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COMMON CAUSE

VOICE OF "COMMON CAUSE"

PUBLIC CAUSES: PUBLIC RESPONSIBILITY

In this issue of the periodical we are presenting write-ups on a few important public causes which affect innumerable people. Our purpose is that readers should get acquainted in some detail with the genesis of these causes and the remedies which have hitherto been explored.

People have a responsibility in regard to these public causes. Concerned citizens need to explore avenues for pursuing them and securing redress. They cannot rest content with reading and knowing about them. They cannot afford to let these be pursued only by others. They should as much get involved in them as those who have taken them up.

It is from this viewpoint we have presented the pros and cons of these various public causes. Avenue for redress in relation to these can be through raising of collective voice, communication of representations to concerned authorities, launching of campaigns, carrying the message to legislators through lobbying, and taking the matters to High Courts in the shape of public interest litigation. Surely, some public spirited lawyers should be coming forth for filing writ petitions in relation to these types of public causes on the pattern of effort being made by COMMON CAUSE.

- We receive numerous enquiries asking how to take membership of COMMON CAUSE. No form is required. Merely send us your name and address (complete with postal code number) preferably written in CAPITAL LETTERS. Membership fee for individuals is Rs 50 for one year; Rs 250 for life membership for individuals; Rs 200 for annual membership of organisations and associations.

- We continue to be beholden to those pensioners who on their own are gracious enough to send us one month's pension - commutation on its restoration in accordance with the Supreme Court directive which we secured for the pensioners.

- We receive numerous letters and invariably send replies. Kindly writ only when you must; letters received in local languages present us difficulties in deciphering them.

Readers will finds in each write-up in this collection the action we have initiated and the stage where the matter at present rests. Most of these matters have been taken to the Supreme Court; couple of them are in Delhi High Court. It will be really worthwhile, and can greatly reinforce the efforts already made, if writ petitions on the relevant subjects are filed in the respective High Courts, taking into account the arguments and aspects which have been highlighted by us and orienting these from the local viewpoints.

We strongly commend the mobilisation of this effort to all those who feel concerned and who can make their contribution towards finding solutions to problems of the people.

These write-ups constitute recent articles of the Director of COMMON CAUSE which have appeared in newspapers including his fortnightly column which features in the "Economic Times". While presenting these public causes we have of course not ignored other important matters, such as Property Tax, on which vigorous efforts continue to be made for finding satisfactory solution.

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BIRTH HISTORY OF UNIVERSE

Vastness and dimensions of the Universe are beyond human comprehension. Judge it from the fact that light takes billions of years to reach us from the distant nebulae and stars; and light travels at 186,000 miles per second.

Scientists have now grappled with the first moments of birth of Universe; this is calculated to have taken place over 15 billion years. Their sophisticated technologies, instruments and calculations have come to certain important conclusions.

Universe in its birth was incredibly small and dense. Neither space nor time then existed. Nothing is known of this earliest instant. A Big Bang is envisaged to have brought about its birth; that was the moment of creation. The Universe - all matter, energy, space - exploded from the original singularity.

Because time did not yet exist there is no way to measure this event but scientists have now agreed to start the universal clock at 10^{-43} second (10 with minus 43 zeros). At 10^{-36} second there was the separation of strong force; time did not yet exist. The period 10^{-36} to 10^{-32} second was original expansion time in which Universe expanded more than in 15 billion years since. Between the first 10^{-32} to 10^{-5} second, quarts and antiquarts, the smallest particles of matter emerged. Universe cooled to trillion K, quarts formed protons and neutrons. In 10^{-32} seconds to 3000 years because of high temperatures radiant energy generated gravity. With cooling, 3000 years onward, matter became primary source of gravity. Thereafter for next 300,000 years expansion continued and electromagnetic energy manifested. This is the birth history of Universe.

TALKING OF ENVIRONMENT

VALUE OF A TREE

A tree that lives for 50 years generates Rs 5.3 lakhs worth of oxygen, re-cycles Rs 6.4 lakhs worth of fertility and soil erosion control, creates Rs 10.5 lakhs worth of air pollution control and Rs 5.6 lakhs worth of shelter for birds and animals. Besides, it provides flowers, fruits and lumber.

So when even one tree falls or is felled, the community loses something worth more than Rs 32 lakhs.

You might like to spread this message; before cutting a tree, plant more trees.

WATER WASTAGE WHICH CAN BE AVOIDED

BRUSHING TEETH: Running tap for 5 minutes, uses 45 litres; using tumbler or glass reduces it to 0.5 litres, saving 44.5 litres.

WASHING HANDS: Running tap for 2 minutes, uses 18 litres; reducing flow, uses 2.0 litres, saving 16.0 litres.

SHAVING: Running tap for 2 minutes, uses 18 litres; using shaving mug reduces to 0.25 litres, saving 17.75 litres.

SHOWER: Making shower run while soaping etc., uses 90 litres; soap up, rinse off, tap off, uses 20 litres, saving 70 litres.

FLUSH TOILET: Using large capacity cistern uses 13.5 litres; using dual cistern, with short flush for liquid waste, uses 4.5 litres, saving 9 litres.

WATER PLANTS: Running hose for 5 minutes uses 120 litres; water can, uses 5 litres, saving 115 litres.

WASHING FLOOR: Running hose for 5 minutes uses 200 litres; mop and bucket, uses 20 litres, saving 180 litres.

LONG AND WINDING ROAD TO JUSTICE

Judicial delays have become a normal condemnatory appellation of the functioning of judiciary in the country. These exasperate the people no end. Almost everybody has a tale to tell, or his woes to pour out.

Common Cause too has a tale to tell. It is about how we, acting in the interest of the people, took the initiative of taking the matter of judicial delays to the Supreme Court of the country to seek some solution to this serious problem.

We chose to initially highlight the delays in relation to criminal cases pending in the courts all over the country. The objective was that if something concrete is achieved in relation to criminal cases, which should in any case receive top-most priority in the context of delays, then way will get paved for taking up other aspects of law's delays, including civil cases, revenue cases, tax cases, labour cases, cases in motor vehicles tribunals, cases in Central Administrative Tribunal, those in relation to other central laws and the big chunk of those relating to other laws of the States. Possibly, an over-ambitious objective, but worthwhile contemplating.

A comprehensive writ petition on the delays in criminal cases was prepared. It was submitted to the Supreme Court. This was way back in 1986, more than seven years ago. At that time the count of pending criminal cases in the courts was about sixty lakhs. Total number of cases then was about 1.5 crores. Out of this total as many as sixty lakhs were obviously cases which affected life and liberty of the persons involved in them.

There are two Articles of the Constitution which are relevant in this context. These are Articles 21 and 14. These are among the fundamental rights guaranteed by the Constitution for every citizen. Article 21 lays down: "No person shall be deprived of his life or personal liberty except according to the procedure established by law"; Article 14 prescribes: "The State shall not deny to any person equality before law or equal protection of laws". The word 'life' appearing in Article 21 has been elaborated by the Supreme Court to imply also the quality of life i.e. quality of life of any person must not be adversely effected except by the due process of law.

Where criminal case is filed against a person, levying accusation of an offence committed by him, it is his fundamental right to be given a fair trial in the court of law. Fair trial must necessarily mean that it should be speedy trial. In fact, in a case the Supreme Court has clearly laid down the law that expectation of expeditious justice is a fundamental right which flows from Article 21. Also, there cannot be any discrimination between a person of adequate means and one who is an underprivileged person in the matter of expecting a fair and speedy trial. This is the essence of Article 14, because the underprivileged and privileged persons both are equal before the law.

Basing the arguments on these fundamentals of the law it was averred in the writ petition before the Supreme Court that both these important provisions enshrined as fundamental rights in the Constitution are violated when the criminal cases go on languishing in the courts and where, as is well known, the underprivileged persons form the majority of those who are charged with offences and do not have the means to defend themselves. Cases languish for years; they clutter up and clog the courts; unending adjournments are given because the courts can not cope up with their lists; trials go on interminably with no end in sight. Often the accused persons languish in custody, nobody bothering to secure early hearing and finalization of the cases. This is the scenario all over the country.

These facts were presented before the Supreme Court in the writ petition. More important was the submission of specific suggestions in it for partly solving this problem. It will be worthwhile to present these suggestions before the people. Let them judge whether and to what extent these are worth consideration.

The suggestions incorporated in the writ petition will need to be considered in relation to the specific size of the problem. Dimensions of the problem can be judged by taking the example of the pendency of criminal cases in the courts of one State. In the case of Delhi the position as was presented to the Supreme Court was that the total pendency of criminal cases in the courts at Delhi, at that time seven years ago, was 4.23 lakhs; the number now will be practically double if not more. Out of these as many as 1.90 lakhs cases were traffic challans; 33000 more cases related to violation of the other transport laws; 7400 were cases related to shops and establishment legislation; 1900 cases related to violation of building bye-laws; 4000 cases were of other municipal regulations; police challans aggregated to 62700.

Taking into account these facts following specific suggestions were given for dealing with the accumulated backlog. These suggestions had wide ramifications as they could be applicable also to all States and Districts:

* All traffic cases, and all cases related to other offences under motor vehicles laws, should be quashed where they had been pending for more than one year.

* All cases relating to offences under any law, whether Indian Penal Code or municipal laws or shops and establishments legislation etc, which had been pending for more than three years from the date of institution, and where the maximum punishment which could be inflicted under the relevant provisions of the law was three months, or fine or both, should be quashed.

* All cases where the accused persons had been in custody, either police custody or judicial custody, for more than three years, and the maximum sentence inflictable under the relevant provisions of the law was seven years, or fine or both, should be quashed.

* All cases under Section 309 of the Indian Penal Code, which provides penalty for the attempt to commit suicide, and where the cases had languished for more than six months, should be quashed.

In making these specific suggestions it was clearly stated that these dispensations were sought only for removing the present clogging and bottlenecks in the courts, that these were not in any case to be taken as precedents and were to be considered only as one time special measure, that the persons accused in the cases which were sought to be quashed would be considered as 'discharged' and not 'acquitted'; the latter comprising the category where the 'court' pronounces the verdict of acquittal after trial of the cases. It was emphasized that acceptance of suggestions of this nature would help to greatly reduce the present frightening backlog of cases and will help the courts to focus attention on the more important cases and not be bogged down only by cases of minor nature.

When the writ petition came up before the court, seven years ago, the Judges on the Bench remarked that these suggestions were of obvious importance for reducing the accumulated burden; they desired that three States should be impleaded in it as illustrative of the problem and for finding the solutions. On our suggestion the States of U.P., Bihar and Delhi were impleaded. On the next hearing the case went before another Bench. The Judges on it felt that the case was important for all the States and

therefore all the States should be impleaded. We urged that this would delay the decision but reluctantly agreed. The case was thereupon ordered to be heard by the Constitution Bench. Since then, due to one reason or another, the case has remained stuck and has not secured final hearing.

Counters to the writ petition were submitted by the Government of India and a couple of States. In the counters the position taken was the normal wooden position which one can expect from any government organisation in this country where formal opposition to any such suggestions appears to be inevitable. It was stated on behalf of the Government that these suggestions "did not have any merit nor substance", that the government was already conscious of the delays in disposal of cases, that Criminal Procedure Code had been amended in 1974 for expediting disposal of cases (of course, not mentioning as to why the accumulation of cases is not lessening). It was stated that Conference of Law Ministers and Chief Justice had already dealt with this matter, that the Law Commission was seized of it, that State Governments had been exhorted to take steps to get various directions implemented, and it was contended that in any case, acceptance of these suggestions will "disturb public order" and quashing of cases in this manner will lead to demands for "repeat of this exercise".

Initially this important case got linked up with certain criminal appeals which were pending disposal. One of these related to the former Chief Minister of Maharashtra, Mr. A.R. Antulay. When these cases came up for hearing before the Constitution Bench I submitted before the 'court' that it had wide ramifications and had nothing to do with any specific cases. The court accordingly ordered that this case should be delinked. Unfortunately, in the Registry it then got again linked up with some other pending criminal appeals. It has been after considerable renewed efforts that it has now recently got delinked from those appeals. It now awaits being again specifically 'mentioned' before the Chief Justice of India; only then it can be brought up for hearing.

This is the tale of a case, which was considered important by the Supreme Court itself, and which aimed at lessening the burden of the courts and expediting the process of justice. One feels legitimately exasperated at the procedures which lead to such delays and which eventually are construed by the people as defeating the dispensation of justice and making them despair of the possibility of overhaul of the judicial system.

STRIKES BY LAWYERS

Lawyers have in the recent years been resorting to strikes. They strike work, bringing the operations of courts to grinding halt, creating serious problems and exasperations to the clients, leading to further clogging of cases in courts. These strikes often make it impossible for people, even in most emergent cases, to seek bail or secure injunction or issuance of stay orders, completely paralysing the judicial system. On some occasions the striking lawyers have gone to the extent of stopping the work even of petition writers, typists, stamp vendors etc. who normally operate in court compounds.

People need to know the pros and cons of this serious problem. They need to be aware of their rights when they engage lawyers, what the courts of various places have said about the lawyers' strikes, the efforts that are being made to overcome this problem, and how within the fraternity of lawyers voices and movements have started emerging to frustrate resort to strikes by the ring leaders.

From the platform of COMMON CAUSE we filed a writ petition on this subject in the Supreme Court some time ago. It had quite a few hearings but had since got stuck in the listing. The case had to

be brought to the notice of the Chief Justice of India in order to be listed for early hearing. It will be useful for people to know the pleadings of this writ petition and the prayers embodied in it.

In this writ petition was emphasised the great importance of the role of lawyers in the judicial system. They are officers of the court. They have the responsibility for maintenance of proper decorum, dignity and reputation of the courts. They have special status in the society; they are in fact pillars of the society, being its privileged members. They have on merit been given special franchise by the society. They owe, thus, a special responsibility to the society. To their clients they owe a special duty and obligation. There cannot be any doubt that lawyers, who live by the law, should keep the law.

The strikes resorted to by lawyers in recent years have been on every conceivable grievance. The lawyers of certain Delhi courts have repeatedly gone on strike for various reasons. A person caught stealing red-handed, who had not revealed his identity and was later found to be a lawyer, was handcuffed; that was taken up as the ground for lawyers' strike. There has been tussle between lawyers of lower courts and of Delhi higher court about the quantum of pecuniary jurisdiction, and that constituted the ground for strike; unauthorised constructions of some sheds by Bar members in Delhi's lower courts were demolished by the Municipal Administration, and that constituted another reason for strike; proposal of decentralisation of courts at Delhi was resented by a section of lawyers and that was reason for strike; at Calcutta a judge decided not to wait for lawyers and proceeded with the cases, and that was adopted as reason for strike; at Bombay the mode of functioning of certain judges was the cause for a strike; direction given by a chief justice not to issue permanent stay in cases was taken as reason for strike; transfer of judge of a High Court constituted a cause for strike; the matter of location of a High Court bench constituted cause for strike; income tax raid conducted on the house of a lawyer caused a strike. All these, and more. In all these the cause was unmistakably personal interests of lawyers. Sometimes the cause was given the colouring as though it was being agitated in the interest of litigants, but the general public could well see through the camouflage; interests of litigants was not the consideration for all these strikes.

As against these facts, let us see what the law specifies in regard to this matter. Firstly, when a person takes a matter to a court he expects speedy justice. In fact, it has been specifically laid down by the Supreme Court in a case that speedy justice is a fundamental right, as much fundamental right embodied in the Constitution as the right to life and liberty. This dictum was pronounced in the case cited as AIR 1979-SC-1360 wherein the Supreme Court recorded: "There can be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution". This pronouncement got elaborated in a judgement of Delhi High Court cited as 1990-Rajdhani Law Reports 318, wherein the judges specifically mentioned about the problems created in disposal of cases during strikes by lawyers. It was stated in this case that: "In any civilised society it should be the endeavour of all that litigation is not unduly prolonged". Strikes by lawyers, it was stated in the judgement, have in recent times been a major contributory factor in delaying disposal of cases. The court gave direction that where in a case a counsel is on strike there is no justification for the court to adjourn that case time and again, and the court should in fact ask the client to argue the case and also file written arguments.

Some sections of lawyers at certain places have started raising voices against strikes. This is a very welcome development. Organisations of the Bar members have started being formed to oppose strikes. Information has been received about such developments at places such as Hathras, Ghaziabad, Bulandshahr, Meerut and Agra, in Uttar Pradesh. The High Court of Allahabad took serious note of a strike where the court was locked by lawyers, and the Secretary of Bar Association was charged with contempt of court. It was held by the court that locking of court is interference with and obstructing

course of public justice; these are peoples' courts, not for the lawyers or of the judges.

These are judicial pronouncements, expositions of the law. The clients have certain positive rights, correspondingly the lawyers have obligations towards their clients. The rights and responsibilities of lawyers have been embodied in the Advocates Act. Section 49 of the Advocates Act has elaborated certain matters on which the Bar Council of India, the statutory body established under this Act, is empowered to make rules and regulations. One of the important matters entrusted to the Bar Council is that of drawing up "Standards of Professional Conduct and Etiquette to be observed by the Lawyers". The Bar Council has formulated an exhaustive code of conduct. In this code there are certain provisions which are of obvious importance from the viewpoint of the clients. One rule states: "An advocate shall not ordinarily withdraw from engagement once accepted, without sufficient cause, and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case he shall refund such part of the fee as he has not earned". Another rule states: "A advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client."

Our prayer in the writ petition is that in the rules of conduct and etiquette it should be prescribed that lawyers should not resort to strikes; where they have any grievance they should handle the matter in such manner that the interests of their clients do not suffer. We have also urged that in situations which are caused by strikes the court should invoke the provisions of S 32 of the Advocates Act and authorise some other person, who may not be a lawyer and who is selected for the purpose by the client, to appear for him so that the interests of the client are not allowed to suffer. Our approach to this matter is also that in the vakalatnama which is signed by the client when he engages a lawyer it should be specifically provided that the lawyer will not allow the interests of the client to suffer on account of a strike.

Another very important development which people should know is that of the enactment of Consumer Protection Act which now empowers the litigants to demand the provision of satisfactory service to them by their lawyers. Profession of a lawyer, in term of the provisions of this Act is a 'service' for which the client, the consumer, pays fee to the lawyer. Where there is a 'deficiency in the service', and the deficiency causes loss or damage to the consumer, he has the right to approach the consumer court for redressal and to demand compensation. If, for instance, due to the non-appearance of a lawyer on the fixed date of hearing, on account of a strike by lawyers, the client suffers a loss, which is attributable to such non-appearance of the lawyer, this will definitely constitute a 'deficiency in service', and the client will be entitled to claim compensation for loss. The remedy available under the Consumer Protection Act has not yet started being invoked by aggrieved clients, excepting in odd cases here and there, but it can surely be envisaged that they will increasingly take resort to this remedy if their interests continue to be adversely affected.

The writ petition filed in Supreme Court has yet to progress further. Meanwhile there have been written responses in the court by certain organisations of lawyers who have in fact supported the prayer that lawyers should not resort to strikes and should instead explore alternative course for redressal of their problems. These organisations included the Bar Association of India, the Association of Advocates-On-Record of the Supreme Court and the bar associations of certain States. The Bar Council of India has repeatedly taken adjournments for filing their reply to the writ petition but the reply has not hitherto been forthcoming.

When the writ petition again recently came up before a three-Judges Bench of the Supreme Court they decided to issue a general notice inviting all, including the Bar Associations all over the country, to submit their views and objections to the suggestions made in the petition. The case will come up after ample opportunity has been provided for receiving these.

DELHI LEASEHOLD CONVERSIONS – NEED OF RATIONAL SOLUTION

Woes of citizens keep mounting and multiplying. One sees no end to their exasperations. Politicians and administrators must grapple with these woes effectively lest patience of the people gives way. One problem at Delhi is that of conversion of leasehold into freehold.

This problem affects 400,000 allottees, including 200,000 persons who have over the last three decades been allotted flats constructed by government agencies including Delhi Development Authority (DDA), 100,000 holders of building plots of various sizes and 80,000 allottees of flats in the multi-storeyed buildings constructed by group housing societies. These plots and flats have been under occupation of the allottees all these years. They executed lease deeds when they were given allotments. In these lease deeds there was no stipulation for conversion into freehold; stipulation was only for payment of annual ground rent and revision of ground rent after three decades.

Two years ago somebody in the Ministry of Urban Development, and also possibly in DDA, came up with an idea, which ostensibly was considered brilliant at the time, to mop up large resources by permitting conversion of leasehold flats and plots into freehold. It was calculated that this scheme could yield as much as Rs.2000 crores within at most a couple of years, and this big amount could be utilised by government for urban development programmes. The scheme was announced with considerable fanfare; presented in glossy pamphlets which were sold from numerous outlets. Sceptics called it a harebrained scheme; some termed it impractical, replete with loopholes and miscalculations. The events have shown that the entire scheme was in fact ill-conceived; it has not yielded even a hundredth fraction of what it was expected to yield in the way of resources.

Let us first see the basic essentials of the scheme. It prescribed that all allottees must submit applications for effecting conversion before 31-3-1993, envisaging that all sanctions would thereafter issue within six months. Certain meticulously worked out mathematical formulae were presented in the scheme for calculating the conversion amounts to be deposited for securing final sanction. It was laid down that if applications were not submitted before 31-3-1993 conversion charges would be very greatly enhanced, calculated on the basis of prevailing land prices. Benefits of the conversion were obvious; it would eliminate the burden of recurring payments of ground rent; it would confer freehold rights on the owners; it would eliminate need of securing sanctions for effecting transfers or for making constructions or alterations. These were undoubtedly attractive features of the scheme.

But, the scheme contained certain elements which, to say the least, were outlandishly ill-advised. The conversion was made obligatory for allottees of all flats, and for allottees of all plots upto the area of 150 square meters (plots upto 50 square meters were to be converted without any payment); holders of plots between 150 square meters and 500 square meters were given option to effect conversion or remain under leasehold; conversion was made totally non-applicable to those whose plots were of area more than 500 square meters; it was made applicable only to residential flats and plots, debarring conversion for those who secured the plots for industrial or commercial purposes.

From the platform of COMMON CAUSE we considered it necessary to challenge the unacceptable elements of the scheme. Writ Petition was filed in Delhi High Court. Government of India in the Ministry of Urban Development, and concerned functionaries of Delhi Administration, were made Respondents. It was inter alia emphasized in the Petition that it would be horrid to contemplate the throwing out

of an underprivileged person who was allotted a small DDA flat 25 years ago on payment of only about Rs.8000 and who was now expected to pay, under the scheme, a hefty amount of about Rs.20,000 for the conversion; this would obviously not be permissible. Show Cause Notice was issued to the government. Some Associations of houseowners also filed writ petitions. These were bundled together. Government kept dragging its feet and eventually, only a few days before the prescribed last date 31.3.1993, it had to give in; the element of compulsion embodied in the scheme was removed, the conversion was made totally optional in respect of all flats and plots, and the period for submission of applications was extended by one year, to 31.3.1994.

This was over ten months ago. Since then the case has been pending in the High Court. It has come up for hearing on a number of occasions but till now for one reason or the other the hearing has not taken place. Only the formalities, of submission of "Counters" by the government agencies, and of "Rejoinders to the Counters" by the Petitioners, have been completed. Unfortunately, the case has also shifted from one Bench to another, for reasons and procedures of the court. Result has been that people have felt greatly frustrated.

Naturally, every allottee would welcome conversion from leasehold into freehold. This gives the owner full ownership rights. It smoothens the processes of transfer by inheritance; it enables sales to be effected which may be necessitated by circumstances; it changes the aspect of owning the flat or plot. Because of the hurdles inevitably linked with leasehold, enormous number of transfers have over the years been effected on basis of Power of Attorney; this is every unfortunate indeed and has brought all sorts of problems for the owners and transferees with inevitable consequential corruption and nepotism.

If the scheme from the start had been prepared properly and was not riddled with absurdities ostensibly connected with the aspiration of collecting fantastic resources, taking people for granted, problems of the people would have been solved and government would have been able to mop up legitimate resources. There is no justification for restricting application of the scheme only to certain categories of people. It should be open to all, holders of plots of all sizes, allottees of all flats, and also to those who have taken plots for commercial and industrial purposes.

Most important is the question of conversion amount. Somebody in the government arbitrarily picked up the year 1987 for forming the base of prices then prevailing. This was taken for calculating the price payable for the conversion. These calculations lead to unacceptable high prices for effecting conversions, particularly for plots of various sizes as well as for the flats. The question arises; why not the price base of the year such as 1971 which base year was taken by the Government of India for Wealth Tax purposes because heavy escalation of land prices came about after 1971. There are other problems; for instance, same scheme cannot apply to rehabilitation colonies where plots and flats were allotted on the basis of properties left behind by refugees when migrating at the time of Partition.

The case in High Court will not solve all the problems, and in any case, not soon. The case may drag on. People and houseowners associations have now sent telegrams and representations to the Government of India and Delhi Government, asking for extension of last date. We have taken up this matter with the Central Minister of Urban Development and have also urged the Chief Minister to convey to Government of India the indispensable need of modification of the entire scheme. One can only hope that functionaries in DDA and Ministry of Urban Development will re-consider those aspects of the scheme which are unworkable. People must be made to feel that Government cannot disregard their interests.

UNAUTHORISED COLONIES ARE POLITICIANS' VOTE BANKS

Delhi is in a mess. People are exasperated. Numerous maladies afflict the city. The question that bothers every body is: Is this city irretrievably doomed? Or, will the politicians, who are expected to deal with problems, be able to halt its doom?

Problems of this city are aplenty - from overpopulation to pollution, from corruption to crime and moral degradation in all walks of life. These problems do not have a short-term solution. But there are other problems which are manmade, in fact made by politicians. People are naturally eager to know what the politicians are going to do about these. Their efforts towards solving them will show their motivation, their capability.

The most glaring problem of Delhi is the mushrooming of unauthorised colonies all over the city. The slums have become the source of all that has gone wrong with this beautiful city. These unauthorised colonies are being promoted, encouraged, fostered, and nursed by politicians, setting at naught all norms of planned development, reducing to shreds the Master Plan which had been prepared for an orderly and planned development of the city. It was not only for altruistic reasons that these colonies were encouraged: they were deliberately planned for creating vote banks.

Politicians of different hues have indulged in this game. After promoting unauthorised colonies they have invariably raised the demand for their regularisation, for extending to them all civic amenities, electricity, water supply, roads, street lighting, drainage, sewerage, disregarding that these are already overstretched and any further extension can only cause their breakdown. They overlook the fact that unauthorised squatting on government land, multiplication of slums of this nature, herding together of people in them, lead to the breeding of crime, development of nexus between property dealers and landgrabbers, and of general degeneration of morals. They are interested only in building vote banks.

About 1,300 of these unauthorised colonies have got established, scattered all over the city, defacing it, polluting it, endangering its hygienic conditions and lowering its quality of life. Politicians succeeded some years ago in getting 700 of these regularised, with the result that the various civic amenities had to be extended to them. They are now demanding the regularisation of the remaining 600. They claim to plead the cause of the under privileged, the deprived elements of society, realising well enough that their living conditions have only further aggravated their misery. People feel unhappy; they feel helpless. We have taken the initiative in seeking the intervention of the Delhi High Court to stem this depredation.

Consider another problem - unauthorised constructions, and encroachments. Practically every third building in the city flouts the building bye-laws. The bye-laws are prescribed for orderly development of a city. Owners and the builders are responsible for sidestepping the regulations. Where the departures are minor they do not create difficulties; where they are blatant violations, the constructions cause serious problems to neighbours, jeopardising the layout and creating problems of strain on civic amenities. There is plenty of corruption at various levels of municipal administration, with the result that rectification of violations gets thwarted, mostly by politicians. Their intercession is sought and invariably demands are made on the administration to condone the violations. No politicians would be willing to stand up and ask for the demolition of structures constructed in violation of the building bye-laws.

Likewise, encroachments of all types, on government land and on streets and public parts continue to be supported by the politicians rather than prompting the municipal authorities putting them down with a heavy hand. There are temporary encroachments. Often these are facilitated by the greasing of palms, but it is inconceivable that any politician will be courageous enough to stand up for removal of the encroachments; the plea on the other hand will be to assuage the voters under under the garb of looking after the interests of the underprivileged.

People are reeling under breakdowns and inadequacies of various services such as electricity supply, water supply and drainage. Hardly any politician has ever demonstrated readiness to take positive and concrete steps to solve these problems.

Roads are clogged. Transport, particularly during the peak hours has become a nightmare besides spewing unbearable pollution. In this matter too, people blame some politicians.

People decry rent control as a major culprit of the problems pertaining to residential accommodation. This measure, which was perforce adopted to meet the conditions resulting from the Second World War has been perpetuated by the politicians on the plea of protecting the interests of tenants, envisaging them to be important vote banks. Rent control, along with the Urban Land Ceiling Act, has done greater damage to urban areas in general than any other enactments. These have brought about huge escalation of property values, highly inflated rentals and generation of black money. People previously built houses for rental; not many now give houses on rent.

Property tax in Delhi is driving hundreds of thousands of owners crazy. People do not mind paying the tax but they are furious at the discriminations and absurdities of assessments. The schemed of conversion of leasehold plots and flats to freehold, announced with fanfare two years ago, is in shambles. No politician ever raised any voice about its impositions on the people; it had to be challenged in the court. Similarly, it was contemplated under the Apartments Ownership Act that allottees of flats in DDA colonies and multi-storeyed buildings would be conferred ownership rignts within six months. Not one apartment out of 300,000 got transferred even in five years. This scheme too had to be challenged in the court.

People have now become conscious of their rights. They are no longer prepared to be helpless spectators of the impositions heaped on them. They will demand remedial action from the politicians, from the representatives they choose. The middle classes among them have assumed the role of ventilating the problems for seeking solutions. Politicians can no longer get away with slogans and mere promises.

TAKING STOCK OF CONSUMER PROTECTION

Seven years is a short period for assessing the gains and setbacks of any nation-wide movement, but it is a matter of considerable satisfaction that consumer movement has taken palpable roots in this country of vast spread and population. There has been considerable awakening among consumers that they can knock at some doors for redressal of their grievances in respect of products as well as services for which they pay, and ask for compensation for loss or damage suffered by them due to any defect in the product or deficiency in the service. More importantly they feel for the first time that they can enforce accountability also in the government sponsored services of the public sector which were being treated as holy cow but which had such extensive coverage throughout the country.

The consumer 'courts', called the Consumer Disputes Redressal Forums at the level of districts, State

Commissions at the level of states, and the National Commission at the apex level, have provided easy access to the consumers for hearing their complaints. To a considerable extent they are shorn of the technicalities of normal civil courts; they are expected to provide ready justice, and at practically no expense. The functioning of these 'courts' has given impetus to the spread of consumer movement; coming months and years hold out promise of their greater strengthening.

There are certain features of the consumer movement which need to be appraised at the present juncture. This is necessary in the interest of getting it on even keel while giving it further push and for making it reach all sectors of the population and corners of the country. Let us consider these features.

The matter of paramount importance is the need of adopting all possible measures for spreading as widely as possible the consumer awareness. It cannot be gainsaid that till now this awareness has spread only in the urban areas, and that too in the bigger urban centers. This message has yet to spread to the smaller towns and more importantly to the rural areas. Consumers in these have also to be made aware of their rights and the scope, possibility and means for securing redressal of their grievances. Several measures will need to be taken to this end. These can be envisaged to include the following:

* Material in the shape of leaflets and pamphlets, explaining in simple local languages the concept of consumer protection and measures available for redress, need to be prepared and widely disseminated. Information about the types of cases taken to consumer 'courts' and the decisions given on them will need to be incorporated in these for concretisation of the benefits that can be derived in seeking redress. About 500 organisations of consumers have already got established in the country; these can be utilised as the base for disseminating such material; Fair Price Shops, Health Centers, Gram Panchayats, and other rural projects can also be utilised for the purpose.

* Special programmes for generating awareness and for dissemination of information will need to be prepared for utilisation through the electronic media, particularly and radio which has high reach in the rural areas and smaller towns. The effort in this direction has hitherto been adequate; the programmes have not been purposeful and effective. It is of fundamental importance that these programmes should catch the imagination of the audience and carry the message convincingly to them.

* Side by side with spreading consumer awareness it is necessary that ways and means should be explored for incorporating certain basic essentials of consumer protection in the curricula of studies in schools and colleges. The National Council for Education & Training, Department of Education of the Central Ministry of Human Resource Development, Universities Grants Commission, and the Education Departments of States, have to be persuaded to meet this requirement.

* There is need also of developing training programmes through which the important provisions of Consumer Protection Act and the essentials of consumer movement are passed on to the activists, operatives and volunteers of the organisations of consumers in various parts of the country. These programmes will not normally need to be of more than four days and the primary objective of these should be to equip these functionaries and operatives of the consumer movement to assist in carrying the message of consumer protection to the people and to provide assistance to the consumers to secure redressal of their grievances.

* There will equally be need of training the trainers as well as training the non-judicial members who sit along with the Judges in the Panels for deciding complaints filed before the Forums

and State Commissions. Institutions such as the Indian Institute of Public Administration and the Institutes of Management will need to be involved in constructing and conducting these programmes of training.

* An important requirement in organising these various activities, for spreading awareness and for equipping the people to seek and secure redressal of their grievances, will obviously be the funds. This requirement can be met from the Consumer Welfare Fund which has recently been established by the Government of India and which was expected to gather considerable lot of funds from the accruals of Excise refund which legitimately belongs to the consumers and had started being collected from the industry as a result of certain judicial decisions.

Another important matter for consideration in connection with the expansion of momentum of consumer awareness is the need of taking certain additional concrete steps of carrying the movement to the rural areas. For the attainment of this objective following initiatives, among others, will need to be taken:

* Functionaries and operatives of the organisations of consumers which are established in the urban areas will need to be encouraged and assisted to penetrate the rural areas, establish contacts with Gram Panchayats where they exist, disseminate information in the shape of pamphlets and leaflets etc for carrying awareness to the villages and offer assistance in taking up grievances of the consumers for redressal.

* A major consideration in connection with the requirement of spreading the consumer movement to rural areas is that of determining measures for providing the means of redress to rural areas within close proximity. It is inconceivable that villagers should be expected to go every time to District headquarters for filing complaints or for pursuing them on every hearing, or to engage lawyers for doing this for them. If the essential ingredients of redressal machinery are not made easily available to the villages it would be meaningless to talk about taking the consumer movement to rural areas the present redressal machinery at the district level, as provided under the Consumer Protection Act, is much too cumbersome to be taken to the villages; the Panel of District Judge and two nominated non-judicial members are not the proper forum for meeting this requirement in the villages. It will also not be possible to expect this need to be met by arranging circuit sittings of the existing District 'courts' in the villages. Means will need to be devised for delegating certain powers, possibly limited in specific respects, to the Gram Panchayats which would enable the aggrieved consumers to secure prompt redress. Revenue Officers and Block Development Officers in these areas can also be empowered where necessary. Requisite alterations will need to be made in the Consumer Protection Act to meet this objective.

Thirdly, the functioning of existing redressal machinery which has been established under the Consumer Protection Act needs to be appraised in all respects for strengthening it where necessary and for removing the deficiencies and inadequacies where they exist. Certain important matters in this regard include the following :

* Already, because of the rapid spread of consumer awareness in the urban areas, enormous backlogs have started developing in the District Forums as well as at the level of State Commissions, and even in the National Commission. In certain cities the number of cases before the District Forums has accumulated to such as extent that the work has already started getting almost paralysed inasmuch as long dates, of four to six months, have become inevitable. In the Act it is laid down that cases must be decided in ninety days. That has become an impossibility in these conditions. In Delhi, for instance, where two Forums got established through pressures developed on behalf of consumers, the number of cases have reached the figures of 4000 and

3500 respectively. Such delays have also become inevitable where the powers under this Act are being exercised by existing District Judges who are already quite heavily burdened with the normal work of civil cases. Very thoroughly and detailed consideration needs to be given to this entire matter for determining how more consumer 'courts' can be established at places of large accumulation of cases, what criteria should be laid down for the establishment of more courts for the purpose, and how the work needs to be regulated where the powers are being exercised under this Act by the sitting District Judges.

* At the level of State Commissions and National Commission there will be need of creating more Benches for dealing with the complaints and appeals which have accumulated and will continue pouring in. The hold up of cases at these levels can be very damaging for sustaining the image of effectiveness of the Consumer Protection Act.

* In the District Forums and State Commissions at a number of places there are serious deficiencies and inadequacies which are causing problems in their functioning. Staff has not been adequately provided to them; stenographers are not being adequately made available; accommodation is very inadequate; furniture for maintenance of files and equipment for typing and photocopying is often not provided; funds are not given to meet even essential requirements; in some cases the Forums are asking the parties to bring their own stamps and envelopes for despatch of documents.

* Another important matter for consideration is that the introduction of lawyers in consumer courts are often turning them into normal civil courts, leading to avoidable adjournments and accompanying delays. There have been demands that a lawyer should be allowed only where the complainant, the consumer, has engaged a lawyer, or where the 'court' considers it necessary because of complex nature of the problems involved. This demand has not hitherto been conceded and continues gathering further momentum.

CONSUMER ACT HAS STARTED BEING MISUSED

"There is a widespread tendency to lodge false claims before the Consumer Forums, especially because no court fees are payable for processing their complaints. It is essential that such a tendency is firmly curbed, and abuse of the Consumer Protection Act is discouraged. It is, therefore, appropriate that the claimant in this case should pay a sum of Rs.5000 as costs to the opposite party".

"The facts of the case lead us to the conclusion that the claimants had put up a false claim to sustain which concocted evidence was sought to be created. Such a tendency must be curbed. No such person should be allowed to misuse the Consumer Protection Act for making any unlawful gain or to harass those who render service to the people. We, therefore, decide against the claimants and direct them to pay the sum of Rs.5000 as costs to the other party".

"We have no doubt that the complainants in this case have been ill-advised to move the Consumer Forum. In fact, the filing of this complaint is an abuse of the Consumer Protection Act, and we would be justified in imposing heavy cost on the complainants."

These are the concluding portions of verdicts given in three recent cases decided by the National Commission for Consumer Disputes Redressal, the apex redressal body established under the Consumer Protection Act. These observations and decisions of the National Commission have obvious importance. These are demonstrative of what we, who are involved in the consumer movement, have been

apprehending. This novel statute has undoubtedly opened up new chapters for giving quick redress to consumers for their grievances against those who sell them defective products or who are hired for providing them service which they find to be deficient. There are unique features in it. No court fee has to be paid on taking the grievance to a consumer 'court'. The statute provides that cases must be decided within a period of 90 days, though, in fact, this has become practically impossible because of big backlog of cases which have started piling up in these 'courts'.

More than 3,00,000 cases have gone to the consumer 'courts'; more than 60 percent of these have already been decided, large majority of them in favour of the consumers. These 'courts', called 'Forums', are by now functioning in all the 454 districts of the country, arising from the directions that Supreme Court gave to the States and Union Territories when their defaults were brought to its notice through a Writ Petition. Functioning of these Forums is yet far from satisfactory at a number of places. There are numerous problems which are yet being encountered in putting them on satisfactory functioning basis. These matter are being continuously pursed.

The matter which needs to be presently highlighted is that our apprehensions have started materialising inasmuch as elements and tendencies have started emerging to misuse this statute. Its unique features, no court fee being required, of possibility of expeditious decision, of its provisions for covering very wide range of services and products for redressal of grievances, and availability of redressal machinery in all districts of the country, besides the State Commissions established at the level of all States and Union Territories, are now being misused by some unscrupulous elements for settling personal scores, for extorting quick gains, and for sidetracking the process of normal civil courts.

These unfortunate developments are often being facilitated by and through the operation of lawyers. We in the consumer movement have been demanding that lawyers should not be allowed to appear in these 'Courts' which are in fact of the nature of tribunals, reflecting the system of panchayats which were the mainstay of disputes resolution in this country in earlier ages. Forums and State Commissions are presided over by eminent persons from the judiciary; each of them has on it two local persons of status and social standing, including a lady. At the apex level the National Commission has four persons of high merit and social status besides the President who is of the status of Supreme Court Judge. They are given the mandate of redressing the grievances of consumers. In formulating this statute it was obviously not contemplated that they will get lost in legal technicalities and procedures of adjournments which normally operate in civil courts. It is unfortunate that the Government has not yet conceded the demand of barring lawyers from these courts.

Against the background of these facts let us see the samples of some cases wherein National Commission has expressed that Consumer Protection Act has started being misused.

One case is about a claim against insurance of a life policy of Rs. One lakh. Life Insurance Corporation contested the claim because the due premium had not been paid in time and the policy thereby lapsed. Dates mentioned in the case are interesting. Premium was due on 6.3.1987. Claimant, heir of deceased insured person, contended that premium was paid by a bearer cheque to the agent on 4.6.1987; son of the agent encashed it on 5.7.1987 but the amount was deposited by him with LIC only on 10.8.1987. The insured person had died on 9.8.1987. State Commission awarded the claim, deciding that the withholding of premium was due to maladministration and management of LIC. National Commission held that there obviously was temporary misappropriation on the part of the son of the agent; there was no authority given by LIC to agent to collect the premium on its behalf; that beneficiary of the insurance had obviously put up a false claim, based ostensibly on concocted evidence.

In another case a claim of Rs.20,49,100 compensation had been made against a State Housing Board on the ground of alleged delay caused to the complainant in the construction of his house due to some police cases and court proceedings initiated against him on allegations of fictitious and unapproved site plans and encroachments having been made on the land. It was contended that cased filed against the complainant by the State Housing Board had been found to be false; hence the Housing Board should pay him compensation for the delay caused in construction of the house. National Commission held that as the allegations of this nature would require elaborate evidence relating to the facts of alleged cases filed against the complainant the consumer 'court' was not the appropriate forum for adjudication of such dispute.

Third case recently dismissed by the National Commission in appeal is of a person who claimed medical insurance amount of Rs.65,000 in relation to his hospitalisation for heart ailment. He took the policy on 9.2.1988 and it was renewed on 8.2.1989. He contended that in March 1989 he had to undergo bypass heart surgery on 3.3.1989. It was found on detailed enquiries and from evidence that the claimant had been in fact, in September 1988, examined for heart ailment and was advised bypass surgery but that he had concealed the facts relating to previous history while renewing the policy in February 1989. It was found from the evidence that he had been suffering for angina for two years and from hypertension for four years; he was aware of these ailments, and had suppressed these facts from the insurance company.

Another case is that of strange demand made by Management Committee of a temple at Delhi alongwith a person entitling himself a consumer. Their complaint is that groups of Pujaris in the temple resort to certain malpractices in, inter alia, recycling and selling the Prasad offered at the temple besides charging heavy amounts from stalls set up in the temple area. They made the claim amount such that it came direct within the purview of National Commission. The Commission straightway held this case to be not a complaint entertainable under the Consumer Protection Act.

A case is at present pending before the National Commission in which an amount, meticulously calculated at Rs.46,26,006, is claimed as compensation due to alleged negligence of a doctor in not correctly diagnosing the cause of ailment of employee lady patient of age 42 years. Calculation of compensation claim is based on the contention that she has lost opportunity of earning her salary, annual bonus and ex-gratia payment for next 28 years i.e. till the age of 70 years, and will have to engage a maid servant for next 26 years. While merits of the case will in due course be adjudged, these claims are indicative of how the Consumer Protection Act is being used for making demand the size of which would in a normal civil court necessitate payment of court fee amounting to about Rs.50,000.

These are a few samples of how people have started resorting to exploitation of the avenues and facilities provided under the Consumer Protection Act for purposes, and in manner, which this statute was never meant to serve. It is necessary that those who are interested in consumer movement must exert to ensure avoidance of the misuse of this statute.

BANE OF LOTTERIES

People are being fleeced every day through lotteries. There has been a phenomenal growth in lotteries nation wide, and there are even reports of people becoming inveterate gamblers due to exposure to this pernicious game.

When lottery fever strikes an individual, the outcome is nearly always harmful, as it fast becomes an obsession which threatens to submerge all other aspects of his life. As one person wrote "He thinks lottery, he lives lottery".

It is estimated that over Rs 10,000 core are wagered annually n the lotteries; and a large portion of this sum represents the hard-earned money of millions of people, spend in the hope of a windfall.

It is very welcome that Delhi Administration has taken the initiative of banning certain types of lotteries. There are rumblings against this decision and one only hopes that the Government will be eventually able to carry it through.

Lotteries fall within the list reserved for the states, though the central government can issue regulatory guidelines. However, the states have the competence and authority to organise lotteries and use the proceeds. The central government has from time to time prescribed certain limited purposes for which the proceeds of lotteries can be utilised by the states.

In some sates lotteries have been banned but most of the state still continue to sponsor and conduct lotteries. Most of the time, these state-sponsored lotteries are held through organisers and agents. Only rarely do states conduct the process directly - as in the case of Delhi, where the administration conducts all the lotteries. Delhi Administration does every step on its own: getting tickets printed under security check, organising the sales through stockists, arranging the draw, publishing the results, and awarding the prizes.

The general estimate is that 95 per cent of the proceeds of a lottery are used up for expenses including the agents commissions, and only about five per cent is left for the state to utilise for welfare schemes.

There are widespread reports of malpractices and manipulations in the states where the lotteries are conducted through agents and organisers. No comprehensive study of the problem appears to have ever been undertaken, to decide whether lotteries should continue to spread, and if they have to be conducted how they should be regulated to rule out possibilities of malpractice.

Though a section says lotteries should be abolished altogether, there have been prevarications - mainly by politicians - and a ban still has not been imposed.

Along with lotteries sponsored states there are quite a few unauthorised lotteries which continue to be conducted, often with impunity and not without the collusion of the law enforcing agencies. Holding an unauthorised lottery is a criminal offence, punishable under Section 294A of the IPC which prescribes deterrent punishment, but this continues to be observed only in breach.

Take for instance the case of when we noticed that Mizoram state had sponsored a bumper lottery last October, to synchronise with Diwali. The lottery was widely publicised in newspapers, and the prizes were very attractive: 108 Maruti cars (1000 cc); 108 Maruti Cars (800 cc); 108 Yamaha Motor Cycles; 108 colour TV sets; and similar number of various other prizes, including VCRs refrigerators, walkmans, quartz watches, totalling 4076, valued at many crores of rupees.

The tickets were priced at Rs 500 each, and the name of the sponsor was prominently displayed in the advertisements, claiming that he was organising two daily lotteries, nine weekly lotteries, four "instant bumper" lotteries, and one monthly bumper lottery.

Two months after the announced date of the lottery draw we wrote to the organiser, asking for answers to some specific questions. The questions included the number of tickets printed; the address of the printing press; serial numbers on the tickets, stating the starting and ending number; certification secured

for aggregate printing of tickets sold before the date of draw; total number of prizes awarded and a list of the prize winners.

The organiser wrote back that the letter was being forwarded to the Directorate of Mizoram state lotteries. Eventually a reply came from the director of lotteries that 24 lakh tickets were printed, bearing numbers 100000 to 399999 in each series; the draw was conducted before two judges; tickets were all pre-paid and all printed tickets were taken as sold tickets.

On the main question regarding prizes awarded, the reply was very vague: "No claims have been received by this office so far, but claims may be available with the organising agent; the same will be submitted to this office for record."

It was obviously intriguing that for this enormous lottery 'no claims' for prizes had been received by the director of lotteries. We then pointed out that with 24 lakh tickets printed and considered sold, the aggregate proceeds would be around Rs 120 crore, the price of each ticket being Rs 500. The state government should have been able to indicate where this amount had been credited. Inquiries about the printing cost of tickets, and the printing press address shuttled in vain between the organiser and the state government as did our requests for information on the names and status of the judges. And most astounding of all, the state government and the organiser did not divulge any information about the names of the prizewinners or the number of prizes given, as the 'no claim' plea was clearly a spacious one.

In these circumstance we considered it necessary to refer this matter to the Commissioner of Police, Delhi. An officer of the crime branch then informed us that investigations were being conducted on the basis of the information we furnished.

The police found that only six Maruti cars were given away as prizes; the number of tickets printed was much less than the number claimed - apparently not more than about 60,000 - and further investigations were in progress. The information collected so far about this lottery itself speaks volumes about what profits it garners for organisers and how they fleece the people.

There are scores of such lotteries held in various parts of the country. And obvious point to ponder is why this undeniably harmful activity is allowed to spread and flourish unchecked. These lotteries are a genuinely serious impediment to the lives of millions of people. Why does the government not give serious thought to doing something about it? Or should it be inferred that it is not in its interest or that of its functionaries to control it?

INDIAN INSURANCE INDUSTRY MUST HAVE USER-FRIENDLY FACE-LIFT

The insurance industry needs to shake itself up and get out of the shackles of the government control. Its performance standards must meet the rising expectations of consumers.

The entire insurance sector has been under total government control for decades. Life Insurance was nationalised in 1956; all other insurance, categorised under the umbrella of General Insurance, was nationalised in 1971. All business of insurance thus bristles with pervasive rules and regulations which are the inevitable hallmark of any public sector functioning, enveloped in inefficienty because of the prevailing instinct of self-preservation of the functionaries at every level.

There has been enormous proliferation of the personnel in all branches of the insurance companies in the country. This itself is in fact the reason for inadequate functioning and concomitant public perception of the prevailing inefficiency. The enormously expanded personnel is naturally more concerned about their own appointments, promotions, salary scales, allowances, perquisites, than about the demands of service to the people for whom the business of Insurance exists.

PROLIFERATION

Consider the size of proliferation. In Life Insurance operations there are half a million agents; 40,000 surveyors; 16,580 development officers; 1,900 branch offices; 1,300 centres; 93 divisional offices. General Insurance does not in any way lag behind. It has the spread of 83,000 employees, out of which as many as 43,000 are Class III employees (i.e. Clerks and Assistants); and 12,300 Class IV employees (peons and messengers); 4,263 officers with 3,090 branch offices; 1,100 divisional offices; 72 regional offices.

Of course, the Life Insurance business as well as General Insurance business have vastly grown and expanded. The population itself has grown; there are more people who go in for insurance; more industry and trade; and consequently expanding demand for insurance. But, the question is whether the objectives of nationalisation of Life Insurance and General Insurance have been attained, whether this social security measure has reached out as far and wide as it was expected to do. Increasingly there are voices rising in the country that Insurance business must become more dynamic, conscious of the quality of its service, and open to competition. It must look beyond enhancing profits and not be concerned only with its problems of financial stability and viability. Its watchword must become "service".

It is incontrovertible that inspite of the operations of Insurance business over three decades and the vast spread of offices and personnel, general awareness of Insurance in the country is yet low, benefit of Insurance is presently available to less that 1/4th of the insurable population. Standard of service to the insurance, both in Life as well as in General Insurance fields, is unsatisfactory and inadequate, interaction of General Insurance with chambers of commerce and industry is not satisfactory. Determination of tariff structure is effected without any consultation with consumers of the service, machinery for settlement of claims leaves much to be desired, necessitating resorts to courts by the aggrieved persons.

PREMIUM RATES

A number of questions are being asked. Has Life Insurance made efforts to reach out to wider fields, to attract the average man's attention and savings? Is Life Insurance operating on sound business principles or has it spread merely because of its monopoly character? How does the premium of Life Insurance in India compare with the premium in some other countries? It has been reported that whereas in India the premium for endowment policies without profit, which alone can provide comparative figures, is Rs.1.85 for age 30 (term 35), Rs.1.83 to Rs.2.29 for age 35 (term 25), and Rs.2.61 to Rs.3.12 for age 40 (term 20), the premium is much lower in UK, ranging respectively from Rs.1.83 to Rs.2.29 for age 35 (term 25) and Rs.2.61 to Rs.3.12 for age 40 (term 20). This differential between premium rates in India and UK is significant; it shows how the people in India suffer the disadvantage, obviously due to monopoly operations obtaining here.

It is generally said that Insurance giants, LIC and GIC do not have operational flexibility. They need to operate in an atmosphere of autonomy and freedom from the shadow of Comptroller and Auditor General and the Central Bureau of Investigation: the omnipresence of which is inevitable as long as

they operate as government organisations, under strict guidelines and regulations of government and concomitant political influences.

Primary test is consumer satisfaction. It cannot be contradicted that consumer satisfaction in the entire sphere of insurance is low. There are complaints of inordinate delays in settlement of claims, of arbitrary cuts made from claim amounts, without adequate justification. Policy documentation needs to be mechanised, but there are problems with the trade unions. Grievance redressal mechanism is not effective; insured persons are themselves not aware of the existence of any such mechanism. Changes have to be effected in the staff for bringing about service orientation in them; including the need for delegation of powers with thrust on accountability.

CONSUMER FORUMS

One recent heartening development is the availability of redressal machinery to aggrieved consumers under the Consumer Protection Act. This development has given confidence to the consumers, the customers of insurance, that if the insurance companies fail to redress their grievances in the matter of settlement of claims they can knock at the doors of Redressal Forums which are by now operating in all districts of the country. A number of cases against insurance companies have been taken to these 'courts', and quite often the consumers have won the battle against the obduracy of the insurance companies.

Let us look at some of the cases that have been taken to the 'courts' under the Consumer Protection Act. There was the case of insurance against fire in the godown of a small scale industry. Fire had caused extensive damage to the stocks. The factum of fire was established from the report of the Fire Brigade; damage to the goods had definitely been caused. The case was kept hanging for ten months by the surveyor who was assigned the task of assessing the damage. The claim thereafter was repudiated by the company. When the matter was taken to the consumer court is was held that the repudiation smacked of sheer arbitrariness, the case having been inordinately delayed by the surveyor; there was distinctly a 'deficiency in service' which was attributable to the default of the insurance company. The industrial unit had fallen sick because of the extensive loss by fire and due to the delay in settlement of the claim. The case went upto the National Commission established under the Consumer Protection Act, and the insurance company was ordered to pay compensation of Rs.7 lakhs plus interest @ 18 per cent.

In another case, where the stocks of a shop were insured against fire and floods, a sever flood had caused extensive damage. The insurance was of the amount of Rs.One lakh. After survey the amount offered by the insurance company was only Rs.36,940 which the company refused to accept. No action was taken by the insurance company on the protest. When the case was taken to consumer 'court' the insurer was castigated for not having refereed the matter to arbitrator when there was provision for such reference in the event of protest.

A life insurance claim of an elderly widow, which was decided at the highest level established under the Consumer Protection Act, is typical of callousness which often manifests itself in bureaucratic processes in the existing insurance business. An elderly person's insurance policy proposal remained pending on the consideration of a slight discrepancy between the birth certificate and the school leaving certificate, the insurance company claiming that an additional premium amount of Rs.6.90 had to be paid before the policy could issue. Meanwhile, the insured person died. It was contended by the insurance company that although the premium amount, as originally assessed, had been paid, the policy had not yet issued because of the short payment of Rs.6.90. The case was fought by the insurance

company at various levels, disregarding that it involved an element also of humanitarian consideration which needed to be kept in view in settling the claim.

There are undoubtedly occasions when the insurance organisations come in for adverse criticism even though they might be within their rights to contest the claim. The case of insurance of a tobacco godown is symbolic. Insurance had been taken against fire; the goods comprised raw stocks of dried tobacco of a cigarette company. The goods got severely ruined by a fire, but when the claim was submitted the contention put forth on behalf of insurance company was that there had been no external fire; there were no flames; the goods had been ruined by the internal combustion resulting from atmospheric heat. There are instances where internal combustion causing damage is not taken as fire for purpose of insurance, and it is claimed that the demand in this case was rightly repudiated. Likewise, there was the case of a young man who paid premium for his life insurance by cheque on a particular day. He met with a motorcycle accident on the following day and died three days later. When his father later fought the insurance claim some doubts were entertained about the signature on the cheque and the signature on policy application form being of the young man; the claim was repudiated, and the appeal against repudiation was dismissed.

Insurance business in India obviously has potential of enormous further expansion. A stage has come when the entire spectrum of insurance coverage, quality of service, customer satisfaction, and cost effectiveness has been scrutinised very competently and effectively by a high level committee for determining how this entire structure needs to be recast, bringing about competition, including the scope of privatisation and possible entry of international players. The most important consideration before this committee, as well as before the nation, is how this important sector can be made more competent for serving the interests of larger number of people while maintaining its profitability in the interest of the country.

There is indication now that major recommendations of this Committee for restructuring the insurance business have been accepted. The country now awaits implementation of these recommendations.

FAILURE ON FUNDAMENTALS

Government machinery in the country has fallen short of the requirements and expectations on a large number of fronts. But, out of the fundamentals the failure on the front of primary education has been a most serious failure.

The country had committed, through its Constitution, to ensure provision of compulsory and free education of all children, within a period of ten years from the commencement of the Constitution. The Constitution commenced in November 1949. Its Article 45 said: "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education of all children until they complete the age of fourteen years."

That period of ten years expired long ago. By now nearly 45 years have passed since the Constitution commenced, four times the period contemplated. We are practically where we were; very far from the attaintment of this target.

Many a policy statement, and many Resolutions and decisions, stressing the necessity and desirability of laying emphasis on this objective, have been pronounced. There was the National Policy for the Child, adopted in 1974. There was pronouncement of the National Education Policy for the Child.

There has been recognition of the Rights of the Child. There has been the endorsement of the United Nations Convention on this important subject.

These Policy Statements, Resolutions and Decisions have come and gone. They made some little headline, and formed material for some editorial comments and columns. But, the situation has remained far from the attainment of the objective; in fact, a matter of serious concern for the future of the country itself.

Let us look at some of the facts. These concretise the failures on this entire front. These failures are attributed by the central government to the state governments; vice versa there are protests that the centre has not extended the requisite assistance. Between the accusations and counter accusations the target has fallen through and is crying to be picked up.

Of all the children of the age group 6 to 14, male and female, only about 40 percent attend schools. Only 55 percent of the children complete five years of the primary education. Large number of children drop out of schools; they add every year to the millions of illiterates of the country. Even among those who complete schooling the majority leave schools with unsatisfactory levels of learning and achievement. Many children do not attain even basic reading and numerary skills. Position of the female children in the matter of primary education is much worse. Position of children of scheduled castes and scheduled tribes is even further worse. Drop-out rate is as much as 68 percent in the case of children of scheduled castes and upto 79 percent for children of scheduled tribes. Drop out of girls is much higher than of boys. Education of girls presents a really grim picture. In the age group of 6 to 14 years, over five crore children, out of total of 15 crores, are out of schools.

Inadequate facilities, lack of basic learning material, poorly trained and unmotivated teachers, as well as poor management and supervision of the schooling system are the root causes of poor performance of primary education. In theory the existence of 5.5 lakhs primary schools and 1.8 million teachers is claimed to provide access to over 90 percent of the child population within a distance of one kilometer of their place of residence, but the overall figures do not reveal the correct picture. Many schools are too small to accommodate the enrolled children; 44 percent of the school buildings either do not exist or are kacha structure; 53 percent schools do not have drinking water; 85 percent of these do not have toilets; 67 percent have no playgrounds; many small and isolated habitations remain unserved; children of the poor and scheduled castes and tribes face problems of access due to prevailing attitudes.

These facts are shocking. These should be a matter of serious concern to everybody: to politicians, policy makers, administrators, educationists, and all the people. Education, beginning with primary education, is the bedrock of development and well being of the country, of all the progress, of nation building and of future. On the education of the child, and on the emphasis on education of the girl child, depends to a very large extent the future of population control, of programmes of family welfare, and of health programmes. Education alone can open up avenues and further expansion of employment opportunities; education of the children alone can prevent exploitation of child labour, education alone can enable proper dissemination of information on various aspects of health. On all these fronts, therefore, there has been inevitable failure arising from the failure to stimulate and provide education and to universalise primary education in particular. This has spelt failure of the body politic of the country.

Question inevitably arises: why have we failed, and, where have we failed? Subject of education is the responsibility both of the centre as well as of the states. Responsibility of the failure cannot be passed on by one to the other. Seventh schedule of our Constitution lays down the areas of responsibility of the centre and the states. List III of the seventh schedule prescribes the subjects

which are the concurrent responsibility of both the centre and the states. Item 25 of this concurrent list provides that "education' is the joint responsibility of the centre and the states. The responsibility for this failure has thus to be shouldered by the centre and also the states and union territories. It was the responsibility of all to ensure that the requisite funds, the manpower required for the purpose, the infrastructure required for attaining the objective, and the atmosphere and motivation necessary for success of programmes, are provided and generated.

A point of law needs to be considered here. Article 45 of the Constitution has been quoted above. This Article features in the Chapter which spells out "Directive Principles". This Chapter is separate and distinct from the preceding chapter which spells out the "Fundamental Rights" enshrined in the Constitution. Shelter can be taken by the concerned authorities that Directive Principles are only indicative of what needs to be attained; these do not impose an inescapable obligation on the government to attain the objective, even though it has been laid down in the relevant articles, the target has been specified in unmistakable terms, and the period has been also specified for its attainment. It can be further argued that the Article at most places an obligation on the government to "endeavour to" attain this target.

These legal niceties are a part of our system. One cannot disregard them. But, in regard to the obligation imposed by Article 45 of the Constitution a very important decision has been pronounced recently by the Supreme Court. This has come about in the case known as Unnikrishnan & Others versus State of Andhra Pradesh. In this judgement the Supreme Court has prescribed that although free and compulsory education for all children does not appear in the chapter of "Fundamental Rights" this obligation has to be construed as a fundamental right because, the Supreme Court has pronounced, the two chapters, of Directive Principles and of Fundamental Rights, are complimentary to each other and the objectives spelt out as Fundamental Rights are only a means to achieve the goals which have been prescribed as Directive Principles.

This important pronouncement of the Supreme Court has opened up a new avenue for pressurising the government to direct its energies to attain the specified goals. Taking this cue we, from the platform of public interest organisation "COMMON CAUSE", filed a Writ Petition in the Supreme Court seeking a direction to the government to spell out and indicate in detail the financial resources and other requirements of manpower and infra-structural facilities which will be utilised for attaining the goal of universal free and compulsory education for children upto the age of fourteen years, latest by the end of 1999 i.e. five years from now, taking into account the fact that the government has failed to achieve this objective during the period which was originally prescribed in the Constitution. In the Writ Petition the Government of India as well as all the State Governments and Union Territories were impleaded. The Supreme Court decided that at the present stage the Government of India submit a status paper, indicating what steps have so far been taken in regard to provision of free and compulsory education for the children of this age group. When the case came up again the Supreme Court, taking account of the status paper of the Government, considered it unnecessary to further pursue it and we felt it appropriate to withdraw it at this stage.

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.

OUR GRATEFUL THANKS

We have now the privilege of receiving assistance from the well known Friedrich-Naumann-Stiftung of the Federal Republic of Germany, the Foundation which is supporting various projects and activities connected inter alia with consumer awareness, entrepreneurship development, economic and civic education, environment protection, legal services, income generation and rural development. The Foundation is named after the known socio-liberal statesman Friedrich Naumann and works towards his ideals and the vision of Liberal society. In India the Foundation operates from USO House, 6, Special Institutional Area, New Delhi-110067

A large number of public causes of importance have been taken up from the platform of COMMON CAUSE redressal. Quite a few writ petitions have been filed in the Supreme Court. These include, for instance, disruption of the work of courts by lawyers' strikes, problem of accumulated backlog of cases in courts all over the country, malfunctioning of blood banks and the requirement of appropriate collection and testing of blood for transfusion purposes, challenging the pensions being given to Members of Parliament, inadequacies in the implementation of Consumer Protection Act, and failure of the government machinery in fulfilling the constitutional requirements of spreading free and compulsory education for the children in the country. Likewise, a number of issues of public importance have been taken to the Delhi High Court. These include the problems of conversion of leasehold properties to freehold, non-implementation of Apartments Ownership Act, problems connected with building bye-laws and unauthorised constructions which have widely proliferated, and such like. A Writ Petition filed against Delhi Electricity Supply Undertaking resulted in a beneficial verdict relating to bills based on defective meters. From time to time matters have been taken up for straightening out problems related to income tax, wealth tax, gift tax, capital gains tax, for avoidance of aberrations, discriminations and harassments.

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 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, inclusive of all local 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 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 observance of the orders for supply and sale of iodized salt.

In taking up the case of consumers the organisation was able to secure orders from the Supreme Court for expeditious establishment of the redressal machinery under the Consumer Protection Act in all districts of the country. Contacts and relationships of organisations of consumers all over the country continue to be maintained.

Membership of the organisation is open to all. Membership fee presently is Rs.50 for annual membership for individuals, Rs.250 for life membership for individuals, Rs.200 for annual membership for associations and organisations. The periodical COMMON CAUSE is published by the organisation. It is brought out quarterly. It has no separate subscription. Donations to COMMON CAUSE are eligible for special exemption available under the Income Tax Act.

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