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# COMMON CAUSE

VOICE OF "COMMON CAUSE"

## NEW HOPES

After the traumatic events leading upto the dartardly assassination of Smt. Indira Gandhi and its Delhi aftermath the country has, with satisfying speed, come back to normalcy. It has shown great maturity in emerging totally unscathed through the general elections, with the installation of a new government with a massive mandate, under the leadership of young Prime Minister Mr. Rajiv Gandhi, kindling new hopes of the country marching forward towards a better future.

Fulfilment of hopes for the future will greatly depend on the interest the people take in their governance, vigilance which they exercise in order to keep the government on even keel, and senstivity in the governmental apparatus that they succeed in stimulating. It is this sprit that COMMON CAUSE will continue to dedicate itself to serve the interests of the people and the country.

In consonance with this requirment we have, within the first week of installation of new government, already sent to the Prime Minister and to the concerned Ministers suggestions on some of the problems. For generating greater effort of the people and for increasing production and productivity, we have suggested that the present pernicious tendency of multiplicity of holidays should be curbed and the national holidays should be restricted to the absolute minimum, leaving to the individuals to debit to their casual leave any extra holidays they may need. We have inter alia suggested that initiative should now be taken in relation to pending matters such as amendments of rent control legislation, elimination of estate duty or at least according total exemption to one residential house from its imposition, resolving irritants arising from the operations of public utility services such as telephones, electricity, transport, gas supply and housing development, as well as straightening out of the functioning of municipal bodies so that they are not allowed to ride rough-shod over the grievances of the people and give impression of disregarding their interests. In the interests of pensioners it might be mentioned that we have already taken up with the new Finance Minister that government must release for the pensioners the deaness relief instalments simultaneously with the serving employees.

COMMON CAUSE promises to thus continue the crusade on all the issues of public interest. We urge that the people and their organisations and associations should likewise keep building up the pressure on concerned authorities for finding satisfactory solutions to their problems.

House Tax Judgement
Housing and Taxation
Public Interest Litigation
Wealth Tax
Estate Duty
For Pensioners



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# HOUSE TAX JUDGEMENT

The long-awaited judgement on the writ Petitions relating to House Tax has been announced by the Supreme Court. It took over 20 months in coming, the Writ Petitions having been argued before Division Bench of the Supreme Court in February 1983. People had become impatient because the Delhi Municipal Corporation went on heaping on the houseowners all the anomalies, discriminations and aberrations of the law and defying the previous Supreme Court judgement of 1979 in the well-known case of Dewan Dault Rai Kapoor & Ors vs NDMC.

With the announcement of this Judgement we earnestly hope that the Delhi Municipal Corporation and New Delhi Municipal Committee, which were Directly impleaded in this Writ Petitions, will abide by its verdict and operate under the guidelines it has laid down for the assessments of House Tax. COMMON CAUSE had submitted two of these Writ Petitions. These covered the entirety of the problems of assessment and dealt with the difficulties encountered by the houseowners in respect of the different categories of properties, namely, self-occupied premises, rented premises, partly self-occupied and partly rented premises, partly recently constructed and partly previously constructed premises, and premises on free-hold and lease-hold land, etc. The judgement covers all these categories in its broad sweep.

The matter of House Tax assessment is of all-India importance. The basis of "standard rent" previously expounded by the Supreme Court in the judgement of Dewan Daulat Rai Kapoor case, has now been forcefully re-iterated. It has application in respect of imposition of House Tax in all the urban areas in relation to the definition of "standard rent" appearing in the rent control laws of the different States. We have, therefore, considered it necessary to give a detailed analysis of this new judgement so that the owners of immoveable property, including residential and non-residential property, should become aware of the legal position regarding assessment in respect of the above-mentioned categories of the properties.

On the pronouncement of the 1979 Supreme Court judgement the Delhi Municipal Corporation and New Delhi Municipal Committee had adopted the subterfuge of pleading before the Government of India that the judgement would entail losses in their recovery of House Tax. It was said that MCD would lose Rs. 5 crores annually, that NDMC would lose Rs. 2 crores annually, and that Rs. 15 croses would have to be refunded by MCD. These fears were false, but they were able to persuade the Government of India to introduce amendments of the relevant statutes for "overcoming" the effects of Supreme Court judgement, for making the assessments on the basis of market rent and not standard rent. People rose up in anger against the proposed legislation and the government had to shelve it. Now, with the announcement of the new Supreme Court judgement, there are indications that the bogey of anticipated losses is again being raised so that the government of India may be persuaded to again attempt the amendment of the concerned statutes. People know that as against the losses, which were at that time loudly proclaimed to be anticipated, the MCD has actually raised its revenue from House Tax from the figure of Rs. 14 crores to the present figure of Rs. 38 crores. Therefore, the people will continue to be vigilant and will hopefully be able to thwart any effort of the Municpal authorities to play hide and seek with them and to seek amendment of the law merely to serve their purposes, disregarding the interests and viewpoints of the people.

COMMON CAUSE has sent telegram to the Commissioner and the Assessor and Collector of MCD requesting that the assessments which have been notified in the begining of December '84 and in respect of which objections have been invited, should be revised in the light of New Supreme Court judgement and public notice should be re-issued. The

Administrator of NDMC has also been requested by a letter to ensure that when the NDMC now notifies the assessment lists for the new assessment year these are based on the law laid down in the new Supreme Court judgement. It is not likely that either the MCD or NDMC will prepare their assessment lists afresh, and therefore it is of paramount importance that every assessee should file the General Objection, as prescribed by law and as advised by us previously, so that opportunity is not lost for filing appeals against the assessments if they continue to be unlawfully made. This advice has been communicated to all houseowners' organisations etc. It is imperative that in the General Objections it should be stated that the assessment should now be made on the basis of the law as laid down in the Supreme Court judgemenf of 12th December 1984.

In the analysis of the new judgement that follows we convey our gratitude to Mr. T. C. Gupta, Secretary General of the South Delhi Houseowners Association, who has been kind enough to prepare the outlines of the analysis for providing guidance to the peopie.

PREVIOUS SUPREME COURT JUDGEMENT

In the case of Dewan Daulat Rai Kapur the Supreme court in 1979 laid down the following basic law :

1) The annual value of a building must be held to be limited by the measure of the standard rent determinable on the principles laid down in the Delhi Rent Control Act. 1958 and it cannot exceed such measure of standard rent.

2) It is obvious that in case of a self-occupied building, the annual value would be limited by the measure of standard rent determinable under the Act for it can reasonably be presumed that hypothetical tenant would not ordinarily agree to pay more than what he could be made liable to pay under the Rent Act,

This enunciation of the law did not suit the municipal authorities of Delhi and New Delhi. They continued to act In gross violation of the verdict of the highest Court of the land. Various tactics and subterfuges were adopted by them to side-step the Supreme Court judgement and they continued to assess the house tax on the basis of rent (in some cases on the basis of first rent) and to put forth excuses to justify their contention why it was not possible to assess the standard rent as per judgement of the Supreme Court. Many cases from various colonies were taken in appeal before the District Courts who were pleased to set aside the assessmnte order of the NDMC/DMC and to re-asses the properties according to law laid down by the Supreme Court on standard rent basis The NDMC/MCD did not take any action on these remanded cases and kept them pending, thus causing harassment to the houseowners. It was in these circumstances that the matter had again to be taken to the Supreme Court for clarification as to how the various types of properties viz. self-occupied, partly self--occupied and partly-let lease-hold properties etc. should be actually assessed. The New Supreme Court judgement is another landmark in the history of house tax. It aim at clarifying all the important points relating to assessment of different types of properties.

THE NEW JUDGEMENT OF SUPREME COURT

Salient features of this judgement are given in the paragraphs that follow.

1) BASIS OF ASSESSMENT ON STANDARD RENT RE-ITERATED.

The Supreme Court has re-iterated the earlier decision of December 1979 given in the case of Dewan Daulat Rai Kapur that the rateable value of a building must be held to be limited by the measure of standard rent determinable on the principles laid down in the Rent Act and it could not exceed such measure of the standard rent. According to Supreme Court, their decision in the earlier case is clearly the authority for the proposition that the rateable value of a building, whether tenanted or self-occupied, is limited by the measure of standard rent arrived at by the Assessing Authority by applying the principles laid down in the Delhi Rent Control Act and it cannot exceed the figure of the standard rent so arrived at by the Assessing Authority. It has been held that even if the landlord was lawfully entitled to receive the contractual rent from the tenant, such contractual rent could not be taken to be the rateable valua of the building, because the reasonable ex-

pectation of the landlord to receive rent from a hypothetical tenant could not possibls exceed the standard rent determinable in accordance with fhe provisions laid down in the Rent Act. According to them the standard rent was UPRPER LIMIT of the rent which the landlord may expect the receive from a hypothetical tenant, if the building was let out to h.m from year to year. If in a given case, the actual rent receivable from a hypothetical tenant were lower than fhe standard rent determinable in accordance with the principles laid down in the Rent Act, then such lower rent and not the standard rent, should be taken to be the reteable value of the building.

In this context, the Supreme Court has also observed that if the assessee fails to produce the documentary evidence as regards the aggregate amount of reasonable cost of construction and the market price of land comprised in the premises on the date of commencement of the construction, for the purposes of determining the standard rent under subsection (1) (A) (2) (a) or (1) (B) (2) (b) of Section 6, it does not mean that the assessing authority can fix the standard rent arbitrarily. According to them in such a situation, the ssessing authorities would obviously have to estimate for themselves on the basis of such material as may be gathered by fhem regarding reasonable cost of constructionn and the market price of the land and arrive at their own determination of fhe standard rent. This is an exercise with which the assessing authorities are quite familiar and it is not something unusual for them or beyond their competence and capacify.

2) STANDARD RENT CAN ONLY BE DETERMINED EITHER UNDER SECTION 6 OR UNDER SECTION 7 OF THE RENT ACT.

A major point of controversy for decision before the Supreme Court was under which section or sections the standard rent of a building should be determined by the MCD/NDMC. According to the Supreme Court, it was clear from the definition of 'stsndard rent" contained in Secfion 2 (k) of the Delhi Rent Control Act that the standard rent of a building means the standard rent referred to in section 6 or where the standard rent has been increased (on account of subsequent additions to the building) under Section 7, such increased rent. Since the definition of standard rent in the Delhi Rent Control Act does not contain any reference to Section 9, (subsection 4), it must mean standard rent as laid down in Section 6 or increased standard rent as provided in Section 7 and nothing more. According to them, Section 9, as definition of standard rent in section 2 (k) clearly suggests and the marginal note definitely indicates, does not define what is standard but merely lays down the procedure for fixation of standard rent.

According to the Supreme Court, if it is nof possible to determine the standard rent of any premises on the principles set forth in Section 6, the Assessing Authority may fix such rent under Section 9 (4) of the D. R. C. Act but while so doing, the Assessing Authority does not enjoy unfettered discretion to do what he likes and he is bound to take into account the standard rent payable in respect of similar or nearly similar premises in the locality or in the adjoining locality. The Assessing Authority may fix such rent as would be reasonable having regard fo the situation, locality and condition of the premises and the amenities provided therein. As pointed out by the Supreme Court, such cases, where the standard rent will be required to be fixed under Section 9 (4) would be extremely race But even in these extremely rare cases, the MCD/NDMC is required to fix the standard rent in accordance with the formula laid down in Section 6 or Section 7 and they cannot ignore that formula by saying that in the circumstances of the case, they consider it reasonable to do so. This decision has completely negatived the contention of the MCD/NDMC that they could fix the standard rent of a building under Section 9 (4) in their discretion on the basis of first rent or any rent which they considered reasonable. They have to fix the standard rent on cost basis under Section 6 (1) or under Section 6 (2) (b) on the basis of actual rent for a period of five years from the date of first letting and the standard rent cannot be fixed on any other basis.

3) FOUR DIFFERENT CATEGORIES OF PROPERTIES FOR PURPOSE OF FIXATION OF STANDARD RENT.

FIRST CATEGORY - SELF-OCCUPIED PREMISES

The D. M. C. contended before the Supreme Court at the time of arguments that the premises which have not been let out at any time and have throughout been self-occupied, the standard rent of such premises would be determineable under the provisions of Section 6 (2) (b) and any rent which would be agreed upon between the landlord and the tenant if the premises were let out to a hypothetical tenant would be deemed to be the standard rent of the premises and the cost formula of Section 6 (1) would not be applicable for determining the standard rent of such self-occupied premises. This has not been accepted by the Supreme Court. According to them this contention, plausible though it may seem, is not well founded. It is difficult to see how the provision enacted in sub-section (2) (b) of Section 6 can be applied for determining the standard rent of the premises when the premises have not been actually let out at any time. Sub-section (2) (b) of Section 6 clearly contemplates a case where there is actual letting out of the premises as distinct from hypothetical letting out, because under this provision the annual rent agreed upon between the landlord and the tenant at the time of first letting out is deemed to be the standard rent for a period of five years from the date of such letting and it is impossible to imagine how the concept of *First Letting out* can fit in with anything except actual letting out and how the period of five years can be computed. According to the Snpreme Court, sub-section 2 (b) of Section 6 can have no application where there is no actual letting out and hence in case of premises which are constructed on or after 9th June 1955 and which have never been let out at any time, the standard rent would be determinable on cost basis i. e. on the basis of 8¼% of the aggregate of reasonable cost of construction and the market value of land on the date of commencement of construction under section 6 (1) of the Delhi Rent Control Act. If a self-occupied premises was previously let out, then the annual rent agreed upon between the landlord and the tenant at the time of first letting would be the standard rent for a period of five years from the date of such letting and after the expiry of five years period, the standard rent will be fixed on cost basis under Section 6 (1) of the Delhi Rent Control Act. Similarly if a house which is presently self-occupied and has never been previously let out, is vacated by the owner and is let out, its standard rent would be determinable for the period of first five years from the date of letting on the basis of rent agreed between him and the tenant. However, after the expiry of five years renting period, the standard rent would revert to cost basis as before when the house was self-occupied. The owners of self-occupied houses should therefore keep this in mind at the time of letting out of their houses which have been self-occupied and whose rateable value have been fixed on cost basis. If the owner of a house which has hitherto been self-occupied and *has never been* previously let out, gives out his house on rent at any point of time even after the lapse of 20 years — the rateable value would be determinable on the basis of rent agreed upon between him and the tenant for a period of five years from the date of such letting out. Of course after the expiry of five years of letting, the rateable value would revert to cost basis as in the case of self-occupancy before the letting was actually done.

In relation to self - occupied properties the Supreme Court suggested to MCD that the rebate of 20% which was previously being allowed and which was withdrawn from 1980, should be restored "because there is a vital distinction between self-occupied premises and tenanted premises and the right to shelter under a roof being a basic necessity of every human-being, residental premises which are self-occupied must be treated on a more fabourable basis than tenanted premises so far as the assessibility to property tax is concerned".

SECOND CATEGORY-PARTLY SELF-OCCUPIED AND PARTLY RENTED PREMISES.

The Supreme Court has decided that it is the premises as a whole which are liable to be assessed to property tax and not different parts of the premises as distinct and separate units. But while assessing

the reteable value of the premises on the basis of rent which the owner may reasonably expect to get if the premises are let out it cannot be over-looked that where the premises consist of different parts which are intended to be occupied as distinct and separate units, the hypothetical tenancy which would have to be considered would be the hypothetical tenancy of each part as a distinct and separate unit of occupation and the sum total of the rent reasonably expected from a hypothetical tenant in respect of each distinct and separate unit would represent the rateable value of the premises as a whole. According to the Supreme Court, the reteable value of a partly self-oceupied and partly rentedbuilding will be determined as under:

SELF-OCCUPIED UNIT

The standard rent of the building as a whole will be determined on cost basis as per Section 6(1) of the Delhi Rent Control Act. Thereafter the proportionate standard rent on floor area basis of the self-occupied unit will be worked out. This will be the upper limit in respect of the self-occupied unit. This formula will apply if the self-occupied unit has not been previously let out. If for example the self-occupid unit was previously let out for a period of say-two years - from the date of construction, in that case the rateable value of the self-occupied unit will be worked out on the basis of first letting value for a period of five years from the date of first letting. Thereafter the formuia of 'proportionate standard rent on cost basis' will come into effect.

TENANTED UNIT

If a separate and independent unit of occupation is tenanted, its rateable value will be determined under Section 6(2) (b) on the basis of rent actually received, for a period of five years from the date of first letting. After the expiry of five years period of letting, even the tenanted unit will be liable to be assessed on the basis of 'proportionate standared rent on cost basis' to be worked out according to the floor area of the tenanted unit.

In this connection it may be stated that in the cases of Dewan Chand Pruthi ond Mahender Singh, the Delhi High Court had decided that during the first five years, the self-occupied unit will also be assessed on the basis of rent actually received for the tenanted portion. Obviously the Supreme Court has taken a contrary view and all cases decided by the MCD on the basis of Delhi High Court's decisions in the above two cases will have to be re-opened and decided as per the law laid down by the Supreme Court now. It is pertinent to note that according to the Supreme Court 'It is impossible to imagine how the concept of first letting out can fit in with anything except actual letting out and how the period of five years can be computed from the date of any hopothetical letting.' Consequently a partly self-occupied unit which has not been previously let out, cannot be assessed on the basis of rental value prevailing either in the premises itself or on the basis of market rent in the locality. Such unit has to be assessen on the basis of proportionate standard rent on cost basis calculated on floor area of the selfoccupied unit.

THIRD CATEGORY—PROPERTIES CONSTRUCTED ON LEASE-HOLD LANDS

The contention of the MCD/NDMC before the Supreme Court was that in many cases lease-hold lands could not be sold without the permission of the lessor and consequently such lands had no market value and as such their cost could not be determined. All such buildings were assessed by them arbitrarily under Section 9 (4) either on tha basis of first rent or the market rent even where the properties were self-occupied or the five years holiday period had expired, where such properties were tenanted. According to the Supreme Court, the above content on of the MCD/NDMC is wholly unfounded. They have stated that 'merely because the plot of land on which the premises are constructed cannot be sold, transferred or assigned except to a member of the Cooperative House Building Society and without the prior consent of the Govt., it does not necessarily mean that there can be no market price for the plot of land. It is not as if there is total prohibition on the sale, transfer or assignment of the plot of land so that in no conceivable circumstances, it can be sold, transferred or assigned.' According to the Supreme Court, subject to the various restrictions imposed in the lease deed by the Government, the sale, transfer or assignment can take place. It cannot, therefore, be said that the market price of the plot of land cannot be ascertained.

When we want to determine what would be the market price of the plot of land on the date of commencement of construction of the premises, we must proceed on the hypothesis that the perior consent of the government, where necessary, has been given and the plot of land is available for sale, transfer or assignment and on that footing, ascertain what price it would fetch on such sale, transfer or assignment keeping in view all the restrictions imposed on the land in the lease deed. Where the lease deed contained a clause providing that on sale, transfer or assignment of the plot of land, the Govt. shall be entitled to claim 50% (or some percentage) of the unearned increase in the value of the plot of land at the price realisable in the market the market price of land cannot be determined as if the lease-hold interest were free from the above burden of restricton. This burden of limitation attaching to the leasehold interest must be taken into account in arriving in the market price of the plot of land. The Supreme Court has, therefore, decided that in case of lease-hold lands : "We must discount the value of this burden or restriction in order to arrive at a proper determination of the market price of the plot of land and the only way in which this can be done is the price of the plot of land as if it were unaffected by this burden or restriction and deductin from 50% of the unearned increase in the value of the plot of land on the basis of the hypothetical sale, as representing the value of such burdeh or resrrictionr"

FOURTH CATEGORY - PREMISES CONSTRUCTED iN STAGES

The Supreme Court has decided that in such cases the rateable value of the building constructed originally with have to be decided on cost basis under Section 6 (1) if the building is self-occupied and has never been let out. Where it has been let out, the standard rent will be on the basis of rent actually receiveable of the time of first letting, for a period of five years from the date of first letting and thereafter on cost basis under section 6(1) one of the Delhi Rent Control Act. According to the Supreme Court, three different situations may arise regarding additions to the existing building. These may be :

1. THE ADDITION MAY BE BY WAY TO EXTENSION OF A ROOM OR TWO TO THE EXISTING PERMISES.

If the premises are self-occupied and have never been let out the existing structure together with the additions will be assessed on cost basis under Section 6 (1) of the DRC Act. If the addtions are made to the existing tenanted premises, the standard rent would be liable to increase under Section 7 of Delhi Rent Control Act at 7½% of the cost of additons and such increased rent together with the standard rent of the existing structure will be standard rent of the whole premises.

2. THE ADDITION MAY BE BY WAY OF DISTINCT AND SEPARATE UNIT OF OCCUPATION.

If the additional separate units is self-occupied and not let out, the standard rend will be determined on cost basis (land value not to be taken for the second time) under Section 6 (1) of the Delhi Rent Control Act. If on the other hand the separate unit is tenanted, its standard rent will be calculated on the basis of rent agreed to between the landlord and the tenant at time of first letting, for a period of five years from the date of such letting out and thereafter on cost basis under Section 6 (1) ; of course the cost of land will not be included for the second time.

In this context the supreme Court has made it very clear that the assessing authorities cannot determined the standard rent of the additional structure by taking the reasonable cost of construction of the additional structure and adding to it the market price of the land and applying the statutory percentage to the aggregate amount. According to them, the market price of the land canno the added twice over, once while determining the standard rent of the original structure and again while determining the standard rent of the additional structure.

This in brief is the essence of the new Supreme Court Judgement. We earnestly hope that the assessing authorities will not try to side-track these clear guidelines and adopt the subter-fuges they previously adopted. If this is done by the assessing authorities they will not be able ro blame the aggrieved assessees if they approach the Supreme Court for launching proceedings of contempt of court against them.

# HOUSING & TAXATION

Taxation problems relating to housing have been mounting over the past few years and have now assumed disturbing proportions. For enabling a comprehensive view to be taken of these problems this write-up is presented so that people should become aware of these problems and seek redress by making representations to the appropriate and concerned authorities. We are grateful to Mr. J. P. Jain, Chairman of the Delhi Urban House - Owners Welfare Association for having compiled the material of this write-up.

The incidence of taxation on house property is a matter of great concern. While a low or moderate rate of taxation may help stimulate housing activity, exorbitant rate can depress it. The problem has, therefore, to be considered realistically as a long term measure in the context of national needs.

The owner of a house receives rent, which is controlled or partly controlled. As against this, there are many outgoings viz :

i) Ground rent (lease-money) payable to local Development Authority.
ii) Local taxes payable to the Municipal authority.
iii) Expenses on repairs and maintenance.
iv) Interest on borrowed capital.
v) Income-tax,
vi) Wealth-tax.
vii) Capital gains tax and other taxes payable in the case of sale/transfer of property.
viii) Estate Duty.

Upto the thirtees rents were not controlled, vacation of premises was not a problem, incidence of taxes was low, municipal authority used to charge about 3.25% as property tax, and there was no lease system. Investment in housing was, therefore, in plenty and there was a general inclination to build houses. Houses were then easily available on rent at a moderate rate.

All this has changed over the years. Gradually, changes that came about include : (i) local taxes have increased to high figure. (ii) ground rent has to be paid on all plots purchased from Development Authority, whether by auction or otherwise. (iii) cost of repairs and maintenance has gone up very considerably and (iv) burden of direct taxes has also increased.

GROUND RENT (LEASE MONEY). The land in the cities is now generally given to people either by auction or through housing co-operative societies. Practically all land is being given on lease-hold basis. In addition to the cost of land, which is called premium, ground rent at the rate of about 2 1/2% of the premium is generally charged. In bigger cities a modest plot of 180 sq. metres costs anything between Rs. one lakh to Rs. four lakhs according to the locality etc. Taking an average price of Rs. 2 lakhs, the ground rent (lease-monay) of Rs. 5,000 per annum becomes payable. Taking on the high side, a 2½ storey building such a plot could yield a rental value of Rs. 30,000/ 40,000 per annum. On recovering an average rent of Rs. 35,000 per annum, about 14% of the annual rental yield would go towards payment of ground rent alone.

LOCAL TAXES. During the forties, local taxes leviable by Municipal authorities in bigger cities were raised to 8¼% and later on to 10% and susequently to 12½% and more.

In addition to property tax, fire tax, scavenging tax and education cess have been introduced at certain places. In Delhi the imposition of local taxes ranges from 12½% to 32½% on a slab system. In some other big cities like Baroda, Bombay, Madras and Calcutta, Property Tax is levied at flat rate varying between 25% to 35%. On an average the local taxes consume about 25% of the rent, which is equivalent to three months' rent in a year. Although the burden of local taxes has already reached a very high limit, there is still clamour from local bodies to increase it further for meeting their continuously mounting expenditure.

REPAIRS AND MAINTENANCE. To keep a house in habitable condition it requires white-washing r distempering, painting, polishing etc. at proper time. The electrical fittings also require periodical repairs and replacement. Rent Control laws envisage expenses equivalent generally to one month's rent on repairs and maintenance per annum. This means that only 8¼% of the annual rental yield can be utilised for this purpose according to Rent Control laws. This has become practically impossible. Due to enormous rise in the prices of material, distemper/lime, oil, paints, polish, spirit, cement, steel, sanitary fittings and labour. the maintenance of property has become a very costly affair. For small jobs it is very difficult to get labour on nominal rates and one has to pay high rates. It is not possible to meet these expenses within one month's rent. As the property gets older, it requires special and extensive repairs which the owners have not been able to provide due to lack of funds and inadequacy of return. Old buildins are thus getting converted into slums and their life span is greatly reduced, diminishing the housing stock. Having regard to the present conditions, repairs and maintenance would consume about 20% of the annual rental yield (i. e. equivalent to 2½ months rent.) In the case of properties which are on old and controlled rents, even the total annual rent is not enough to meet the cost of repairs and maintenance in many cases.

COLLECTION CHARGES, BROKERAGE, INSURANCE, LITIGATION AND OTHER MISCELLANEOUS EXPENSES. The houseowners have to incur certain miscellaneous expenses in the shape of fire insurance, collection charges, litigation, brokerage, and sometimes suffer loss of rent. The Income Tax department allow 6% as collection charges. These miscellaneous expenses may be taken to consume at least 6% of the rent.

INTEREST ON BORROWED CAPITAL Now-a-days a middle class person cannot build a house from his own finance. He has to obtain loan from Lifu Insurance Corporation and other sources at interest ranging from 13½% to 18%. On an average 50% of the capital comes out of loan. Liability of interest is high and it disturbs the entire economy of house construction. After paying interest, the houseower invariably goes into red. It is, therefore clamoured that the interest chargeable should not exceed the net return allowed to owner on his investment under the Rent Control laws and the bank finance should be available for house construction at similar concessiooal rates.

TOTAL BURDEN Even disregarding, for the time-being, the crippling interest which houseowner has to bear on borrowed capital for construction of the house, the total burden of outgoings works out as under :

| | |
|---|---|
| Ground rent (lease money payable to DDA) | 14% |
| Municipal taxes | 25 |
| Miscellaneous expenses | 6 |
| Repairs and maintenance | 20 |
| | 65% |

In certain cities the land is free-hold and no lease money has to be paid. Expenses of repairs and maintenance would vary according to the condition of the building. The rates of Municipal taxes also differ from place to place. The total outgoings may, thus, vary from 40% to 70%, having regard to the local factors. Besides the local taxes and connected expences the houseowner is also subjected to levies of Income-tax, Wealth-tax etc and it would be necessary to examine these impositions.

INCOME TAX : The minimum rate of income-tax is now 22½% (inclusive of surcharge). It goes upto 62%. The balance income left over with the owner

after payment of local taxes and other outgoings, is subject to income-tax. The Combined burden of all the outgoings, inclusive of income-tax, may go upto 80%. It is necessary that the burden of these various impositions should be examined. Suggestions have been made that tax concessions need to be given in regard to ONE RESIDENTIAL HOUSE which may be self-occupied or rented out as the case may be. It has been repeatedly urged that self-occupied house should be totally exempt from income-tax as is does not yield any actual income. The present system of charging income-tax on the basis of notional income from self-occupied property, requires to be scrapped. In regard to a rented house rebate of 10% on the capital invested deserves to be given in order to allow the fair rent return to the house-owners after payment of all taxes. This would help to place house construction at par with other priority industries of national importance for giving boost to the construction activity. The Income Tax Act allows a rebate of 1/6 for repairs and maintenance, inclusive of depreciation. This provision was made more than 50 years ago and it is totally indequate in the present day circumstances. This rebate needs to be enhanced from 1/6 to 1/4 and should be allowed on total rental income instead of income left after payment of House Tax.

CAPITAL APRECIATION : There is a mistaken belief that low yield in rental income is compensated by the rise in the value of land and building. This is only a notional concept, not based on reality of the situation. As a matter of fact, renting of the premises depreciates its value. Under the opetation of existing Rent Control laws there are no purchasers of rented properties as the buyers want vacant possession. If at all there is some gain in a particular case, the Capital Gains Tax takes away a large share of the gain. The money left with the owner after payment of Capital Gains Tax does not have the purchasing power equal to the amount originally spent on the building. The factor of capital appreciation should not, therefore, cloud the issue of a fair net return to the owner.

CAPITAL GAINS TAX : If a house property is sold one has to pay some duty, registration charges and some brokerage to selling agent, the outgoings aggregating to about 10 percent of the sale price. In the case of lease-hold plots the Development Authority in a city like Delhi charges 50 percent share in the unearned increase in the value of land. The Income Tax department takes the capital gain by adding substantial part of it to the other income of the assessee during the assessment year. This addition of capital gain pushes up the income to a high figure and the gain is thus taxed at a high rate, leaving little in the hands of the seller. There is need of re - structuring the Capital Gains Tax. In fact, as the prices of gold or other moveable property which one may like to purchase after selling the house have gone up substantially, the whole concept of capital gain has become illusory and there is no justification for any tax on the so called capital gain. A rebateof atleast 60% of capital gain should be allowed to the owner of one residential house as is allowed in the case of capital gain arising out of a moveable asset. The rates of rebate differ having regard to the period for which the capital asset has been held by the assessee, the lower rebate is allowed in respect of immoveable assets. The discrimination between moveable and immoveable assets for purposes of capital gain is uncalled for. The acquisition and disposal of a moveable asset is more easy as compared to an immoveable asset. The disposal of an immoveable asset involves a lot of other taxes (e. g. stamp duty, registration fee and brokerage) where the disposal of gold, silver and diamond jewellery is much easier and no other taxes and expenses are incurred in the sale. The quantum of capital gain would almost be the same in both cases. It also needs to be born in mind that the Development Authority charges 50% of the unearned increase in the price of land. The element of gain in respect of lease-hold land, therefore, dserves to be ignored while calculating the capital gain as the Government has already taken lion's share which is practically equal to the highest slab of income-tax. The balance of 40% should be taxed in four assessment years as capital gain accrues gradually in a number of years. It is unfair to treat it as income of one year.

TAX INCENTIVES : The Government at present gives precious little in the way of tax incentive for

investment in housing construction as compared to bank deposits and other savings schemes. Let us take the case of middle class person having an annual taxable income of Rs. 25,000, residing in a rented house of Rs. 600 p. m. He has somehow saved a sum of Rs. 1.25 lakhs in his life time and invested it in fixed deposits in Banks, National Savings Certificates, units of UTI etc., on which he earns tax free income of Rs. 12,000 p. a. If he builds a small house or purchases a Development Authority flat for Rs. 1.25 lakhs by withdrwing it from the savings schemes, he has to forego tax free interest income of Rs. 12,000 p. a. If he occupies the house he saves rental expenditure of Rs. 600 p. a. but has to lose tax benefit admissible on rental expenditure upto Rs. 400 p. m. under the Income Tax Act. In addition, he will pay Ground Rent to the Development Authority, House Tax to Municipal Authority, Income-tax on notional income of Rs 2500 (10 '/. of Rs. 25,000) and bear expenses of repairs and maintenance. All these liabilities would almost consume the rent saved by him. He will live in his own house by foregoing his tax free income of Rs. 1,000 p. m. This illustration proves the fact that it is much cheaper for him to live on rent than living in his own house. If due to any financial stringency he gives the house on rent of Rs. 1,000 p. m. his income will be subject to local tax, ground rent, income-tax and also expenses on repairs an maintenance, which would consume about 40 '/. of the rental income. In short, if one converts his investment of bank deposits and savings schemes into a residential house, he loses in all respects.

As a measure to encourage building activity Government gives a rebate of Rs. 3,600 p. a. in taxable income for five years on a new residential unit. This is obviously insignificant when compared to tax benetits available on investments in the various savings schemes. Obviously, for stimulating construction activity, the tax benefits for investment in housing constructisn should be the same as available in other savings schemes, otherwise investment in housing will continue to be the last priority of a prudent investor. It is unfortunate that prejudice exists against rental income. It is but proper that rental income from a residential house and interest on bank deposits should be treated on equal footing for the purpose of tax rebates.

WEALTH TAX : A residential house valueing upto Rs. 2,00,000 is exempt from Wealth-tax. The land price and cost of construction have gone up very high in all metropolitan areas and other cities, ranging from Rs. 600 to Rs. 2,000 per sq. metre in Delhi and making it practically impossible for a middle class person to buy even a modest plot of 180 sq. metres which may cost upto Rs. 2,00,000. Residential flats in multi-storeyed buildings, with area of about 900 sq. ft., would cost not less than Rs. 3 00,000. Obviously, the exemption limit for Wealth-tax pursoses, in fhese circumstances, deserves to be substantially increased, and should be fixed at not less than Rs. 5,00,000.

Government has liberalised the valuation rules by pegging the land prices at 1971 level and valuation of the residential house on rental basis These rules do not provide relief to persons who have constructed houses after 1971-72 it is obvious that the value of house constructed after 1971-72 should also be determined to be pegged to a year prior to the period of escalation of prices.

ESTATE DUTY : One self-occupied residential house, upto the value of Rs. 1,00,000, is at present exempt from Estate Duty. Previously the exemption limit of a residential house used to be same for purpose of Estate Duty and Wealth-Tax but this principle has been ignored while raising the exemption limit to Rs. 2,00,000 in the case of Wealth Tax. The exemption from wealth-tax is admissible to one residential house upto 2,00,000 irrespective of the fact whether it is self-occupied or rented. It is obviously necessary that one residential house, whether rented or self-occupied, should be exempt from Estate Duty.

The family residential house is usually in the name of earning male member of the family. On his demise the widow and minor children are placed in state of financial distress. In most of the middle class families the successors of deceased owner get the house but do not have the cash resources to pay Estate Duty. The requirement of payment of Estate Duty has created a scare in the middle class families who have, over the life time of bread winner, constructed a house. It is of fundamental importance that for Estate Duty purposes a residential house needs to be treated on more liberal basis than Wealth-Tax

# NEW DIMENSIONS OF PUBLIC INTEREST LITIGATION

In two recent Writ Petiitons the Bombay High Court has prominently reaffirmed a law that the statutory duty devolved upon a public utility authority is a public duty and such statutory duty could be enforced through court action where the authority fails to perform it. It has reiterated that the law of jurisdiction in issues of public importance is well settled and the law will have to be relentlessly enforced; the plea of inadequacy of finances etc. will be a poor alibi when people under misery cry out for justice; and dynamics of judicial proces has a new enforcement dimension. The Court has considered it appropriate and justifiable to issue directions to compel the statutory bodies including the municipal authority, electricity supply authority, town improvement trust and the state government to stand by the citizens and do their duty so that the purpose of public laws expressly enacted are not frustrated.

The Writ Petitions had been filed by the Citizens Action Committee of Nagpur and other citizens complaining of absence of civic amenities in certain localities of the city. The Court, after detailed hearing, and providing opportunity to the concernod civic authorities and bodies, has issued specific directions covering a wide area of the functioning of these authorities. It has inter alia directed that the civic body and the electric supply undertaking should supply within a time bound period of five months adequate lighting in certain areas where it has not so far been provided; it has directed these two bodies to set up a joint committee for this purpose and to hold its first meeting in three weeks; it has directed the shifting of a market to another site by March 85 for relieving congestion in certain areas of city; for this purpose it has directed the provision of water supply, surfacing of specified roads, provision of lighting, establishment of a police out-post, within the specified period; it has advised the shifting of parking place; it has, in the interest of public, directed the cleaning of specified nallahs with utmost priority and has given a period of one year for preperation of scheme; it has directed speedy execution of pending projects relating to sewage treatment and to ensure that water for growing vegetables is not utilized from these places; it has given direction regarding speedy execution of projects on certain roads including ring road; the electric supply undertaking has been directed to ensure that meter reading are carried out every two months and meter reading cards are maintained; it has directed the concerned Chief Engineer of PWD to ensure that within two months the work of road maintenance, sewer lines, upkeep of toilets and supply of furnishing of three state run hospitals is undertaken, and the hospital authorities have been directed to give to the concerned department their requirments within one week. In respect of hospitals the court has directed that the compound walls should be repaired within six months, police force should be deployed within six weeks for stopping nuisance of breakages of compound walls and nuisance of stray cattle; air conditioners should be repaired and electric fittings installed within eight weeks; work on high tension energy line to a particular hospital should be completed within four months. In the matter of traffic noise the court has directed the city police commissioners to take steps within six weeks to declare silence zone around three mentioned hospitals. For avoiding over-crowding in the children's ward of a hospital the court has directed the state government to take steps for providing more space or an alternative ward to cater to the needs of children alongwith necessary staff.

Besides issuing directions in these various fields the court has also appointed a high powered five-man committee headed by a former Vice Chancellor of Nagpur University to investigate into and suggest measures within six weeks about the improvements required in the three state run hospitals. It has been directed that if there are no objeetions to give effect to the recomendations, which may be suggested by the committee, the State Govt. would be free to

implement them. But it there are any objections these should be put before the court for consideration.

NEW DIMENSIONS :

Directions of such wide authority and significance, with time bound action, dealing with the details of civic matters and concerning the operations of various statutory bodies including the municipal authority, electricity supply undertaking, improvement trust, medical department and the state government, comprise the emergence of new dimensions in the results arising from public interest litigation. The court in this instance has endeavoured to identify the issues and back them by judicial sanction. The time bound programme has been given by the court after discussion with the concerned authorities. Wherever matters of policy are involved the court has directed the state government to lay down a policy and further to issue directions to the concerned statutory authorities.

In issuing these directions the court has dispelled any impression that the directions aim at running the government through the court. It has been clarified that these direction have been issued to compel the statutory body including the state government to stand by the citizens and do their public duty so that the laws, which have been enacted for the various purposes, are appropriately enforced.

This judgement and the directions embodied in it are illustrative of the remedies that citizens can seek from the courts where, to their exasperation, the concerned authorities, whether they comprise the state government or the municipal authorities or any public utility authority, such as the one dealing with transport or electric supply or water supply etc. fail to take appropriate action on the demands made to them by the citizens.

Against this background it will be worthwhile to consider broadly the matters which could be agitated before the courts in respect of non-performance or unsatisfactory and inadequate performance of bodies dealing with some of the public utilities.

AIR POLLUTION :

The capital of the country has in the past few years developed an extremely high level of automobile air pollution. A survey made in early 1984 showed that about 60,000 tonnes of carbon monoxide which is a deadly gas in its own right, 24,000 tonnes of hydro-carbons, and 2000 tonnes of nitrogeon oxide are released annually in the atmosphere by the petrol consuming vehicles. Other studies claim that that these fugures are an under-estimate and that the pollution caused daily in Delhi is of the order of 1400 tonnes of sulphur di-oxide, hydro-carbons, and oxide of nitrogen, aggregating to about 4,80,000 tonnes in a year. These latter figures include pollution caused by industries, power plants and smoke from cooking places.

The fact remains that atmosphers of this metropolis is being seriously polluted by the automobiles. Biggest mence is that of the poorly maintained automobiles, which according to the studies account for emission of about 500 tonnes per day, two/three wheelers account for 50% of the carbon monoxide and 83% of the hydrocabons, proportionately much more than pollution caused by bigger vehicles. It is also found that 93% of the buses, trucks and mini buses, emit more somke than they are permitted.

Leaving asid the pollution caused by the industries which is a subject for separate studies and treatment, it should be possible to collect data based on studies so far conducted and available within the Department of Environment, Central Board of Control of Air & Water Pollution JNU school of Environment Studies, etc., and make out a case for rousing public pressure on the Department of Transport of Delhi Administration and the Delhi Transport Corporation that they should take immediate and effective steps for devising ways and means to check and control this continuing pollution. On their failure to check the menace the matter should be taken to court.

ROAD DEATHS

Rash and negligent driving, particularly by the heavier vehicles including public transport buses and privately operating trucks, have increasingly made the roads of our cities virtual death traps for the cyclists and pedestrians. In a city like Delhi there is hardly a day when one or two deaths are not caused on the

roads through accidents of vehicles. More often these are caused by the public transport buses and the heavy trucks. Public has been feeling very upset about this but nothing has hitherto been effectively done by any voluntary organisation to ensure rigorous measures against those who can be held responsible for not checking the growing menace. The accidents and the deaths are generally due to factors which can certainly be identified. These are either over-speeding and disregard of traffic rules; failure of basic mechanism like brakes, steering, wheel, etc. which may be caused due to poor maintenance; or inadequate training of the drivers. Remedial measures for minimising the menace can certainly be taken, and if they are not taken this will ostensibly constitute criminal neglect on the part of concerned officials which eventually leads to the death of a padestrian or a cyclist on the road.

Detailed studies need to be undertaken as to what for instance are the procedures of recruitment and training of drivers and how long a person undergoes apprenticeship befora he is given charge of a heavy vehicle like public bus to drive, what procedures are adopted regarding periodic inspection of driving capability, what precautions should be taken to ensure avoidance of over-fatigue and rashness and drunkenness of the drivers. Secondly, it needs to be ascertained as to why it has not been possible for 'governors' to be installed in the heavy vehicles for controlling the speed and whether the period allowed to the drivers of public buses for round trip is insufficient and constitutes a cause for rash driving and whether adequate precautions are taken at corners and at entry points of main roads, etc. Thirdly, the system of inspection and maintenance of vehicles and the system of repairs and replacement of parts needs to be studied in great detail to determine the areas of possible laxity and consequent mechnical failures.

On the basis of such detailed studies the management of transport services can be warned about the inadequacies and failure of their systems and procedures and it can be pointed out to them that if they fail to rectify the faults and omissions they will be liable to be held personally responsible for the negligence which results in any deaths on the roads. On their failure to rectify the defects pointed out to them, proceedings could be initiated for ascribing to them the culpability of any death that is caused by the public vehicle under the charge of such management. Certain procedures in this regard will need be observed before the culpabiiity could be taken to court but this matter could be considered at the appropriate stage.

ELECTRICITY SUPPLY

Anothhr public utility which should attracf the notice of activists in public interest causes is the electricity supply. Practically everywhere the supply of electric energy has become the monopoly of the state. Wherever private licensees existed in any towns and cities they have been generally eliminated and electricity boards and electricity supply undertakings have been established. There are recurring complaints of indifference and callousness on the part of these undertakings and their disregard of the interests of consumers. Billing systems established by them are often defective. The inspection of meters is non-existent excepting for prescribed 'readings', extessive bills are sent withouf any details, payments are extorted on threat of causing disconnection of electricity. The electricity supply is non-chalantly disconnected caustng extreme inconvenience. Even disregarding the technical failures and defaults such as power failures. fluctuating voltages etc. some of which may be beyond the powers of local authority, the omissions and commissions of the undertaking itself are of such enormous proportions that they constitute a serious failure on the part of undertaking to give satisfaction to the consumers. There are instances at Delhi, for instance, where bills of very high amounts, running into thousands of rupees, are suddenly inflicted on the consumers and they are asked to make immediate payment on the threat of causing disconnection. Often no details are supplied as to how the bill has been worked out and what period it relates to. When the consumer runs about to collect this information he finds that the bill relates to the period which may have expired six years ago, and the reason for raising the demand now is that the auditor of the undertaking may have pointed out that a particular meter at the premises of the

(Continued on page 16)

# WEALTH TAX AND ESTATE DUTY

Until March 1981, the value of a residential house belonging to a deceased person was determined according to its market value on the date of death of the owner. This method of valuation was nothing short of being an obnoxious and confiscatory measure in view of the enormous escalation of prices of property which has taken place during the last few years. Many properties had to be auctioned to pay the estate duty, rendering the families homeless.

Through the persistent efforts of the COMMON CAUSE and public outcry, the Estate Duty Act, 1923, was amended w. e. f. 1. 4. 81 which provides that the valuation of a residential house would be made on Wealth Tax basis and not on market price. This undoubtedly provides a breather because under the amended provisions oi 1979 of the Wealth Tax Act, the value of a self-occupied house is frozen as on 31. 3. 71 or on a subsequent date when the ownership was acquired. The value of rented properties after 1. 4. 79 is determined on rental basis under Rule I BB of the Wealth Tax Rules and not on the basis of market value. This basis of valuation is somewhat satisfactory.

But the amendments made to the two Acts are halting and inadequate. There are also glaring anomalies between the provisions of the two Acts as exp lained below :

## WEALTH TAX ACT

i) The exemption limit for the purpose of Wealth Tax in respect of a house or part of a house has been raised w. e. f. 1. 4. 1985 from Rupees one lakh to Rupees two lakhs. In the context of present property values, this limit needs to be increased to atleast rupees five lakhs.

ii) There is great public demand that one self-occupied house should be completely exempted from Wealth Tax.

iii) The existing time - barring limit for the purpose of assessment under the Wealth Tax Act is four years. It should be reduced to two years as under the Income Tax Act.

## ESTATE DUTY

i) The general exemption limit for purposes of Wealth Tax in respect of specified assets including deposits with Banks etc. is Rs. 3 lakhs (including units). There is no such general exemption in the case of Estate Duty. If an exemption is justified during the life time of a person, there is no reason why this exemption should not be available after his death.

ii) Whereas the exemption limit for the purpose of Wealth Tax in respect ot a house or part of a house (whether commercial or residential or selt-occupied) is now rupees two lakhs, it continues to be only rupees one lakh under the Estate Duty Act and that too is available if the house was EXCLUSIVELY USED by the deceased for his self-residence. This is a serious anomaly. The exemption should be available irrespective of the fact whether the house is self-occupied or rented and the limit should be the same as under the Wealth Tax Act.

iii) The aggregate yield, despite the present day escalation of property values, from estate duty does not go beyond rupees 20 crores a year which is an infinitesimal percentage of the aggregate tax revenue of the Government. The expenditure involved in collecting estate duty is about rupees two crores. There is therefore a strong case for abolishing this tax altogether with a view to saving the breaved families from the pangs of this legislatiion.

iv) The various exemption limits provided in the Estate Duty Act for funeral expenses, house-hold goods etc. are hopelessly out-dated and need to be modified by executive insrtuctions.

(Continued from page 14)

consumer stopped, say, in 1975 and this was detected in 1979, therefore he should be charged for the period from 1975 to 1979, calculated on a base period which is determined by the undertaking. There is utter disregard of the Section 26 (1) of the Indian Electricity Act which indisputebly fixes the responsibility on the licensee for correct maintenance of the meters, and of Section 26 (4) of the IC Act which provides that when dispute in regard to incorrect meter arises the charge cannot be made for a period more than six months. There is also utter disregard of the specific provision of Section 455 of the Delhi Municipal Corporation Act which lays down that no proceeding can be launched for recovery of any dues which are more than three years old. Some instnnces of such defaults of Delhi Electricity Supply Undertaking have been collected by COMMON CAUSE where consumers have been billed with high amounts, contrary to these provisions of the law, and the matter is being taken to court. It is apropriate that similar vigilance should be exercised at other places for determining what action needs to be initiated tor deterring the the local electric supply undertaking from riding rough shod over the interests of the consumers.

# ALL ABOUT ESTATE DUTY

## What happens to one's assets when one dies

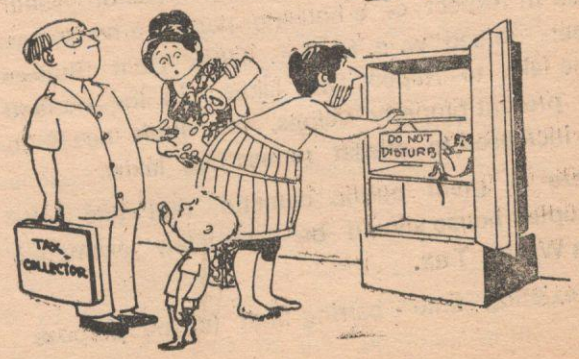

## Plan payment of death duties in advancc


*Death and taxes are certain*

However disagreeable the thought, there is no denying it that death is inevitable & certain. Equally certain is the fact that the taxman will also soon be there to collect his death duties. Inspite of this, very few people plan the payment of their taxes on death-estate duty-so as to minimise its burden with the result that the family is subjected to anguish and distress on this account and at a time when it is already under severe mental and emotional strain.

### Cash for payment of duty

Apart from planning one's affairs and investments so as to reduce the burden of duty of one's estate, the first thing to remember is that the beneficiaries, usually the immediate family, cannot distribute the estate of the deceased until the estate duty is paid. Every person should therefore ensure that at any point of time there are assets that can readily be



converted into cash to faciliate the payment of estate duty. Here are some ways one can provide for this :

1. One way is to take out an insurance policy for the purpose. A reduction in estate duty will be available subject to a limit of Rs. 50,000 out of the amount of the policy
2. Alternatively, an amount upto Rs. 50,000/- can be deposited with the controller of estate duty for payment of estate duty. This amount would not be subject to estate duty although it will be included for working out the rate ot estate duty.

   Another way is to keep roughly the estimated amount of estate duty in a current bank account in joint names. The account can be operated upon by the survivor for the purpose of paying the duty. Normally the account would be transferred to the name of the survivor merely on production of the death certificate. But keeping money with the Controller or in a bank means locking up valuable funds which could have yielded higher returns if the money was invested in other types of funds.

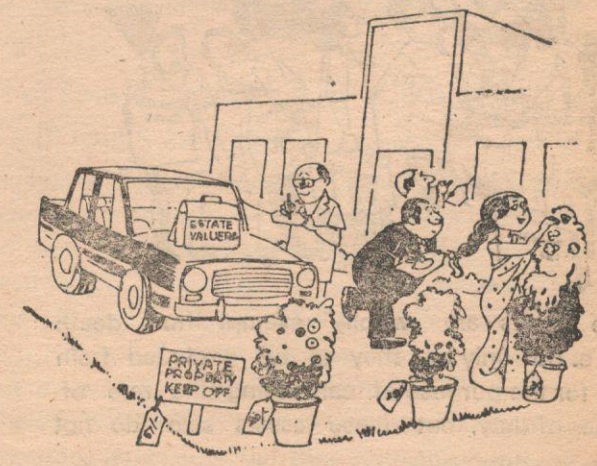
   So it is unlikely that in reality one would do this for enabling one's heirs to pay one's estate duty. Besides this could be for a very long time as one can never tell how long one is going to live.
3. Insurance P olicies of various types also provide ready cash for payment of estate duty.
4. Shares kept in joint names can be useful for purposes of paying estate duty. But the disposal of shares can sometimes be time consuming and it may also happen that they may have to be sold at a time when the market prices are low resulting in a loss.

   Everyone must ensure that shares, bank accounts, fixed deposits etc. are always in joint names as this saves a considerable amount of time and trouble when one has to transfer these to the servivor on the death of the other person.
5. Shares can als be pledged to obtain an overdraft for payment of estate duty.

## Bad planning irreversible in the case of Estate Duty

The importance of planning for estate duty can be realised by the fact that unlike income tax and wealth tax which are payable every year and situation can be rectified in a subsequent year, estate duty is payable only once and if there has been no planning, or bad planning, the situation is irreversible. Much can be done to reduce the burden of estate duty if one's financial affairs are organised on the lines described.


## On what is Estate Duty payable ?




A person domiciled In india must pay estate duty on all assets, both moveable and immoveable in India and his movable property outside India. An

Indian citizen domiciled outside India pay estate duty on his property both moveable and immoveable in India.

## Deduction for Estate Duty purposes


*Permissible deduction*

Estate duty or death duty is payabie if the estate of the deceased after deducting the debts owed by the estate to others, and the permissib le deductions, exceeds Rs. 1,50,000/-.


Some assets are wholly exempt from death duties, i. e. not only are they to be excluded from the estate for the purpose of calculating the rate of percentage of duty, but these assets also do not bear duty.

Other assets are to be included for calculating the rate or percentage of estate duty. But the rate of percentage is not to be applied to the value of the asset itself.

## How assets are to be valued

The valuation of any property for purposes of payment of estate duty is the price which the assets would fetch if sold in the open market at the date of the death of the deceased.

## One Residential House

The only exception is the valuation of one residential house belonging to the deceased. The valuation of such a house will be on the same basis as for wealth tax. Such valuation is much less than the market value. If more than one residential house is owned by the deceased then the other houses are valued at their market value at the time of the death of the deceased.

The purpose of this concession is to give relief to the heirs of persons who may have purchased a flat at a nominal price twenty or thirty years before their death but as a rusult of inflation the market price of such flats at the time of their death may become 20 to 30 times their original cost. The valuation of residential accommodation arrived at according to the wealth tax rules is much less than the artificial and inflated market value of such accommodation in big cities.

## Important Exemptions which will reduce Estate duty


*Important deductions*

Some important assets which are exempt not

only from estate duty but which are also not taken into account for calculating the estate duty rate of percentage are the following :

1. **Gifts made more than two years before death**

   This is probably the best way in which the amount of estate duty, income tax and wealth tax can be reduced substantially. It might well be worthwhile in the long run to pay gift tax and 'spread' one's assets among one's family and friends. If gifts are made not earlier than say once every five years, the incident of gift tax is less. 7% Capital Investment Bonds can be gifted once without paying gift tax. Gifts must be made more than two years before the death in order to qualify for exemption.

2. **Residence of the deceased**

   One house or a part of house exclusively used by the deceased at the time of death is exempt up to Rs. 1 lakh in a place where the population exceeds 10 000, and generally without limit at other places. The valuation of one such house can be calculated according to the Wealth Tax Act and Rules which as explained above is generally much less than the market price.

3. **Policy under the married Women's Property Act**

   This is a very valuable exemption from estate duty. The premiums for this policy are paid by the person taking the policy, but the policy is assigned under the Married Women's Property Act for the benefit of one's wife and/or children. Children in this case may be minor or adults. Each policy upfo Rs. 1.50,000/- would not be subject to estate duty nor would it be added to the estate for purposes of arriving at the estate duty This policy could also provide ready cash to the heirs for payment of estate duty. The premium for this policy also, of course reduces one's taxable income.

In other cases although the items are included in the estate for purposes of calculating the rate or percentage of estate duty the rate is not applied to the items in question.

A person can therefore so plan his affairs that he can either reduce his estate or reduce the burden of duty by making use of the several exemptions, which we have described in some detail.

## Some Of The Points Summarised For Reducing Estate Duty

1. **Married Women's Property Act**

   A person can take out policies of insurance upto Rs. 1,50,000/- each for the benefit of his wife and children, under the Married Women's Property Act and these amounts would not be included in the estate of the deceased. These policies would help considerably in reducing the incidence of estate duty.

2. **Gifts To Relatives And Friends**

   If a person has definitely made up his mind to give certain legacies to relatives, and one does not need the money for one's living and maintenance expenses, it may be advisable to gift this amount to the relatives before one's death as already explained above. These amounts would not then be included in the estate if the gift have been made more than two years before the donor's death. Gift tax would however have to be paid except in the case of 7% Capital Investment Bonds which are an excellent means for spreading one's wealth and saving on estate duty.

## Relief of Estate Duties where there are deaths in quick succession

Payment of full estate duty on property which has passed from the heir to another in quick succession due to quick deaths in one's family, would considerably reduce the value of the property because of the incidence of the estate duty after each death. To ease this position to a certain extent, the government has worked out a formula whereby the incidence of estate duty is reduced proportionately year by year upto five years if there is more than one death during this time.


This formula would apply to any portion of an estate which has been inherited and has borne estate duty and which can be identified, when the estate is passed on to the next person.

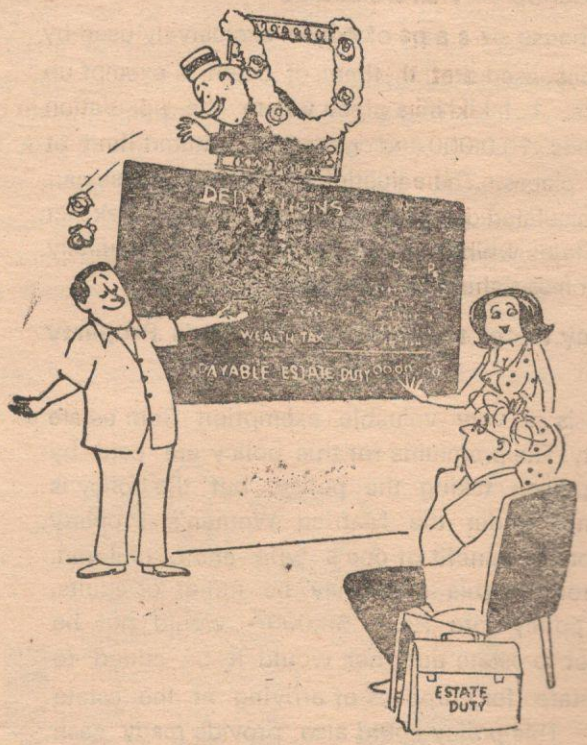
4. **Gift for public charitable purpose**
Such a gift will be exempt from duty whatever the amount provided it is made more than six months before the death of the person.

5. **Gifts in consideration of marriage**
Gifts which have been made on the marriage of any person would be excluded even if made within two years. But the total exemption for such gifts will not exceed Rs. 10,000/- for each person.

6. **Gifts which are part of normal expenditure**
Gifts which are part of the normal expenditure of the deceased, for example, gifts to friends or relatives would be excluded from the estate even if they were made within 2 years but the total exemption again in this case will be limited to Re 10,000/- in all.

7. **Pension and Annuity**
Any pension accruing on the death of the deceased to his widow or other dependants under the Revised Pension Rules of the Central government or under a similar scheme of a state government will be exempt from estate duty. Similarly an annuity or pension payable to a widow or dependants from an approved superannuation fund to the extent of Rs. 15,000/- (fifteen thousand) per annum would be exempt.

8. **Household goods to the extent of Rs. 2,500/-**
Taking the high present day values of household goods, crockery, furniture, etc. the exemption of such assets upto Rs. 2,500/- only is unrealistic and illusory. However, in actual practice, the value of household goods and furniture is seldom declared as the members of the household living with the deceased usually claim that the household goods belong to them and thus avoid paying duty on such items. Such items also cannot normally be pinned down on any particular person as no wealth tax is payable on household goods and personal effects.




9. **National Defence Gold Bonds 1980**
National Defence Gold Bonds 1980 to the extent of the value of such bonds for an equivalent of 50 kgs. of gold.

10. **Immovable Property Outside India**

## Items included For Calculating Rate of Estate Duty But Would Not Bear Estate Duty

1. **Life Insurance Policy Upto Rs. 50,000/- For Payment of Estate Duty.**
   Such a policy would be included for calculating the rate but would not be subject to duty.
   Any other life insurance policy upto Rs. 5,000/- is exempt. If the policy is for a larger amount, then only Rs. 5,000/- would be exempted.

2. **Insurance Policies For The Marriage Of A Dependant Female Relative**
   To provide for the payment of the marriage expenses of their daughter or a dependant female relative, parents or guardians often take out an insurance policy for this specific purpose. If the policy has been taken for this specific purpose namely to provide for the marriage of female dependants. then on the death of the parent or guardian, the amount of each policy upto Rs. 10,000 for each dependant would be added up for purpose of arriving at the rete of estate duty applicable to the estate. However no estate duty would be payable on these amounts.

3. **Gifts To Charity**
   Generally, a gift to charity to be valid, must be made more than six months prior to the death of the person. However, gifts for public charitable purposes made even within six months of the death will be exempt. However, the total amount of such exempted gift cannot exceed Rs. 2,500/- in all.

## Agricultural Land

In certain states agricultural land is included in the estate for both tax and rate purposes. In other states the value of the land is included only for determining the rate, but is not subject to duty. For instance in West Bengal, and Jammu & Kashmir, there is no estate duty on agricultural land but the value of the land is included for rate purposes.

## How To Reduce Estate Duty

The reader will note from the foregoing that the law permits several items to be taken out from the estate so that the estate is not only reduced but the rate of duty is also brought down.

## Time limit for paying


The prescribed form for paying estate duty can be obtained from the controller of estate duty. The details of the estate have to be furnished in the prescribed form and have to be filed within 6 months of the death, or within the extended time to the controller of estate duty by the executor or the legal representive of the deceased.

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# FOR PENSIONERS

*Anxious equiries continue to be received by COMMON CAUSE about the progress of the two pending Writ Petitions in the Supreme Court, one relating to the Famity Pension to pre 1964 pensioners, and the other relating to the restoration of pension commutation. These two Writ Petitons have now, under the orders of the Court, been tagged together for the purpose of early hearing. During

the last six weeks they have come before the Court thrice for hearing but for one reason or the other the hearing could not be completed. Both the writs are now fixed for 18th January 1985 for final hearing. Decisions on these Writs when announced by the Supere Court will obviously feature in the newspapers and accordingly it is not necessary for pensioners to keep writing to COMMON CAUSE for information in regard to progress of these Writ Petitions.

* Supreme Court has in a recent judgement, reported in the newspapers in December 1984, arising from the case field by a pensioner of Kerala State, pronounced that the failure on the part of government or its officers to promptly pay the dues of pension and gratuity to a pensioner, attracts the liability of paying interest on the dues for the delayed payment and that the liability lies also directly on the officers who may be responsible for the delay of payment. As the retirment age of every official is known well in advance, there is no reason why all the requisite formalities cannot be completed well before the date of retirement or on the day following and the pension should start being paid on expiry of the month following the date of retirment. It will obviously become possible to invoke principles of this important judgemhnt of Supreme Court in cases of delay in the payment of dues of the pensioners.

* We have received complaints that the pensioners encounter long delays in securing transfers of their pension account from one bank branch to another, which are necessitated sometime. We have written to the Reserve Bank of India requesting that instructions should be issued to the banks to obiviate such delays.

* Some pensioners have pointed out to us the difficulties enoountered in following our suggestion which was made in a writ-up in a previous issue of this periodical that it would be desirable to give standing instruction to the bank to transfer from the pension account a fixed amount every month to a joint account. It appears that the RBI has issued some circular to the banks not to automatically make monthly remittance from the pension account and the remittance from the pension account should take place only on the specific monthly authorisation of of the pensioner. This has obviously been done to avoid continuation of remittances in the event of demise of pensioner. We do not wish to rake up this matter with RBI.

* Problems connected with the submission of nomination forms nominating a family member to receive arrears in the event of demise of the pensioner have not yet been overcome. It is unfortunate that instructions were not widely and properly communicated by the Central Government. This matter has again been taken up by us with the Government of India.

* Enquiries have often been made as to which State Governments have so far implemented the Supreme Court judgement, which States have ordered restoration of pension commutation and which States have allowed family pension entitlement to persons who retired before 1. 1. 64. This information, as gathered by us from the magazine 'Pensioner's Advocate', is as follows :-

Supreme Court judgement has started beingl implemented in the states of Gujrat, Himacha Pradesh, Kerala, Karnataka, Maharashtra, Punjab, Haryana, Tamil Nadu and Uttar Pradesh.

The States which have ordered restoration of of pension commutation include Andhra Pradesh, Bihar, Haryana, Punjab, Karnataka, Rajasthan, Tamil Nadu and West Bengal.

The States which have granted family pension to to pre 1964 retirees include Andhra Pradesh, Haryana, Karnataka, Maharashtra, Punjab, Tamil Nadu and West Bengal.

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