general provision under Section 481(7) authorising promulgation of byelaws in respect of any matter "of which this Act makes no provision or makes insufficient provision" and which is considered necessary. Resort to this provision for purposing of regulating parking end charging fees may be considered possible but this too can be challenged in court.

These are very serious lacunae. It is surprising that during the last two decades when this problem has been building up to the present dimensions, nobody has ever cared to examine this matter and resort has been placed only on ad hoc measures without examining whether these would be sustainable under the law. This matter has in the recent past been dealt by the Calcutta Municipal Corporation. In the Calcutta Municipal Act, which was enacted in 1980, a specific provision has been made for the purpose. It is contained in Section 355 of the Act which lays down that the Municipal Corporation can close any portion of a public street and declare it as a parking area; it can levy "parking fees, at different rates, for different vehicles, for different areas, and for different periods" at such rates as may be determined by the Corporation by regulations.

We have drawn the attention of the Lt. Governor of Delhi to these lacunae and have also pointed out these to the Administrator of NDMC and Commissioner of MCD. This matter has also been specifically brought to the notice of the Ministry of Urban Development and Ministry of Home Affairs so that the Government of India, which has responsibility towards the Union Territory of Delhi, should get it remedied urgently, if necessary by issue of an ordinance and subsequently by amendment of the two relevant statues.

"COMMON CAUSE" SCORES AGAIN

With loud fanfare the Government had last year announced the scheme of conversion of leasehold properties to freehold in Delhi. The scheme affects four lakhs owners of flats and plots. The Government surmised that with the launching of this scheme, they would be able to collect Rs 2000 crores. Huge conversion charges were prescribed, linking these escalated prices to the price of 1987 and making things difficult for the under-privileged sections of the allottees, totally disregarding the feelings and capacity of the people to pay the stipulated conversion amounts.

COMMON CAUSE took up the gauntlet. A writ petition was filed in the Delhi High Court challenging various aspects of the scheme. It was rightly felt that in matters of such serious importance government cannot take the people for granted and that hair-brained stipulations of such nature need to be avoided in the interest of the people. There were many grounds of which the scheme was challenged. Firstly, the elements of compulsion built into it were highlighted; people who had been living in their flats and houses could not be thrown out of them merely on account of their incapacity to pay the conversion charges. Secondly, the amounts collected for the conversion smack of utter arbitrariness, basing them on highly escalated land prices, disregarding the fact that when the allotments were made decades ago, no stipulation had been made that such big amounts will have to be paid for securing conversion. Thirdly, there are certain colonies which had been developed as housing colonies; allotments were made only on the basis of "cost" and in most cases after taking into account the properties left behind by refugees consequent upon partition of the country.

The writ petition was filed in July, 1992, A number of hearings took place but for nearly eight months the government failed to submit reply in the Court. It had been provided in the scheme that applications must be submitted before 31.3.1993 whereafter the conversion charges would be based on prevalent land prices. Attempt was made by us for securing extension of the date but the decision on this too continued to be avaded by the Government. Numerous telegrams were sent by the people to the Minister of Urban Development on suggestions emanating from COMMON CAUSE. A strongly worded telegram was also sent by COMMON CAUSE. Eventually five days before the stipulated date of 31.3.1993, the government had to yield; date was extended by one year.

Pressure of the people, exercised through this writ petition, ultimately made the government to realise that the feelings of the people cannot be disregarded, based on wrong assumptions, as these can be frustrated. The will of the people has triumphed.

The case will continue to be further pursued by COMMON CAUSE. Certain other organisations also subsequently filed writ petitions in the High Court. These have been bunched together for further hearing.

PROPERTY TAX

Problems of property tax continue to get more and more irksome for the citizens of Delhi. They have over the past 4/5 years continued to receive notices of enhancement of the rateable values of their houses and commercial premises. It is unfortunate that till now no satisfactory solution has emerged despite the detailed study of the problem and the recommendations by the High-Powered Committee set up by the Delhi Administration. There have been reports that draft legislation for amendment of the relevant provisions of MCD Act has been prepared though apparently it has not yet been submitted to the Parliament. People in general have been severally critical of the recommendations made by the High-Powered Committee; they are equally critical of the provisions amending legislation. Meanwhile,

a comprehensive writ petition is presently pending before the Delhi High Court and it cannot be said with any certainty as to when it can be expected to be finally decided.

The owners who are receiving notices of escalation of the rateable values have been filing objections in accordance with the prescribed procedures. Wherever any final decisions on their objections have been taken, the owners have felt compelled to file appeals or take resort of filing writ petitions in the High Court.

An important recent development has been the issue of a Public Notice by MCD on the 15th March, 1993, giving only one week's notice to the people to submit their objections/suggestions in relation to certain bye-laws which are proposed to be promulgated in relation to the submission of returns by the owners wherein detailed information is required to be submitted about the cost of construction, price of land, rent etc. Owners as well as the occupiers are proposed to be placed under obligation to submit the prescribed returns every year.

People have felt resentful about this Public Notice and have communicated objections in large numbers, protesting against the period of only one week being given, the prescription of submission of returns by owners as well as occupiers and the provision of penalties incorporated in the proposed bye-laws which are stated to be ultra-vires of the relevant Act.

Another irritant complained of by the owners of premises is that tens of thousands of the owners, whose rateable values are assessed at more than Rs. 2 lakhs will have to go all the way to the concerned MCD office near the Old Delhi Railway Station. It has been stated on behalf of MCD that all the cases of such properties have been grouped together for being dealt with in that office. The owners of properties in the South Delhi have been representing that this matter needs to be immediately rectified.

AMENDMENTS OF CONSUMERS PROTECTION ACT

The matter of effecting the desired amendments of Consumers Protection Act has been pending for many months. It is unfortunate that for various reasons the proposed amendments have not yet come before the Parliament. The Ministry of Civil Supplies & PDS continue stating that the amendments will soon be effected; it is now being proclaimed that these will be effected in the current session of Parliament. It is unfortunate that such long delay has come about. Meanwhile, a number of problems have arisen wherein the constitutional validity of CP Act has been challenged in certain High Courts as well as in the Supreme Court. The challenges in respect of this Act have been made primarily in relation to two major items, namely, "Housing" & "Medical Practitioners/Hospitals". In respect of both these items, a number of cases are reportedly pending before certain High Courts and the Supreme Court has also been seized of certain cases. From COMMON CAUSE, we have sought intervention in the Delhi High Court and the Supreme Court. We hope that the matters relating to these two items can be suitably resolved in the near future. Meanwhile, we feel that it is very unfortunate that controversies have taken place between the consumers and hospitals/medical practitioners at certain places which have led to the matters being taken to the Consumers 'Courts' and to the High Courts.

Consumer Protection Act does not extend to Jammu & Kashmir State. That State has, in accordance with the normal practice, passed its own Statute known as "The Jammu & Kashmir Consumer Protection Act, 1987". In the J&K Act where the compensation claim is less than Rs. 50,000/-, the case goes to the Division Forum and where the compensation claim exceeds Rs. 50,000/- but does not exceed Rs. 10 lakhs, the case goes before the State Commission. It is not clear whether under this Act the claim exceeding Rs. 10 lakhs can be taken up before any other Court, as ostensibly there is no provision

defining the jurisdiction of the cases involving clams above Rs. 10 lakhs in relation to the J&K Act. This lacuna obviously requires to be rectified.

This matter has been taken up by us with the Ministry of Civil Supplies & PDS. It has been suggested that it should be examined for securing rectification of the law, where required.

CONSUMER COURTS

It is a matter of great regret and serious concern that effective implementation of the Consumer Protection Act is still languishing in certain States. We have received complaints about the inadequate functioning of the District Forums and even State Commissions at a number of places in the country. This is very unfortunate indeed, and it is a matter of great regret that the Consumers Organisations have not effectively taken up the problem for rectification by filing writ petitions in their High Courts on the lines which we had suggested.

As an instance, the position at Calcutta is reported to have been very unsatisfactory. During 1991, the District Forums as well as the State Commissions are reported to have been in operation only on the basis of the President without the association of the two other persons as prescribed under the Act. The functioning of both was declared ultra-vires by the High Court with the result that these "Courts" are reported to have remained closed for almost six months till February 1992. The State Government apparently felt compelled to take the requisite initiatives when the Supreme Court issued strict directives. Even after appointment of all the three Members for the District Forums and the State Commission, it is reported that the cases are generally heard only by two Members and one Members is constantly absent, particularly from the District Forum. The number of cases in the District Forum and the State Commission are reported to have accumulated to almost 3000 each. Another very unfortunate fact is that the District Forum and the State Commission have not been provided separate rooms; they sit in the same room the one after the other, the State Commission operating for about 2 hours and the District Forum operating for the remaining 3 hours.

Reports about the functioning of State Commission at Shimla have also been unhappy stating that the accommodation has not been adequately provided nor the staff is adequately in position. Representations made to the Himachal Pradesh Government have been unavailing.

Similar reports have been coming from the various other parts of the country. We again request the Consumers Organisations to initiate action of filing writ petitions in their High Courts to seek effective implementation of the relevant provisions of the Act and the specific directions to the State Governments that they must provide full complement of the appointments for the Bench, the essential staff requirements, satisfactory accommodation and the provision of funds for meeting the essential requirements. There should not be any occasion for the people to complain that the complaints are being asked by the District Forums and the State complainants to produce stamps, envelopes etc. for issuing of communications and registered letters.

These suggestions need to be given careful and early consideration. In certain metropolitan cities there is need to set up more than one District Forum (as has been done at Delhi where two Forums are presently operating and need for a third Forum is being articulated) and demand has started emanating about the establishment of similar Forums at places other than the District headquarters, namely, in Sub-division, Taluks and Blocks. It appears inevitable that as awareness of consumer protection measures continues to spread, there will be need of establishment of Forums at the various places in the Districts.

In this connection, we would be grateful for information from the Consumers Organisations about the problems encountered in relation to the functioning of District Forums and the State Commissions

ADMINISTRATION OF JUSTICE

Administration of justice in the country is passing through a severely critical phase. A backlog of over two crore cases pending in the Courts is proving an extremely heavy burden, clogging all judicial processes. One aspect of this huge backlog is the well known fact that the Government itself is the largest litigant in the country. A very substantial percentage of pending cases in the Courts at every level comprises the cases initiated by the Government or a decision against the Government. On this specific matter, we have written to Mr. H.R. Bhardwaj, Central Minister of Law, Justice & Company Affairs. The letter addressed to him is worth being reproduced :

"You would surely be aware of the enormous backlog of cases which has over the years accumulated in the courts of the country. The total number of cases, civil and criminal, in the courts would now be of the order of about 20 million. The number of the cases at the level of the Supreme Court and the High Courts also have accumulated to an extent which is undoubtedly a matter of serious concern in relation to the functioning of senior judiciary of the country.

While enormous number of steps need to be taken for improvement of the system of administration of justice, I would like to request you through this letter to focus attention on one aspect which ostensibly is remediable at the level of the government. It goes without saying that in every department of the government, at the Centre as well as in the States, there is obviously a tendency to file an appeal against any decision wherein government is a party or is involved as a defendant. This tendency arises from the fact that no officer wishes to incur the odium of subsequent criticism if he does not initiate the process of filing an appeal against a decision which may be construed to affect the interests of the government. The result of such disinclination of the officers is that almost invariably the appeals are filed in the Appellate Courts, including the High Courts and the Supreme Court, as well as the Appellate Tribunals. If a rough appraisal is made of the cases pending in these appellate courts it would be found that a very large percentage of these are the appeals filed by the government departments.

This is obviously a matter for serious consideration by the Ministry of Law. We feel that an initiative on your part in this sphere can very substantially reduce the accumulation of cases in the courts. I suggest for your consideration the following steps :

i) Every department of the government, at the Centre as well as in the States, should examine each individual case which is presently pending in appeal anywhere. A Committee of two officers should be designated by the seniormost authority of the Ministry/State Government for going into the particulars of each case. It should be decided by these two-officers-committees whether the appeal should be allowed to continue or should be withdrawn. If they come to the conclusion that the appeal should be withdrawn, suitable orders should be taken from the next superior officer and the appeal should be withdrawn. If the two-officers committee comes to the conclusion that the appeal should not be withdrawn they should, likewise, take the orders thereon of the next superior officers for continuance of the appeal.

ii) When any court decision in future comes before a government department a decision should be taken by similar two-officers committee for determining whether the appeal should be filed against the decision. Likewise, their decision should be submitted for approval by the next superior officer before the appeal is filed or the case is closed.

iii) Specific directions to this effect should be communicated by the Ministry of Law to all the Ministries and Department of the Central Government, and concrete suggestions on the same lines should be communicated for implementation to the State Governments and Union Territories."

LAWYERS' STRIKES

Our writ petition regarding lawyers' strikes is yet pending in the Supreme Court awaiting its listing for hearing. It continues to feature in Part-II List of the Supreme Court and it cannot yet be said as to when it is likely to come up for the final hearing.

Meanwhile, on the writ petition of a person in the Delhi High Court, the matter of lawyers' strike has been coming up for early hearing. From COMMON CAUSE, we have submitted an application for intervention in the Delhi High Court. It is expected that the hearing of the writ petition and our intervention in the Delhi High Court may come about earlier than the hearing of the pending writ petition in the Supreme Court.

COMMON CAUSE

OUR ACTIVITIES AND PROGRAMMES

COMMON CAUSE as a public interest organisation has reached out extensively in ever-widening spheres for taking up causes of the people for securing redressal.

Its activities have given benefits to very large number of people, in fact to innumerable persons, spread all over the country. Almost three million pensioners have benefited from the three important decisions the organisation secured from the Supreme Court, in relation to extension of liberalisation of pension, restoration of commutation of pension, and extension of the scheme of family pension. The case relating to Delhi Municipal Corporation Property Tax, decided at its instance by the Supreme Court, helped to straighten out problems of the levy and assessment of this tax. Various manifestations of this matter have continued to be pursued by the organisation of securing proper restructuring and rationalisation of the tax. Various issues relating to Rent Control laws and their distortions have continued to be taken up for being sorted out. We have maintained close relationship with various associations of houseowners, tenants, ratepayers, welfare organisation etc.

From time to time we have taken up the problems relating to income tax, wealth tax, gift tax, capital gains tax, for avoidance of abberrations, discriminations and harassment. All sorts of problems of non-issue of shares and debentures, non-payment of interest on deposits, and disregard of interests of the people have been taken up by us with the concerned authorities.

In matters of public importance the organisation has filed writ petitions in the Supreme Court and High Courts. Matter relating to lawyers' strikes has been taken on the Supreme Court The problem of accumulated backlog of cases in the courts all over the country. leading to serious erosion of faith of the people in the administration of justice, has been highlighted through another writ petition. A writ petition in the Delhi High Court effectively thwarted the wholesale amendment of the building byelaws which would have been detrimental to the interests of the people. Writ petition was filed against Delhi Electric Supply Undertaking which resulted in a beneficial verdict relating to bills based on defective meters. Writ petition has been filed challenging the pensions being given to Members of Parliament. Another writ petition has highlighted the inadequacies and malfunctioning of blood banks in the country. A writ petition has brought to the fore non-implementation of Apartments Ownership Act n Delhi.

Increasingly the organisation has also been taking up various problems of the consumers, with a view primarily to give them the feel that they too can fight their battles in relation to the products and services provided to them. A major achievement of the organisation has been to secure amendment by the Government of the relevant rules prescribing the mode of price printing on packages with the result that now the price, including of all taxes, is being printed on packages, all over the country. Matters relating to various areas of inefficiency of the public sector functioning, as of electricity supply, telephone services, airlines etc. have been taken up for redressal of the grievances of the consumers. Cases were filed by the organisation for setting right the inadequacies of quality control in manufacture of sensitive items such as intravenous fluids, and removal of distortions in strict observances of the orders for supply and sale of iodized salt.

COMMON CAUSE has involved itself deeply in the problems of consumerism in the context of the implementation of the Consumers Protection Act. Omissions and delays in the implementation of this Act by the state governments in the country were highlighted in a writ petition filed in the Supreme Court, and arising from the directions issued by the court the process of setting up of quasi-judicial machinery under this Act has been expedited. Contacts and relationship with the organisations of consumers all over the the country have been maintained.

COMMON CAUSE retains its basic character of being a non-political, non-profit and voluntary organisation. Its membership is open to everybody.

Everybody can take membership of COMMON CAUSE. Membership Fees: individual annual membership Rs 50; individual life membership Rs 250; organisation annual membership Rs. 200.

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