

# COMMON CAUSE

## VOICE OF "COMMON CAUSE"

### LET US DEMAND CITIZENS CHARTER

New horizons are opening up in some countries demanding from the government and concerned agencies accountability, transparency, quality and choice of services provided by them to the people. These are no longer in the realm of illusory exhortations. Under pressure of public opinion these are being translated into reality.

Time has come for the beginning to be made for such demand taking shape in India. People here have for too long been taken for granted. They have had to put up with shoddy services, with their inadequacies, shortcomings, and failures; suffering in silence, amidst their exasperations. They need to now shout that services exist for the people and not people for the services. It is the responsibility of functionaries, of the government, municipal civic authorities and all others, to provide them the services of the standard, and of the choice, they pay for.

This demand needs to be translated into a demand for emergence of a Citizens Charter. The Charter should spell out in minute details the responsibilities of concerned functionaries in relation to the provision of various services, what their standards will be, how these quality standards will be ensured and maintained, what measures will be adopted for providing the services of such assured standards, and what measures will be available to

them for complaining about the inadequacies and for securing redressal.

The municipality must, for instance, be made to publicise detailed plans of how it would ensure safe and adequate water supply, how it will effect continuous garbage removal and drainage cleaning, what standards it will maintain of road surfacing, what steps it will take for clearing encroachments on the roads, laying down specific standards

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for attainment in respect of all its services. Telephone, electricity and transport departments and organizations, likewise, must lay down specific standards of quality of their services, how they will regulate the rectification of faults and inadequacies. Universities and schools, banks and insurance companies, railways and hospitals, all must come forth with their commitments. Government departments, in their respective areas of the provision of services, must similarly prescribe standards of quality of their performance in the matter of provision of services to the people. This way, thus, each institution, organisation, department which is operating in the country on the strength of tax-payers' money must become accountable to the people. Where we are demanding quality performance from the industry and trade for the products and services we pay for, we must insist on similar assurance of the provision of standard services which are provided from tax payers' money. This will be the logical extension of the spirit of Consumer Protection Act which has caught the imagination of people in the country.

Demand to this effect will be Citizens Charter, the demand of an assurance that services of specified standards will be provided and that complaints about failures will be immediately attended to. The Charter will in fact amount to the preparation and publicization of a comprehensive programme, commitment of its implementation, and assurance of accountability of the functionaries connected with implementation of the programme.

Let us develop this concept further, in the light of experience of what is now happening in other countries. A Citizens Charter has emerged recently in U.K. Its elements are of obvious interest, aiming at giving confidence to the citizens about the provision of services to them and of the prescribed standard. Standards in respect of each service are laid out in detail. They are published and prominently displayed. These standards invariably include courtesy and helpfulness from the staff (this requirement needs to be particularly emphasized in the Indian context), accuracy in accordance with statutory entitlements, and a commitment of prompt action which is expressed in terms of a target response or delivery time of the service. There is a commitment that these standards will be progressively improved as services become more efficient.

Second element of UK Charter is that of openness, a commitment that there will be no secrecy about how public services are run, how much they cost, who is incharge and whether or not they are improving their standards. Public servants, it is prescribed, must not be anonymous. The third element is related to dissemination of information. Full and accurate information relating to the service is readily available, in plain language, indicating the targets prescribed and the commitment of monitoring the attainment of these targets. Another element is that of choice, giving the public affected by the service an opportunity to be consulted, with suitable arrangement to secure their views regularly and systematically. In the Charter it is clearly provided that services are run for the convenience of customers and not of the staff, prioritising the interest of the people over that of the machinery providing the service. And, very importantly, it is provided in the UK Charter that "at the very least the citizen is entitled to a good explanation or an apology". The consumer must be informed why the service could not be provided, of the standard prescribed, and at the time committed. A readily available and well publicised complaints procedure is committed, for putting right the inadequacy and default, and for ensuring that the mistake does not get repeated.

The Charter in U.K. applies to all services. These include government departments and agencies, all public sector industries and enterprises, local authorities, national health service, the courts, police and emergency services. In the private sector it covers the key utilities. Through the proclamation of this Charter the government stands committed to continuous review of public expenditure and taxation policy. The Charter programme aims at finding better ways of converting the available funds into better services. This Charter has been spelt out in a White Paper issued by the government wherein commitment has been made to bring in legislation for removing any obstacles which may be encountered in its implementation. The Prime Minister of U.K. has committed himself to effective implementation of the demands incorporated in it. The White Paper lays stress on four themes: **QUALITY**, with commitment of a programme for improving quality of public services; **CHOICE**, giving the citizen choice between competing providers of service for acting as spur to quality improvement; **STANDARDS**, informing the citizen about the standards for enabling him to act where the service is unacceptable; and **VALUE**, assuring the citizen that as tax payer he will get value for the money he spends for the service.

There are hosts of reasons and justifications for our demanding a Citizens Charter. One has only to see how people, individuals and many together, are treated by persons exercising authority, at the counters, at police stations, at licensing windows, even at bus-stops and ration shops. Demand for formulation of Citizens Charter should arise all over the country, in all States, and in all cities, voicing it in meetings, conferences, seminars, resolutions, slogans, editorials, judicial interventions, and all else that can be devised. Parties, organisations, associations, societies, all should raise loud clamour.

The way to this goal has been shown by certain recent developments. Climate created by establishing new 'courts' all over the country under the Consumer Protection Act for redressal of grievances of consumers, is important. Boost to fulfilment of legitimate demands of the people has also been provided by certain recent pronouncements of the apex judicial authority of the country. The Supreme Court has done signal service by laying down the principle of liability of individual public servants for their acts of omission and commission in the performance of their prescribed duties. Responsibility for payment of compensation for loss or damage occurring by default of a public servant can now be placed directly on him. Where any hazard to public weal and health is involved the offending elements can be ordered to be eliminated. With the climate thus shaping in favour of the people, and the people becoming conscious of their rights, time has now come to demand supply of clean and efficient administration to the people and the provision of services to them of the standard and choice they pay for.

## TWO IMPORTANT COMPLAINTS UNDER CONSUMER PROTECTION ACT

We have recently taken initiatives of filing two important complaints before the National Commission established under the Consumer Protection Act. One complaint relates to the matter which has in the last few months effected hundreds of thousands of people all over the country who invested in National Savings Certificates (NSCs) and who have on maturity of NSCs after six years been paid amounts less than the amounts stipulated when the NSCs were secured. This matter involves many crores of rupees. On behalf of all these affected citizens we have filed a complaint before the National Commission asking for compensation alongwith interest to be given to all persons who have been deprived of the whole payment.

The other complaint submitted before the National Commission relates to an equally important matter wherein hundreds of thousands of people all over the country have suffered on account of Banks resorting to strikes. During the month of May 1994 the Banks remained closed on the 5th May and 11th May. It is estimated that one-day strike by branches of Banks all over the country holds up 35 lakh cheques, involving the aggregate amount of about 6500 crores, leading to a loss of interest of the order of Rs 3.20 crores. In the complaint we have asked for compensation from the Government of India, Indian Banks Association and also the associations and unions of officers and employees of the Banks which have resorted to the strikes.

We reproduce hereunder the two Complaints. These will be of obvious interest to all our readers.

### **COMPLAINT REGARDING NATIONAL SAVINGS CERTIFICATES (NSC's)**

To:

THE HON'BLE MR. JUSTICE V.B. ERADI, PRESIDENT AND THE  
MEMBERS OF THE NATIONAL COMMISSION

1. That the Complainant is a Registered Society which has been taking up various public causes and grievances of the people for securing redressal by submitting pleas before the Hon'ble Supreme Court, Delhi High Court and the Hon'ble National Commission. The present complaint is being filed in relation to an important matter which has arisen in connection with Six-Year National Saving Certificates (NSCs), which have been issued under the authority of the Union of India, Ministry of Finance, as a measure for encouraging savings through Income Tax concessions. The assesseees of Income Tax have over the past many years been encouraged to invest in the National Saving Certificates for gaining the advantage of reduction of their annual income to the corresponding extent for purposes of assessment of Income Tax. Innumerable people all over the country have been making investments in the NSCs. Mostly these investments have been made by the middle class persons who depended upon this device for effecting savings and at the same time secure the benefit of Income Tax reduction.

2. That the Six-Year National Saving Certificates Series have been issuing from year to year. The investor/assessee, who made the investments was given the Certificates of the denomination in accordance with the amount invested. The denomination of Certificates varied from Rs 1,000 to Rs 10,000 and possibly even more. The investor was also given an Identity Slip for facilitating encashment on completion of the period of six years from the date of investment.

3. That numerous investors who made investments running practically into crores of rupees have now suddenly been confronted with a very serious problem in regard to interest payable to them. When the Six-Year NSCs were given to them there was a specific stipulation incorporated on the reverse of each Certificate indicating the amount which would become available on maturity of the Certificates after completion of the period of six years. The amount of Rs 1,000 was to become Rs 2,015 on completion of full period of six years. Correspondingly a Certificate of the amount of Rs 5,000 was to mature at the value of Rs 10,075 on completion of the six years period and Rs 10,000 was to mature at the value of Rs 20,150 on completion of the six years period. Reference in this connection is invited to the photocopies of two attached NSCs, one of Rs 1,000 and the other of Rs 10,000. The amounts stipulated for payment on completion of the six years period are specifically mentioned on reverse of each of the two Certificates. For the purpose of submission of this complaint the names of the assesseees/investors have been obliterated from the Certificates.
4. That it has now been experienced that when the assesseees/investors go to the concerned Post Offices for encashment of these Certificates the Postal Authorities are now unilaterally scaling down the cashable value of Rs 20,150 to Rs 19,010 (in relation to the NSC of Rs 10,000) and correspondingly of the amounts of Certificates of other denominations.
5. That on the face of Annexures A and B it will be noticed that it is recorded: "This Certificate is issued pursuant to Government of India, Ministry of Finance, Notification No. GSR 309 (E) (24 April 1981).
6. That it is learnt that the Government of India had reduced the Bank rate of interest in 1993. The Postal Authorities, who are responsible for encashment of these Certificates, take the plea that the Bank interest rate has been reduced and correspondingly the amount payable on the NSCs has to be reduced. Obviously, this is a matter which can be considered to have been unilaterally decided by the Union of India. The Postal Authorities are apparently acting under the specific instructions issued by the Union of India in this behalf. When a specific contract has been entered into between the investor and the Union of India whereby commitment is made of payment of a specific amount on the completion of six years period on the maturity of NSCs, the authority making the payment has no competence to alter the terms of contract unilaterally.
7. That this action on the part of Union of India and the Postal Authorities is obviously tantamount to a deficiency in service as defined under the Consumer Protection Act. On acceptance of the investment through NSCs the Union of India agreed to provide a service of making payment of a specified amount in proportion to the amount of investment, and failure to abide by such commitment would definitely constitute a deficiency in service that is being provided to the investor.
8. That the Complainant attaches herewith a press report from the Indian Express of Bombay, dated 12-3-94, wherein this matter has been highlighted.
9. That as this matter involves hundreds of thousands of people all over the country, and the amount involved would be running into crores of rupees, the Complainant has considered it necessary to submit this Complain for urgent consideration of the Hon'ble National Commission for issue of appropriate directions to the Union of India not to effect any unilateral alteration in the terms of the Contract and also to forthwith compensate all those whose NSCs have been encashed with any such deduction during the last six months, the compensation being the amount of deduction along with interest for the period of deduction.

**PRAYER**

Taking into account the submissions made in the foregoing paragraphs, the Complainant prays that the Hon'ble Commission may be pleased :

- (i) Direct the Union of India in the Ministry of Finance to immediately re-examine the entire matter and to issue explicit directions to the Post Offices all over the country through the Union of India in the Ministry of Communications to ensure that the full maturity value is paid to the investors/assesseees when they submit their NSCs for securing the payment.
- (ii) Direct the Union of India in the Ministry of Finance and the Ministry of Communications to issue directions to all Post Offices that wherever any deductions in payments due on NSCs have been effected on this account during the past six months the investors-assesseees should be compensated by repayment of the deducted amount along with interest for the period of deduction.
- (iii) The Hon'ble Commission may please pass such other orders or directions which may be considered necessary in the case.

Drawn and filed by  
(H.D. SHOURIE)  
DIRECTOR, COMMON CAUSE

**COMPLAINT REGARDING STRIKES OF BANKS**

To:

The Hon'ble Mr. Justice V.B. Eradi, President  
and Member of the National Commission

1. That the Complainant is a Registered Society which has been taking up various public causes for redressal of grievances of the people. The Society has submitted a number of Writ Petitions and other Petitions to the Supreme Court, Delhi High Court and the Hon'ble National Commission. The present complaint is being filed against the abovementioned Respondents for the serious inconvenience and losses caused to the clients of various nationalised banks, the consumers, by the strikes resorted to by these banks which the Respondents No. 1 and 2 have failed to counteract and overcome.
2. That during the recent weeks there have been strikes in the nationalised banks in the country, repeating certain previous similar strikes which have obvious adverse effects on economy of the country. These strikes have gravely effected the interests of clients of these banks, the consumers of the services they provide. Estimates are that one-day strike by these banks in the country causes the holding up of cheques worth Rs 6,500 crores, entailing extreme inconvenience to hundreds of thousands of consumers and causing losses to tens of thousands, besides bringing about a loss of seven million man-hours to the country.
3. That these strikes are caused by employees of the banks staying away from work, the employees including workers at all various levels and also the officers. The strikes are called by their Unions and Associations, and all employees at various levels thus get involved in staying away from work. Employees' Unions and Officers' Associations appear to be practically vying with each other in

resorting to strikes.

4. That the ostensible reasons for resorting to strikes are stated to be the demands for better wages and accompanying privileges and facilities. The Officers' Associations are stated to be demanding grant of additional increment and hospitalisation facilities. Employees' Unions are stated to be agitating against the contemplated policy of privatisation of the banks; they are also demanding early resumption of wage negotiations. We understand that the demands of this nature are being particularly made by the Associations and Unions mentioned as Respondents in this Complaint. The names and addresses of the main office-holders of these organizations have been given in the Complaint.

5. That these strikes effect 15000 Banks Branches all over the country, involving about 25000 bank employees and officers. Two one-day strikes were recently organised by the employees and officers of the banks, one on 5 May and the other on 11 May 1994. The 5th May strike was in fact the second one-day closure of the banks in less than one month. A third strike has been threatened for 24 May; negotiations are stated to be in progress for calling it off. Strikes have been threatened also for the dates 2 and 3 June 1994. The strikes held on 5 and 11 May are stated to have almost paralysed the functioning of banks, causing disruption of banking operations and inconvenience and losses to consumers all over the country as mentioned above.

6. That strikes by employees and officers of banks cannot for any reason be justified. It is generally known that bank employees already enjoy high basic salaries, inflation-indexed dearness allowance, subsidised loans for housing, conveyance and purchase of household goods, allowances for educational qualifications and special skills, attractive leave concessions and medical care benefits for self and family members. It is learnt that despite the existing tight financial position of the banks, a pension scheme for the employees with some other benefits is also reported to have been agreed upon, involving an outflow of Rs.500 crores annually. An advance increment is also stated to have been given to all employees to usher in computerisation and this itself involves an annual outflow of Rs.500 crores.

7. That in the general prevalent structure of wages in the country the bank employees and officers are already considered to be a greatly privileged section, and it is being generally felt that they have no cause or justification for resorting to the weapons of strikes, paralysing banking operations throughout the country and bringing down the image of operations of banks, particularly in the context of measures being taken towards liberalisation of the economy.

8. That the creation of strikes, besides being brought about by decisions and actions of the Associations and Unions of officers and employees, has necessarily to be attributed also to the failure of the Union of India and the Banks to take appropriate measures to avoid these taking place, and also to take steps to make it inappropriate and impossible for the Associations and Unions to resort to this measure which causes such enormous inconvenience and losses to the clients of banks, the consumers. Accordingly, the Complainant has considered it necessary to implead the Union of India in the Ministry of Finance/Department of Banking, and the Indian Banks' Association, the organised collective body of the banks. The impleadment of the Indian Banks' Association has been considered appropriate as an alternative to the impleadment of all the individual banks.

9. That the strikes of banks involve stoppage of work in Branches all over the country, holding up in one-day strike cheques approximating 35 lakhs in number and involving the aggregate amount of Rs 6500 crores. It is estimated that direct loss of interest to the consumers, by the holding up of transmission of cheques, is of the order of Rs 3.20 crores by one-day strike. Clients of the banks, the consumers, expect the banks to provide them service. For providing them this service the banks charge consumers through utilisation of their deposits for deriving the benefits of interest and utilisation

of the term deposits for transacting business. Where the banks strike work this inevitably involves deficiency in service, which causes inconvenience and loss to the consumers. As stated above, the estimate of loss suffered by the consumers in a one-day strike is itself of the order of Rs 3.20 crores; besides this loss they suffer enormous inconvenience which is not easily measurable in monetary terms but can be estimated to be of not less than about Rs 2 crores. Strikes resorted to by the banks on two days, 5 and 11 May 1994 can thus be estimated to have caused loss to consumers of the order of at least Rs 10 crores.

10. That on behalf of clients of the banks, the consumers, who have suffered inconvenience and losses in the two one-day strikes of 5 May and 11 May, the Complainant submits that the Hon'ble Commission should award a token compensation of Rs 2 crores. It is obviously impossible for this compensation to be distributed to individuals who have suffered the inconvenience and losses; therefore, it is suggested that this entire amount should be deposited in the Consumer Welfare Fund which has been established by the Government of India for the benefit of consumers and to which contributions have already been from various other sources. It is for consideration of the Hon'ble National Commission that out of the aggregate compensation of the amount of Rs 2 crores, Rs one crore should be made payable jointly by the Union of India and the Indian Banks' Association, and the remaining amount of Rs one crore should be made payable jointly by the abovementioned prominent organisations of officers and employees of the banks which have sponsored and encouraged the strikes.

#### **PRAYERS**

11. That the Complainant therefore prays that the Hon'ble National Commission be pleased to :
- (i) award compensation to the extent of Rs. one crore to be jointly paid by the Union of India, Respondent No. 1, and Indian Banks' Association, Respondent No. 2;
  - (ii) award compensation to the extent of Rs. one crore to be jointly paid by the abovementioned Respondents No. 3 to 7;
  - (iii) the aggregate amount of Rs. two crores, derived from the above compensation, should be deposited in the Consumer Welfare Fund maintained by the Government of India, and the deposit be made through the Ministry of Civil Supplies, Consumer Affairs & Public Distribution;
  - (iv) pass such other and further orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

Drawn and filed by  
(H.D. SHOURIE)

#### ***The Test of Time***

A tree that stands alone is a symbol. Graceful elms along the rivers and brooks, patriarchal beeches, great oaks and gaunt maples are trees that have fought a long, testing battle and have established their strength.

For a century and more they have known the tempests of winter, the miracle of spring and the heat of summer. A century ago a small seed found sanctuary in good humus and a tiny white root struck downwards; a slender green shoot lifted towards the sky and stars. Over the decades while a nation fought wars, grew in power and tapped the sources of space, the trees grew taller.

Cattle have rested in their shade; birds have made homes among their branches. Great roots reached far to find food as branches developed. Men and women have lifted their eyes to the trees, and in their serenity have found inspiration for the tasting of life.

A tree that stands alone represents qualities that a man admires. The tree has met and conquered the storms of life; it has bowed but never broken before powerful forces. Its feet are in the ground but its head is lifted to the light.

All men stand alone. Each has his private sanctuary where no other may enter. A man with his feet on the ground and his head lifted to the sky and stars, has a foundation that will stand the test when tempests assault.

## PROBLEMS OF PROPERTY TAX ASSESSMENTS

Property Tax is a matter of very close interest to people in practically all towns and cities of India. The levy of Property Tax is presently enmeshed in all sorts of legal technicalities which inevitably continue involving corruption at the level of municipal staff and concealments on the part of houseowners. The entire matter needs to be re-examined for effecting requisite alterations in the statutes for bringing them in line with the present-day requirements. This matter has been dealt with comprehensively in this article.

### MUNICIPAL PROPERTY TAX LAWS FULL OF CRACKS AND LEAKS

A major source of revenue of all municipalities in the country is the tax which is variously termed Property Tax or House Tax. Recovery from this source is practically equal to all the other municipal taxation sources put together. And, unfortunately, the assessments and recoveries of this tax have correspondingly become the major source also of corruption and harassments on the part of functionaries and operating staff of the municipalities, and concealments and evasions on the part of owners. Interests of over twenty million owners of houses in the towns and cities of the country are involved. 300 million people live in the areas of municipalities.

It is necessary that municipalities should be able to raise sufficient funds for rendering to the people services for which they exist. They are charged with the statutory responsibility of providing certain services which are essential and obligatory, and certain other services which are discretionary and of comparatively lesser importance. Their obligatory functions include water supply, drainage works, cleaning of drains, scavenging, registration of births and deaths, and regulation of places for disposal of the dead, measures for prevention of dangerous diseases, construction and maintenance of roads, markets, schools, hospitals, dispensaries, and certain other specified services. Discretionary functions include those like cultural and physical education, libraries, museums, organising fairs and exhibitions, establishment and maintenance of zoological and botanical collections, and other such.

Discharging these various responsibilities requires funds. For raising funds they have been given powers, and authority, through the individual statutes by which they are established. Among the statutory powers given to them for the purpose is generally, in the case of every municipality, the power to levy a tax on lands and buildings located in the defined areas of their jurisdiction. This tax is called Property Tax; it is often called House Tax in general parlance. But in fact, it is a tax on the property comprising all lands and buildings within the area of the municipality, including all unbuilt land and all built premises, residential, commercial as well as industrial. Property Tax is one of the taxes which municipalities are authorised to levy and collect. Other taxes are of the nature of taxes on vehicles, advertisements, transfer of property, and for supply of fire extinguishing services etc. We are here concerned with Property Tax and its various facets which have assumed certain undesirable manifestations.

The main problem relating to Property Tax arises from the fact that the statutory provisions governing it are a part of municipal statutes which were enacted practically forty years ago and which are a throw-back from what preceded them in pre-partition India. The basis of assessment of Property Tax on lands and buildings in all these statutes is generally the "Rateable Value" determinable on the basis of "annual rent at which such land or building might reasonably be expected to let from year to year." These words have over the decades created enormous lot of problems and have been the subject of numerous decisions of courts and rulings of High Courts and the Supreme Court. It is most unfortunate



that no concrete effort has hitherto been made to modify these statutory provisions which, as we will presently see, are anachronistic and outdated. Till these provisions exist the courts cannot but pronounce their adjudication on the interpretation of these words.

These words incorporated in the municipal statutes got further complicated by the fact that in practically all the States, consequent to the problems created after the Second World War which terminated in 1945, certain rent control laws got enacted to keep a check on rents so that available accommodation of premises would not encounter spurt of increase of rentals. These rent control laws, which were at that time considered to be primarily a temporary measure, have unfortunately got perpetuated, on political considerations of meeting social purposes. The limitations on rents imposed by the rent control laws got inevitably entangled with the provisions of rent realisable on lands and buildings for purposes of assessment of Property Tax. A linkage of rent and Property Tax thus got perpetuated. This has been the main cause of problems and difficulties which have over the past many years been encountered.

The linkage of rent with Property Tax in those periods, decades ago, was understandable. Rents were low, expressed even in 20s and 40s of rupees, very seldom reaching three digits figures. Construction cost was also low. Rent then was a reasonably good measure for determination of the worth of a property. Therefore, the "annual rent", which a property could 'reasonably fetch' was adopted as the appropriate measure for determining the "Rateable Value" comprising the basis for determining how much percentage of rateable value should be recovered as Property Tax by the municipality for providing its services.

Position has totally changed since then. It started materially changing about 20 years ago. Prices of land have, during the past two decades, jumped up at places 100 times what they were; at certain locations in the bigger cities the prices have enhanced even 1000 times and more. Cost of construction has increased at least ten times. Rents have increased phenominally, beyond imagination in certain localities of metropolitan areas and other cities. Rents no longer have any relationship to cost; they are related more to opportunity of business and status of locality. Linkage of rent to Property Tax has thus gone haywire. Rents beyond certain prescribed limits have lately also been taken out of the purview of rent control laws; this has caused further complications. Adjudications of High Courts and Supreme Court on various aspects of the levy of Property Tax, over the past couple of decades, have further added to problems and confusion.

Another important consideration is that rental income is also subject to levy of Income Tax. For purposes of assessment of Income Tax a percentage rebate is given for repairs and maintenance of the premises. In assessing Property Tax too a prescribed percentage rebate is given for repairs and maintenance. Same rental income thereby becomes subject to two taxes, Income Tax which is a Central levy in accordance with provisions of the Constitution and Property Tax which is leviable by municipal authority under the State Governments. Whatever may be the legal implications involved, and which are presently before the Supreme Court in a reference from Delhi, the fact remains that there is overlapping of taxes on same source of income, and this can be termed a case of double taxation. I have referred this matter to the Finance Minister. It needs to be sorted out by the Ministry of Finance in consultation with the Ministry of Urban Development who are concerned with the well-being and revenues of municipalities.

Existence of this anomaly and the present continuing linkage between rent and Property Tax is the root cause of all the malaise which is being encountered in the administration of Property Tax in the municipalities and all the corruption and concealments that accompany this administration. With high rentals, and direct linkage with Property Tax levy, which goes upto even 20 to 30 percent of the accrual,

there is enormous scope for high level wrong doings on the part of assessment staff as well as the owners. At the same time, with highly escalated land prices and construction costs the calculation of Property Tax assessments for self-occupied properties also provides enormous leeway for resort to corrupt practices. These are the reasons why staff operating in municipalities is always more eager to be posted in department dealing with assessment and collection of Property Tax.

Linkage of rent and of land prices and construction costs with assessment of Property Tax inevitably involve subjective elements in the determination and calculation; these are the bane of this tax. The entire system needs to be revamped and overhauled. Suggestions have been made that we must break away from the throwback of the past and attune the processes with facts as they exist presently. Property Tax needs to be linked to the value of property; services of the municipality determine and enhance the value of property; the value gets inevitably linked also to the location, standard of services provided to the locality, size of the property. It is necessary to evolve criteria which would enable the determination and calculation to be made on objective and verifiable facts and not on subjective judgements. Built area of property is certainly a measurable criterion; assessable standards of construction can be prescribed as in PWD specifications; localities can be enumerated. On the basis of such measurable and verifiable criteria the owners should be made to file their self-assessment, as in the case of Income Tax, make advance payments of the tax; verifications can be made by random selections. These devices can put Property Tax on a proper footing, shake it off from unfortunate accretions of the past. Criteria and standards can be determined and prescribed in consultation with expert bodies and representatives of citizens.

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#### *No Regrets*

A famous surgeon once said: "Now that my days are almost over, I wonder if I haven't devoted too much time to my work - time for my studies, my patients, my hospital and office commitments. I've never looked at the clock, paid attention to my exhaustion, either night or day. How many Sundays have gone by that I spent studying books or patients' files? Thousands. I could have been enjoying myself instead out horseback riding or watching a football match or spending time with friends or a beautiful woman. Instead I chose to ruin my eyesight poring over paper. But I was happy and wouldn't have traded it for anything. Now, there is no time left for anything, I know, but I have no regrets. I have lived the way I wanted."

This, then is the point ; living the way you want to. Some like to spend it roaming the earth, stuffing at the dinner table, making love once a day, generally avoiding exertion and fending off adversity. And then there are those who find their serenity and reward in solitude, study, family responsibility, work, sacrifice and helping others. Only boredom wastes and wears. Nothing else.

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In our steel-township, we have a social club which, among other activities, screens a feature film every week for its members. The club's telephone number and my home phone number are identical except for a slight change in the sequence of the digits. Naturally, on the day of the filmshow we are inundated with phone calls from people anxious to know what film is being screened and it tries our patience explaining that they've got the wrong number.

One Saturday evening, having answered a particularly large quota of mis-dialled numbers, I was straining too contain my irritation when the phone rang again for the umpteenth time. A booming voice demanded, "What picture is being shown today?"

"Wrong number," I said severely.

However, this time instead of the usual apology, he shot back another question: "Is it in Hindi?"

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Like every other national leader, US President William Howard Taft had to endure his share of abuse. One night at the dinner table, his youngest boy made a disrespectful remark to him. There was a sudden hush. Taft looked thoughtful.

"Well," said Mrs. Taft, "aren't you going to punish him?"

"If the remark was addressed to me as his father, he certainly will be punished," said Taft. "However, if he addressed it to the President of the United States, that is his constitutional privilege."

## CONSUMER COURTS

It is a matter of serious concern that consumer 'courts', established under Consumer Protection Act, have started presenting an unsavoury spectacle, of almost turning into civil courts, with all the attendant delays, adjournments and exasperations. Huge backlogs of cases have developed in quite a few District Forums and State Commissions, and also at the level of National Commission. There is great need of reorienting the policies relating to the functioning of consumer 'courts' at all these levels. This article tries to focus attention on these unfortunate developments. The article following thereafter attempts to briefly present views for stimulating the development of alternative disputes resolution machinery for supplementing the work of consumer 'courts' by involving the industry and trade in resorting to conciliation, mediation and arbitration to the maximum extent.

### CONSUMER COURTS TURNING INTO CIVIL COURTS

Serious apprehensions have started emerging all over the country that the Consumer 'Courts', termed Forums and Commissions, are fast turning into normal civil courts, bedevilled by the same exasperating and procedural delays. Everybody complains that in relation to the functioning of normal civil and criminal courts the word 'justice' has lost all meaning; they have become synonymous with frustrations, backlogs and excruciating procedures. In contrast it was expected that the consumer 'courts' would be able to dispense justice expeditiously and inexpensively.

The whole concept of enactment of Consumer Protection Act was to make redressal quickly available for grievances of the consumers. For long the interests of consumers had been disregarded; they were taken for granted by the manufacturers, traders, and those, including public sector organisations, who provided them various services. This Act presaged and envisaged a distinct change in the attitude towards consumers. Redressal machinery set up under it was deliberately given the appendage 'quasi-judicial', and its functioning was planned to be such. It was specifically laid down in the Act that the District Forums and State Commissions established under it were expected to function "without any interference with their quasi-judicial freedom". A clear clause was incorporated in it that simplified procedures followed by the consumer 'courts', as prescribed in the Act, would not be called in question in any court on the "grounds that the principles of natural justice have not been complied with". Of course, they are expected to adopt the normal procedures which inspire confidence of their functioning on principles of natural justice but it was laid down that the proceedings adopted would not be challengeable on such grounds. They were to function in a manner distinguishable from normal civil courts.

Procedures prescribed in the Act are straightforward and simple. It is laid down that when a complaint is received by a District Forum it has to be referred straightaway to the party complained against, directing him to give his version within 30 days which may at most be extended by another 15 days. Where the opposite party denies or disputes the allegations contained in the complaint, or omits or fails to represent his case within the prescribed period, the consumer 'court' has to pass the appropriate order. No court fee is required for filing a complaint. The complaint should contain full facts of the allegation, alongwith relevant documents, for enabling the other party to respond to the allegations. Taking into account the type of prescribed proceedings, which are to be shorn of the various formalities and requirements of Civil Procedure Code, it has been prescribed in the statute and the rules framed under it that the case should be decided as far as possible within a period of 90 days. A very important requirement embodied in it is that there should be not more than one adjournment during the disposal

of a case.

These are the requirements of this unique enactment, something which has not previously been visible on the scene of functioning of judicial system in this country. No hassles, no expense, no procedural delays, no unnecessary adjournments, no intricacies of evidence of witnesses and their cross-examination; examination of essentials of the case, consideration by a panel of experienced and knowledgeable people unhampered by intricacies of the law, with empowerment of effective enforcement of their decisions. This is what this new law was expected to attain.

Unfortunately, however, implementation of this Act has got enmeshed in the procedures and delays. Legal technicalities have overtaken the fulfilment of objective of simple and effective redressal. What was expected to constitute a machinery for ready and inexpensive justice has started being heavily burdened with millstone of the prevailing normal judicial system. Let us see the unseemly manifestations that have now enveloped it.

First and foremost is the continuing apathy and indifference of State Governments in removing the deficiencies of its implementation. Mostly, the State Governments do not give any impression of their feeling concerned about the problems encountered by the consumers who knock for redressal of their grievances. They are obviously lost in other pursuits and manipulations. It is only under the series of explicit directions which were issued to them by the Supreme Court that they got electrified into issuing Notifications for setting up the Forums in each of the Districts. Hardly any regard is, however, being paid to the various essential requirements of the Forums.

The Forums and State Commissions established under the Act have necessarily to depend on State Governments for remedying their problems. These problems are many. In a large number of Districts all over the country the cases of consumers are yet taken up by the operating District Judges. Supreme Court, in the judgement given in March 1993, had directed that independently functioning Forums should positively start operating everywhere within one year i.e. by March 1994. Independently functioning Forums imply that these will not be operating under the existing District Judges but that new personnel with prescribed qualifications will be appointed to operate them on whole-time basis. This unfortunately is not happening in a large number of Districts. Where the number of cases in a District is small, it has been envisaged in the Supreme Court judgement that two or three Districts will be clubbed together for enabling the cases to be taken up by independently functioning Forums. State Governments have not yet started effectively tackling this problem. Other important shortcomings relate to the non-provision of funds to the Forums and State Commissions, making them totally dependent on the concerned departments for meeting even minor requirements of furniture, equipment, and stationery. Accommodation in numerous cases is often very poor and inadequate; staff requirements are not being met; stenographers are not made available, often reducing the Members of the Forums to write judgements in hand. In certain Districts, where large number of complaints are filed, huge backlogs have started developing, State Governments are not taking expeditious and palpable action of setting up additional Forums which have since been authorised under the Act. These are very unfortunate omissions which are adversely effecting the functioning of these 'courts'.

Result of all this is getting reflected in inordinate delays in disposal of cases and attendant exasperations of the people. Often, where accumulated backlogs have developed, the first date being given on receipt of complaints is after four-five months, which sets at naught the provisions made in the statute. Already some cases have dragged on for over two years. Lawyers utilise the opportunities for seeking adjournments, for reasons which are often flimsy. The statutory provision that not more than one adjournment should be given in a case, is totally forgotten.

Immediate steps, at all concerned levels, need to be taken. Under the law State Commissions have now been given authority of administrative control over the District Forums, calling for periodic returns from them, issuance of instructions regarding adoption of procedures, and generally overseeing the functioning of Forums to ensure that objectives of the Act are properly achieved. Similar administrative powers over the functioning of State Commissions have been given to the National Commission. It is a matter of serious concern that the exercise of administrative control at these levels gets handicapped by its non-effective utilisation as well as lack of adequate support from the concerned departments of State Governments.

At the level of National Commission itself the functioning is considerably handicapped by certain factors. The Act provides that National Commission shall consist of the President and four Members, including a lady social worker. The Commission came into existence nearly five years ago, but at no stage has it had full complement of its Members. From the very beginning three Members were appointed besides the President. Presently there are only two Members besides the President; lady Member's tenure terminated four months ago and no substitute has yet been appointed. This can possibly affect the constitutional validity of National Commission's functioning because it is specifically provided in the Act that one Member has to be a lady. The Commission thus cannot have regular sittings because sometimes a Member may not be available; quorum necessitates at least three, including the President. As many as about 1800 cases have piled up at this apex level, comprising 375 original complaints, about 1000 Appeals, and 400 Revision Petitions. It is impossible for the Commission to take up more than about 25 cases per day. Overall result is that cases cannot be disposed of expeditiously as envisaged in the Act.

Similar is the position at the level of State Commissions. There too the burden has increased enormously. Some of these are seriously handicapped by the non-filling of vacancies on the Bench, even at the level of the position of President. Their problems were recently reviewed in a Conference called by the President of the National Commission. There is obvious need of setting up more Benches of the National Commission as well as in the overloaded State Commissions, but no initiatives in this direction have yet been taken though recommendation to this effect was made by the All India Convention held nearly six months ago.

Some day, one hopes, these matters relating to the functioning of District Forums, State Commissions, and the National Commission will be grappled effectively for finding solutions. Without finding satisfactory solutions consumers in the country can only continue to exhibit their exasperations.

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### *Sorry, Wrong Something*

I have a small office which I run on my own with the help of a telephone answering machine. One day the phone rang and I picked it up and said, "Hello." A woman's voice on the other end of the line asked, "Is that the man or the machine?" I don't know what made me do it, but I said, "This is the machine."

"Oh," she said, "I beg your pardon" - and put down the phone. I never did find out who it was.

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The Physician I work for plays a game with some of his young patients to test their knowledge of body parts. One day, while pointing to a boy's ear, the doctor asked, "Is this your nose".

Immediately the child turned to his mother and said, "I think we better find a new doctor!"

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## CONSUMER DISPUTES RESOLUTION : ALTERNATIVE TO CONSUMER COURTS

Redressal machinery in the shape of consumer 'courts', of the Consumer Protection Act, has undoubtedly caught imagination of the people. They have started feeling that justice is not totally out of their reach, that delays will not be interminable, that redressal of grievances can be secured without undue expense, that they can knock at the doors of consumer 'courts' with bare hands. When these developments are measured against the prevalent systems of normal justice, of civil as well as criminal courts, they present a significant change.

Therefore the people now eagerly explore the avenues of Consumer Protection Act for seeking redressal of all sorts of their grievances. Recent specific inclusion of words "building construction" among the items spelt out in the definition of the word "service" in the Act, as one of the amendments of the statute, has given enormous fillip to submission of complaints to these 'courts'. Various types of problems encountered by the people in the matter of housing plots, delays in construction, delays in allotment of flats, quality of construction, non-refund of demanded payments, have been taken up under this Act. Result is that more than 3,00,000 cases have already been filed for seeking redress under this Act. This all has happened mostly during the last three years since the consumer 'courts' got established in all districts of the country.

Industry and trade has suddenly woken up to these realities. They now realise that consumers can no longer be taken for granted. They have started showing eagerness to explore possibilities of themselves reaching out to consumers and redress their grievances. This is a very healthy and welcome development.

An important trend that has now got into evidence is that manufacturers and traders have started talking in terms of orienting their manufacturing and marketing policies for meeting consumer satisfaction. Some of them have further improved on this objective; they feel that they have to reach out beyond 'consumer satisfaction' to 'consumer delight'. They have suddenly started quoting Mahatma Gandhi in which he said "consumer is an honoured guest; he is not an intruder; he is the reason for your existence".

Observance of Consumer Day on 15 March this year was quite a revelation of this change. The advertisements of manufacturers in the newspapers prominently displayed the quotes of Mahatma Gandhi; they held out promises of thorough satisfaction to their customers. The organisations of industry and trade vied with each other in organising conferences, seminars, workshops, and meets on 15 and 16 March, attracting political dignitaries to these and reaching out to the print and electronic media for widely carrying the message to the people, trying to convince them that they have their interests close at heart. Organisations of consumers all over the country held their own conferences and seminars for observance of the Consumer Day.

These developments raise hopes that manufacturers and traders can now be persuaded to adopt measures of such self-regulation which would minimise discontent of their customers and would reduce their resort to consumer 'courts' for resolution of the disputes and grievances. Effort in this direction will be in consonance with what has already extensively spread in the more developed countries where elaborate machinery has evolved for meeting the demands of consumers for resolution of disputes. It will be worthwhile in this context to know about this machinery.

Better Business Bureau (BBB) of USA is one such prominent example. This organisation has extensive network all over the country. It has as many as 150 offices, covering all important cities, and branches even in the contiguous country Canada. It has evolved detailed methodologies for settling consumer disputes. These take the shape of mediation and arbitration. Individual complaints are handled by the Branches wherever these come to notice. They use their good offices for settling the problems initially through mediation. Where mediation effort fails they resort to the next step, of arbitration. The branches of organisations have their panels of arbitrators; parties are free to choose either a sole arbitrator or respective arbitrators. Stipulation in resorting to arbitration is that award of arbitration will be binding on the parties. In addition to providing this forum for mediation and arbitration these Branches of BBB are equipped to provide detailed information to consumers through elaborate computerised system which provides unbiased information to a consumer about complaints received in relation to any product or service and action taken thereon. Functions of the nature of BBB are replicated in some form or the other in a number of other developed countries.

In UK there is a Directorate of Fair Trade Practices which motivates and assists the associations of industry and trade to evolve appropriate codes of conduct and the machinery required for enforcement of the code by manufacturers and traders. Advertisements Standards Authority of UK also greatly supplements the task of safeguarding the interests of consumers. This Authority examines the advertisements for the contents of their message, and through its Consumer Complaints Council deals with complaints of false or misleading claims made in the advertisements as well as for maintenance of standards of decency in the advertisements and use of pictures of women and children in advertisements. This Advertisements Authority has established separate Chapters dealing with advertisements related to specific groups of goods and services.

A very important development in the developed countries is the evolution of machinery for detailed scrutiny of the terms of contract and clauses of agreements entered into between the buyer and seller, for ensuring that these are not unilateral or one-sided and that the interests of consumers are protected. Some countries have evolved laws which regulate the terms of contract so that these do not operate to the disadvantage of the users of goods and services.

In India evolution of such alternative disputes machinery has started showing signs of emerging Advertisement Standards Council of India (ASCI) at Bombay is doing some creditable work, but their work has hitherto been confined mainly to deal with generalisation of advertisement standards; they have not yet set up Chapters to deal with problems relating to advertisements of specific groups of products nor have they yet set up any such complaints bureau which would suo moto initiate action regarding inappropriate advertisements or violation of prescribed code of ethics. There is also the Council of Fair Business Practices (CFBP) at Bombay. This Council has yet its focus primarily at Bombay. It has not set up offices or branches at any other places nor has it reached out to consumers with assurance of settling their disputes and claims.

Various chambers of commerce and industry have in recent years taken initiatives of setting up their Consumer Forums (such as of FICCI) or Consumer Cells; these have been quite active in organising seminars and discussion groups, and remaining in touch with organisations of consumers. Another healthy growth is that practically all major manufacturers have started setting up their own consumer cells, as part of the marketing departments, for attending to the grouses and complaints of consumers.

With the expansion of liberalisation processes of the economy, and gaining by experiences of advanced countries, it is a matter of primary concern that the associations and chambers of industry and trade, and the leaders among manufacturers and traders, should intensify their initiatives to set up and

strengthen the organisations which would deal with the grievances and complaints of consumers, increasingly obviating the necessity of having to seek redress through consumer 'courts'. This need applies equally to all public sector enterprises which provide goods and services to consumers. Some of them have started operating their Lok Adalats; this machinery will need to be increasingly elaborated and strengthened for giving confidence to consumers that their interests will no longer be disregarded.

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## THE RIGHT TO DIE

In a significant judgement the Supreme Court has recently held that attempt to commit suicide is not an offence and that, accordingly, Section 309 of the Indian Penal Code is ultra vires of the Constitution. Move was already afoot for deleting Section 309 IPC; it is now hoped that this deletion will be expedited. Meanwhile, this matter has received wide publicity and is of obvious importance. Various aspects of this problem have been presented in this article.

### *THE RIGHT TO LIVE, AND TO DIE*

I have throughout maintained that my life is my own. I discharge all my responsibilities to the best of my capacity and capability, fulfilling the obligations and duties life imposes on me. I live now for others, dedicating all my energies to work.

But, when it comes to the question of my life I hold and maintain that it is my life and I have the right to live, or not to live. In asserting this right I feel fully rational and logical.

It is contended that in law the State alone has monopolistic right over my life, the State alone can take life. I cannot accept this contention; in fact, I totally discard it.

It is welcome that the Supreme Court in Judgement of 25-4-94 on Writ Petitions 409/86 and 419/87 has upheld that as an individual I alone have the right to my life. This is fundamental right, enshrined in Article 21 of the Constitution; the right to life, including the right to live with dignity, recognising that finer graces of human living make life worth living. In expounding on this right the court has held that while there is the positive aspect of this fundamental right, the right to live, it also encompasses the inter-linked and connected right, the right not to live. This part of the judgement of the Supreme Court, which is now being talked about and written on all over the country, is a very welcome elucidation of a fact which was obvious but which needed to be spelt out. I will have occasion later to touch upon other features of this important judgement, but this particular feature is practically the most prominent for being highlighted. The Supreme Court has held in this judgement that provisions of Section 309 of the Indian Penal Code are violative of this fundamental right. When I have inalienable right to live, or not to live, there cannot and should not be any argument that I have committed an offence by attempting to end my life, to commit suicide. If I succeed in ending the life, that is the finale; if I fail, it is no business of the State to prosecute me for the attempt.

The offence covering attempt to commit suicide has been in the Indian Penal Code since the Code was enacted over hundred years ago. The offence provides for imposition of sentence of imprisonment, upto one year, or of fine, or both, on a person found guilty of this offence. The High Courts of Delhi and Bombay in recent years have castigated this provision, holding that it was violative of the fundamental rights enshrined in the Constitution. Delhi High Court went to the extent of quashing all proceedings pending u/s 309 of I.P.C. and ordering the acquittal of 119 persons who were being prosecuted in different cases. The Court pointed out the futility of creating criminal liability in suicide



cases, and of dragging the prosecution for years when the victims have already had enough of misery and that prosecutions were only adding insult to injury.

It is good that this judgement of the Supreme Court goes in fact to remove Section 309 I.P.C. from the statute book. This should have been done long ago. The Law Commission of India, as long ago as 1971, had recommended the repeal of this provision, expressing the view that it was obviously a monstrous procedure to inflict further suffering on an individual who has found life already unbearable, his chances of happiness slender, who is willing to face pain and death in order to cease living. They expressed that it was a perverse legislation that a person whose life is altogether bitter should be subjected to further bitterness and degradation. This recommendation of the Law Commission was accepted by the Government of India. An Amending Bill was introduced in 1972. It passed through the Rajya Sabha. It could not pass through Lok Sabha because it was dissolved and the Bill lapsed. Since then the matter has languished. Government of India has now shown readiness to bring the Bill again for effecting the amendment.

It is really a praiseworthy and herculean effort that the Supreme Court has made in examining all possible aspects of the problem for assessing whether the Provision of Section 309 I.P.C. should be declared void. It posed before itself as many as 16 specific questions in relation to this matter. The first question was whether the fundamental right to life, guaranteed by Article 21 of the Constitution, had the implicit aspect in it that this right involved also the right not to live. Other questions included such as whether suicide is immoral, whether it is a non-religious act, whether it produces adverse sociological effects, whether it is against public policy, why is suicide committed, who commits suicide, how suicide prone person should be dealt with, and such like. On each of these questions the Judges went through the entire gamut of analysing the views, judicial pronouncements, and expositions.

It is a satisfying experience to go through the material that has been marshalled in relation to each of these questions. Dealing with the question relating to public policy, for instance, the Court has put before itself all pros and cons of the arguments that allowing persons to commit suicide would be against public policy which charges the State with the responsibility of preservation of human life. The concept of public policy, however, is contended to be varying and uncertain, a vague and unsatisfactory doctrine. Public policy is not capable of precise definition; restraint of liberty, commerce, or legal rights, destruction of justice or violation of a statute can be argued to be against public policy. Concept of public policy varies with changing economic needs, social customs and moral aspirations of the people. Public policy can vary with habits and fashions of the day; what is public policy in one region may not be in another. On these various grounds the Court held that it would be wrong to assert with any degree of definiteness that commission of suicide is against public policy.

Likewise, in examining the question whether suicide is immoral all the various aspects of law and its relationship to morals have been analysed. It is right to be law-abiding, but there might be times when it is not wrong to break the law. Civil Disobedience Movement of India shows that there was clash of law and morality. It is argued that human life has sanctity, and this is defaced when a person commits suicide. This view held ground in U.K. There were objections on the grounds of morality, but U.K. itself set the pace by enacting the Suicide Act of 1961. Whereas previously suicide was regarded as a serious felony, requiring burial in a public highway and forfeiture of properties of the deceased, the Suicide Act of 1961 laid down that suicide was no longer to be regarded as an offence.

Factors or circumstances which lead to suicide have found special mention in this Supreme Court judgement. Causes can be various; economic, religious, socio-economic status, exasperations, fury, frustrations, revolution; feeling of burden, torture and sadness; loss of employment, reverse of fortune,

misery due to illness, family trouble, thwarted love. Suicide knows no barriers, of race, religion, caste or sex. In fact, there is complete secularisation of suicide. Persons from all various religions and regions have succumbed to commit or attempt it. As many as 60,000 are stated to commit suicide in one year in this country.

Main consideration is how the suicide prone persons should be dealt with. Do they deserve prosecution because they have failed? The Court has unequivocally said in the judgement that the answer to this question should be "NO". Take some examples cited by the Court. 20 persons committed suicide in Tamilnadu on being distressed by the prolonged illness of the then Chief Minister, Mr. Ramachandran. Should they have been prosecuted if their attempt had failed? Should woman be prosecuted who attempts suicide because she has been raped? Would it not be adding grievous insult to compel her to face ignominy of undergoing an open trial exhibiting details of sexual violence which otherwise may be known only to a few!

This entire matter has now assumed wider dimension. It is not restricted merely to the question of declaration of suicide being not an offence or deletion of Section 309 of the Indian Penal Code. It has in recent years got closely linked with that of assisted suicide, passive euthanasia as well as active euthanasia. In any case euthanasia is not unrelated to the act of committing suicide. Suicide is not an offence; giving consent for termination of life should also not be an offence. The subject is now being widely debated in various countries and strong attitudes are developing in favour of euthanasia.

This attitude is gaining ground due to emergence of certain major developments. Population in every country is ageing, more so has the population aged in the developed countries, though the developing countries are also not lagging behind. There are now more people alive above the limit of the life span of 72; many surviving beyond this limit. Advancements of medical science have placed instruments and facilities within reach; these help to prolong life. Previously death came when a person stopped breathing; now cardiopulmonary resuscitation and mechanical ventilators and respirators prolong life beyond what could have ever been previously conceived.

Advances in medical science and technology have particularly brought this matter to the fore. Question being asked is whether it is right to continue life-sustaining medical treatment in cases where all hope has extinguished, whether wishes of a person yet competent to exercise judgement, and the wishes previously expressed before lapsing into incapacity of exercising judgement, be respected and complied with in terminating life. These and many other similar questions have arisen in many countries. Some specific cases have captured the public imagination of these countries. There was the tragic case of 21-year Karen Ann Quinlan. She collapsed during a party, ceased breathing for near 15 minutes, was rushed to hospital, placed on a respirator to restore breathing; during this interval she suffered irreversible brain damage and went into "persistent vegetative state" with no prospect of recovery. Her tormented parents petitioned the courts at various levels to allow the girl to die with "grace and dignity" and eventually the life sustaining equipment was allowed to be removed. There is the other case of 25-year old Nancy Cruzan who met a serious car accident, was taken for dead, was revived by cardiopulmonary resuscitation but her brain had remained without oxygen for 12/14 minutes. She lapsed into state of unconsciousness which has lasted for over seven years. She is stated to have often expressed, before the accident, that if she ever was reduced to vegetative state she should be allowed to die, but the courts, which were petitioned by the parents, declined to allow removal of life-sustaining equipment on the grounds that the patient had been rendered incompetent. The girl has laid for years in unconscious condition, suspended between life and death. Latest, out of thousands, is that of Jacqueline Onassis, previously Jacqueline Kennedy, who passed away the other day, with cancer having

spread to her liver and brain, declining any extra-ordinary measures for prolongation of life, based on a living will executed by her.

Numerous persons in various parts of the world are presently lying in a "persistent vegetative state". In USA alone the number is estimated to be 10,000. Advances in medical technology have brought about conditions wherein they continue to remain suspended near death but not allowed to cross the threshold. In such cases of terminally ill persons, with no hope of recovery, adoption of procedures of passive euthanasia are being forcefully advocated. Active euthanasia is taken to be a criminal offence, but increasingly it too is being tolerated in practice. Practice prevailing in Netherlands is particularly important in this connection. Physicians in Netherlands who perform active euthanasia, actually helping the process of dying, are not prosecuted if they follow certain guidelines. These guidelines include: there should be an explicit and repeated request by the patient which leaves no reason for doubt concerning his desire to die; mental and physical suffering of the patient must be very severe with no prospect of relief; decision of patient is well informed and free; all other options for the patient have been exhausted. Increasingly people are relying on executing "LIVING WILLS", authorising their surrogates to petition for removal of life-sustaining devices in the event of becoming terminally ill.

Certain individuals have emerged on the scene and have taken bold initiatives to propagate the concept of euthanasia, including also active euthanasia where circumstances necessitate it. Derek Humphry, who has set up the Hemlock Society and last year wrote "FINAL EXIT" which immediately became the best seller, and Jack Keiborkian, who has not hesitated to adopt aggressive procedures for terminating life in cases of terminally ill patients and has even faced indictment for homicide, have in USA set the agenda for debate on this important subject.

These developments in various parts of the world have opened up new and vast vistas on this complex question of the right to live, and the right to die. India has had a long history, of illustrious personages who decided to terminate life, of the path they showed to rise above the trammels of earthly existence. Against the background of this long history of India's essays in this field, and amidst the widespread debate on various aspects of euthanasia, this Supreme Court judgement, holding the provisions of Section 309 of the Indian Penal Code regarding attempt to suicide to be void in law, is hopefully the beginning of initiatives for ultimate acceptance of assisted suicide, passive and active, subject to thorough safeguards against misuse, within the ambit of jurisprudence.

H.D. SHOURIE

#### *Travel Service*

The Automobile Club of Florence, Italy, has launched a scheme to cut back on the use of cars, and, above all, to save on petrol. For those who must travel often by car, the club offers rapid and comfortable transport at half the price and competitive with the price of public transport.

To do this, the Automobile Club of Florence arranges to put travellers bound for the same destination in touch with one another. To members seeking this service, the club issues a card authorizing them to transport other passengers and share costs, which the Club establishes beforehand according to the size of the car.

Those wishing to volunteer the services of their cars must show their car insurance policy and their clean criminal and driving record. When these persons intend to take a trip, they call the club and inform a staffer at what time they expect to leave and the number of passengers they are willing to take. The maximum allowed is three.

It is just a simple and speedy for the passengers: they call in beforehand to reserve seating. Just before departure time, they go into the club and pay for the trip. They are given a receipt, which gets turned over to the driver upon arrival at the destination. He, in turn, cashes this in (less 10 per cent for office expenditure) at any of the club's branches in Florence.

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## PROBLEMS OF JUDICIARY

Judiciary in the country is facing a very critical phase. People have started losing faith in the judiciary. Civil and criminal courts all over the country are clogged with cases which remain pending for years. An alternative, in the shape of organising establishment of Lok Adalats all over the country, was contemplated under a new statute. Unfortunately that statute till now remains unimplemented. This important matter has been dealt with in this article.

### *A STATUTE COLD STORED*

A very important statute has been kept in cold storage, and unfortunately nobody has raised a voice about it. This is a very sad commentary on our civic life as well as on our politics and politicians.

This statute could have enormously helped in tackling the serious problem of our crumbling judicial system. It could have helped to restore some confidence in the people about the functioning of courts. It could have greatly helped in dealing with the accumulated backlog of cases in courts.

There are now over two crores cases pending in the courts of the country. There may be even more. Nobody knows for sure. The courts are of various kinds; civil, criminal, revenue, administrative, central taxation, local taxation, matrimonial, consumers, tribunals of labour, motor vehicles, and some others. Clogged criminal cases alone are more than sixty lakhs; civil cases a crore and half. At every level the system is out of hand. Expectation of justice drives people to the higher courts, the High Courts, the Central Tribunals, the Supreme Court. In these higher temples of justice too the passages have become heavily jammed. Justice has become extremely distant, practically beyond reach, in terms physical as well as financial.

The only solution to this entire malaise could be the evolution, institutionalisation and spread of an alternative machinery of disputes resolution. This system, in common parlance, is that of Lok Adalats, the system of settling disputes, arriving at quick decisions, through mediation, conciliation, and arbitration, without the trappings of the rules and regulations and legal niceties; the system which over many millennia operated through Panchayats which settled disputes and helped in maintenance of normalcy.

A laudable initiative to this end had been taken in 1987. Credit for this great initiative would need to be given to the late Prime Minister Rajiv Gandhi; nobody appears to have ever mentioned this fact. To him we owe the initiative of having brought about the Consumer Protection Act; and also the laying of groundwork for establishment of the concept of Panchayat Raj. The evolution of machinery for alternative disputes resolution, likewise, appears to have generated during his tenure; with his going away it has remained dormant. Let us have a close look at this machinery.

The concept was embodied in the statute called the Legal Services Authorities Act. This Act was passed in 1987; it became law on 11th October 1987 to be precise. The Preamble of this Act states: "An Act to constitute Legal Services Authorities to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of legal system promotes justice on the basis of equal opportunity."

The Act envisaged the setting up of a District Legal Services Authority, in each district in the country, and through such Authorities the setting up of Lok Adalats at any place and as frequently as required, for exercising such jurisdiction and for such areas as considered necessary. Each Lok Adalat was to

consist of such judicial officers and other members of the area as may be specified by the Authority organising it. Each Lok Adalat was to have "jurisdiction to determine and arrive at a compromise or settlement between parties to a dispute in respect of any matter falling within the jurisdiction of any civil court, criminal court, revenue court, or any other tribunal under any other law." It was explicitly provided in the statute that where any case was pending before any court, the parties had only to make a joint application to the court, requesting it to refer the case to Lok Adalat for settlement of the dispute. The District Authority could also on the application of a party to the dispute, refer the case to the Lok Adalat for settlement of the dispute.

Lok Adalats, under the statute, were charged with the responsibility to proceed to dispose of the suit, proceeding or dispute and to arrive at a compromise or settlement between the parties. Lok Adalats were expected to proceed with "utmost expedition to arrive at a compromise or settlement between the parties"; it was of course to be guided by legal principles and principles of justice, equity and fair play. Where a Lok Adalat failed to arrive at a compromise or settlement, parties to the dispute were at liberty to refer the dispute back to the concerned court for adjudication; and the court was under obligation to proceed with the case from the stage at which it was before it was transferred to the Lok Adalat. Where a dispute was settled by a Lok Adalat, the Award made by it was given the status of "a decree of a civil court or order of any other court or tribunal"; the award was to be "final and binding on all parties to the dispute"; and it was laid down in the Act that "no Appeal shall lie to any court against the award". Lok Adalats, for the discharge of these functions, were given the powers of Civil Procedure Code in respect of summoning and enforcing the attendance of witnesses, examining them on oath, taking evidence on affidavits, requisitioning any public records, and determination of its own procedures for settlement of disputes coming before it. All proceedings before Lok Adalats were deemed to be judicial proceedings under the relevant provisions of Indian Panel Code and Criminal Procedure Code.

These provisions of Legal Services Authorities Act were the essence of this statute. Other provisions relating to the constitution of National Legal Services Authority and setting up of State Legal Service Authorities in the States, were ancillary to this basic objective of settlement of disputes through mediation and conciliation through Lok Adalats. The machinery of disputes settlement, as envisaged under this Act, has the same ring as the machinery established in each district under the Consumer Protection Act through District Consumer Disputes Redressal Forums. Consumer Protection Act was also passed at about the same time, in December 1986; a few months prior to the enactment of Legal Services Authorities Act.

Now let us see what happened to this important Act. It was passed, as stated above, in October 1987. In its Section 1(3) it was provided that the Act "shall come into force on such date as the Central Government may, by notification, appoint." This date of appointment of the Act did not ever come about. For over six years this important statute has languished on the statute book, unenforced, a dead letter, merely adorning the statute book.

Of course, the government has explanation to offer. It claims that certain proposals got necessitated for effecting amendments in the Act, for removing anomalies and for strengthening it. It took the government near three years, after enactment of the Act, to bring forth an Amending Bill which was introduced in the Rajya Sabha in May 1990. The Amending Bill is unfortunately even larger than the Act itself. It is only now, after four years of its introduction, that this Bill has passed through the Rajya Sabha. It now awaits passing through the Lok Sabha. It will be interesting to see whether the legislators will have the patience to go through the provisions of the Amending Bill and details of its clauses. Statement of Objects and Reasons of the Amending Bill is indicative of how passage

of such serious importance can get impeded in the government structure. It is recorded in the Objects and Reasons that "certain provisions of the Act were not appreciated by the lawyers and the judges; this is the reason why the Act which was passed as long ago as 1987 could not be brought into effect." Provisions of the Act were discussed; the then Chief Justice of India suggested certain amendments, including particularly that consultation with the Chief Justice of India should be provided for in relation to the setting up of the Central Authority, with the Chief Justices of High Courts in the setting up of State Authorities, powers of Central and State Governments be diluted, functioning of Lok Adalats be modified and provision be made for setting up Lok Adalats also at Taluka level. These amendments, to all appearances, have made the statute more cumbersome to be effective in actual operation. Opposition of the lawyers to the enactment of this measure is understandable. Their apprehension would be that settlement of disputes through machinery of Lok Adalats will lead to redundancy of their intermediacy in the processes of present legal system which has got completely stuck through manoeuvrings which are a regular feature in the courts.

It is a matter of serious concern for all citizens that a legislation of such importance has been allowed to languish for over six years. If it had started operating when it was enacted the Lok Adalats operating in all parts of the country would have in all likelihood brought about a change in the entire atmosphere of judicial functioning; people would have started believing that disputes could be settled, that some expedition and finality to the judicial proceedings could be ensured. Non-implementation of this statute has halted all these possibilities. Its proposed amendments do not augur well for its effective enforcement. One also wishes that it was given an easier and more explicit name, its provisions were made less cumbersome, and that its enforcement was made obligatory. One can only hope that it will not continue to encounter any further hurdles of the nature which have till now stifled its implementation. People need to wake up to the need of staving off the emergence of any such hurdles.

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I recently came across a letter that my wife had written to me many years earlier. She was, at that time, staying with her parents while I was house-hunting in another city. After describing how lonely she felt, she declared her readiness to join me right away, even if it meant that we had to live under a tree. "Didn't Sita live with Rama in the forest?" she asked. "What difference is there between you and Rama."

Chuckling, I handed her the letter and asked her if she still felt the same. "Almost," she said, making a few marks on the letter before returning it. The last line now read: "What difference there is between you and Rama!"

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Everybody thinks of changing humanity and nobody thinks of changing himself

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"What's the difference between thrifty and stingy?" a boy asked his father.

"Well, if I buy myself a cheap coat, I'm thrifty," said the father. "But if I buy your mother a cheap coat, I'm stingy."

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A dog is a dog except when he is facing you. Then he is Mr Dog.

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#### **Blood Money**

While on a shopping expedition, I mistakenly handed the salesperson my blood-donor card to pay for one of my purchases. He looked at it and then gave it back saying, "That's all right lady. We still only want money."

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#### **Plain Speaking**

While attending a convention, my wife and I were taken out to dinner by another couple. My wife, who can never remember names, had to ask me our hosts' names twice during the meal and again on our return to the hotel. In exasperation, I chided her about her lack of attention and ended my lecture saying that I was surprised she could remember my name even after 20 years of marriage. "Well", she said. "why do you think I call you 'honey' most of the time?"

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*The quotes reproduced here are from various issues of READERS' DIGEST*

BUSYBEE COLUMN

Reproduced hereunder are two Busybee columns from "THE AFTERNOON" of Bombay. They are of obvious interest.

I have been feeling unwell. So this morning, I went to the Doctor.

He examined me, then said: "You have got a cold."

"But it is so warm," I said. "Yesterday was the warmest day of the year".

"Yes. That is why you have got a cold", the doctor said.

"But I am sweating and I have got prickly heat and a summer rash and I am suffocating in the humidity", I said.

"Yes, you have got a cold," the doctor said, writing out a prescription.

"How can I have a cold when I am feeling warm," I said.

"It is a summer cold," he said. "Nothing to worry about, but you have got to take care. Otherwise, it could lead to pneumonia, then double-pneumonia, then if it develops into bronchitis, don't come to your doctor for help."

"How can I take care of my cold in the heat," I said.

"Drink plenty of water, don't go out in the sun, take complete rest. I am prescribing some tablets and an anti-cold tonic. Take the tablets three times a day, two tablets each time, after meals, take the tonic morning and night, one tablespoon."

"If I have to do all this to cure a summer cold, what would I have to do to cure a winter cold!" I said.

"Avoid contact with others, especially children in the house, you can pass your cold on to them," the doctor said. "Try and sleep in a separate room, and no fans and definitely no air-conditioning."

"I cannot sleep without air-conditioning, I may get a heat-stroke," I said.

"Dip a napkin in ordinary water, with cologne, wring it, then get somebody to put it on your forehead," the doctor said.

"I do not think anybody would be willing to put a wet napkin on my forehead," I said. "If I was about to die, maybe, but not because I have got a cold in the heat."

"Hospitalization at this stage is not necessary," the doctor said. "You could consider hiring a night nurse, though in case of summer colds, a day nurse is more advisable. My secretary will give you the number of the nursing agency you may contact."

"I will keep the number, just in case," I said. "Could you tell me how I caught the summer cold?"

"Through the summer," the doctor said. "Extreme temperatures, summer and winter, can cause a cold, a lot of people do not know that."

"And could you tell me how long it will take to get rid of this cold?"

"It will run its course. The simplest way of getting over it is the setting of the winter. Or in our case, the monsoon season. But then you may catch the winter cold," the doctor said. "Meanwhile take a week's leave from work. You want me to give you a sick note for your office?"

"I won't help," I said. "It is difficult to convince the chief I have a winter cold, he will never believe I have a summer cold."

There is some criticism of the Air India and Indian Airlines unions for going on frequent strikes and causing hardships to passengers. This is unfair, since I have come to know from a neutral observer that both the unions have the passengers' welfare at heart and try to limit their difficulties.

The neutral observer was telling me: "Before Indian Airlines goes on strike, it finds out that Air India is not on strike. And vice-versa."

"That is being considerate," I said.

"Yes," said the observer. "The leaders of the two unions frequently meet and try to work out how best to see that one of the airlines is working so as to cause minimum problems to passengers."

"How do they decide which airline should be working and which should be on strike?" I asked.

"There is a joint committee of the two unions which decides whether Air India or Indian Airlines problems require more immediate attention at a particular time. Then that airline goes on strike while the other keeps working."

"That seems fair enough," I said.

"I will give you an example," the observer said. "Supposing Indian Airlines engineers want a hike of Rs.7000 in their emoluments, and Air India engineers want a hike of Rs.6500. Then, since Indian Airlines engineers' needs are more by Rs.500, they are allowed to go on strike first. When they get their Rs.7000 and withdraw their strike, the Air India engineers go on strike. But never together."

"What happens when both Indian Airlines and Air India have equally important demands that require priority?" I asked.

"They toss a coin," said the observer. "You must try and understand, the employees of one or the other airline do not mind delaying their strike and suffering in silence, so long as the passengers do not suffer. The passenger is king.."

"We have been grossly unfair to the two unions and their members," I said. "I am sorry."

"You did not know," the observer said. "Everybody thinks that neither Indian Airlines nor Air India employees care and they go on flash strikes forcing the airlines to cancel all their flights and making passengers sleep on the floor in the smelly terminal buildings for 24 to 36 hours."

"You mean, they do not go on flash strikes!" I said.

"Of course, they do, but only one of the two airlines goes on flash strike at a time," the observer said. "The passenger always has a choice to fly by the other airline."

"It is sounding better and better," I said. "Tell me, now that the Air India strike has ended, will Indian Airlines be going on strike?"

"From Monday," said the observer. "But passengers need not worry. Instead of flying to Delhi by Indian Airlines, they can fly to London by Air India. Twelve flights a week."

## OUR ACTIVITIES AND PROGRAMMES

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

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

### OUR GRATEFUL THANKS

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

A large number of public causes of importance have been taken up from the platform of COMMON CAUSE for redressal. Quite a few writ petitions have been filed in the Supreme Court. These include, for instance, disruption of the work of courts by lawyers' strikes, problem of accumulated backlog of cases in courts all over the country, malfunctioning of blood banks and the requirement of appropriate collection and testing of blood for transfusion purposes, challenging the pensions being given to Members of Parliament, inadequacies in the implementation of Consumer Protection Act, and failure of the government machinery in fulfilling the constitutional requirements of spreading free and compulsory education for the children in the country. Likewise, a number of issues of public

importance have been taken to the Delhi High Court. These include the problems of conversion of leasehold properties to freehold, non-implementation of Apartments Ownership Act, problems connected with building bye-laws and unauthorised constructions which have widely proliferated, and such like. A Writ Petition filed against Delhi Electricity Supply Undertaking resulted in a beneficial verdict relating to bills based on defective meters. From time to time matters have been taken up for straightening out problems related to income tax, wealth tax, gift tax, capital gains tax, for avoidance of aberrations, discriminations and harassments.

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

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

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

H.D. SHOURIE, DIRECTOR