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COMMON CAUSE

VOICE OF "COMMON CAUSE"

OUR CREDIT LINE

COMMON CAUSE has just completed five years of its existence. In this short period it has come of age. Far and wide in the country it has found acceptance. Support to it has come from every quarter. Membership has continued to spread through the efforts of members themselves, each spreading the word to others. There is recognition everywhere that it has stood by its objectives, dedicating itself to the cause of ventilating common grievances of the people.

The credit line of COMMON CAUSE has quite a few achievements. It will be worthwhile to do stock-taking.

First and foremost, from the point of view of senior citizens, the pensioners, there is manifestation of the confidence it has given them that they count and they cannor be taken as thrown on the scrapheap. This confidence shows itself in the large number of their organisations in the country which are asserting themselves for their rights, in the demands individuals are making for redressal of their grievances and refusing any longer to be disregarded. Hundreds of thousands of central government pensioners have benefited from the Supreme Court verdict, on the initiative of COMMON CAUSE, entitling them to the benefits of liberlisation which they were denied. The message of this verdict of supreme Court has been conveyed to the State Governments to pursuade them to extend similar benefits to the pensioners and, where neccssiated. this matter has been taken to the respective High Courts by the pensioners for endorsement of the verdict. Estimate is that about three million pensioners in the country have benefited from these initiatives. Connected with these problems of pensioners, in smaller measure, are the problems resolved, on our initiative, for the pensioners of all-India services and pension nominations etc. Anothe important achievement which gives us great satisfaction is the solution of the problem of about a hundred thousand widows of pensioner who have, through the recent decision of the Supreme Court on the writ Petition of COMMON CAUSE, been made entitled to the family pension which continued to be denied to them.

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The publication is not a monthly. It is at present issued once a quarter. There is no subseription. It goes free to Members of COMMON CAUSE.

LOK ADALATS

TO STEM THE COLLAPSE OF OUR JUDICIAL SYSTEM

The concept of LOK ADALATS'. People's Courts, for eftecting conciliation and mediation as an alternative to facing the frustrations of delays and expense in courts, has obvious Importance in the conditions prevailing in the country. This machinery has already gathered considerable momentum in many countries. In India its progress has been tardy, though its potential has been demonstrated at the places where the effort has developed.

There is need of envolvement of a large number of activists in the field, for educating the people about it, for creating the environment which would be conducive to its larger spread, and for motivating the concerned authorities, and particularly the Chief Justices of the High Courts, to take the initiative for stimulating establishment of Lok Adalats or Lok Nayayalas through the intermediacy cf State Legal Aid Boards, manned by reliable voluntary mediators and conciliators, and with the associatien of reputed voluntary organisations.

Considering the importance of this task were produce below a comprehensive paper on this subject which has been prepared by H. D. Shourie, Director, of COMMON CAUSE, It puts the concept of mediation and conciliation in the over-all prespective of the present problems connected with the mounting costs and frustrating delays of justice, the dificulties of weaker sections in seeking access to justice and the frightening accumulation of cases in courts. It describes the conditions prevailing in India in connection with these problems. Against the background of these problems the paper focusses attention on the traditonal system of justice and mediation through the panchayats in the villages and particularly on the innovation that has emerged in recent years for effecting conciliation and mediation through Lok Adalats as a part of the legal aid programmes which are being extended for generating assistance and legal awareness to the poor and the underprivileged.

The present system of justice, in democratic societies is beeing subjected to severe criticism and serious strain. The value and utility of the system itself is being questioned. The role of courts and the role of lawyers is being criticised. The effectiveness of present methodology of dispute processing has come under doubt. Access to justice has become suspect,

The cost of justice, in the present system, has increasingly become disproportionately high. The barrier of cost stands in the way of access; the cost quite often tends to exceed the amount in controversy, tending to make the processes of litigation futile. It has become impossible for any aggrieved party to visualise speedy amelioration of the grievance. Effects of delay. amidst the prevailing corrosion of inflation, are nothing short of devastating.

The economically weak are literally driven to the wall; they face ruin in litigation. To them justice has become well high inaccessible. The complicated procedures, atmosphere of the court-rooms, distance from judges, manoeuvring of lawyers, all combine to exasperate them On the other hand, the access to justice is visibly easier to the economically strong and the affluent, For them the manipulations of the

processes of justice come easy; the repeat-player litigants among them get away with all the advantages.

During the ages faith and confidence got built up in the minds of the people in the administration of the justice through courts. Impression prevailed that courts dispense justice between the rich and and the poor, the mighty and the weak, the State and the citizens, without fear or favour. The community yet has tremendous stake in the preservation of this image of the courts as dispensers of justice. Weakening of judicial system will necessarily have the effect of undermining the functioning of democratic structure.

The failures and frustrations of the existing system and its procedures can, however, best be guaged aginst the background of the facts of a country like india. Amidst the country's adherence to the institutions and processes of democracy, the people have reposed faith in the courts. Disputes have continued to be taken to the courts in the hope of finding justice. The element of rising costs and the excruciating problems of delays have, nevertheless, started causing serious inroads into such faith and hope.

ARREARS IN COURTS

The figures of accumulation of arrears in the courts will furnish an idea of the serious dimensions and implications of this problem.

The arrears of cases in courts in India, according to the latest figures available, show that there are presently well nigh seven million criminal cases and over three million civil cases in the various subordinate courts in the country. These are the courts in the districts and subdivisions of districts where the people come most directly in touch with the system of justice. At the higher level, there are about two million cases in the courts of district and sessions judges who exercise original well as appellate jurisdiction. In the High Courts, which are the repository of the highest level of talent of justice in different States of the country, the accumulation of arrears has come about to the extent of about a million cases. In Delhi High Court, which is concerned only with the cases emanating from the metropolis of Delhi and a few rural areas outside the city, the arrears list is at present of over 67,000 cases In the Supreme Court, which is the highest court of the country, nearly 85,000 cases have accumulated. The pendency each year in all the courts of the country has gone on mounting despite the continuou and enormous effort of disposal. In certain cases the pendency has increased 30% to 50%. Institution of cases in one year, at the level of district and subordinate Courts, is of the order of seven million criminal cases and about two million civil cases, disposal in the corresponding period is also practically of the same order; but the backlog has gone on accumulating to frightening proportions of the total of nearly ten million cases, counting for all the courts. This is the picture despite the fact there are over 5,000 courts of subordinate judges and magistrates, 3,000 courts of district and sessions judges, and about 400 judges in the various High Courts. When the figures of ten million, one crore, cases of the accumulated arrears and of about nine million cases instituted every year are considered in the light of the fact that each case involves the interests of a family which may consist of 5-6 persons, it becomes evident that a substantial percentage of the total population of the country is in one way or the other involved in or directly concerned about the processes of litigation.

The accumulation of arrears in the courts is due to various factors, including the expanding society, changing social values and manifestations of the rights of justice, ever increasing and diversifying functions of the State in the public sector as well as the private sector, passing of ever increasing plethora of new enactments, etc. There has also throughout been a paramount consideration that while the requirements of speedy justice should always be kept in view, the basic norms which are necessary for ensuring justice should not be dispensed with. In devising ways and means of minimising delays and effecting speeey clearance of arrears, there has always been the feeling that the consideration of speed and the demands of justice must be balanced,

and there must be harmony between these two requirements.

The fact, however, remains that frustrations and exasperations of delays continue to mount and to vitiate the course of justice. The norms previously prevailing were that a criminal case should finish atmost in four months; a civil case in not more than one year; first appeal in not more than another year, and so on. There are now instances where cases and appeals drag on for years, sometimes for decades and generations. The extent of delays that take place in courts is sometimes unbelieveable. It is notorious that in certain jails in India it has been recently found that there are a number undertrial prisoners who have been in custody for longer than they would have been in prison had they been convicted of the offences with which they were charged. In the High Courts of India there were, in a recent count, 600,000 cases pending which were over one year old and 27,000 cases including criminal cases, which were more than ten years old. When one adds to these the figures of subordinate courts, it becomes understandable how serious the problems of delays of justice are.

ALTERNATIVE TO ADJUDICATION

Amidst these various problems, wherein the judicial system and the role of courts have started being questioned because of increasing inaccessbility of justice and its costs and delays, attention has started being given to seek supplementation of this system by activating and expanding the machinery of conciliation and mediation so that the disputes can be settled without one party having to be adjudicated to be in the right and the other in the wrong. It is obvious that settlement of cases by mutual compromise is in the ultimate analysis a better method of handling the disputes than the alternative of fighting the disputes to the bitter end, seeking adjudication in the lower courts and following it up in appeal after appeal. The method of adjudication leads quite often to a trail of bitterness. Results more in consonance with justice, equity and good conscience can in large number of cases be achieved by having a mutual settlement of the dispute rather than by having a court decision one way or the other.

In discussing the role of conciliation machinery it is important to bear in mind that it needs to be considered as a process separate and distinct from the ordinary law courts. The comparison between two is not justifiable. The conciliation machinery has to be viewed against the background of the traditional and long established custom of settlement of disputes through mediation, arbiteration and compromise. whereas the ordinary courts are primarily required to decide all matters before them in accordance with the law. In the cases of conciliation machinery the adjudication of disputes is not the primary function. The primary objective of conciliation courts is to bring about conciliation and settlement between the parties.

PANCHAYAT JUSTICE

The traditlon of conciliation and mediation has been deep rooted in earlier ages and is even today strong in primitive societies. In India the tradition goes back to hoary past. As far back as history can trace it, the system of Panchayat operated in all establishments of rural societies. Panchayat means a body of five persons. This number is small enough to meet frequently and function effectively, but not so small as to lose touch with the community. It is an odd number making for avoidance of dead-lock in the Panchayat. The five members consisiing the Panchayat were normally the respectable elders of the community or the village. They exercised powers of dealing with disputes among members of the community and also wielded administrative functions of looking after the welfare and grievances of the community. Their powers of awarding punishment, for instance, of social boycott of the offenders was a very potent instrument for correcting misdemeanours and compelling the mambers to conform.

Administration of justice was one of primary functions of the Panchayats at the unit level. Panchats exercised the powers of trial of cases and settlement of disputes. The powers of trial of cases were delegated to it statutorily under the enactments of the individual States of the country. Certain limits were prescribed for imposition of fine for prescribed offences which the panchayats were empowered to

try, monetary limits were also prescribed in regard to the adjudiation of civil disputes and matters relating to revenue administration. Limits of competence and jurisdiction of the Panchayats were laid down.

Panchayat system of administration at the village unit level has the objective of taking democracy to the grass-roots. It is relevant to the Indian ethos. It envisages the ideal of gram swaraj (village autonomy), independence at the village level, administrative and economic autonomy, for political education of the people and with minimum official control. The basic concept of panchayat administration derives its inspiration from specific provision (Article 40) in the Directive Principles of the Constitution of India, namely-"The state shall take steps to organise village panchayats and endow them with powers and authority as may be necessary to enable them to function as units of self-government."

PANCHAYAT RAJ

Increasingly, since the attainment of independence of the country, attention has been focussed on effecting decentralisation, particularly of administration and community development, at the village level. It has been sought to establish village republics, sympolic of decentralised democracy, wherein the village panchayat should be embodiment of legislative, judicial and executive roles. Adequate infrastructure for the purpose of effecting this process of decentralisation, and for seed-drilling of development processes, was built up with horizontal provision of extension officials representing the various developmental activities, and vertical development of multipurpose village level officials linking them up with development committees at the district level, state level and eventually with a separate ministry in the central government. Whereas the primary role of village panchayat, therefore, was originally the resolving of disputes, increasingly greater emphasis started being placed in recent years on the requirements and processes of development for the alternative objective of bringing about administrative, economic and political autonomy and planting the seeds of local self-governance. This was the concept of Panchayati Raj which gripped the imagination of politicians and administrators through the earlier years after the attainment of independence. The village panchayats were to become the focal statutory institutions, linked to the machinery set up at the respective levels of blocks of groups of villages and districts consisting of blocks. They were to constitute the focal points of participatory representation of authority, responsibility and resources.

This particular objective of one of the Directive Principles of the constitution has, however, remained unrealised. The first flush of enthusiasm and partriotism in relation to the establishment of Panchayati Raj has started fading and the panchayats have not widely taken roots on the lines contemplated, except to a considerably limited extent and in certain States and areas of the country. Alongside, the panchayati justice has also not been as successful as was originally envisaged. Political considerations and manoeuvring, and the local pressures, have militated against satisfactory development of the panchayati courts. Dispensation of justice through the panchayats, amidst the stress and strain of developmental processes, as well as of the emergence of economic forces, in the eyes particularly of the weaker sections of the people, has not been impartial and unbiased. Dispute handling and dispute resolving role of the panchayats, which was the primary function of panchayats in the ancient system, got overlaid and somewhat eclipsed with developmental requirements and a stage came when the overtones of failure or lack of success of the developmental process affected also the role of panchayats constituting the arbiters of local disputes. Sporadic efforts were made to institutionalise the system of village judiciary by constituting *Nyaya Panchayats* (Justice Panchayats), which were entrusted with judicial functions. But these have been established only in some states of the country and there too the village courts have not inspired adequate confidence among the people. Wherever they are functioning the Nyaya Panchayats have been given statutory powers to levy fines and try petty civil suits.

Amidst this scenario of emergence of the concept of Panchayati Raj, the dssire of promoting and deve-

loping local autonomy and self-government and the experimentation of the expansion of judicial role of panchayats, one is likely to lose sight of the role of panchayats functioning as arbitrs of locai disputes and particularly the role of bringing about settlement through mediation and conciliation. Even though the ancient system of panchayats functioning as arbiters of local disputes got overlaid subsequently with the panchayats statutorily established, and in the recent years got converted into focal points of developmental activities, they still continue to retain the basic essentials of Gram Nyayalas or Gram Adalats (Village Courts) For certain types of disputes, such as relating to land boundaries. damage by cattle trespass, matrimonial disputes, money disputes, rent disputes, etc., they are yet the ideal instrument for bringing about settlement through compromise instead of acting as adjudicators and using the powers statutrily conferred on them.

BEGINNINGS OF AN EXPERIMENT

Against this background of the problems of frighteningly mounting arrears in courts of the towns and the virtual break-down of the ancient system of panchayats which operated in the villages of India the emergence of an innovative experiment at certain places in the country for stimulating mediation and conciliation between disputing parties has obvious relevance and importance, This experiment forms a part of the network of the processes of legal aid which were initiated under the over-all auspices of Justice Mr, P.N. Bhagwati Chief Justice designate of India. Under this experiment the infrastructure of providing legal aid to the underprivileged and the weaker sections, which comprises the expansion of the concept of providing wider access to justice, has been utilised for extending the facilities of conciliation and mediation.

Article 39 (A) of the Constitution of India prescribes, among its Directive Principles : "The state shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizens by reason of economic or other disabilities". In fulfilment of this constitutional obligation a Committee was constituted by virtue of a Resoiution of the Government of India under the chairmanship of Mr. Justice P N. Bhagwati. This Central Committee for Implementing Legal Aid Schemes (CILAS) has now been operating for over four years and has done substantial pioneering work in initiating legal aid programmes throughout the country. The legal aid programmes initiated by this Committee are mainly of two kinds : (i) court or litigation oriented legal aid programmes and (ii) preventive or strategic legal aid programmes. It is under the auspices of these programmes that the processes of mediation and conciliation have been set in motion, both in urban as well as rural areas, and without the backing of any specific legislation. It would be relevant, therefore, at this stage to consider these programmes of the provision of legal aid in some detail.

The Central Committee for Implementing Legal Aid Schemes (CILAS) has promoted the establishment of Legal Advice Boards at the level of the States, and under these State Boards a network of Legal Aid Committees has been set up for meeting the require ments of the underprivileged in each of the High Courts of the States and at the levels of district and sub-divisions of districts. The apex Legal Aid Board in each State is presided over by the Chief Minister or the Minister for Law of the State. A sitting or retired judge of the High Court of the State is appointed as the Executive Chairman. In the State Legal Aid Board representation is given to lawyers, local members of Parliament and the State legislature, and representatives of women, agricultural labour and other weaker sections. Member Secretary of the Board is generally the District Judge or an officer of equivalent status nominated by the State Government. The State Board is in overall charge of the administration and implementation of the legal aid programmes in the state. The State Board lays down the criteria for provision of legal aid including the prescription of income level of a person who needs to be provided free legal aid. It also determines what additional programmes relevant to the provision of

legal aid should be undertaken and sponsored by the legal aid committee functioning under it. For the operation of these programmes and for provision of legal aid to the poor, funds are allotted by the State Board to the various committees, and the central committee CILAS also provides grants to the Boards for implementation of various schemes. The programmes other than provision of litigation oriented legal aid include activities such as programmes of legal literacy, holding of legal aid camps, training of paralegals and research into the areas of law affecting the problems of weaker sections of the society. Initiation of the experiment of effecting mediation and concilation for setting disputes, in the present context, is a part of this programme which is being implamented under the over-all objective of providing legal aid.

LEGAL AID PROGRAMMES

Before going into the particulars' of the processes of mediation and conciliation it would be worthwhile to briefly take account of the various programmes initiated under the auspices of CILAS. Provision of legal aid is, as stated above, one of the activities. Increasingly, the areas of provision of this aid have expanded. The poor and vulnerable sections of the society are increasingly availing of this traditonal form of legal aid through the committees set up at the various levels of High Courts and subordinate Courts. Even at the level of Supreme Court of India a committee has been set up for providing this aid in relation to cases in the Supreme Court where such assistance is necessitated. According to the periodical reports of CILAS about 300,000 person have received the benefit of legal aid through the various committees. Among the preventive or strategic legal aid schemes emphasis has been placed on promotion of legal literacy through publication of booklets and pamphlets in local languages, for wide dissemination to the people, on subjects which are of importance for acquainting them with their legal rights and the benefits they can derive from various social welfare schemes. Grants are given to institutions and organisations for preparation and publication of such material for dissemination Subjects selected for purposes of disseminating such information include, for instance, landlord tenant relationship, matrimonial rights of women, problems of citizens vis-a-vis the police, compensation to victims of accidents, rights of labour, problems of dowry etc.

In the sphere of legal literacy a national programme has been prepared for training cadres of legal educators for spreading legal literacy among the people. It seeks to also introduce the legal component in certain programmes of adult education and workers education. This programme is being supplemented also by preparation of short films on such specific subjects. Side by side with the efforts of spreading legal literacy certain programmes have been initiated for training of para-legals or bare-foot lawyers for catering to the needs of the people at grass-roots level. Under this programme, training in rudimentary knowledge of law and basic elements of social welfare laws and procedures is imparted to social workers. These para-legals would help to find out for the weaker sections of the people the sources of their exploitation, creation of legal awareness among them, giving first aid in law and providing support and assistance to them to fight for their rights through the legal process, bringing about community rights mobilisation and encouraging mutual conciliation and settlement of disputes, failing which the poor are taken to the legal centres for provision of legal aid and advice. Quite a few para-legal camps have been organised at various places for this purpose. For the women special para-legal training programmes have been initiated to build up social and legal defences, for avoiding the conttinuance of their exploitation and deprivation; through these programmes selected workers are trained to deal with problems of women and provide them integrated legal support. Ways and means are determined from time to time for providing legal support to various non-political social action groups for equipping the young social activists with basic knowledge of the law for creating legal awareness among the poor. An allied step taken under the auspices of CILAS is to promote the

establishment of legal aid clinics with the help of universities and law colleges.

Another important chapter which has opened up in the recent past in the administration of justice in India is that of public interest litigation. This is not adversary litigation where one party is making a claim or demand against the other, but it is collaborative effort on the part of petitioner or an organisation to see that basic human rights become meaningful for large masses of the people who are deprived of justice and who are leading a life of want and destitution. Arising from the efforts made by the Legal Aid Committee, and certain important pronouncements of the Supreme Court of India, problems of the people have started coming up before the courts in the shape of such public interest litigation. Cases which have brought about this transformation have dealt with problems such as enforcement of labour laws including minimum wages legislation, eliminating bonded labour, improve conditions in protection homes for the women and children, ensuring speedy justice to under-trials languishing in jails, dispensing social justice to dwellers in slums, removal of environmental pollution, prohibition of drugs harmful to to human life, etc. Under the auspices of Legal Aid Boards, cells have been created for handling public interest litigation work and providing assistance in such types of litigation.

Although the Legal Aid Boards have been set up in most of the States and at the level of High Courts, the actual provision of legal aid has not been totally satisfactory. A number of factors are responsible for the delays and inadequacy in the provision of legal aid. These are connected with the organisational deficiencies, procedural problems and delays in the release of funds to the Boards and Committees. The fact remains, however, that network of the legal aid apparatus has spread satisfactorily and has roused hopes of being able to set in motion the processes of reaching out the assistance to the poor for enabling them to have easier access to justice.

LOK ADALATS

Uuder the auspices of this programme of legal aid a very promising develoment is the expansion of the work of Lok Adalats, people's courts, for bringing about conciliation and mediation between the disputing parties for effecting settlements as an alternative to their fighting the battles in courts. This project is increasingly gathering momentum. A particularly satisfactory picture of this programme is presented by the State of Gujarat. Other places where this programme has recently made impact are the towns of Meerut, Dehradun and Faizabad in Uttar Pradesh. The third example which would be worth quoting is that of the functioning of this programme at Delhi as a part of the operations of its Legals Aid Board.

In the programme of Lok Adalats, in the shape it has evolved as a part of over-all operations of legal aid activities, a prominent feature is that the conciliation efforts, for bringing together the disputing parties and effecting settlement of their disputes is without basis of any legislation. No legislation has hitherto been issued under which there is any compulsion for any categories of cases or suits to be placed before the conciliation machinery. It is possible that after further development and expansion of this programme it may become necessary and desirable to issue some legislation or statutory direction that certain types of cases and certain categories of disputes should initially be taken to the Lak Adalats for effecting compromise, and these cases should be entertained in the regular courts only when these fail to be compromised before the mediation machinery. At present, however, there is no such compulsion or obligation imposed on the parties, and the effort of conciliation and mediation has emerged in the recent years purely as voluntary operation of the Lok Adalats wherever they have started functioning.

LOK ADALATS IN GUJARAT STATE

As mentioned above Gujarat State affords a very good example of the mobilisation of the effort and functioning of Lok Adalats. The scheme, as it is operatimg in Gujarat, has put before itself two objectives : (i) to resolve disputes which have not yet come to law courts, and (ii) to resolve

those disputes which have already come to the courts. The operation of Lok Adalats in Gujarat State is conducted through a Team called the Legal Aid Ambulance. The Team visits a taluka town in a van. Visits of the Team are planned well in advance. Normally, the Team fixes the visits on a Saturday or Sunday, and carries its operations in rooms of a court house or other suitable premises selected in advance with the help of the Presiding Officer of the taluka court. Applications on prescribed form are invited from the disputants. Intermediacy of the revenue administration officials of the area and the village panchayats is sought for sending letters of request to the parties to appear on the day fixed for visit of the Team. The Team normally consists of selected social workers including women, socially aware members of the Bar with appropriate orientation, women lawyers, and some selected retired judges as well as sitting judges, other than the Presiding Officer of the court where the Lok Adalat is held. From among the cases which have already been filed in the courts the minor civil cases, matrimonial matters and criminal cases of compoundable offences, and even pending appeals in district courts, are identified; the names and addresses of the parties are secured from the courts, and letters of request are sent to them for appearance before the Lok Adalat on the appointed day.

The Lok Adalats work for the whole day at the appointed place. Each Adalat has a team of two or more "judges" (conciliators). The Adalats are open to members of the public. Generally a number of persons collect in each Lok Adalat. In the presence of members of the public the cases are called out one by one, and each matter is discussed with the concerned parties. The conciliators get to the heart of the problem in each case and persuade the parties to resolve the dispute amicably. They suggest a formula for the settlement after listening to the parties. Eventually a formula is evolved by adopting a common sense approach which aims at practical solution by finding basis of settlement of the dispute with some little give and take on both the sides. Each Team of conciliators is assisted by a clerk made available to them locally by the Presiding Officer of the court. The clerk prepares an agreement or settlement under the guidance and supervision of the Lok Adalat, and signatures of the parties are taken thereon. When the matter relates to case pending in court, the agreement is presented to the Presiding Officer who also satisfies himself that the agreement has been willingly arrived at and is legal, he then passes the order for recording the compromise. Where formalities are rendered necessary the agreement is taken up by the court on the next working day and an order in accordance with the law is passed disposing of the matter. In criminal cases the disputing parties are persuaded to sink their differences and forget the past; they often embrace each other or shake hands when the matter is settled. The experience has been that a number of matters pending in courts are settled amicably through the intermediacy of Lok Adalats and the parties leave the Lok Adalats with happiness writ on their faces and with a smile. They save court fees and expenses of litigation, burden of arrears in courts is decreased; and further appeals and revisions are avoided. Some socially conscious lawyers have been participating in these programmes and lend their cooperation; they save themselves the trouble of ensuring the presence of witnesses, preparation of briefs, searching for authorities. arguing the cases, and they derive satisfaction from rendering service to the society. Generally, the settlements emerging from Lok Adalats satisfy both parties, and the parties are saved from protracted litigation and anxiety, botheration and bitterness, apart from saving the expenses and exasperation of delays. Besides the conciliation and settlement of cases the Team also helps by giving legal advice to the parties who come for seeking such advice.

Cost incurred on the project of Lok Adalats is very little. Apart from the cost of operating the van in which the Team visits the villages and talukas on the appointed days, and for expenses incurred on providing tea, snacks and lunch to members of the Team, no other expenditure is incurred. Generally, social organisations including Rotary Club, Lions, etc. readily come forth for providing the lunch packets,

and expenditure on this item too is saved.

On occasions the Team visits only one village or taluka during the day. On certain occasions three or four villages are visited during one day. The total number of cases dealt with by Lok Adalats of Gujarat in 29 visits during the period of nine months was 13845, out of which 7788 cases were compromised and advice was given in 1347 cases. This work of Lok Adalats has earned high praise from the people in all walks of life.

A senior advocate of Junagadh recorded that :

> "The impression formed is that after a legal practice of 35 years, I come across a day wherein I experienced a sense of fulfilment and glory. In many a speach I might have eulogised the legal profession as a noble one but I got an opportunity to get the same translated in that way in action and I value that occasion as an ever memorable one in my life."

Anoiher senior advocate of Porbandar in Gujarat State has recorded :

> "After the case of a very old woman got settled and when she gave sincere blessing by the words. "Son, you have given me new life. What can I give you in return ? But God will do you good", my heart got overwhelmed with love and compassion.

An eminent social worker states :

> "For me it was the first and a unique experience to participate in Lok Adalat. It was tough and strenuous to be able to bring both the parties to a compromise. I congratulate the organisers for settling 92 matters out of 187 matters during Lok Adalat. The atmosphere of co-operation prevailed for the whole day".

It has been the experience of organisers that in the Lok Adalats without any oath or other pressured people speak the truth, they show desire to settle the disputes, they are prepared to accommodate each other; there is a visible element of understanding rather than standing on prestige and on dispute itself; they are open hearted while discussing the problem and do not necessarily stick only to their rights. Generally a sprit of give and take prevails.

In publicising the record of work done by the Lok Adalats of Gujarat it is generally claimed that the service rendered to the people through it has saved them fram exasperation and litigation of years, in its outcome there is no victor nor any vanquished; it provides conciliation which both parties accept without acrimony or heart burning and with smile; friendships emerge out of animosities; non justice emerge in place of injustice for either party.

LOK ADALAT AT MEERUT

Another significant example of tho operation of Lok Adalats was provided recently in the town of Meerut, about fifty miles east of Delhi. A Lok Adalat camp was organised at Meerut on 23 9. 1984. It was held in the premises and compound of a college which is situated in the vicinity of Meerut court. The entire work was organised under the auspices of District Legal Aid Committee in which there was active participation of local administrative and judicial officers The District Magistrate and the District Judge of the area assumed specific responsibilities of organising tne camp, and they also secured the cooperation of various voluntary and social organisations including the local bar association. Special committees were constituted for organising various facilities including accommodation, collection of cases and provision of assistance to the parties and invitees. A notice was published in local newspapers and through posters inviting the people to bring their disputes for settelment before the Lok Adalats on the notified day. Uuder the authority of District Mogistrate and the District Judge instructions were issued to all subordinate courts to compile lists of old cases of criminal and civil disputes, giving priority to cases of matrimonial disputes, municipal matters, motor accident claims, land acquisition cases and compoundabie criminal offences. Lists of 2400 cases were thus prepared. 10,000 notices, related to these

2400 cases were sent out to the parties. Agency of the police in the area was utilised, with the concurrence of District Magistrate, for serving the notices, relating to the criminal cases, on the parties, The parties from Government departments and municipal authorities etc. were also asked to appear before the Lok Adalat. Notices in relation to civil cases and in revenue cases were sent through the revenue official machinery. In this way 90% of the notices got served on the parties & were received back.

The *Panch-Mandals* (Members of the Jury) presiding over the individual courts were selected out of representatives of the public, The Panch-Mandals included members of local bar association, representatives of Rotary Club and Lions Club and some registered voluntary social organisations including those of women. In all 31 Lok Adalats were constituted for operating on one day. The Panch-Mandals had been given briefing about the work in advance. Chief Justice of the State High Court and some high dignitaries had been invited to the inauguration of Lok Adalats. These 31 Lok Adalats operated simultaneously in different rooms of the college. In the Meerut experiment seven Panch-Mandals were allotted to each Lok Adalat They heard the parties one by one, explored methods of compromise, talked to them, persuaded them and convinced them. About 1600 parties appreared from among the 2400 cases; 1135 cases out of these were compromised. A comprehensive note on this programme was submitted by the Chief Judical Magistrate of Meerut who is Member-Secretary of the District Legal Aid & Advice Committee. The cases compromised included 238 civil, 799 criminal, 13 matrimonial and 85 other miscellaneous cases.

DELHI LEGAL AID BOARD

Another instance is that the work of Dehli Legal Aid and Advice Board which is functioning under the chairmanship of the Chief Justice of Delhi. The Board has been functioning since 1981. Its work is handled through Legal Aid Committee at the High Court level and the Legal Aid Committee for the district courts. These committees, in their respective spheres, have provided in the last one year legal aid to 104 cases in the High Court and 2578 cases in district courts. Since its inception it has provided legal aid and advice in 6113 cases out of which 1316 cases were disposed of. These included cases of matrimonlal disputes and maintenance, accident cases, civil disputes and minor criminal cases. The Board has been laying particular emphasis on the amicable settlement of disputes between the parties. Particularly in the matrimonial cases, in which dispute arises primarily because of mis-trust. misunderstanding and unnecessary meddling of other relations, efforts are made to settle the disputes amicably and in these the help of voluntary organisation is often sought. In most of the cases some little persuasion has yielded positive results. Experience of the Board, on the basis of its functioning, has been that the provision of free legal services to weaker sections of the community ultimately creates an atmosphere for amicable settlement of disputes through proper counselling. A number of lawyers, some without charging any fees, have offered themselves to be on the panel for selection of advocates for provision of legal aid in individual cases. In the area of providing legal literacy the Delhi Board has brought out a series of booklets for disseminating information on people's rights in relation to some of the common problems.

Yet another example of the operation of machinery for effecting conciliation is provided by a women's organisation at Delhi. This is a registered voluntary body called Legal Aid Centre for Women. This organisation has been working since November 1983. It has concentrated only on the problems of family and matrimonal dispntes, problems of wives against husbands, and vice-versa, problems of in-laws, problems of dowry demand, maintenance, custody of children, neglect of old persons or children, etc. Increasingly, the usefulness of intermediacy of thls organisation is being sought by the disputing parties and a healing touch is applied by the women operating this Centre. Almost about 20% cases coming before it get settled by compromise with initial effort; other cases are often postponed for allowing the

Supreme Court Judgment. This has been accepted by you also in the circular that was issued by you at the time of convening of a public meeting on 31st March, 1985. Point No. 4 of the representation attached to your letter is, therefore, not in line with your circular mentioned above.

You are also aware that thousands of writ petitions filed in the Supreme Court between 1 80 to 1983 were heard by the Hon'ble Court in February, 1983 but the decision was reserved and the same was delivered only on 12.12.1984. During these years especially after the Hon'ble Supreme Court of India took up the writ petitions for hearing even the Delhi High Court was keeping the cases pending for decision in the light of the expected Supreme Court Judgment and the cases remanded by various courts during this period were awaiting the Supreme Court Judgment so that the decisions could be finalised once for all. It is, therefore, a fact that many remanded cases are awaiting decisions but the same will have to be disposed of in accordance with the latest Supreme Court Judgment which now requires determination of market value of land for lease hold plots for which unfortunately there is no reliable evidence available with us so far. Right in December, 1984 we had requested the D.D.A. to provide us with the auction rates for different years for all the D.D.A. colonies so that we could go ahead with the disposal of remanded cases as well as other pending cases in a big way. Unfortunately, the information is still awaited from the D.D.A. without which we are totally handicapped in disposal of cases. You will kindly appreciate that the tax payers are also in the same boat and have no evidence to submit regarding market value of land for the plots given on lease by D.D.A. After all the legal confusion has taken a toll all these years and it will take us sometime to streamline every thing for satisfactory disposal of cases. Nobody will like the cases to be disposed of in a hurry which may result in avoidable litigation. The interest of the M.C.D. revenues also lies in quick disposal of pending cases and delay in disposal thereof can never be conducive in this direction.

As regards payment of accumulated arrears, it is not a fact that the M.C.D. insists on lumpsum payments. Suitable instalments are always granted provided request for grant of instalments is made by the tax payer before he becomes a defaulter as per provisions of the D.M.C. Act. Unfortunately what has been seen in practice is that the tax payers do not bother to ask for instalments for a long time after receipt of the bill and come forward with such request only after coercive action against the defaulter starts as per law. In this regard lack of provisions for charging interest on delayed payments of property taxes also works as an allurement but many tax payers to delay the payment of taxes as long as they can avoid since the same is available for use in business etc. free of interest. If, however, timely request for instalments is made, the same is always considered sympathetically keeping in view the paying capacity of the concerned tax payers.

Serious efforts have also been made for training the officers/staff of the property tax Deptt. in order to equip them with the implications of the latest Supreme Court Judgment and also with better and more efficient ways of dealing with letters/documents received from the tax payers. It is expected that things will come up to the increased expectations of the tax payers with the sustained efforts we are making but the same will definitely take sometime. In the end I must thank you for the kind and constructive suggestions and for the interest taken by you in the matter of property taxes.

I take this opportunity to assure you of our best co-operation in all matters of property taxes in all times to come."

Letter of Director of COMMON CAUSE to the Assessor & Collector of MCD dated 1.6.1985:

It was a pleasant surprise to receive your letter no: A&C (PC)/HQ/85/497 dated 14th May. Normally it is practically impossible to expect any reply from senior officers of MCD to communications of citizens dealing with their problems. Therefore, your letter

has been very welcome indeed, and I thank you for it.

I wish you would recognise the enormous alienation of the people your Department's functioning has caused during the past five years. This is reflected, as I have stated previously and as you are aware, in terms of thousands of objections filed against the assessments and thousands of cases filed in courts. People donot file the objections and cases without reason; these are indicative of the severe dissatisfaction caused to them They donot mind paying taxes because they genuinely realise that services cannot be provided to them if they donot pay the taxes, but they are greatly upset by anamolies, discriminations, distortions, aberrations and unlawful demands. There is a general feeling that the assessment authorities have either been deliberately adopting policies which were contrary to the law or they have over the years been wrongly advised by their legal advisers. There cannot be any other explanation for their having continued to flout the law. Let me explain to you in some detail how the law has been deliberately and knowingly flouted :-

(i) It is wrong to state the legal position was in any way confused after the November 1979 Supreme Court judgement in the case of Dewan Daulat Rai Kapur. The December 1984 Supreme Court judgement has basically re-iterated the position expounded in the 1979 judgement ; in certain details it has elaborated and clarified the issues. It is very surprising that an experienced and knowledgeable person like you can raise the contention that the Delhi High Court decisions take precedence over the judgement of the Supreme Court where they are in conflict with the latter and they constitute the "law of the land for all authorities within the jurisdiction of Delhi High Court." This is a most astounding statement and I earnestly hope it does not ever get quoted before the Supreme Court.

(ii) The basic problems arising in assessments are the price of land and cost of construction; and standard rent determination based on the former two factors. Daulat Rai Kapur judgement indisputably laid down that assessment cannot be based on existing rent; it must be based on standard rent. Your department continued holding that price of land in lease-hold cases was indeterminable, that the assessees failed to submit the documents (which would only lead to conclusions you adjudged acceptable), and that resort could be taken to the provisions of .9 (4) R. C. Act because, in the opinion of the assessing authorities, the price of land was not determinable. All these arguments have been struck down by the Supreme Court. People were urging and pleading these points; their pleas had throughout been brushed aside. This is what angered them, and this is where the Supreme Court has upheld their contentions. The argument that on any of these points the actions of your Department were based on decisions of the Delhi High Court, is obviously wrong and hollow. One can only infer that the legal advice given to you in this regard was distorted and perverse.

iii) You have cited some judgements of the Delhi High Court. Deliberately, your epartment ignored the judgements of Delhi High Court which supported the point of view of the assessees. For instance, the well-known Division Bench judgement of NDMC Vs. Little Theatre Group, dated 9.4 1980, laid down very clearly the criteria which should be kept in view while determining the price of land; these have been re-iterated in the December. 1984 judgement of the Supreme Court. Your Department was surely aware of this important judgement, but continued to ignore it. Its mention does not feature in the list of judgements of Delhi High Court which you have quoted, obviously because it did not suit you to quote it. A large number of appeals filed by the assessees against the assessments were decided by the District Judge against the MCD on the basis of this clear

exposition of the law, but this did not suit your Department and action on remand of the cases has been kept pending for years. This judgement of the Division Bench over-ruled the judgement of Madho Lal Vs. Roop Chand of 1972 which you have quoted, and I am surprised that you have considered it necessary to quote it inspite of the matter having been clarified by the November, 1979 judgement of Supreme Court and Little Theatre Group judgement of the Division Bench of the Delhi High Court.

iv) Among the judgements you have cited there is mention of the Sailesh Jain case judgement of September, 1980. You are aware that all properties continued to be assessed on rental basis even after the period of five years despite protests of the assessees. The Department continued to flout this judgement itself which you have cited.

v) It is wrong to contend that no reliable evidence was available for determining the market value of leasehold lands. Your Department was assessing the vacant plots on capitalization basis and that certainly was a reliable basis; price of land is also very relevant for acquisition purposes of Income Tax as also for purposes of Wealth Tax and Gift Tax. Surely, it was nothing short of a subterfuge to contend that price of lease-hold land was not determinable.

vi) General resort by your Department to the provisions of S. 9 (4) of R, C. Act, which can be utilised only when the determination cannot be effected under Section 6 of the Act, was wilful distortion of the law, and it is most unfortunate that this continued being done despite all protests. Supreme Court has taken adverse notice of this action of your Department. Likewise, the Supreme Court has taken adverse notice of the general plea resorted to by your Department that documents for determination of price of land had not been produced by the assessees. holding that this could not be an acceptable excuse.

vii) You must be aware that over a hundred thousand cases of notice u/s 126 MCD Act have been kept pending for years by your Department, under the belief that the Department would be within its rights to charge on the basis of revised assessment retrospectively because of notice having been once issued. This is totally contrary to the spirit of the law which enjoins on the MCD to make assessments on annual basis and which debars it from resorting to any measures for effecting recovery where the dues are more than three years old. This matter, as well as the holding up of action on all cases remanded to MCD by the District Judge and making assessments for subsequent years on basis struck down in appeal, are of grave importance and have greatly contributed to the alienation and anger that has been caused among the people by the functioning of your Department.

Against the background of above facts it is indisputable that there has been a deliberate and wilful flouting of the law on the part of your Department. This has had the inevitable consequence of causing serious disaffection and alienation of the people against the MCD; it has led to enormous proliferation of litigation; and one can only infer that the holding up of action over a hundred thousand notices u/s 126 MCD Act and on large number of cases remanded back by appellate court, must have adversely affected the recoveries, These adverse consequences were definitely avoidable, and we feel that these circumstances need to be enquired into for fixing the responsibility of omissions and commissions which have led to these. We are writing to the Grievances Wing set up by the Prime Minister suggesting that such an enquiry should be set up, for enabling smoother operations to prevail in future.

This much is about the past. I plead with you to kindly take appropriate steps for the future to see that the Supreme Court judgement is implemented in "letter and spirit" as your Commissioner had affirmed. Already there is wide-spread feeling that ways and means are being devised to again resort

to strategies which would side-track the Supreme Court judgement. One important matter in this context is the determination of the price of land. You have mentioned that for price determination you are depending upon the figures of auction prices from D.D.A. We would like to urge at this stage that auction prices are definitely not the realistic basis of market prices. You are aware that auctions were conducted by D.D.A. of plots in small driblets, which caused intenslve competition and raised the prices artificially, both for residential plots as well as commercial plots, and that this procedure was commented upon in the Parliament and outside. These prices were, therefore, not the market prices; they constituted artificially inflated prices caused by shortage of supply against enormously expanding demand. The market price in each case could be taken to be the "reserve price" which the auctioning authorities publicised at the time of auction. Where the LIG and MIG colonies have been constructed, the markel price would be the price of land which D.D.A. has itself adopted for purposes of calculation of the price at which the flats were allotted to the people. These factors would obviously be a better criterion for determination of the market price, and we strongly urge that your Department should kindly secure information of these prices and calculate the average based thereon.

In sending you these observations I am concentrating only on the major issues arising from your reply and donot consider it necessary to deal with the points of lesser importance. You have referred me to our circular which was issued for the Conference on 31st March '85. You will notice that it was explicitly stated therein that where any assessments have not been appealed against, in accordance with the provisions of the law, they would be considered to have become final; we hold to this view. Where, however, appeals or objections had been submitted and the assessments disregarded the law, as has been brought out in the December 1984 judgement of the Supreme Court, the aggrieved parties obviously have the legal right to seek remedy and you cannot deny them this right".

Substance of the Application submitted by COMMON CAUSE to Supreme Court to seek clarifications on certain points of the judgement dated 12.12.84 on the Writ Petitions relating to House Tax.

1. That the Hon'ble Supreme Court has announced judgement on 12.12.1984 effecting disposal of a number of Writ Petitions, including that of Petitioner Society (Civil Writ Petition No. 6945 of 1982), relating to the subject of Property Tax assessment by the Municipal Corporation of Delhi. In this judgement, the Hon'ble Supreme Court has provided guidelines on all the various issues which had been raised before it in these Writ Petitions. On behalf of the Municipal Corporation of Delhi the Commissioner of the Corporation is reported to have stated that the Delhi Municipal Corporation will give effect to this judgement in "letter and spirit".

2. That some statements made on behalf of the Municipal Corporation of Delhi, (hereinafter referred to as MCD), since the announcement of this judgement, have however caused concern to the houseowners and have raised apprehensions that MCD authorities will again start resorting to the strategems in the matter of assessment of rateable value, which will negate the decisions embodied in the judgement. The apprehensions in this regard arise from the previous behaviorr of the assessment authorities when, subsequent to the previous judgement of the Hon'ble Court in the well-known case of Diwan Daulat Rai Kapur & Ors VS NDMC & Ors 1980 (2) SCR 607 they created numerous difficulties for the assessees on the question of determination of the price of land in lease-hold colonies, utilisation of Section 9 (4) of the Delhi Rent Control Act, determination of rateable value on the basis of rental even after the period of first five years, which matters have now been held by this Hon'ble Court to have been done contrary to law by the assessing authorities. In the right of certain statements having been made on behalf of MCD, which have caused such concern to the houseowner of Delhi, the Petitioner Society which has been taking up such public causes, requests this Hon'ble

Court to provide clarification on the issues arising from the above-mentioned judgement which appear in the paragraphs that follow.

4. The Hon'ble Court, in the above-mentioned judgement of 12.12.84, while dealing with the category of houses constructed in stages recorded the following. :-

> "The same principles for determining of rateable value would obviously apply in case of subsequent additions to the existing premises. The basic point to be noted in all these cases is- and this is what we have already emphasised earlier - that the formula set out in sub-section (1) (A) (2) (b) and (1) (B) (2) (b) of Section 6 cannot be applied for determining the standard rent of an addition, as if that addition was the only structure standing on the land. The assessing authorities cannot determine 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 of 7 1/2 to the aggregate amount. The market price of the land cannot be added twice over, once while determining the standard rent of the original structure and again while determinlng the standard rent of the additional structure. Once the addition is made, the formula set out in sub.-section (1) (A) (2) (b) and (1) (B) (2) (b) of Section 6 can be applied only in relation to the premises as a whole and where the additional structure ccnsists of a distinct and separate unit of occupation, the standard rent would have to be apportioned in the manner indicated by us in the earlier part of this Judgement."

5. The above decision of the Hon'ble Court embodied in its judgement of 12.12.84 makes it clear beyond doubt that the price of land cannot be taken twice over for purposes of calculating the rateable value i. e. where a portion of the construction took place earlier and another portion on the same plot was constructed at a later date; the price of the land would be taken into calculation of the cost of the original construction and it cannot be computed over again in calculating the cost of the subsequent construction. This decision of the Hon'ble Court would obviously apply irrespective of whether the subsequent construction is an extension of existing unit or separate residential unit, or whether the subsequent construction is on an upper floor or on the adjacent land, provided it is on the same housing plot. It is also obvious from this decision that when the price of entire plot of land has been taken into calculation of assessment relating to the initial construction, it cannot be taken, either in whole or any part, in relation to the assessment of subsequent construction. It will be a total travesty of the decision if an attempt is made, as is apprehended by houseowners on the basis of certain statements made on behalf of MCD, to adopt the escalated price of land, in relation to the subsequent construction, for purposes of calculation of cost, and to deduct therefrom the proportionate area of land of the initial construction, to satlsfy the requirement of not taking into account the price of land twice over.

6. The Petitioner requests the Hon'ble Court to give clarification on this point so that difficulties are not caused by the assessing authority in this regard. In this connection the Petitioner submits that for further avoiding difficulties in the matter of calculating the cost of subsequent construction it would be fair for the assessing authority as well as for the houseowners that in the case of self-occupied premises the cost of construction obt ining in 1971 may be taken as the basis for the calculation if the construction took place subsequent thereto. This measure will avoid the disparities which may otherwise be caused due to escalation of the cost of construction in the recent years. The year 1971 in this context would be justifiable because the construction cost and land prices sharply oscalated from 1970-71 onwards and the year 1970-71 has also been adopted by the Govt. of India in ralation to Wealth Tax assessments.

7. In relation to self-ccupied promises another problem which is being anticipated is that of assessmont of newly construc ted promises, in relation to which the Hon'ble Court in the above-mentioned judgement of 12-12-84 has stated as follows :-

> "If this basic principle is borne in mind it would avoid wide disparity between the rateable value of similar premises situate in the same locality, where some premises are old .premises constructed many years ago when the land-prices where 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) or (1) (B) (2) (b) of Section 6 would be comparatively low, while in case of latter category of premises, the standard rent determinable on these principlaes 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 situate in t e same or adjoining locality. That would be wholly illogical and irrational. Therefore, what is required to be considered for determining rateable value in cases of recently constructad pren.ises is as to what is the rent which the owner might reasonably expect to get if the premises are let out and that is bound to be influenced by the rent which is obtainable for similar premises constructed earlier and situate in the same or adjoining locality and which would necessarily be limited by the standard rent of such premises. The position in regard to the determination of rateable value of self-occupied residential and non-residential premises may thus be stated as follows. The standard rent determinable on the principles set out in sub-section (2) (a) or (2) (b) or (1) (A) (2) (b) or (1) (B) (2) (b) of Section 6, as may be applicable, would fix the upper limit of the rateable value of the premises and within such upper limit, the assessing authorities would have to determine as to what is the rent which the owner may reasonably expect to get if the premises are let to a hypothetical tenant and for the purpese of such determination, the assessing authorities would have to evaluate factors such as size, situation locality and condition of the premises and the amenities therein provided. The assessing authorities would have to take into account the rent which the owner of similar premises constructed earlier and situate in the same or adjoining locality, might reasonably expect to receive from a hypothetical tenant and which would necessarily be within the upper limit of the standard rent of such premises, so that there is no wide disparity between the rate of rent per square foot or square yard which the owner might reasonably expect to get in case of the two premises."

8 It is clear from the abova cited portion of the judgement that in making assessment of newly constructed premises, and for avoidance of the possibility of disparity, which has rightly been stressed in the judge:ent, it would be desirable to prescribe some yardstick for determination of the standard rent of unit of similar construction in the vicinity, To avoid claims arising that the assessment should be based on the standard rent of some old constructions in the vicinity, and that such claims be rejected by the assessing authority thereupon leading to matters being taken to Courts, it would be appropriate to prescribe that in this context the price of land and construction cost of similar premises in the vicinity, as prevailing in the year 1971, on the same ground as appear hereinabove, should be taken as the basis for the assessment. This measure will obviate the difficulties which are likely to arise in the assessment of self-occupied new constructions.

9. Another matter requiring clarification by this Hon'ble Court in relation to the above-mentioned judgement of 12-12-84 relates to the advice that has been made in it regarding the rebate of 20% for

self-occupants. The relevant portion of the judgement, relating to this suggestion, is given below :-

> "We may also point out that until 1980 the assessing authorities were giving a self-occupancy rebate of 20% in the property tax assessed on self-occupied residential premises. We would suggest that, in all fairness, this rebate of 20% may be resumed by the assessing authorities, because there is a vital distinction, from the point of view of the owner, between self-occupied premises and tenanted premises and the right to shelter under a roof being a basic necessity of every human being, residential premises which are self-occupied must be treated on a more favourable basis than tenanted premises, so far as the assessability to property tax is concerned."

10. It is apprehended from the statements made on behalf of MCD that the suggestion regarding this rebate is likely to be read and interpreted in the light of the circumstances obtaining at the time when the rebate was being allowed on self-occupation of the property which was previously assessed on the basis of prevailing market rent and the rebate was calculated and allowed on the basis of that market rent. It is stated that the words "this rabate of 20% may be resumed by the assessing authorities" (emphasis supplied) are sought to be justified by giving this form of the rebate i. e. relating it to the market rent. This would obviously be tantamount to total disregard of the main thrust of the judgement in which it has been emphasised that the assessment has to be based on standard rent and not on market rent. The market rent, or actual rent, received, has no relevance for the purpose of determining the rateable value of any property, whether tenanted or self-occupied. The basis has to be standard rent whether it be the agreed rent for the first five years of tenanted promises or the standard rent determined on cost basis. The suggestion of 20% rebate for self-occupied premises has not yet been accepted by the MCD but while this suggestion is deliberated upon by the MCD it is considered necessary to seek clarification on the matter in relation to the above quoted portion of the judgement so that it may be clear that the rebate of 20% is desired to be applied to self-occupied residential properties irrespective of whother they were previously rented or were throughout self-occupied because the Hon'ble Court has held in the judgement that "the residential properties which are self-occupied must be treatedon a more favourable basis than tananted premises."

*Owners of houses and residential as well as commercial flats in NDMC area will be glad to know that after persistent efforts and taking the matter to court, the NDMC has now decided that they will henceforth charge House Tax on the basis of standard rent as per Supreme Court judgement. In the case of flats the basis of assessment of rateable value will be the price paid for the flat.

FOR PENSIONERS

FAMILY PENSION & PENSION COMMUTATION CASES

The Family Pension Writ Petition has succeeded. We have achieved whatever we wanted. News about the success of this Writ Petition has appeared in the newspapers. We would like to amplify the information. The main factors which have emerged are : (i) all pre-1. 1. 1964 pensioners have been made entitled to the benefits of family pension, i. e. where the pre-1. 1. 64 pensioner has alreada passed away, his widow minor son/unmarried daughter have been made entitled to the benefits of family pension, and where the pre-1. 1. 1964 is alive the benefit of family pension will accrue to the widow/minor son/unmarried daughter, in accordance with the rules; ii) the family pension scales, which were revised

with effect from 1. 1. 1973 and were not previously allowed to pre-1. 1. 1973 pensioners, will now be applicable to all pre-1. 1. 1973 pensioners; (iii) the widows etc. will now be entitled to the arrears with effect from 22. 9. 1977, when the family pension rules were revised, because they have been extended the benefits which they were hitherto denied, and (iv) these benefits will accrue to all irrespective of the fact whether they did or did not contribute the two months' remuneration for entitlement to family pension.

It will be observed from the above that the benefits of family pension, to the full present measure, have now become available to all; and that the inequity and discrimination against which we fought have been removed. The Government had expressed that there will be difficulty in identifying the widows and benficiaries of pre-1964 pensioners. This is undoubtedly a genuine problem. We had suggested, and the Government will probably act on this suggestion, that they should issue publice notice and widely publicise it, inviting the widows etc. to submit their claims. We suggest that the organisations of pensioners should render positive nelp in this matter, and ensure that genuine cases are given all the assistance and no false claim is allowed to be submitted. The organisations should help the widows etc. to claim the arrears from 22. 9. 1977; this service should be rendered selflessly and willingly, and a general impression should be created that the organisations of pensioners are readily coming forth in this humanitarian task. The issue of government notification and orders should now be awaited.

In this context we might mention that we had not asked for, nor do we propose doing so, the refund of two months' remuneration which was contributed for entitlement to family pension. In making the statement before the Court, which formed the basis of the decision of the Writ Petition, the government stated that there is no intention of making this refund. It may also be mentioned that Writ Petition submitted by COMMON CAUSE covered the entire subject comprehensively and that this Writ Petition was decided upon along with a couple of other Petitions which had been submitted by some widows.

For the benefit of pensioners and widows we give below the scales of family pension which were prevalent from 1. 1. 1964 and those which were introduced from 1. 1. 1973 (the latter having now been made applicable to all).

ORIGINAL FAMILY PENSION SCALES
(Effective from 1.1.1964)

Pay of Government servant	Amount of monthly family pension
(i) Below Rs 200/-	30% of pay subject to minimum of Rs. 40/- (prior to 1.3.1970 min. : was Rs. 25/-)
(ii) Rs. 200 and above but below Rs. 800.	15% of pay subject to maximum of Rs 96/- and minimum ot Rs. 60/-
(iii) Rs. 800 and above.	12% of pay subject to the maximum of Rs. 150/-.

REVISED FAMILY PENSION SCALES
(Effective from 1. 1. 1973)

Pay of Government Servant	Amount of monthly family Pension
(i) Below Rs. 400/-	30% of pay subject to a minimum of Rs. 60 & maximum of Rs. 100.
(ii) Rs. 400 and above but below Rs. 1200	15% of pay subject to a minimum of Rs. 100 and a maximum of Rs. 160.
(iii) Rs. 1200 and above	12% of pay subject to a minimum of Rs. 160 and a maximum of Rs. 250.

PENSION COMMUTATION

The Writ Petition dealing with restoration of Pension Commutation has not reached final decision. The Government made statement in the court on 7. 5. 85 that they were prepared to give the benefit

of "ex-gratia" payment of full pension to the pensioners whose basic pension before commutation was upto Rs. 500 p. m. It implied that they were not prepared to "restore" the full pension but to treat this as 'ex-gratia' payment, and that the benefit of this was to be limited to the recepients of asic pension of Rs. 500, When this statement was read by the hon'ble Judges (Mrs. Justice Tulzapurkar, Mr. Justice Desai and Mr. Justice A. K. Sen) they themselves remarked, even without our offering any comments, that this dispensation was not acceptable. We feel that this formula will inevitably involve discrimination and later lead to further problems. For instance, by the imposition of this limit of Rs 500, civil pensioners with basic pensions of Rs. 500, Rs. 600 and Rs. 675 (the maximum previously prescribed), who commuted one-third of their pension, would benefit to the extent of Rs. 166, Rs. 100 and Rs. 50 respectively, and a pensioner of pension Rs. 500 who commuted 50% of the pension would benefit to the extent of Rs 250. The hon'ble judges decided, therefore, that our Writ Petition would be heard. They fixed the date 6. 8. 85 for the hearing, after the summer vacation.

It is a pity that the Government evolved such a formula which was so unacceptable. We have since written to the Finance Secretary of the Government of India. We have again urged, making it clear that it was without prejudice to our pending Writ Petition, that the Government should re-consider this matter, and gracefully restore the pension, of course suitably linking the restoration to the "years of purchase". Obviously, the restoration should not be linked only to the attainment of age 70 or otherwise, because defence pensioners retire when they are much younger, and not to quibble over the words whether it was "restoration" or "ex-gratia" payment. We can only hope that the Government will see justification of our demand, and take the initiative themselves to the effet the restoration. Failing this, we will of course pursue the pending Writ Petiton.

OTHER PENSION MATTERS

○ The case of pre-1973 (and particularly pre-1970) defence pensioners is now fixed for hearing towards the end of July, 1985. The writ Petitions filed by the Indian Ex-Services League and CUMMON CAUSE will come up for hearing then.

○ Large number of pensioners have written to us about the discrimination involved in the extension of greater benefits of the merger of DA etc and removal of ceiling on pension with effect from 31.3.1985, which benefits are restricted only to the pensioners who retire after this date. We referred this matter to the Government. Their reply is that this liberalisation "is in keeping with the normal policy of giving effect to new financial concessions from prospective date only. The judgement of the Supreme Court has no bearing on the liberalisation mentioned above" Some aggrieved presons, particulary those who retired a few weeks before the date 31.3.1985, have now to determine whether they should challenge this decision of the Government in Court.

○ Pensioners keep on writing to us regarding the deprivations caused to pre 1.1.1973 pensioners and by the previous non-marger of DA. We have previously communicated, and would like to repeat, that this matter is not at present proposed to be taken to court by us We have made a reference to the Governmen, arising from the case of Mr. V. Goutam as already reported,

○ We wrote some time ago to all Chief Secretaries of State Governments asking them to implement the judgement of Supreme Court where this has not yet been done. State Governments of Gujarat, Himachal Pradesh, Kerala, Karnataka, Maharastra Haryana, Tamil Nadu and Uttar Pradesh have done this. Where the State governments have not till now implemented the judgement they should be approached organisations of pensioners to do so. Failing that, initiative should be taken by the pensioners and their organitions to file writ petitions in their High Courts on the basis of Supreme Court Judgement Likewise, the organisations of pensioners should now take up with fhe State governments the question of extending the benefits of family pension on the basis of the decision of new Supreme Court judgement. For referring this matter to the State governments, and for taking

it to the High Courts where the State governments may not extend the same benefits, we might mention that the judgement of Supreme Court has the title : writ Petitions Nos 5870-93/81, 13181/84 8446-457/83, 1001/84 and 12707/84 decided on 30 4.85, by the Division Bench of the Supreme Court consisiting of Mr. justice D.A. Desai and Mr. Justice Ranganath Misra,

○ Pensioners often write to us they are not recai ving copies of circulars. We have previously stated, and would like to re-iterate that circulars on different subjects are issued from time to time but these are specifically meant for the organisations and associations concerned with those specific subjects, for enabl ing them to pass on the information to their members. It is impossible to send circulars to all members all over the country. Substance of the important circuiars is reproduced in this periodical as for instance that of circular no: 203 on the subject of family pension and pension commutation has been reproduced in this section.

○ A retired ICS Officer Mr Saroop Krishn, (address : 83, Secior 8-A Chandigarh) has through tenacious efforts been able to secure a judgement from the Punjab & Haryana High Court, which would be of interest to income-tax paying pensioners. Mr. Saroop Krishan had claimed standard deduction under section 16 of I. T. Act. 1961 for a previous year. This was turned down. On eventual appeal to the High Court he has got it established that pensioners can claim standard deduction for the privious years. The citation of the case is : Commissioner of Income-Tax Vs Saroop Krishen, decided by Mr. Justice D. S. Tewalia of Punjab & Haryana High Court, on 14, 1. 1985.

○ For railway retirees we have taken some further steps and the matter is under consideration with an advocate whether it can be filed in court relating to non-supply of option to those who could not come on to pension scheme.

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A major achievement of COMMON CAUSE has been in the area of property tax levy by the municipal authorities. All short of problems in the computation of rateable value, for purposes of property taxes, had got accumulated over the years. The accentuation of these problems at Delhi have been symptomatic of the harassments caused to citizen in other towns and metropolitan areas, through anomalies, aberrations and distortions in the matter of assesments. The matter has now been sorted out through a wideranging Judgement of the Supreme Court in which the position has been clarified in respect of various types of properties which COMMON CAUSE had presented in its writ petition. It is unfortunate that there are still tendencies in evidence on the part of Delhi Municipal Corporation to evade certain guidlines embodied in the Supreme Court Judgement, and the matter may have again to be taken on the Court. Meanwhile, hundreds of thousands of houseowners have benefited from the initiatives taken by COMMON CAUSE in this matter.

Estate Duty is another area in which unremitting crusade on the part of COMMON CAUSE has borne fruit through the abolition of this imposition by the Central Govt. This imposition was posing a very serious problems to practically everybody because of the enormous escalation of property values over the past few years. Its confiscatory nature was repreatecly brouget out. Our crusade initially brought about some mitigation by the government in deciding to evaluate house property on certain varied principles; eventually the government recognised the unreasonableness of keeping the measure on the statute book.

Likewise, in the areas of wealth tax and income tax certain changes have come about a result of pressures built up by COMMON CAUSE. The functionaries of COMMON CAUSE had, even before its establishment, taken up the cause of effecting changes in valuation of the properties for purposes of wealth tax, and succeeded in eventually bringing about the incorporation of new Rule 1BB in the Wealth Tax Rules which has mitigated the problems caused due to escalation of the values of property.

In Income Tax COMMON CAUSE has continuously been advocating the increase of exemption limits including the basic limit and the limits relating to income accruals and savings, and it is gratifying that some of these found acceptance with the gevernment. In the matter of dividends the demand raised by us has got accepted wherein the practice of tax deduction at source has been relaxed which has meant relief to numerous small investors

Our credit line goes on lengthening, At best we can deal with a number of other matters only in brief. We have established working relationship with the large number of consumer's organisations in the country which in their own spheres are endeavouring to protect the interests of consumers. We have apprised them of the facilities and assistance of funds available from the Government of India in the work of consumer protection. We have on our own lunched activities in relation to problems of services such as telephones, electricity, transport. On telephones, we have filed a writ petition in the Supreme Court; it is pending. On electricity our writ petition is pending in the Delhi High Court against demand of outdated arrears. Against the chairman of Delhi Transpor Service and Director of Transport of Delhi Administration we have issued nottces. Against Muruti Udyog Ltd. we were the firt to file a writ petition in the Supreme Court against thelr proposal of allotting cars out of turn. Against proliferation of speed-breakers on the roads we have initiated action. Against proliferation of private lotteries we have launched crusade, About inadequacies of equipment and performance in well-known hospitals of the capital we have lunehed campaign.

Demands for our services keep mounting. We are trying our best to keep pace with the expectations we have roused. We constantly need your support and encouragement.

To Assesees of House Tax

In this issue of the periopical we have provided detailed Information about certain essential aspects of the problem of House Tax assessment by Municipal Corporation of Delhi. Assessees are now being called by MCD Officials in connection with the objections submitted by them against the proposed assessments. They will not receive copies of the assessment orders passsed on their cases; they will at most receive information about the decision having been taken, or the MCD authorities may merely issue a public notice stating that the objection have been disposed of. Vigilance will need to be exercised by the assessees. Each must apply for certified copy of the assessment order. For this purpose an application. with 40 paise *non-judical stamp* affixed thereon, will need to be submitted in the concerned Zonal Office, securing acknowledgement of its receipt. This is a must. Days taken in preparation of certified copy will be allowed extra, beyond the specified 30 days for submitted appeal to District Judge (ADM in the case of NDMC assessments). Where it is felt that the assessment order is contrary to the guidelines contained in Supreme Court Judgement the assessees must file appeals. This is the legal requirement; mere representations serve no useful purpose. We will be prepared to supply panel of names of lawyers who can be engaged for the purpose. It is obviously necessary that if MCD is prepared to side-track and disregard the Supreme Court Judgement, there should be tens of thousands of appeals and contempt of court cases, where justifiable. So that MCD recognises the measure of people's awakening and resentment

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