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COMMON CAUSE

VOICE OF "COMMON CAUSE"

OUR JUDICIAL SYSTEM

Our judicial system has got warped and is in disarray. There are atrocious delays in the provision of justice. These types of delays do not perhaps occur anywhere else in the world. Civil cases drag on for two decades and more; criminal cases take years, sometimes many; persons accused of offences in criminal cases languish in jails, sometimes even beyond the period of maximum punishment provided in relation to the concerned offence; jails are over-crowded to an extent that adds great blemish to the entire system.

Delays in cases of courts are in fact making mockery of the judicial system. There is report of a civil case at Delhi instituted 14 years ago which has so far had 45 hearings but the evidence of plaintiff has not yet been recorded. There is similar report of a criminal case which was filed long ago; an interim submission was made to the High Court by the other party and stay order got issued; since then, in the last 13 years the case has not come up for hearing before the High Court; some of the persons involved in the case have since passed away. There was recent news item that accused in a criminal case was discharged by a Delhi Court after 33 years. The same Court discharged another set of accused in a case which had dragged on for 30 years. In discharging the accused in latter case the Court passed strictures against the prosecution. The case property, a small item of gold, had been disposed of by the prosecution in a public auction, yet the case kept hanging as the prosecution had indicated that the case property would be produced in evidence. There would be numerous civil cases in various courts of the country which have been pending for 30 years and more. One calculation is that if no new cases are admitted it will take 350 years merely to clear the present backlog.

★ Everybody is eligible to take membership of COMMON CAUSE. No form is required. Merely send your name and complete address, preferably written in CAPITAL LETTERS. Send it to our new address: COMMON CAUSE, Common Cause House, 5, Institutional Area, Nelson Mandela Road, Vasant Kunj, NEW DELHI 110070. We are ever so grateful to Mr. Vikram Lal, of Eicher Tractors for having enabled construction of COMMON CAUSE HOUSE.

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From COMMON CAUSE we had filed a Writ Petition in the Supreme Court on the matter of pending criminal cases. Various specific suggestions had been given that where cases under specific sections of the law had been pending for periods comparable to the maximum sentence provided in the law, the accused should be discharged and the cases closed. Very strict orders were given by the Supreme Court covering a wide range of offences; these orders have had a very satisfying result. Hundreds of cases have been closed and the accused discharged.

Above facts are very disturbing. From COMMON CAUSE we have highlighted these and also brought out certain facts in two articles in the Times of India. Attention has particularly been drawn to a very important judgement recently given by the Allahabad High Court. The judgement takes note of the fact that in the courts of U.P. there are 9.25 lakh cases presently pending. Out of these about 3 lakh are one to three years old, 2.5 lakh are three to ten years old, about 60,000 cases are over ten years old. Detailed and very strict orders have been given by the Allahabad High Court to all its subordinate courts that they should categorise the pending cases in separate groups according to duration of

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pendency. Labels of different colours, Red, Green and Yellow, should be affixed on each of the cases on the basis of duration of pendency. The High Court has issued directions to the State Government to provide File Covers of the prescribed three colours to all subordinate Courts for putting the respective files in them. Each Court has been directed to give top priority to the category of Red cases and appeals which are more than three years old. These are to be followed by the cases in Green and Yellow colours. Prevalent cases will be considered those which are less than one year old and appeals which are not more than six months old.

Strict instructions have also been issued by Allahabad High Court to all subordinate Courts in regard to the full observance of court hours and also in relation to holidays. It has been ordered that judicial time should not be lost in doing any other work or by closure of courts to enable lawyers to attend condolence meetings. General mandamus has been issued that if on any occasion lawyers go on strike, the judicial officers must, despite the strike, sit in the courts and pass orders on cases before them even in the absence of counsel.

The Allahabad High Court has taken the initiative of highlighting the provisions of order XVII, rule I, of Civil Procedure Code which clearly lays down that when hearing of a suit has commenced it shall be continued from day to day until all witnesses have been examined, unless the Court finds that for any exceptional reasons, which must be recorded, the adjournment of hearing beyond the following day is necessary. It is provided in the Rule that no adjournment shall be granted on the request of a party except where the circumstances are beyond the control of the party; the mere fact that pleader of a party is engaged in another Court, shall not be the ground for adjournment; where illness of a pleader or his inability to conduct case for any reasons is put forward as the ground for adjournment, the Court shall not grant the adjournment unless it is fully satisfied that the party applying for adjournment could not have engaged another pleader in time.

In the Criminal Procedure Code, under Section 309(1) similar provisions have clearly been made. It has been laid down that when examination of witnesses in a case has begun, it shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds adjournment beyond the following day to be necessary for reasons to be recorded.

While issuing these orders the Allahabad High Court prescribed that any judicial officer who delays disposal of cases, did not sit in the Court in time, or rise before closing time, and where any suit, trial or other case takes more than two years, or any appeal takes more than one year, an adverse entry shall be made in the record of the judicial officer.

From COMMON CAUSE we brought this judgement of Allahabad High Court and its directions to the notice of Chief Justices of all High Courts in the country requesting them to see what action can be initiated by them for issuing similar directions to their subordinate judiciary, highlighting the fact that action on these lines by the subordinate courts can prove a great boon for expediting the judicial processes in the country and lifting the judiciary out of the morass it is facing.

Accumulation of cases in the courts has become a major problem. In particular there is general tendency of government functionaries to file appeals in practically all cases wherein decisions go against the prosecution in criminal cases and the government Departments in civil cases. This is obviously done to avoid criticism of the dealing officials for not taking appropriate action. Almost 1/3rd of the total number of cases presently pending in the courts of the country are stated to be appeals submitted by government functionaries. This tendency needs to be very effectively curbed. Within the government, in the Centre and at the level of States, this matter needs to be considered in detail. It is suggested that the procedure should be established that whenever any court's decision has to be considered for filing appeal, the decision should invariably be taken at the level of two senior officers who must record reasons as to why the appeal was necessary. They must thereby assume the responsibility for filing of an appeal, and the existing process of filing the appeals in normal routine must be eliminated.

Another connected matter is that of the basic requirement of simplifying the laws, repealing the out-dated and antiquated laws, and reshape the rules, regulations and procedures which in their variety get reflected in the courts in relation to civil and criminal cases. The matter has been placed squarely in the hands of the government by a commission which was recently set up for examining administrative laws and to make the recommendations about modification of the laws where needed. There is primary need of updating the basic laws which govern the functioning of courts, namely, Indian Penal Code, Civil Procedure Code, Criminal Procedure Code and Indian Evidence Act. It is very unfortunate indeed that these Acts have not been reoriented for meeting the present requirements. It needs to be noted

in this connection that the Indian Penal Code is of 1860; Indian Evidence Act is of 1872; Civil Procedure Code is of 1908, and the Criminal Procedure Code was amended in 1973. Amendments have been made in these Acts from time to time, but the matter needs to be considered in totality for determining as to how these basic laws relating to functioning of courts have to be brought up-to-date.

In the functioning of our judicial system there is also great need of larger spread and greater utilisation of the medium of arbitration and mediation. Concept of the functioning of Lok Adalats needs to be spread very widely in all the districts and also in talukas and tehsils. Legal Authorities and Services Act was enacted more than ten years ago; it has remained practically moribund. Arising from a direction given by the Supreme Court on a Writ Petition of COMMON CAUSE the Act was last year notified for implementation. There is great need of spreading the Lok Adalats at every possible level. Provision exists in the Act that where parties to a pending case agree to refer the dispute to a Lok Adalat it has to be sent there. In the Lok Adalat the atmosphere is conducive to bring about settlement of the dispute. Wide use of Lok Adalats will be of great benefit to the country in relation to the functioning of judicial system.

Still another measure which needs to be introduced on a large scale in the country is the system of Honorary Magistrates. During the British time the system of the Honorary Magistrates functioned satisfactorily. In England even now the system of Honorary Magistrates is doing a very important job. They are known as Lay Magistrates. Nearly 95% of the criminal cases of minor offences are dealt with by them. There is no reason why this system of Honorary Magistrates cannot operate widely in India. Initially, it can be set up in the main cities of the country. Honorary Magistrates should be selected by the High Court in consultation with the Session Judge and the District Magistrate. Each Honorary Magistrate should be provided a judicial clerk and a typist. Only out-of-pocket expenses may be paid to the Honorary Magistrates and they should be required to hold courts three days in the week. Likewise, Arbitrators for settling small claims can be appointed with prescription of an appropriate level of monetary limits of cases to be settled by them. Simplified procedures before the Arbitrators need to be prescribed. People going before an Arbitrator should have the right to be accompanied in the court by a non-lawyer friend and Advisor.

Taking account of all these various problems of the functioning of our judicial system it is very heartening that the present Prime Minister has spelt out a strategy for judicial reforms besides establishing a National Judicial Commission for appointment of judges to the Supreme Court and High Courts. Expressing great concern over the functioning of criminal justice system he, in a recent statement, stressed the need for an alternative dispute settlement machinery at all levels of the judiciary. He has also expressed that there is need to scrap or drastically simplify the several outdated laws particularly the Civil and Criminal Procedure Codes and the Evidence Act, for removing delays and for making the ordinary litigant understand the processes of justice. In the statement he has also strongly advocated the establishment of a check on casual litigation by the government and to curb the strong appetite of our government Departments and the lawyers representing them for casual litigation which inevitably wastes government money.

The matter relating to judicial delays has also been highlighted in a statement recently made by the Chief Justice of India. He has cited the case of one accused who is reported to have continued to be in jail for as long as 37 years and also of a boy who was beaten up by his employer for stealing three "cigarette packets" from his shop and then handed over to the police. The boy is reported to have been detained in custody for a long time on the ground that there was nobody to bail him out. Still another case mentioned by him relates to some under-trial prisoner who was arrested for gambling in public; the total amount recovered from them by the police was one rupee and ten paise. The Chief Justice of India has expressed deep anguish at the lack of requisite action in regard to the expeditious trial of the persons who are lodged in jails.

On these various problems of backlog of cases in the courts and the vitiation of the processes of justice and functioning of courts we also reproduce some recent news items, an editorial in the Indian Express and an article of Mr. Atul M. Setalvad which has appeared in the Hindustan Times, as well as a write-up by Mr. Swaminathan A. Aiyar in the Times of India.

We feel strongly about this matter. We suggest that our readers should write to the Chief Justices of their States and also to Mr. Ram Jethmalani, Minister of Law and Justice, Government of India. If necessary, they should send to them photo-copies of the present write-up and accompanying reproduction of the newspapers reports and features. They should request the Chief Justices and the Law Minister to take concrete steps to reduce the backlog of cases and to expedite the processes of justice. Public voice must rise loudly on this very important issue. We earnestly hope that members of COMMON CAUSE who read this Periodical, will kindly take this initiatives.

Editorial in Indian Express

Justice in tatters

JUDICIAL REFORM CALLS FOR CONCERNED ACTION

The prime minister has been unusually outspoken in his criticism of delays in the judicial system and rightly so. Justice is jammed in the works. A monstrous number of cases is pending in courts around the country. One calculation is that if no new cases are admitted it would take about 350 years merely to clear the backlog. It is high time the consequences for society were recognised. The system has broken down for millions of ordinary people who have to wait sometimes as long as 20 years for a verdict. Nor are the demands of growing and increasingly complex economy served well. Things have got to such a pass that criminals manage to manipulate the system to their advantage and the dishonest see the courts as allies. So the prime minister should be forgiven for choosing the 50th anniversary celebrations of the Supreme Court to say delays in the judicial system "justly invite contempt and derision". As harsh as that sounds it is, sadly, true. People from all walks of life are bound to lose respect for a justice system that does not work for them. One has only to go to the corridors of any court in the country to get confirmation.

Shock tactics are necessary in this cynical age but everything the prime minister said could end up as mere denigration of the system unless constructive efforts are made to mend the system. This must involve the judiciary and political executive working in tandem to reform it. But that can hardly happen if egos and turf battles get in the way. The remedies are well known: many more suitable judges will have to be found and appointed at all levels; salaries and perks especially of the subordinate judiciary should be substantially upgraded; new rules and guidelines should be drawn up to deter government departments from overloading the courts with minor problems or because bureaucrats want to avoid taking decisions.

The new Union Law Minister has promised action on all these fronts and it is time to go ahead. So why is the government talking about setting up a judicial reforms commission at this stage. A commission would be useful for overhauling procedures and evolving new dispute resolution mechanisms (arbitration, plea bargaining, out-of-court settlement procedures). However, it seems the Centre is determined to impose a code of conduct on the judiciary and the JRC may serve the purpose. This is quite inexplicable and confrontationist when a nine-member bench of the Supreme Court has already drawn up a detailed code of conduct for the judiciary. If for any reason Ram Jethmalani has reservations about that code, surely it should be discussed in a cooperative spirit and solutions found. What is holding up new judicial appointments to fill the huge number of vacancies in courts? To set up a JRC (a five to ten year process) to settle these issues suggests the judiciary and the political executive still do not see eye to eye on the basic remedies. Gridlock threatens all over again. That must not be allowed to happen. Having said what was necessary Atal Behari Vajpayee should ensure his government plays a constructive role in the judicial reform process.

Accused discharged after 33-year trial

Refusing to give any more chance to the prosecution to bring evidence against some people accused of smuggling, a city court has discharged them in a trial that dragged on for 33 years.

Only about a fortnight ago, the same court of additional chief metropolitan magistrate Sangita Dhingra Sehgal discharged another set of accused who were facing trial for more than 30 years in a similar case.

In the latest case, of the 52 men booked by the customs department on October 28, 1963, only six were left at the fag-end of the protracted case, which was ended by the ACMM's order this Wednesday.

The judge also granted permanent exemption to 85 year old accused Karnail Singh who pleaded he should be spared from attending court dates as he is too old.

Dismissing the prosecution plea for another date, the ACMM said: "No trial can be allowed to prolong indefinitely due to the lethargy of the prosecution agency ... even if the accused are not in prison they would be suffering from immense mental agony as if a dagger is hanging over their heads." In an almost 33 year long trial, two accused died, 14 who were foreign nationals evaded trial and 15 were discharged before the charges were framed in 1984.

The prosecution had listed as many as 110 witnesses in the beginning but only one witness appeared in 1989. For the next 10 years, the matter came up in court only to be adjourned for another date as the case property (the seized gold) could not be produced by the prosecution. "The case property has already been disposed of ... the case kept on hanging as the prosecution (says it) might be able to produce the case property," the judge noted.

The same court in a similar case on November 19, discharged 12 accused for want of any incriminating evidence. They were among the 43 booked in 1964 by the customs for smuggling gold from Pakistan.

In a trial spanning four decades 13 accused died and those who were Pakistani and Afghan nationals, were deported.

Only 17 of the accused were sent up for trial. Five of them died during the stage of examination of witnesses. Of the surviving 12, four sought and were granted exemption from personal appearance.

Year later, courts for petty offences not in sight

It is almost a year since the Delhi High Court issued notices to set up special courts for trying petty offences. However, there are no signs of these special courts. Only communiques have been exchanged.

Except for appointing 22 judges, laying the guidelines and submitting figures of petty offences in various districts, the state government has not made any progress so far. The appointments have been made only for special courts to try traffic challans.

It was decided that heinous offences would continue to be tried in the magistrate courts and subsequently in the sessions court. But for petty offences - causing hurt, wrongfully confining a person for three days, dishonest misappropriation of property, cheating, fraudulent removal, prevention or execution of deed and use of false trade marks - special courts would be set up.

All offences punishable up to two years' imprisonment also have to be tried by special courts. Guidelines for selecting judicial officers for the courts have also been laid.

According to the notification, the officer must have either exercised his powers as an SDM for more than one year or as an executive magistrate for not less than three years.

The candidate should have held a post of superintendent for three years or a gazetted post for not less than five years.

Crowding out justice

Swamynathan A. Aiyer *(in Times of India)*

I argued a few weeks ago that the top priority of the government should be judicial and administrative reforms rather than economic ones.

If the judicial system is so slow, costly and inaccessible that citizens cannot exercise these rights, then we will have neither liberal politics nor markets – only those with money, muscle and influence will prosper.

Economic reforms cannot succeed beyond a point unless we have judicial reforms too.

Judicial delays in India are so great that ordinary folk avoid courts if at all possible. So instead of being a means of redressing grievances, the courts have become a means for crooks to evade justice.

According to Prof. Bibek Debroy, who headed a project on legal reform, the total backlog of court cases is 30 million. On an average, it takes 20 years for a dispute to be resolved.

Three liquidation cases in the Calcutta High Court remained pending for more than 50 years. And India can boast the longest legal dispute in history – a land dispute in Maharashtra lasted 650 years! If no new cases at all are registered, says Debroy, the courts will take 324 years to dispose of the backlog at the current rate of clearance. That sums up the enormity of the problem.

Why are delays getting from bad to worse? There are several reasons, including insufficient courts and absurd procedures.

Yet arguably the most important single cause of delay lies elsewhere, escaping public attention even as it erodes the whole foundation of justice. This is the emergence of the government itself as the biggest litigant by far, swamping all the courts and leaving no space for ordinary folk.

According to a paper by Mohan G. Gopal, visiting professor at Georgetown University, the government is involved in no less than 60 percent of all civil suits appeals. Now, criminal cases obviously have to be prosecuted by the government. But civil disputes are supposed to be mainly disputes between private parties.

In India, the government dominates civil cases too because of the enormous web of laws and controls devised in the hey-day of socialism. Those affected constantly contest what they regarded as unfair applications of rules.

Yet governments in some other countries also have extensive rules and controls without suffering the total paralysis we witness in India. A special feature of India is that the government appeals against almost every adverse decision, even those of its own administrative tribunals.,

In no other country does the government appeal everything. The Indian government's success rate in appeals is just 5 to 6 per cent. This is probably the lowest success rate in the world. Most government appeals are frivolous.

Every official appeals automatically to avoid any possible accusations of corruption. Corruption is so endemic in India that accusations which would be dismissed as absurd in other countries are readily believed in India – can mean long and unending inquiries – and so jeopardise the future of an official. So officials find it safer to appeal every decision, regardless of the merits of the case.

This is why the higher courts are clogged with government appeals. These now take up so much of court time that there is simply not enough judicial space for the commercial disputes, which in other countries constitute the heart of civil litigation.

The government has taken over most of the judicial space in the country, leaving grossly insufficient space for ordinary folk.

The government takes up so much legal space that the availability and cost of justice has gone up greatly for everybody else. We have not only a fiscal deficit, but a judicial deficit, both a consequence of crowding out by governments.

Judicial and administrative reforms must address this judicial deficit. For starters, officials must be held accountable. Today they suffer no penalties for frivolous appeals or frivolous assessments.

A key reform will be to specify in their annual confidential report the success rate of their appeals or assessments.

Poor success rates should automatically mean less promotion. This alone will reduce inflated assessments and frivolous appeals. This alone will then reduce the judicial deficit and judicial crowding out.

Article in Hindustan Times

Legal system under strain

ATUL M. SETALVAD

The very core of a civil society and the rule of law is the provision of justice; this must mean that a decision or a verdict is delivered reasonably promptly. Justice is denied if a suspected criminal waits for a trial for 10 years; it is unfair to him as he may well be innocent, and the victim of the crime will not be satisfied if there is no punishment of the criminal for so long. Similarly, in civil cases, a delay in a decision for long virtually amounts to denying the claim altogether. The claimant may not even be alive when the defendant is ordered to pay, and the amount decreed is likely to be worth much less. The saying, justice delayed is justice denied, is trite but nevertheless expresses a profound truth.

In India today, criminal trials take five to 10 years to conclude, and civil suits are finally decided at times after 20 or 25 years. This is an intolerable situation. Though we inherited from the British a fine system of laws, the court system was creaking even then, with considerable delays; 50 years of independence has only made the situation much much worse. In the 1950s and 1960s, writ petitions in the Bombay High Court were heard in a year or two; today they are rarely heard for five to 10 years! The situation is no better elsewhere, and is much worse in some High Courts.

To take only one example. After the notorious security scam of the early 1990's, Parliament enacted a special law designed with the sole purpose of ensuring a speedy trial of offenders. For this purpose, a special court consisting of a High Court judge was set up. Yet it took seven years for the first conviction of Harshad Mehta, and it will be a year or two more before the issue is finally concluded in the Supreme Court. If this is the time taken to hold a trial under a special law, it is easy to imagine the time an ordinary criminal trial takes.

The plight of undertrials languishing in jail for years without a trial became so unbearable that the Supreme Court stepped in with directions that those not accused of very serious crimes must be released on bail after some time, and must be discharged if the period they have served in jail exceeded the maximum sentence they would have had to suffer even if they had been convicted. The orders of the Supreme Court were eminently fair and reasonable but they reveal a situation which is grotesque and a negation of the first principle for the rule of law: a man, who may well be innocent, stays in jail without even being tried for the period he would have served had he been guilty.

Why has this happened and what have we done about it? The problem has not been altogether ignored by the government. They have, first, done the usual. They have appointed several commissions

and committees to submit reports. After the reports come, usually after several years, many of the recommendations are not implemented, particularly those which involve spending substantial sums of money. In some cases, laws have been amended, an example being the extensive amendment of the civil procedure code. A very useful amendment made as far back as 1966 was to provide that no proceedings must be adjourned to suit the advocates. This salutary amendment is being ignored in every court every day ever since.

One "solution" adopted has been to set up a whole range of specialised tribunals. We have tribunals having exclusive jurisdiction in labour disputes, taxation matters, revenue matters, matters relating to cooperative societies, consumer disputes, bank claims, and so on. The justification for setting up such tribunals has been to ensure that judges or members would have, or soon acquire, special knowledge in the field, and that this will result in a speedy disposal. The hope of a speedy disposal has not been fulfilled as most of the specialist tribunals also have a long list of cases awaiting disposal.

Specialist tribunals are popular with politicians and bureaucrats mainly as they have freedom to select its members unlike the personnel of the regular judiciary who are appointed by the Public Service Commission and the High Courts. Judicial independence has certainly suffered. Further, there are many occasions when the members of such specialist bodies come late or rise early as they are free of the discipline of the regular courts. The quality of the personnel appointed to such bodies also leaves much to be desired with the result that the regular courts have to deal with their decisions in ever-increasing numbers either by way of writ petitions or appeals.

Quixotic experiments such as *nyaya panchayats* have also been tried, at times with much fanfare and publicity. Some disputes do get settled by such bodies but they are numerically insignificant. Gross delays in the disposal of cases actually adds to the workload of the courts, at least in civil cases. A person who has defaulted in repaying his loan to a bank has, he knows perfectly well, virtually no defence. This is equally true in quite a few other cases. If a suit was expected to be disposed of in a few months, few defendants in such cases would defend the claim at all, and pay straight away; no suit need be filed at all. There are many suits, perhaps as many as half the total number filed where there is no real defence, and the suit is defended only because the defendant is banking on getting 10 to 15 years to pay. The very number of suits being filed would significantly diminish if suits could be heard and decided in, say, a year or two.

Again, if suits were to be finally decided in a year or two, interlocutory proceedings, would have little importance. Today they are of vital significance as the arrangement ordered as an interim measure is expected to last for 10 years or more. So an enormous amount of time and labour is expended in claiming, and resisting, interlocutory reliefs, and appeals are common, even at times to the Supreme Court. In many courts one-third of all judicial time is spent on interlocutory proceedings.

We do not need more commissions to tell us what to do. We do not also need a revision of the laws. One solution is obvious and simple to achieve if there is a will. We need more and better judges, and need to furnish them with satisfactory working conditions. The number of judges in the Bombay High Court has gone up about three or four fold since 1947. During the time, the country has grown in every respect: the area under the jurisdiction of the High Court has increased; the population has increased; trade and industry has increased enormously; the State has ceased to be a *laissez faire* state, and numerous laws have been enacted to ensure social justice; the volume of work in the courts has increased phenomenally, at least tenfold, perhaps twice that figure, if one includes, as one ought to, new types of cases. The increased number of judges is hopelessly insufficient.

Apart from the number, which is very important, there is the question of the calibre of he judges. A judge must not only be of impeccable character but must also be intellectually at least as good as the bulk of the bar. If he is weak, he tends to be different, and is wholly unable to control the advocates. Enormous judicial time is wasted by over-prolix and repetitive arguments which many advocates indulge in. Only a

self-confident judge can curb this. Again, only a strong judge can curb the endless adjournment applications which can be seen every single day in our courts.

It is, essentially, a question of priorities. Legislators and ministers who are profligate in voting themselves funds do not seem to realise that the country and its people deserve a better system of administering justice. They also fail to realise that any government which does something to ensure that courts work, and work reasonably fast, will earn the gratitude and plaudits of the people. It is also a question of perspective. It is absurd for a country which can spend thousands of crores on atomic bombs and missiles, and hundreds of crores on stadiums and flyovers, to say that it cannot afford the relatively smaller sums required to have a proper system of courts.

We now have a government with a reasonably stable majority; we have in the Cabinet a Minister of Law who is an eminent lawyer with vast experience on the subject. Is it too much to hope that he will act and persuade his colleagues to do what has to be done to provide justice to our people?

After she had been searching for a job for several weeks, he noticed a help-wanted ad in local newspaper that seemed suited to her needs. "That sounds great!" she exclaimed as he read about the qualifications and benefits stated in the ad. "What does it pay?"

"Salary commensurate with ability", he replied.

Panic stricken, she gasped, "I can't live on that!"

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After giving a woman a full medical examination, the doctor explained the prescription as he wrote it out. "Take the green pill with a glass of water when you get up. Take the blue pill with a glass of water after lunch. Then just before going to bed, take the red pill with another glass of water".

"Exactly what is my problem, Doctor?" the woman asked.

"You're not drinking enough water."

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Sandy: My boyfriend is at the Medical School.

Mandy: Oh, is he studying to be a doctor?

Sandy: No, the doctors are studying him.

• • •

Father: When I was your age, I could name all the Prime Ministers we've ever had.

Son: Yes, but when you were my age, there had only been about half as many.

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In a maths class, the teacher asked the students to: "Multiply the height of the Eiffel Tower by that of the Taj Mahal. Substract the result from the height of the Statue of Liberty and then divide it by the depth of our school's swimming pool. The resulting figure will indicate exactly what my age is".

After a moment, a student stood up and said: "It's 60, Sir".

"Excellent", said the maths teacher. "How did you work it out so quickly?"

"It was easy, the geography teacher is 30 and he is only half crazy".

• • •

A young female job applicant was filling up an employment form in one of New York's larger public relations agencies. She had no trouble with the application until she came across a heading entitled: "Sex", she hesitated. Finally, she answered: "Twice a week".

• • •

A friend asked a lady, "Why have you named your children VC, MC, and ABC? Are you so enamoured of these decorations?" The mother replied, "No, not enamoured at all. The first one is named VC, because he was born out of Virgin's Curiosity. The Second is MC, because of Misplaced Confidence. The last one is because of Absolute Blooody Carelessness!".

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Bachelors should be heavily taxed. It is not fair that some men should be happier than others.

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An archaeologist is the best husband a woman can have; the older she gets the more interested he can be in her.

PROPERTY TAX

NEW METHODOLOGY FOR ASSESSMENT
UNIT AREA METHOD

(Property Tax is the main source of income of municipalities and municipal corporations. Levy of this Tax has for some decades been causing problems in proper assessment, for raising maximum possible revenue and for avoiding leakages. COMMON CAUSE has been very much concerned about this matter and had at a previous stage taken it to the Supreme Court.

This entire matter has now been dealt with at length by the Director of COMMON CAUSE, advocating the introduction of Unit Area Method which will eliminate all difficulties and raise the revenues. The following complete note has been sent to Mr. Jagmohan, Minister of Urban Development and is presently under consideration of the Government of India.

Hundreds of thousands owners of premises in each city are concerned about this matter. We suggest that readers should kindly examine this note and if they agree with the views expressed in it they should write to the Minister, Mr. Jagmohan. This is a matter obviously of great importance).

Property Tax (term now generally used in preference to House Tax) is the major and most important revenue source for Municipal administrations in the country. Various services provided by the Municipality (excluding water supply which is increasingly being charged on metering system) including roads, drainage, sewerage, street lighting etc. are financed primarily from this major revenue source. It is, therefore, of paramount importance that the statutory provisions, procedures of assessment, levy and collection of Property Tax, on land and buildings which lie in the jurisdiction of Municipality, should receive special importance of State Governments and Municipal authorities for removing any shortcomings and effecting improvements.

Anomalies and Discrimination:

Existing system of assessment and levy of Property Tax is based on the determination of "annual rental value". This system was alright fifty years ago when it was introduced, but it is now riddled with shortcomings and inadequacies which lead inevitably to enormous lot of anomalies, discriminations and distortions in the assessments, and which give rise to great lot of grievances, foul play and scope for corruption. During the last few years attempts have been made in half a dozen Municipalities to change the system and their experience of the change has been fully satisfying. This entire matter needs to be brought to the notice of the State Governments, and through them to all Municipalities, for effecting the requisite alterations in the interest of improving and expanding their revenue, leading thereby to improvement of their services and stopping the avenues of corruption involved in it.

The anomalies, absurdities and discrimination become evident when one examines the existing provisions in detail. Largely the existing system consists of the provisions that the Rateable Value (on which the calculation of Property Tax is based) is the "annual rent on which such land or building might reasonably be expected to let from year to year." This is subject to a provision which states that the "annual rent shall not exceed the standard rent prescribed under the "Rent Control Law". "Standard rent" of a building is generally a percentage of "cost of construction of a building and the price of land on the date of commencement of construction."

These provisions worked satisfactorily decades ago when the price of land and the cost of construction were comparatively much smaller and correspondingly the annual rent was within reasonable limits. There were consequently not much variances in rentals and costs. Things have now totally altered. Prices of land, in all urban centres, as well as cost of construction, have escalated beyond measure; cost of construction has also increased manifold. Consequently the application of this formula, connected with annual rent and price of land and cost of construction, has inevitably brought about anomalies and absurdities which are taken advantage of by the unscrupulous elements among the assessees, in collusion with the concerned Municipal staff.

Some examples will illustrate these facts. Take two neighbouring similar houses, on similar sized plots of, say, 500 sq.mtrs., one of which was constructed thirty years ago and the other was constructed this year. Both have same dimension and same sized rooms and accommodation. Price of land paid thirty years ago for 500 sq.mtrs., was only Rs. 10,000/- at Rs. 20/- per sq.mtr., which was then the reasonable price. The price now is Rs. 10,000/- per sq.mtr., and the owner of new house has thus spent Rs. 50.00 lakhs for the plot. The cost of construction previously was, say, Rs. 1.00 lakh, now that house will cost at least Rs.10.00 lakhs to construct. The "price of land and cost of construction" was thus Rs. 1.1 lakh thirty years ago; for the same sized adjacent house the aggregate cost is now Rs. 60.00 lakhs. The rent, constituting a fraction of the cost, will vastly differ and any calculation based on the "annual rent" will be totally defective. Where the Property Tax is based on such calculation of annual rent, it indisputably opens up avenues for disputes, challenges, and for corruption. Similar would be the case in respect of flats constructed in old and new buildings, and these anomalies extend to buildings used for commercial and industrial purposes etc.

Delhi Bye-Laws on Property Tax:

In as far as Delhi is concerned this problem has become further complicated by another imposition which was imposed five years ago by prescription of certain Bye-laws for assessment of Property Tax. In these Bye-laws provision has inter-alia been made that the Property Tax will be based on "price of purchase". This provision inevitably again involves similar discrimination and anomaly. A flat in a multi-storeyed building, purchased when it was constructed twenty years ago, may have cost only Rs. 1.00 lakh; the same sized neighbouring flat in that building today costs Rs. 20.000 lakhs, and the person who has now purchased it faces a very serious problem in relation to assessment of Property Tax of his flat.

The matter of primary concern in considering these types of anomalies is that such contiguous houses and such contiguous flats are receiving the same quantum of services from the Municipality; same road, same street lighting, same drainage, same sewerage, same sanitary services etc. How can there be any justification for such vast difference in the levy of Property Tax, which is related to the provision of these services by the Municipality? This will necessarily involve serious grievances leading to disputes in courts, and scope for corruption.

These considerations of disparity between assessments of similar properties were very strongly commented upon in the Judgement of three-judges Bench of the Supreme Court in case No. AIR 1985 Supreme Court 339, which had in fact been filed by COMMON CAUSE and in which these anomalies and discriminations had been highlighted in assessment of Property Tax. The relevant portions of that Judgement quoted hereunder are very important in the context of the problem relating to Property Tax provisions, rules, regulations and procedures:

> The annual rent which the owner of the premises may reasonably expect to get if the premises are let out would depend on the size, situation, locality and condition of the premises and the amenities provided therein and all these and other relevant factors would have to be evaluated in determining the rateable value, keeping in mind the upper limit fixed by the standard rent. If this basic principle is borne in mind, it would avoid wide disparity between the rateable value of similar premises situated in the same locality, where some premises are old premises constructed many years ago when the land prices were not high and the cost of construction had not escalated and others are recently constructed premises when the prices of land have gone up almost 40 to 50 times and the cost of construction has gone up almost 3 to 5 times in the last 20 years. The standard rent of the former category of premises on the principles set out in sub-section (1)(A) (2)(b) and (1)(B) (2)(b) of Section 6 would be comparatively low, while in case of latter category of premises the standard rent determinable on the principles would be unduly high. If the standard rent were to be the measure of rateable value there would be huge disparity between the rateable value of old premises and recently constructed premises, though they may be similar and situated in the same or adjacent locality. That would be wholly illogical and irrational.

Property Tax and Municipal Services:

During the last few years considerable effort has been made to lift the provisions of levy of Property Tax

out of the morass in which they are obviously sunk in the context of relationship to "annual rental" and the "cost of construction". It is increasingly being recognised that the Property Tax is linked to the quantum of services of municipality provided in relation property and it must be delinked from the concept of "annual rent" since all these have vastly changed in the past few decades and will remain subject to perpetual change. Accordingly, it is now being considered, practically everywhere in the country, that as the quantum of municipal services is related to the aggregate area of the premises, Property Tax should approximately be related to this factor, the area of premises. Of course, there are certain other relevant and connected factors which have necessarily to be kept in view. Location of the premises is one such factor. Obviously, Property Tax on a building in old and decrepit locality of the city cannot be equated with the Property Tax which can justifiably be levied on a building of the same size in a newly developed colony. Likewise, an old building should not be equated with a new building nor a hutment with a posh construction. Factors which have been found to be thus relevant for fair adjudgement of levy of Property Tax are: location, measurement of the premises, age of the building, road-width on which the building is located or the zone of its location, type of construction (whether this structure is of RCC, corrugated tin/tiles or straw). In addition, another important factor is the use to which the building is put, whether it is residential or is used for commercial purposes or functioning of industrial enterprise. Along with the size of the building it would be relevant to also consider the size of unbuilt area of the building where it is more than the area which is the essential requirement under the Building Bye-laws, because the size of land adjacent to the building has relationship to the quantum of municipal services.

Initiatives in Certain States:

Efforts have been made during the past few years in certain States to deal with this problem. Kerala took the initiative and fixed norms for different locations and different types of structures. It was not considered necessary to take into account age of the building for fixing the letting values but provision was made for variation upto 10 percent upward and downward for making allowance for difference in age. Madras attempted to adopt the method known as Unit Area Method, basing the assessment of Property Tax on the area of the building, besides its location, type of construction and age, but they withdrew the proposal in face of some public criticism that it lacked statutory sanction. West Bengal considered the new scheme but it has not made any further progress in adopting it. Andhra Pradesh and Bihar are the States where Unit Area Method has been introduced and is operating. In each of these cases the objective has been to eliminate the elements of subjectivity and discretion of the municipal assessment staff and base it on factors which were indisputable and measurable. The elements of location of the building, including also its structural characteristics (whether it is RCC or tin/tile or straw), its age, its use (whether residential, commercial or industrial), unbuilt area appurtenant to it, were taken into account, and the assessment was based on the aggregate area of all floors of the building. But, in fact, in these attempts, the ultimate base adopted was the calculation of letting value i.e., the rent which the building would fetch taking into account these various factors. "Annual rental value" which has been the base in all the present legislations of various States, and remains applicable to the municipalities still, therefore, continues to be the criterion for assessment of Property Tax even on Unit Area Method.

Property Tax Rules of Patna Municipal Corporation are often cited as of particular importance in the adoption of Unit Area Method (UAM). These are based on key elements of (a) location (whether on principal Main Road, or Main Road, or on any other road), (b) use (residential, commercial, industrial, partly residential/ commercial/industrial, and others) and (c) type of construction (pucca building with RCC roof, pucca building with asbestos sheet or corrugated sheets roof, others). The factor for calculation of Property Tax in respect of a particular building is the "carpet area" (comprising internal dimensions of the rooms), covered verandah, 50 percent of balcony/corridor; kitchen, store, 25 percent of garage, not taking account of area of bath rooms/ latrines, staircases and portico. Taking various factors into account the "rent which the building is capable of fetching over a period of one year" is determined. It is claimed that these procedures minimise the scope of subjectivity and discretion at the level of the assessment staff. By and large Patna experiment is stated to have been welcomed by the people. It was, however, challenged by some house-owners in the High Court which eventually turned down the new scheme as involving shortcomings and arbitrariness. The matter went to the Supreme Court which held that the system had been well designed and should continue. It is, thus, continuing.

The problem in implementation of this type of Unit Area Method is that it is still linked to rental. The measurement regarding area, modified by the elements of location, type of construction, age, and use, are eventually subjected to the rental unit which is adjudged to be the prevalent rent of the locality. Even though it is being claimed that the elements of subjectivity and discretion have been minimised, it is indisputable that eventually the determination of unit rental or standard rent of the area inevitably involves considerable scope for manipulation and discretion, and this determination cannot be claimed to be rid of the scope of corruption and wrong-doing. Properties of rental value above the average are likely to benefit from this method; the quantum of Property Tax chargeable particularly from owner-occupied premises increases substantially under this method which is consequently resisted; the non-residential properties entertain serious grouse about the substantial increase of the tax.

Unit Area Method:

The Unit Area Method (UAM) in its basic essentials, is obviously the only appropriate method for giving scientific and logical orientation to the levy of the Property Tax which is undoubtedly the most important source of revenue of the municipality, needs to be related to the quantum of services which are being provided to the premises. Bigger buildings have larger frontage and consequently larger use of road surface, more utilisation of street lighting, greater quantum of drainage and sewerage requirements; consequently there is obvious justification for levy of more Property Tax/House Tax on the bigger buildings than on smaller buildings. For enabling the municipality to more effectively serve the people it needs more resources; commercial enterprises and industrial establishments, which add to the requirement of services, need to pay more tax. In totality, thus, there is justification for relating the quantum of Property Tax/House Tax to the quantum of services provided to the premises.

This brings us to the question whether in operating the Unit Area Method, there is any method other than basing the assessment ultimately on standard rent or on unit rental. We feel that the Unit Area Method as presently practised in certain cities needs to be modified. Most important consideration in examining the possibilities is that the method should be simple, it should be transparent and equitable, its aim should be to explore the avenues of raising the municipal revenues without causing any discrimination, anomalies and absurdities which the existing system involves, and it should be such that it is not challengeable on grounds of arbitrariness or other deficiencies.

Factors for UAM Calculation:

Following points are relevant in this context:

(A) The Unit Area Method should not be based on "carpet area" of the building. The determination of "carpet area" will inevitably involve the scope and possibility of manipulations in the measurement of corridors, staircases, kitchen, bath rooms, basement, projections, verandah etc. Therefore, it is appropriate that outer measurement of plinth of the building should be taken as the basis, totalling the outer measurements of respective floors (excluding the projections of sun-shades, balconies and porch) and restricting the "carpet area" only to the measurement of basement. The measurement of the outside plinth area of a building, on each of these floors, will provide no scope for manipulations by assessment staff or assessees and will be easily verifiable.

(B) Specific relevant multipliers should be allocated to the different alternatives of each of the important constituents such as location of premises in the city, importance of the roads on which it is located, type of construction, use of the premises and the size of its built area. Following factors have been worked out in the interest of simplicity of calculation for meeting all contingencies that can be envisaged. The multipliers mentioned hereunder may look somewhat complicated, but in fact they are quite simple to operate. These would easily enable the calculation of Property Tax due on any premises in the area of a municipality:

(a) Location:

For the premises located in old city area, which consists largely of narrow streets and old houses (even though a particular building may have been rebuilt after demolishing the main building), multiplier

considered appropriate is 1/4. For premises and flats constructed during the last five decades, the multiplier should be 1/2. For a developed colony which may normally be placed in the category of "posh are", the multiplier should be 3/4. This factor is given the term F1 for purposes of facility of calculation.

(b) Road-Width:

Width of road is obviously another important factor. For roads/streets less than 15 ft. width, the multiplier determined is 1/4; for width 15 ft. to 30 ft. the multiplier should be 1/2; for road-width 30 ft. to 60 ft. the multiplier should be 3/4; and for road of width more than 60 ft. the multiplier considered appropriate is 1. This factor is F2.

(c) Age of Construction:

Age of construction provides the other factor. For premises more than 50 years old the multiplier proposed is 1/3, for construction between 30 and 50 years the multiplier is 1/2, for premises constructed between 30 and 15 years the multiplier suggested is 3/4, and for premises less than 15 years the multiplier is 1. This factor is F3.

(d) Type of Construction:

For factor of type of construction, the multiplier should be 1/10 for mud-straw structure, for tin/tile roofing 1/5, for ACC structure multiplier should be 1. Further sub-division on the basis of incorporation of any posh constituent in the premises is not necessary. This factor is F4.

(e) Use of Premises:

For use of premises the multiplier should be 1 for residential, 5/4 for commercial use, of shop or office, and 3/2 for industrial establishment. This factor is F5.

(f) Unbuilt Area:

In regard to the extent of unbuilt area attached to the premises, the multiplier should be 1 where the unbuilt area is of size less than built area, 5/4 where built area is 1 to 1-1/2 times of built area, and 3/2 where unbuilt area is more than 1-1/2 times of built area. This factor is F6.

For calculation of Property Tax on any premises in a town the primary requirement would be to ascertain roughly an idea of the total estimate of funds for enabling the concerned municipality to meet the demands of its services. If, for instance, a municipality has 2,00,000 premises on a rough count, it can be estimated that the aggregate area of 2,00,000 premises, on the basis of a rough average 2000 sq.ft. per premises (taking into account all the floors), the aggregate area of all premises will be approximately 40 crore sq.ft. If the estimated aggregate fund required for services of the Municipality is Rs. 400 crore, the Rate of Tax roughly works out to Rs. 10/-. This constitutes the 'R' factor for our consideration of Property tax due on any individual premises.

Property Tax Assessment on UAM:

The calculation of Property Tax for the premises will be: R x (F1 x F2 x F3 x F4 x F5 x F6). In this formula 'R' is the "Rate of Tax" as calculated; the other factors are as explained above. For determining the Property Tax of a particular premises this formula facilitates the calculation. If the house is, say, of total area of 1000 Sq. ft., located in the old portion of the city (multiplier 1/4), constructed more than 50 years ago (multiplier 1/3), of RCC construction (multiplier 1), it is residential and self-occupied and has no un-built area (multiplier 1), the calculation will come to R (1/4 x 1/4 x 1/3X1 x 1) equal to R x 1/48. For the house of 1000 Sq. ft. the Property Tax works out to Rs. 10 x 1/48 x 1000 equal to Rs. 200. For an equally small house of 1000 Sq. ft. located in a new colony (multiplier 3/4), road width 50 ft. (multiplier 3/4), of age 30-50 years (multiplier 1/2), RCC structure (multiplier 1), for residential use (multiplier 1), with no excess un-built area (multiplier 1), the tax will be Rs. 10 x 1000 x 3/4 x 3/4 x 1/2 x 1 x 1 equal to about Rs. 3000/-. If the aggregate built area is 3000 sq.ft. the tax based on the above

calculation for premises in a recently developed colony will be Rs. 9,000/-. If the premises is used for commercial purposes, the amount will be multiplied by 5/4; if it is used for industrial purpose then the multiplier will be 3/2.

In order to enable the municipality to have adequate funds for providing satisfactory services to the citizens, and for making up for the comparatively lower charges of Property Tax on the basis of this formula, it is necessary that over and above the calculation on the basis of this formula, the assessee should pay rent of one month if the premises or any part thereof is on rent. In case of second of the above examples, if the premises is totally on rent, for, say, Rs. 8,000/- p.m., the Property Tax will be Rs. 3,000/- x 3/2 + Rs. 8,000/- equal to Rs. 12,500/-

Annual Statement by Assessees:

For persuading the assessees to make prompt payment of the assessed tax there will be a provision for giving rebate of 20% on the aggregate tax if the payment is made before the date which is prescribed for the purpose.

Every owner of the premises should be under obligation to submit a statement, annually, on a prescribed proforma which should contain specific directions for submission of information regarding (a) plinth area of the building measured from outside, on respective floors, excluding projections of porch, verandahs, sun-shades and external staircase, if any, (b) total area of the plot on which the building is constructed, alongwith measurement of the area of the un-built area in excess of the area prescribed under the Building Bye-laws as part of the construction, (c) location of the building, whether inside the city area or in a previously developed colony or in a colony developed during the last 30 years, (d) width of road(s) adjoining the premises, (e) age of the premises i.e., the year when it was constructed, if known, (f) use to which the premises is being put (whether residential, commercial or industrial) indicating the area which is used in it for commercial/industrial purpose if only a part of the premises is being put to such non-residential use. At the end of the prescribed form there must be a printed undertaking which should be signed by the owner, affirming" that the information furnished in the statement is correct in all respects, and that nothing has been concealed, and that if any fact is found to be false the signatory will be liable for criminal prosecution."

Certain Exemptions:

There would be need of providing exemption for certain types of buildings and their users. It is suggested that exemption should be limited to very minimum, specifically to those institutions and organisations which are rendering any particular social welfare services of the nature of old-persons Homes, handicapped children Homes, beggars Homes, Charitable Hospitals which are not charging any fees; organisations which have scope and possibility of charging any fees and which have source of income, whether they are social organisations or any other welfare organisations, need not be accorded any exemption.

Delinking Calculation from Rent:

Finally, in elaborating the Unit Area Method it would be necessary to particularly mention the case of Delhi Municipal Corporation (DMC) which has taken the position that they would like to continue to operate on rental basis for the assessment of Property Tax. The contention put forth by MCD is that in a case decided by the Supreme Court (1998-6 Supreme Court Cases 381), it has been upheld that the assessment of Property Tax based on rental is appropriate. It needs to be highlighted in this context that the Supreme Court judgement referred to by MCD incorporates decision on a Writ Petition in which the ground taken was that the rental derived from a premises is in fact a form of "income" and that tax on "income" under the relevant provisions of the Constitution can be levied only by the Central Government and that it would be violative of the Constitution to base the levy of Property Tax on rental. It was on this contention that the Supreme Court gave the verdict that the levy of the Property Tax on rental is not contrary to the provisions of the Constitution. The matter before the Supreme Court in that case was not relating to the levy of Property Tax on the basis of area of the premises. It is, therefore, not correct on the part of the MCD to raise this contention in favour of continuance of levy of Property Tax only on the basis of rental.

RENT CONTROL

(The subject of Rent Control has been creating serious problems practically in all cities of the country. The existing Rent Control laws of the States were enacted about 40 years ago; these are now bringing about serious distortions and anomalies in the matter relating to determination of rent, and also difficulties in securing evictions even in inevitable circumstances.

On this subject COMMON CAUSE had taken the initiative of filing Writ Petition in Delhi High Court. There have been a number of hearings, but the matter has not yet been decided.

Meanwhile, Director of COMMON CAUSE has addressed a self contained letter to Mr. Jagmohan, Minister of Urban Development, GOI. In this letter suggestions have been communicated for effecting the required changes in Delhi Rent Control Act while can later be adopted as Model in other States with necessary modifications.

It has since been reported in the Press that the cabinet has approved the suggestions relating to amendments in the Act on certain points including deemed rent, inheritability, problems of rent determination, eviction, and registration of rent deeds, holding that there is need of bringing about balance between the interests of owners and tenants. The matter will now go before the Parliament.

The letter to the Minister, Mr. Jagmohan is reproduced hereunder).

LETTER TO THE MINISTER

I am writing this letter to you on the important subject of Rent Control. The letter is somewhat long; this is inevitable. I earnestly hope you will be kind enough to glance through its contents and to get these examined in the Ministry.

In the context of serious problems that working of rent control measures have created you would surely be aware of the emphasis that has been laid on the need of bringing about an atmosphere wherein there is balance between the interests of owners and tenants, and there is scope of increase of availability of rental housing in urban centres of the country. These objectives have been before the country for a number of years but progress towards the achievement of these objectives has not been satisfactory. The Chief Ministers' Conference held in 1992 had laid emphasis on these; Government of India had got a model Rent Bill prepared in 1994 and circulated to all States. There has, however, been inadequate progress in effecting revision of rent control laws by the State Governments.

Problems of rent control measures in Delhi have got highlighted often. The new Rent Control Act, enacted by Parliament in June 1995, and assented to by the President in August 1995, has yet remained unenforced. From the platform of COMMON CAUSE we had taken this matter to the Delhi High Court. Division Bench of the High Court gave its verdict in March 1999, but there was difference in views of the two Judges regarding the issue of mandamus to the Government, and the matter has since been before a third Judge. There has been considerable delay in finalisation of hearings before the third Judge; and it is not certain when the decision will be given.

Unfortunately the matter of enforcement of Delhi Rent Act is tied up also with the fact that after the enactment of this Act, an amendment bill was introduced in the Parliament in 1997. Even if, therefore, the High Court issues the mandamus, and the 1995 Act is notified, the problem will remain tied up with the existence of the Amendment Bill which is already before the Parliament and which was referred to the Joint Parliamentary Committee.

Existence of the Amendment Bill cannot obviously be disregarded. Your predecessor in office Mr. Jethmalani had taken the initiative about a year ago to call a meeting of the representatives of the organisations of houseowners and tenants for finding out a solution. I had attended this meeting as neutral. In this meeting the

major issues between owners and tenants were satisfactorily resolved. These issues feature in the Amendment Bill and it was unanimously agreed that the provision in the Amendment Bill in relation to these issues were acceptable. There was thus unanimity that the 1995 Act should be amended as provided for in the Amendment Bill.

I have gone minutely through the provisions of the Amendment Bill. The major issues which are agitating the organisations of tenants and which were agreed upon before Mr. Jethmalani by the representatives of owners, are following :

(a) The phrase "deemed rent" appearing in Section 3(1)(C), which had been objected to by the tenants lobby, has been deleted vide Section 2 of the Amendment Bill.

(b) Limitation of period of inheritance of non-residential premises, on the demise of the tenant, has been increased to three years from one year as per Section 5 of the Amendment Bill. The limitation of one year was felt irksome by the tenants' organisations.

(c) Registration of rent deeds will henceforth be obligatory only in relation to rent deeds executed after passing of the Act. This change has been effected under Section 4 of the Amendment Bill.

(d) Representatives of tenants had raised objection to the provisions relating to eviction of a tenant merely on the submission of an affidavit by the owner. This has been modified by adding the appropriate provision under (r) of Sub-section (2) of Section 22 that tenant can submit a counter-affidavit before the Rent Authority.

It will thus be observed that the differences which had arisen between owners and tenants on these major issues of the Delhi Rent Act had get satisfactorily resolved.

There is one other matter which has often been raised by representatives of tenants, particularly by the representatives of tenants of shops. They have been pleading that where a shop has been running in a particular premises, its products get associated with the locale; its goodwill, operations, and quality of service get associated with the premises. Disruption of the shop from the premises can spell ruin for it. There is undoubtedly substance in this contention. Therefore, the representatives of tenants-shopkeepers consider that where a shop has been running in a particular premises, say for a period of 30 years or more, an option should be available under the law to the shopkeeper to buy over the shop, adequately compensating the owner. If a suitable provision can be made in the Act to meet this requirement, opposition to the Rent Act on behalf of shopkeeper tenants can be totally eliminated. On this matter I have taken the initiative of getting views of some experts. Two alternative formulae have been suggested. One is that the quantum of payment by the tenant should be the present price (to be assessed by authorised Valuer) minus one percent per annum, for the total period of 30 years or more, for which shop has been with the tenant. Second alternative is to calculate the rent as provided for in Schedule I of the Act, multiplying it with the number of 30 or more years. In both these alternatives there would be need of making a Proviso that for a smaller shop of 20 Sq.Mtrs. or less, the price should be discounted by 30 percent. I feel that this matter may kindly be got examined in the Ministry, for determining how a suitable provision can be made in the Act to meet this demand.

I have spelt out these details to enable you to get the matter expeditiously resolved. Since the Amendment Bill has been referred to the Joint Parliamentary Committee (perhaps a new Joint Parliamentary Committee has now to be appointed), but surely this process can be got expedited and the Committee can be requested to urgently meet and make their recommendations, taking into account the fact that representatives of houseowners and tenants have already reached the decisions on the above mentioned major issues. The matter relating to the provision for purchase of premises can, after detailed consideration, be placed before the Joint Parliamentary Committee and thereby got incorporated in the Amendment Bill, which can then be placed before the Parliament for final enactment.

We earnestly hope that you will kindly spare the time for going through this important matter and help to resolve the problem for Delhi where hundreds of thousands of people are presently feeling greatly perturbed by the enormous delay that has come about in the enforcement of the Delhi Rent Act.

CONSUMER PROTECTION

We reproduce hereunder an article on the important subject of finding redress in Consumer "Court". This article is by Mr. D.S. Mehta which appeared in the Indian Express.

A large number of readers of this column have inquired about the procedure for filing complaints in the consumer courts under CPA, 1986 as amended in 1993. The information has been sought as to who can make a complaint? What kind of complaints fall under the purview of CPA? When to file complaints? What relief can be sought? What details to be included and what documents to be attached to the complaint.

The complaint can be filed by any consumer or group of consumers. Where consumers have the same interest, they can seek redress in a group. The complaint can be also filed by any voluntary consumer association on behalf of the consumer and the Central and State Governments. However, the seller of goods or provider of service is not a consumer, and is not eligible to file any complaint in consumer courts. Also any consumer who buys goods or avails of services for re-sale for carrying commercial activity does not fall in the category of consumer under the CPA and is not eligible to take advantage of consumer forums.

The consumer can file complaints in regard to defective or hazardous goods causing injury on use. A restrictive trade practice of the tie up sale or unfair trade practice is also a ground for invoking jurisdiction of consumer forums. Complaints can also be filed for negligence or 'deficiency' in service on part of providers of service on payment such as hospitals, medical and educational institutions, public utilities like telephone and electricity depts., P&T, banks, insurance companies, railways, airlines, Govt. and private builders and developers and others providing services to the consumers on payment.

The complaint has to be filed in the concerned district consumer forum, if the value of goods and services and compensation claimed does not exceed Rs. 5 lakhs. In metros and big towns there are more than one district forum. For instance, Delhi has seven such forums located in different parts of the capital. Consumers can file complaints in the forum where the cause of action has arisen. Where the value of goods or services or the relief sought is between Rs. 5 and 20 lakhs, the complaint has to be filed to the State Commission. Each state has one such Commission. If the value of goods or services or compensation exceeds Rs. 20 lakhs, complaint is to be made to the National Commission located in Delhi.

The consumer as well as the opposite party or parties can appeal to State Commission against the decision of district forums. Similarly, it can be filed to the National Commission against the verdict of State Commissions. The appeal against the decision of National Commission lies with the Supreme Court. These appeals however, have to be filed within 30 days from the date of the order. As per amended Section 24A(1) of CPA, the time limit of filing complaint is two years from the date on which the cause of action had arisen.

The details in the complaint should include complete name and address of the complainant as well as of the opposite party or parties. The complaint should indicate the relief/compensation sought from the consumer court. The compensation should be for the loss suffered, inconvenience caused, injuries sustained, expenses incurred in filing the case, mental agony, legal expenses etc. The relief could be for the removal of defects or deficiency, replacement of goods, return of amount paid, award of compensation, discontinuance of unfair trade or practice, withdrawal of hazardous goods for sale, etc. Evidence of complainant's neighbours and other is to be given at evidence stage. This is to be done on duly attested affidavits. Any witness produced by the opposite party can be cross examined. However where consumer forum adopts summary procedure, the cross examination is permitted only if considered appropriate. At no stage the consumer complainant is required to pay court fee or any other fee. The complainant or opposite party has an option of preferring a Revision petition before the next higher forum if the lower forum has exceeded the jurisdiction not vested in it by law or has failed to exercise the jurisdiction so vested, or has acted in excess of its jurisdiction illegally or with material irregularity.

If the dealer or trader against whom the complaint is filed, fails or omits to comply with the order, passed against him, the complainant can get it enforced by approaching the concerned forum by way of petition. In such a case, the forum can impose penalties, not only monetary fines but also imprisonment.

The consumer courts have now been empowered to impose penalty upto Rs.10,000 for filing false and frivolous complaints. Consumers who file complaints in consumer courts for deficiency in service should take a cue from the recent judgement of the Supreme Court which has ruled that consumers must prove deficiency in service such as wilful fault, imperfection, shortcoming or inadequacy in the service to get redress. For instance delay in flight due to fog cannot be construed as deficiency in service. In the absence of deficiency in service, an aggrieved person may file a suit for damages but cannot insist for grant of relief under the Consumer Protection Act for acts of commission and omission which otherwise do not amount to deficiency in service. Also, the rendering of deficiency in service has to be decided in each case, according to the facts of the case, for which no hard and fast rules can be laid down.

The format of complaint should follow the following order: Name of the District forum/State commission as the case may be, full name and address of complainant and of the opposite party or parties, brief introduction of complainant, subject matter - details of transaction, defect/deficiency, rectification - attempts made to set things right, and present status of the case, if pending in MRTP or any other court; reference to law, rules, regulations etc., relevant to the complaint, evidence and documents - list of witnesses experts/documents, jurisdiction, in respect of quantum of claim and the territory covered; limitation - complaint filed within 2 year limit; relief and compensation sought, prayer and verification. Six copies of complaint have to be filed along with all documents. If there is more than one opposite parties, plus one copy each for the members of the forum/commission. The complaint should be legibly written, preferably typed out and signed by the complainant or the authorised agent and duly verified. The complaint can be submitted personally or by registered post AD. If given personally, the signature of the person receiving the same should be obtained.

A police officer stopped a motorist for speeding on the highway. When the officer approached the car, the driver's first words were, "Officer, I couldn't slow down when you were coming up so fast behind me."

• • •

On an invitation card: "Your gracious presence is requested at the wedding of our lonely daughter."

• • •

How can any man be sad and watch a sunset?

• • •

An optimist sees the rose; a pessimist the thorn.

• • •

A clerk at the telephone board in a Bombay book shop received an order for "She Strips to Conquer".

• • •

Wife, reading husband's fortune card from scale: "You are a leader, with a magnetic personality and strong character. You are intelligent, witty and attractive to the opposite sex." She paused. "It has your weight wrong, too."

• • •

The transferred clergyman was being praised by members of his congregation. One woman told him: "You're wonderful! I never knew what sin was till you came here."

• • •

A former Director-General of the BBC was explaining the impossibility of drawing up specific codes of practice in the matter of taste. He cited the answer given by a well-meaning curate who, when asked, "Where exactly do you draw the line on bosoms?" said, "It depends a good deal on the bosom".

• • •

Overheard: "Secretive? If you gave her a needle, she would build a haystack around it."

REDRESSAL FOR CONSUMERS

We are reproducing hereunder certain news items which are of obvious interest for consumers in general.

Consumer Court Orders
Rs 2 crore relief to investors

In a significant order, a consumer court has directed two finance companies belonging to the Okara Group to pay compensation of nearly Rs. two crore as punishment for duping over 250 investors.

Disposing 253 complaints filed by investors duped by Okara Agro Industries and Okara Leasing and Investment, Mr. P.K. Jain, president and Ms. Santosh Khanna and Mr. G.R. Gupta, members of Consumer Disputes Redressal Forum-1 held the companies guilty for failing to pay the investors their assured amounts on maturity.

The court held the companies guilty of deficiency of service and directed them to compensate the investors within two months. Nearly 250 investors who had deposited amounts ranging from Rs.5000 to five lakh with the two companies would be benefited by this order.

The court directed the companies to pay the assured amounts to the investors with an interest of 18 per cent per annum from the date of maturity till the date of payment. The companies were also directed to pay Rs.1000 each as cost of litigation to the investors.

The investors had deposited the money with the two companies and in return post-dated cheques of the assured sums to be payable on maturity were issued to them. But to their dismay, the investors found that the cheques were of no value as the companies had already closed their bank accounts.

Following complaints, the companies issued promissory notes to some investors assuring them to pay their due amounts in instalments. But the investors were again duped as the companies failed to keep their promises. These notes were issued only to delay payments of the sums assured, the investors alleged.

Failing to get justice, the investors filed hundreds of complaints with the consumer court in an effort to get back their money.

Finance Companies ordered to pay investors
Rs 50 lakh compensation

In a significant order, a city consumer court has awarded compensation worth over Rs.50 lakh to 260 investors who were duped by six financial companies.

In six different orders passed this month, Mr. P.K. Jain, president and Ms. Santosh Khanna and Mr. G.R. Gupta, members of Consumer Disputes Redressal Forum-1 held the financial companies guilty of deficiency of service and directed them to compensate the investors within 60 days.

The court directed the companies to pay an interest of 18 per cent per annum on the amounts deposited by investors from the date of maturity till the date of payment. The companies were also told to pay Rs.1000 to each investor as cost of litigation.

The orders were passed against six Sadar Bazar based companies, Rapka Laboratories, Precision Industrial moulders, Nuchem Industries, Barar Fabricators, Nuwood Enterprises and Nuchem Investment Pvt. Limited.

In all the 260 cases filed before the court, the complainants stated that they had made fixed deposits of different amounts with the six companies for a fixed period. On maturity of the fixed deposits when the complainants approached the companies for payment of their maturity amounts, they were turned back, the complainants stated.

In all the cases, the companies held that the complainants cannot be termed as consumers as they were not rendering banking services and the relationship of the complainants and the companies was that of a lender and a borrower.

The companies also stated that at present, they were going through financial constraints and hence were in no position to make payments for the fixed deposits of the complainants. The companies further stated that there was no deficiency of service on their part and so the complaints should be dismissed.

The court however, mentioned that the contention of the companies that the complainants were not consumers had no force and rejected the plea. "Non-payment of deposited amount along with interest by the companies constitute deficiency of service", the court held. The court added that if the companies failed to compensate the investors within 60 days, appropriate action under section 27 of the Consumer Protection Act would be initiated against them.

The court directed Nuchem Investment Private Limited to pay a total sum of over Rs.1.71 lakh to 21 investors. Nuwood Enterprises was directed to pay over Rs. 9 lakh to 51 investors. The court directed Barar Fabricators to pay a sum of Rs.8.09 lakh to 39 investors. Nearly 80 investors based in South and West Delhi will receive over Rs. 16.26 lakh as compensation from Nuchem Industries. Precision Industrial Moulders will have to pay Rs.6.23 lakh to 27 investors and Rapka Laboratories was directed to pay Rs.6.59 lakh to 34 investors.

Goods once sold will not be taken back?

"Goods once sold will not be taken back". Placards bearing the statement hang in most shops virtually like a Damocles sword over consumers, most often in a bid to intimidate them.

But should consumers take this statement seriously?

Apparently they should not. Consumers have the right to return goods purchased from a shop if they feel the goods are not to their satisfaction irrespective of whether the sign was displayed or not at the time of purchase.

According to legal experts, shopkeepers who adopt such a policy are indulging in "unethical trade practices" and are taking advantage of consumers who are ignorant of their rights.

Most often when consumers return goods and seek replacements, shopkeepers reject their demand citing the fact that during the purchase the consumer had known the goods he was purchasing were not going to be taken back by the shop.

Most often the consumers believe the shopkeepers explanation and are left saddled with defective goods. "I had bought a pair of shoes from an established shop and found that due to a defect it was cutting into my ankle. I returned to the shop and sought a replacement and was told that nothing could be done as the policy of the shop had been made clear to me during the purchase. I had no choice but to bear with the pair until I got myself another pair, much to my chargin", said Amit Jain.

According to Monopolies and Restrictive Trade Practices Act Commission chairman A.N. Divecha, shopkeepers are bound by law to replace faulty merchandise they have sold, specially if it is under warranty.

"Under section 36A of the MRTP Act, any transaction which is in breach of warranty amounts to unfair trade practice, in fact the consumer can also approach the MRTP or the consumer courts under the Sale of Goods Act, section 14 which defines conditions and warranty", says Justice Divecha.

Consumer rights activists say that shopkeepers operate in highly competitive markets and are reluctant to take back goods because they feel it may harm their reputation.

"During festival periods like Diwali they are doubly anxious to get rid of their stocks and use the sign as a pretext to off-load some goods that are defective. Customers who buy during the festival period are most often rushed and do not check the quality of the goods, and this provides the shopkeepers the opportunity to cheat them", says a consumer activist.

According to a legal expert, MRTP does not have the power to stop traders from displaying the signs in the shop. "Consumers should be aware of their rights and not get taken in. In law people cannot escape punishment if they commit crimes by citing their ignorance of the law, it is not incumbent upon shopkeepers to teach them their rights either", says a lawyer.

Shopkeepers say that consumers on their part also act dishonestly, often returning the goods after using them under the pretence that they were not satisfactory.

Consumer activists concede point saying "Sometimes the consumer uses the material he has bought and then returns it to the shopkeepers and sometimes the retailer sells defective goods but even then that does give retailers the licence to take advantage of their customers".

Early to bed and early to rise and you'll never meet the rich and famous

• • •

If at first you don't succeed, deny you were even trying.

• • •

The darkest hour is just before you're overdrawn.

• • •

People who live in glass houses have faded sofas.

• • •

A lady, in the latter part of her pregnancy and suffering from some of the miseries that can accompany that condition, went for her regular prenatal check-up. Her doctor asked if she was having any problems. "Yes", she replied. "I can't sit comfortably. I can't eat what I like, I'm nauseous most of the time, I can't sleep well, I have to go to the bathroom too much, I have headached, I'm sore from the baby's kicking and my feet are swelling".

The doctor listened to her politely, then turned to her chart and wrote, "No complaints."

• • •

The American blonde, back home from holiday in Italy, was asked by her gushing friend if she had picked up any Italian. After a momentary pause, she said, "Oh, only one".

• • •

"Please can't you go a little faster?" implored the lady to the taxi driver during the rush hour. "Of course, I can", croaked the cabbie, "but I am not allowed to leave the taxi".

• • •

British actress Joyce Grenfell recalls that while she and her friend Viola Tunnard were on a hospital tour in India during the Second World War, they were invited to a service club dance at Poona. "We were made to feel fine - lines formed to await our favours on the dance floor," she writes. "But we were a little surprised to hear ourselves announced as 'two well-known artistes who have been flown out from home to entertain men in bed."

Re: DIET FOR HEALTH

(Reproduced hereunder is a write-up from the magazine FOOD FACTS ASIA for general interest in relation to Health matters).

REDUCED DISEASE RISK WITH DIETARY FIBRE

Food fads may come and go, but the importance of a well-balanced diet never goes out of style. One of the most important components of a healthy diet is fibre.

While it may not be the most exciting part of the diet, eating foods high in fibre is essential for good health and reduced risk of several diseases. This recommendation is as strong today as it was more than 20 years ago when fibre hit the headlines after it was noted that African tribes who took a diet high in fibre had lower risk of several diseases. Scientific studies continue to produce new evidence to support the need to increase fibre in the diet.

Dietary fibre is found only in plants. Dr Dennis Gordon, a researcher in nutrition and dietary fibre at North Dakota State University in the US, defines fibre as "Food carbohydrate that is not digested or absorbed and which contributes to positive phsysiological functions in the body".

Soluble and Insoluble fibre

If you've read up on dietary fibre, you may know that most scientists clarify fibre as either "soluble or insoluble". This refers to whether the fibre dissolves in water. More importantly, it helps to explain the different actions of the two types of fibre in the body.

The largest amount of fibre in our diet is insoluble. This type of fibre provides texture to fruits, vegetables and cereals. Insoluble fibre helps bind water in the intestine and increases the volume of waste materials. The end result is more frequent and softer bowel motions and less risk of constipation.

Soluble fibre is found in all fruits, some cereals (such as oats and barley) and in legumes (dried peas and beans and lentils). This type of fibre acts as a natural thickening agent in foods. For example, if you add lentils or beans to a curry, they help to thicken the curry.

When we eat soluble fibre, it traps fatty substances in the intestines thereby helping to prevent their absorption by the body. This is thought to be the reason that soluble fibre helps to lower blood cholesterol levels. Soluble fibre also has beneficial effects on blood glucose levels.

Dietary partners

The combined actions of soluble and insoluble fibre are important in helping to maintain a healthy population of bacteria in our large intestines. Fibre in the large intestines acts as a source of energy for these bacteria to use. Fermentation of fibre in the large intestine helps promote the growth of more lactic-acid producing bacteria. A predominance of lactic acid producing bacteria helps to prevent the accumulation of toxic and pathogenic (disease-causing) bacteria.

How much fibre ?

Most health organisations agree that adults should consume between 20 and 35 grams of dietary fibre a day. Yet most people in Asia fail to reach this amount. According to the national dietary survey of Singaporeans (1983) average fibre intake is just 15 grams a day. In Hong Kong, a 1995 study estimated that fibre intakes averaged less than 10 grams a day.

Yet not only is it easy to increase fibre intakes, it is also vital to good health. Dr Gordon warns, "There are many diseases or disorders frequently related to inadequate consumption of dietary fibre. These diseases include cancer of the colon, high blood cholesterol, diabetes, diverticulosis and constipation."

Fibre and Health

Coronary heart disease is a leading cause of death in most Asian countries including Singapore, Malaysia, China, India, the Philippines and Indonesia. The National Heart, Lung and Blood Institute, US, has reported a direct relationship between blood cholesterol concentrations and premature coronary heart disease. Dietary fibre, particularly soluble fibre, appears to lower blood cholesterol and may help to reduce the risk of coronary heart diseases.

Another disease that appears to be affected by fibre is colorectal cancer, one of the most common forms of cancer in Asian countries. Although the evidence is not yet complete, a lot of research has shown that a low fat, high fibre diet may reduce the risk of this type of cancer. Dr. John Potter, Fred Hutchinson Cancer Research Centre, notes that, "Since 1970, a large number of case-control studies have explored the role of dietary fibre in colorectal cancer, with relatively consistent results suggesting a reduced risk with higher consumption."

A study published in a recent issue of the New England Journal of Medicine reported that a high fibre diet did not appear to affect the number of women in the test group who developed colon cancer. However, there are many questions about the conclusions of the study. Dr. Potter suggests that a number of technical issues concerning this study need to be resolved, including the translation of dietary intake collected in the test group's questionnaires, biological questions about fibre itself and questions intrinsic to epidemiological studies.

More research will undoubtedly be performed to determine what effect dietary fibre has on colon cancer risk. Nevertheless, the overall benefits of dietary fibre are widely accepted and dietary fibre remains an important part of the diet. Drs. Gordon and Potter both agree that while one study alone will not prove a positive effect of dietary fibre on any human disease, no one study deserves to be the final word in dismissing the importance of dietary fibre for any disease.

There is no doubt that dietary fibre is beneficial to health, and more research will continue to identify the areas in which dietary fibre contributes to a healthy lifestyle.

Dietary Fibre Content of some Southeast Asian Foods

Food	Total Dietary Fibre per 100 g.	Food	Total Dietary Fibre per 100 g.
Vegetables		**Rice**	
Bitter gourd	2.7	Brown rice, long grain, cooked	1.8
Broccoli, boiled	2.9	White rice, long grain, cooked	0.4
Cabbage, boiled	1.7		
Cauliflower	2.2	**Breads**	
Carrots, boiled	3.3	White	2.3
Chinese spinach, pointed leaves	2.2	Whole wheat	6.9
Collard	3.1		
Snow pea, edible-podded	4.6	**Breakfast cereals**	
Tomato, raw	1.1	Bran cereals	16.3
Water convolvulus, kangkong	3.1	Wheat flake biscuits	13.1
Starchy vegetables		**Fruits**	
Potato, boiled peeled	1.8	Apples, raw with skin	2.7
Sweet corn, cooked	2.8	Banana (pisang tali)	4.6
		Durian	4.4
Nuts and Seeds		Mango, large Fillipino	2.0
Almond, salted	8.8	Mangosteen	1.4
Peanuts, dry roasted	8.0	Orange, Thai	2.7
Peanut butter	5.9	Papaya	2.5
		Pineapple	1.7
Legumes		Prunes, dried	7.1
Beans, baked, canned	5.0	Watermelon	0.4

Re: CASE OF CAPT. SATISH SHARMA

(In relation to the three-judge judgement of the Supreme Court in the case of Capt. Satish Sharma we still continue receiving letters from various parts of the country. We have already, in a previous issue of the Periodical, put forth brief excerpts from the various letters. Among the various letters, we have now received comments from Mr. N. Jaggi, Advocate of Delhi High Court. From his comprehensive write-up on the subject of "JUDICIAL DISSENT" we reproduce hereunder the portion dealing with the case of Capt. Satish Sharma. The views expressed in this write-up are his own views).

"The judgement dated July 28, 1999 of the three judge Bench of the Hon'ble Supreme Court of India comprising of their Lordships the Hon'ble Mr. Justices Saghir Ahmed, Venkatswami and Rajendra Babu in the Review Petition C No.: 98 of 1997 in W.P.P.) 26 of 1995 Satish Sharma Vs. Common Cause is unique - it seems to have taken the concept of dissent to horizons hitherto unknown or unheard of.

Order XLVII and Section 114 of the Code of Civil Procedure (Act V) of 1908 prescribe the procedure for filing a Review Petition and also lay down the limited scope under which a Court can review its own judgement. Article 137 of the Constitution of India provides the power of review to the Supreme Court of India to review its earlier judgement, but this power is exercisable subject to the law made by the Parliament or any rule made under Article 145. All these provisions, however, provide that the matter sought to be reviewed is to be placed before the same bench, whose judgement is sought to be reviewed, as far as practicable.

In the instant case the judgement sought to be reviewed was by two judges (Kuldeep Singh and Faizan Uddin, JJ), and both of them had retired when the review petition came up for final disposal.

The case of Satish Sharma raised some very interesting queries. Was the latter judgement really a review or an appeal, especially when a review lies on a very limited ground, but appeal to a larger bench is not provided. How then could the review be heard by three Judges instead of two? What was the purpose of the review bench to only partially review the earlier judgement by recording their dissent? Ought not the totality of circumstances have been taken into account before partially recording a dissent and therefore partially reviewing the earlier judgement.

However some of the questions which arise and call to be answered are:

(i) Whether in a public interest litigation by the Common Cause (a registered body) the Court on 4.11.96 set aside the allotment of petrol outlets by Satish Sharma being in wanton disregard of his discretionary power as a Minister of State in the Union Cabinet and further directed him to pay Rs. 50 lakh damages with a direction to the CBI to investigate the case against him, can subsequently through a three judge bench, by its judgement covering 124 pages while upholding the cancellation of the allotment of petrol outlets has set aside the imposition of Rs. 50 lakh as exemplary damages and also the direction to the CBI to investigate cases against Satish Sharma?

(ii) Can the review judgement, which no doubt incorporates voluminous and copious quotations from numerous judgements, Indian as well as English, proceeding on premises, some erroneous, some unclear, ove- rule but partially, the judgement of the two judges compressed into five pages of reasoning?

(iii) Whether the basic premise of allowing partial review is that the Court is vested with "plenary power unfettered by any legal constraints" which is to be used to correct mistakes committed by it earlier is a precise and correct enunciation of law as regards the power to review under Article 137 of the Constitution hedged as it is by law made by Parliament and rules framed under Article 145 of the Constitution?

An aspect which appears to have been lost sight of, or at any rate not fully considered, is the nature of public interest litigation". The view taken that there is no plaintiff in such litigation and consequently nobody is before the Court who has suffered loss, therefore the remedy of awarding damages, which is meant only to compensate, could not be invoked, cannot find sustenance in law.

The concept of public interest litigation and the dimensions to which it has developed, and still in the process of being developed, appears to be not present in the mind of the learned judges. The public interest litigation has innovatively developed in recent times and still the process is far from complete. Notions such as, since there is no plaintiff, and consequently the classic concept of tortious liability known in English common law is inapplicable, do not really fit in the context. There is another aspect such as accountability attached with public office and consequences flowing from its wanton abuse cannot be trimmed to fit in with the traditional and in certain ways outmoded concept of English common law of torts.

We have a written Constitution and that certainly prevails. Concepts of tortious liability and procedural aspects of the English common law of torts must give in while moulding relief in matter of constitutional exercise of power the confines of which are untrammeled by narrow confines of pedantic rules of English common law. Unfortunately our Courts, and that includes the Supreme Court, have for a considerably long time been oppressed by Anglo-Saxon jurisprudence that evolved in course of centuries in England even after the coming into force of an exhaustive written Constitution. There are numerous instances and one need not pause to recount them to illustrate this. Yet take the reluctance to read together various constitutional provisions on fundamental rights in A K. Gopalan till the fallacy was discovered and over ruled in Golaknath.

It must be recognised that we have made substantial jurisprudential contribution among which is "public interest litigation". But it is this phenomenon which appears to be a casualty in the review judgement in Satish Sharma's case.

The review judgement which is under review here, having made some uncharitable remarks that this Court has already used judicial invectives in respect of such allotments and we need not strain vocabulary any further in this regard, proceeds, that suffice it to say, that though the conduct of the petitioner was wholly unjustified, it falls short of "misfeasance in public office" which is a specific tort and the ingredients of that are not wholly met with in this case. This, with all seriousness, is a proposition of law that does not fit in with the contemporary jurisprudence in our country.

The impelling reason to review dwells upon the tort of "misfeasance in public office" culpability under Section 503 of Indian Penal Code, there being no plaintiff in a public interest litigation is not only simplistic but misplaced and erroneous. The Supreme Court, to say with due respect, has set the clock back and ventured to lay down erroneous law, may be unwittingly overruled settled law.

It is further said that under Article 32 the Supreme Court, unlike Article 226, can only act to protect fundamental rights such as Article 21. It is perhaps forgotten that arbitrariness hits Article 14 which is also such a right.

Were three judges sitting in appeal over the earlier judgement of the two judges or considering to discover an error apparent on record in exercise of power under Article 137? This is a crucial question because almost as of rule every review petition is dismissed unceremoniously in Chambers, even when it is said sometimes that the judges do not go through the ritual of assembling to form the coram. The elaboration of the law and practice of review is of considerable significance which one may in vain look for in the exhaustive treatise spreading to 124 pages.

The Supreme Court has made history earlier also when in cases such as Antulay's a subsequent Article 32 petition nullified an earlier judgement of three judges on ground that the petitioner's right under Article 21 was at stake. But it is unfortunate that such an instance is rarest of the rare available according to general impression in matters involving highly placed men of substance. As such, signals that go to the people in the country are unfortunate.

This does not pretend to be an exhaustive study of the review judgement, but a first attempt to asses it's impact on the law of the land. An in depth study of the review judgement is called for and if this initiates such a debate, the purpose will be served.

To conclude. The review judgement deserves to be reviewed. The exposition of law notwithstanding painstaking erudition, on the face of it is unsound. In certain ways it puts the clock back and in some other ways unwarrantedly circumscribes the ambit of plenary power into narrow confines of the English common law of tort.

To

All Members of Common Cause

NOTICE OF ANNUAL GENERAL MEETING

The Annual General Meeting of COMMON CAUSE Society will be held in the Constitution Club, Rafi Marg, New Delhi, on Sunday the 20th Feb., 2000 at 11.00 A.M.

Agenda will be as follows :

i) Consideration of Annual Report and adoption of the Annual Accounts alongwith the Auditors Report for the year 1998-99.
ii) Appointment of Auditors for the year 1999-2000..
iii) Activities and Programmes.
iv) Elections.

It may kindly be noted that in accordance with Rule 15 or the Rules & Regulations of the Society if within half an hour of the beginning the quorum is not present, the meeting shall stand adjourned for the same day and will be held after another half an hour, and members present in the adjourned meeting shall form the quorum of the meeting.

H.D. SHOURIE
DIRECTOR, COMMON CAUSE

RAO & RAVINDRANATH
CHARTERED ACCOUNTANTS

AUDITORS REPORT

We have audited the attached Balance Sheet of COMMON CAUSE as at 31st March, 1999 and the annexed Income and Expenditure Account of the Society for the year ended on that date which are in agreement with the books of account maintained by the Society.

In our opinion and to the best of our information and according to the explanations given to us, the said accounts give a true and fair view:

i) in the case of the Balance Sheet of the state of affairs of the Society as at 31st March, 1999 and

ii) in the case of the Income and Expenditure Account of the excess of income over expenditure for the year ended on that date.

for RAO & RAVINDRANATH
CHARTERED ACCOUNTANTS

Sd/- A.V. RAVINDRANATH
PARTNER

Place : New Delhi
Date : 27.10.1999.

ANNUAL REPORT FOR 1998-99

COMMON CAUSE is now nearing two decades of its existence. It was established in 1980. Over the years it has devoted itself to the task of amelioration of problems of the people. The problems keep on multiplying and proliferating, particularly in urban areas where enormous migration has also taken place from rural areas practically in all States. These problems cover a very wide range, almost all aspects of living.

In the last few years there has been an exclusive expansion of non-government organisations. Some of these are undoubtedly doing an excellent job in helping the people in relation to their problems. There is undoubtedly scope for development of really capable and effective organisations specialising in specific areas of the problems, which can render assistance to the people. It is unfortunate that in the field of development of NGOs too there have been instances of the entry of unscrupulous persons for exploitation of the facilities and resources that they manage to raise from Government and foreign sources with the promise of rendering service to the people. This tendency needs to be curbed.

Amongst the NGOs, COMMON CAUSE has undoubtedly earned a good name for taking up common and collective problems of the people for seeking redress through the intermediacy of the Government where possible and alternatively seeking the intervention of the Courts. Our service has throughout been selfless, dedicated and ameliorative. We hope that this trend will continue and the organisation will maintain its reputation for serving common causes of the people.

Numerous demands are made on the services of the Organisation. These cover an exclusively wide range, from cases of matrimonial discord to grievances of consumers, of residents of colonies, levy of taxes, woes of houseowners, pollution, traffic conditions, overcharging in prices, and multitudinousness others. People carry the impression that our Organisation is fully equipped with legal expertise and that they can secure redress through us in relation to their various disputes and problems. We have to invariably point out to them that we have no legal experts and that we are exerting our best to pursue cases in courts in person. In any case, we cannot deal with any individual problems because there are hundreds of thousands of people who are encountering the problems. We invariably inform them about our inability to deal with the individual problems and that we can at most take up only common and collective problems of the people.

The various important cases taken up from the platform of COMMON CAUSE for redress of problems of the people, through intermediacy of the Supreme Court, High Court and the National Commission established under the Consumer Protection Act have in fact set a trend of enhancement of the instrument of Public Interest Litigation (PIL) for dealing with such problems. Work of COMMON CAUSE is generally recognised in this regard. Some of the cases taken up by COMMON CAUSE have benefitted literally millions of people. The case relating to pensions brought relief to 2.5 million pensioners. Case relating to election expenses brought about changes in the procedures adopted by political parties in relation to their election campaigns in the country. Our Writ Petition on criminal cases in the Courts has brought about closing down of hundreds of thousands of cases in various parts of the country. On the subject of Blood Banks the decision given by the Supreme Court has changed the entire scene in relation to the operation of Blood Banks in the country.

COMMON CAUSE has during the year of report dealt with various matters of the above nature. The case filed in the Supreme Court in regard to pensions being given to Members of Parliament is still pending; it has not yet come up before the Constitution Bench. In the Supreme Court our other matters related to the appointment of Lok Ayuktas in the States for checking corruption (the subject of appointment of LOKPAL is pending before the Parliament); the cases relating to depredations caused by certain Non-Banking Finance Companies (NBFCs) and the matter of Non-Performing Assets (NPAs) of Banks have continued to be pursued. Two important new cases have recently been filed before the Supreme Court. One relates to the large number of Railway Accidents that have taken place in the country in recent years, highlighting the serious problems of human failure and technical failure, and submitting concrete suggestions for constituting requisite number of expert groups for

minute examination of various aspects of the functioning of railway system which would obviate the possibility of accidents. Second case relates to the Fake Universities and Teaching Shops which have come up in recent years in the country and which are duping students and charging them heavy amounts.

In Delhi High Court there are quite a few of our cases pending. The problem of Rent Control was taken to the High court by COMMON CAUSE more than three years ago. It has had a number of hearings and is now at final stages. The matter relating to unauthorised colonies has been pending since 1993. This case has also had a number of hearings. We have been resisting the demand of regularisation of unauthorised colonies and have suggested that there should be definite norms and guidelines prescribed before effecting regularisation. The Government has now promised to the Court that norms and guidelines will soon be prescribed. Another important case pending in the High Court is that of theft of electricity which is extensively taking place in Delhi and that of load shedding which is often resorted to. This case too has been progressing satisfactorily and we hope that definite directions will soon be issued by the Court. Another case pending in the High Court relates to certain markets of Delhi and the transfer of ownership rights to the allottees of shops in these markets.

An important decision in the matter of consumer protection, which was taken up by COMMON CAUSE, relates to price printing on packages of imported products. This case related to non-printing of price on Kodak Films. It was taken up almost ten years ago. It was decided in our favour originally by the District Consumer Forum of Delhi. Appeal by the company against that decision was rejected by the State Commission, then by the National Commission and recently their appeal has been rejected by the Supreme Court. This decision is obviously of far-reaching importance because it brings under the purview of price printing all packages of imported products.

FINANCES :

Balance sheet as certified by our Auditors, relating to the year of report, is reproduced hereunder. The real over-all picture is that income during the year has been Rs.8.95 lakh and the expenditure of Rs.6.73 lakh. Indication of the depreciation which is normally adopted in relation to the building, furniture and other items, has necessitated appearance of deficit in the Audit Report.

Diner: Do you serve lamb?

Waiter: I'm sorry, sir, we don't allow animals to dine here.

• • •

Mother: Now, Paul, I know you don't like having a wash, but if you wash your face I'll give you a piece of chocolate, and if you wash your hands as well, I'll give you two pieces.

Paul: Can I have a bath.

• • •

To err is human; to admit it, superhuman.

• • •

Since our daughter, Nagalakshmi, refuses to get married, my wife and I often try persuading her to change her mind. On the day she passed her MA Literature examinations, her mood was upbeat, so we gently broached the much-shunned topic and showed her some photographs of prospective grooms. But Nagalakshmi remained silent.

Finally, my exasperated wife asked her : "Tell us can't you choose one from the crowd?"

Our literature graduate snapped: "I'm too far from this marrying crowd!"

• • •

A woman missed seeing the Sunday 'Mahabharat' TV serial. She asked her twelve-year old son, a science-fiction fanatic: "What was yesterday's episode about?"

"Arjuna transports himself to a space station", began the son, "requests for a nuclear weapon, rejects the advances of a woman astronaut, returns to earth with the weapon, tries to prove its efficacy to his brothers but is contacted via satellite and requested to use it only in an emergency".

COMMON CAUSE
(REGISTERED UNDER THE SOCIETIES REGISTRATION ACT 1860)

INCOME & EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31st MARCH 1999

EXPENDITURE	AMOUNT Rs.	INCOME	AMOUNT Rs.
Printing & Stationery	180,394	Donations	119,551
Staff Salary & Bonus	161,090	Annual Membership	22,685
Books & Periodicals	807	Associate Membership	7,510
Conveyance Expenses	31,007	Interest:	
Legal Expenses	24,790	- Savings bank	27,303
Postage & Telegrams	25,997	- Fixed Deposit with SAIL	541,929
Telephone expenses	17,242	Amount transferred from	
Water & Electricity Expenses	79,834	Foreign Contribution Account	138,712
Repairs & Mtenance	1,752	Amount written off	37,083
Miscl. expenses	3,916	Excess of Expenditure	
Honorarium to Consultants	128,968	over Income	199,938
Membership charges	1,105		
Accounting charges	3,500		
Professional charges	6,808		
Meetings & Seminars	2,714		
Bank charges	4,032		
Depreciation	420,755		
	1,094,711		1,094,711

AS PER OUR REPORT OF EVEN DATE

for RAO & RAVINDRANATH
CHARTERED ACCOUNTANTS

A.V. RAVINDRANATH
PARTNER

GOVIND NARAIN
PRESIDENT

MAJ. GEN. U.C. DUBEY
TREASURER

H.D. SHOURIE
DIRECTOR

Place : New Delhi
Date : 27.10.99

Schedule 'A'

DEPRECIATION CHART FOR THE YEAR ENDED 31ST MARCH 1999

PARTICULARS	RATE	W.D.V. AS ON 1.4.98 Rs.	ADDITION Before 30.9.98 Rs.	ADDITION After 30.9.98 Rs.	TOTAL Rs.	DEPRE-CIATION Rs.	W.D.V. AS ON 31.3.99 Rs.
A. Land	Nil	–	1,384,969	-	1,384,969	-	1,384,969
B. Building	10%	–	–	6,803,604	6,803,604	340,180	6,463,424
C. Furniture	10%	11,386	465,961	–	477,347	47,735	429,612
D. Shed	10%	15,815	–	–	15,815	1,582	14,233
E. Office Equipment	25%	2,228	–	245,607	247,835	31,258	216,577
		29,429	**1,850,930**	**7,049,211**	**8,929,570**	**420,755**	**8,508,815**

COMMON CAUSE
(REGISTERED UNDER THE SOCIETIES REGISTRATION ACT 1860)

BALANCE SHEET AS AT 31st MARCH 1999

LIABILITIES		Rs.	ASSETS		Rs.
CAPITAL & CORPUS FUND ACCOUNT			Balance with Scheduled bank		
			- S.B. A/c. No 8564	214,625	
Life Membership subscription			- S.B. A/c. No. 18382	9,460	
					224,085
Opening Balance	650,034		Stamps in hand		175
Add: Subscriptions received during the year	73,570		Fixed Deposit with SAIL		4,012,000
		723,604	Interest accrued on Fixed Deposits with SAIL		309,682
CORPUS FUND			Fixed Assets (as per Schedule 'A')		8,508,815
			Security Deposits		12,724
			Income & Expenditure Account		
Opening Balance	2,903,689		As per Contra		66,272
Add: Donation received during the year	1,147,000				
		4,050,689			
BUILDING FUND ACCOUNT (Donations from Goodearth Foundation)					
Opening Balance	7,600,000				
Add: Received during the year	700,000				
		8,300,000			
Foreign Contribution Fund					
Opening Balance	36,796				
Add :					
Donation Received	110,750				
Interest on Foreign Contribution Account	626				
	148,172				
Less: Transfer to Income & Expenditure Account	138,712	9,460			
Security Deposit (Refundable)		50,000			
Excess of income over Expenditure					
Opening Balance	133,666				
Less: Deficit during the year	199,938				
	(66,272)				
As per Contra	66,272				
		13,133,753			13,133,753

AS PER OUR REPORT OF EVEN DATE
for RAO & RAVINDRANATH
CHARTERED ACCOUNTANTS

A.V. RAVINDRANATH
PARTNER

Place : New Delhi
Date : 27.10.99

GOVIND NARAIN
PRESIDENT

MAJ. GEN. U.C. DUBEY
TREASURER

H.D. SHOURIE
DIRECTOR

OUR ACTIVITIES AND PROGRAMMES

COMMON CAUSE, a registered Society with membership all over the country and operating on All India basis, has earned reputation and credibility as an Organisation dedicated to public causes for seeking redress for problems of the people. Its initiative in public interest litigation, for solving the common and collective problems of the people, has greatly contributed to the evolution and spread of the system in the country and its adoption by the people on a substantial scale for effecting redressal of public grievances.

A large number of writ peittions have been filed by the Organisatin in the Supreme Court and Delhi High Court, and quite a few important cases have been taken to the National Commission established under the Consumer Protection Act. The very first case taken up by COMMON CAUSE, almost two decades ago soon after its establishment, related to the problems of pensioners. Almost four million pensioners benefited from the three important decisions which the Organisation was able to secure from the Supreme Court, relating to the extension of liberalisation of pension, restoration of commutation of pension and extension of the scheme of family pension. An important matter relating to the pending criminal cases of the courts of the country was taken to the Supreme Court. In our writ petition specific suggestions were submitted for adoption of procedures for dealing with backlog. The important decision given by Supreme Court in this case led to the discharge of large number of accused persons and release of prisoners whose cases had dragged on for long periods. These directions have brought about termination of hundreds of thousands of cases all over the country. On the subject of general malfunctioning of Blood Banks a writ petition was formulated and taken to the Supreme Court. Directions given by the court on this important matter has led to the evolution of system for registration of Blood Banks and stoppage of use of professional blood donors. On the general matter of corruption and establishment of the institutions of LOKPAL and LOK AYUKTAS in the country the Supreme Court, on a writ petition of the organisation, gave a verdict of severe punishment in a particular case, and the matter relating to the appointment of Lok Ayuktas has continued to be pursued by issuing direction to all States. On another writ petition the Supreme Court gave very important direction in relatin to the conduct of election campaigns by the political parties, in relation to a provisin which has been incorporated in the election law. The Court also directed strict compliance with law in relation to the submission of Income-tax Returns by the political parties.

OUR GRATEFUL THANKS

We have the privilege of receiving assistance also from the well known Friedrich-Naumann-Stiftung of the Federal Republic of Germany, the Foundation which is supporting various projects and activities connected interalia 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

We are also grateful to Kumari L.A. Meera Memorial Trust, Kerala, for providing us financial assistance for our activities.

In Delhi High Court a number of writ petitions have been filed by the organisation. Problems of general importance, such as anomalies arising in the Property Tax and the difficulties encountered in the operation of old Rent Control laws, have been taken up and are being pursued. There has been large-scale theft of electricity in Delhi on account of which electric distribution has often got disrupted and the authority has had to resort to load-shedding; these problems have been taken to Delhi High Court and are being pursued. A major problem in Delhi has been the large-scale establishment of unauthorised residential colonies. There has been demand for their regularisation; this was challenged by the organisation and the matter continues to be further pursued.

An important matter relating to the Rail Disasters which have taken place in the country in recent years has also been taken to the Supreme Corut. Another very important matter recently taken to the Supreme Court relates to functioning of Fake Universities and ineligible Teaching Shops. The National Commission established under the Consumer Protection Act has, on our submission, issued certain important decisions on matters such as use of iodized salt, stoppage of malfunctioning in relation to intravenous fluids, operation of buses on Delhi roads and strikes by Banks and Air India. Important decisions in general interest of consumers secured from the Supreme Court include establishment of Consumer Forums in all districts of the country and price printing also on all imported packages.

Membership of the organisation is open to all. Membership fees are Rs. 100 for annual membership for individuals, Rs. 500 for life membership and Rs. 200 for annual membership of organisations and associations. Quarterly Periodical COMMON CAUSE goes free to all members; it has no separate subscription. Donations to COMMON CAUSE are eligible for exemption available under Section 80-G of Income Tax Act. Everybody can take membership of the organisation. No form is required. Send your name and address, written in capital letters, along with cheque/DD, drawn in favour of COMMON CAUSE.

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