

# COMMON CAUSE

VOICE OF "COMMON CAUSE"

## YOUR DUTY AND MINE

Vijay Kumar Saxena, of Nai Basti, Queens Road, Delhi, has written to say that his father Mr. S. N. Saxena, a member, has passed away and that he was the one who wrote "the name of COMMON CAUSE should be written in golden letters". Sonubai Khushaba, widow of Khushaba Padwal of Sirur, Pune, has written, affixing her thumb-impression on the letter, conveying her gratitude for our having taken up her case of family pension, which continued being denied to her on the ground that records of her husband's service were not available. We had referred the matter to the Adjutant General's Branch, Army Headquarters, and there has now been positive response to her. Sabita Shee, a permanently crippled daughter of a very old retired chief clerk of Railways, has written from Manoharpur, district Hooghly, to convey her gratitude for our having taken up her case with the Chairman of Railway Board for extending to her the benefits of the scheme of handicapped children of railway employees which was stated to be non-applicable to her merely because her father had retired prior to the introduction of the scheme; there has now been positive response to her.

B. M. Desai, of Ranjan Society, Ahmedabad, has written; "I am really grateful to the organisation for the benefit I have got as pensioner. I express my good wishes to the organisation for all the success in their noblest, selfless service they render". A. G. Raghava Iyengar, Singanallur, Tamil Nadu, writes that he is of 90 years and that out of his meagre pension of Rs. 50.81/- the Government has been deducting Rs. 16.94/- for the last 35 years towards commutation and that all his representations since 1972 have fallen on deaf ears. D. N. Ramachandran, of Tatabad, Coimbatore, who retired in 1952 and is now of 92 years, has written again that he feels "worse than bonded labour" for having taken commutation of pension; he was given Rs. 2,999/- and the Government has so far recovered Rs. 12,000/- and is still recovering. H. P. Dev Sharma, of Mahanagar Extension, Lucknow, who retired as postal pensioner in 1945 and is now 94 years, states that he got Rs. 3,000 on commutation of Rs. 25/- per mensem and Government has taken from him Rs. 13,500/-. He too is eagerly waiting for commutation restoration.

K. L. Kishwar, of Punjabi Bagh, New Delhi, writes in "token of appreciation of tireless efforts and full devotion in tackling multifarious problems which an individual cannot dream even to follow what to talk of finding solutions". T. N. Parikh, of Madhuvan, Ahmedabad, of 82 years, writes: "my membership subscription and donation was only a drop in the ocean as a token of my feelings, and quotes from Bhagwad Gita. He, the Lord, accepts and enjoys even a leaf, a flower, a fruit or even water offered to him with Bhakti". G. B. Kulkarni of Dharwad writes that he feels great pride in calling himself member of this organisation; it is an honour and privilege. R. S. Dixit, retired principal, of New Colony, Etawah, of 82 years, writes, "thousands of pensioners are deeply indebted to you for the benefits they are now receiving. Your COMMON CAUSE is the only agency that can help us, whose days are numbered. It has fought the fight of freedom and inculcated sense of responsibility and devotion to the case of down-trodden". Trikanlal Nagandas Parikh, of Toll Naka, Ahmedabad, writes: "Lord bless you! What can old people do to even think or try to repay an unrepayable good done to them? It is Lord's own business to do so".

These are the types of letters we receive. On the average about 30 letters come every day, conveying such words of appreciation, which rouse us to greater endeavour, and communicating a variety of problems. We are doing our bit. It is in fact everybody's duty to help in dealing with these numerous problems which people face. We have on our list 180 organisations of consumers and 253 organisations of pensioners. There are also numerous welfare associations of citizens. We plead that each one of these, instead of remaining preoccupied with only their limited range of problems, should take up wider problems of the people and lend them the helping hand. They should take on themselves the task of being also local chapters of COMMON CAUSE. It can be very rewarding. They must wipe a tear when they see it.

UNFAIR TRADE PRACTICES  
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OLD CRIMINAL CASES

BACKLOG OF COURTS  
ANNUAL REPORT  
STATEMENT OF ACCOUNTS

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## UNFAIR TRADE PRACTICES ACTION BY MRTP COMMISSION

During the past few months a great amount of initiative has started being taken by the Monopolies & Restrictive Trade Practices Commission, and particularly by Mr. N P Bhatt, its Director General and Mr G. Saran, Additional Director General, in investigating cases of alleged unfair trade practices adopted by business and industry enterprises. Their initiative has provided the basis for further expansion of this work in the coming months. It can be said without any exaggeration that every single complaint sent to the MRTP Commission regarding the alleged adoption of unfair trade practices has been investigated and in quite a few cases the interim injunction has been issued or the orders have been issued by the Commission to cease or desist. In this context, and for disseminating general information about the types of unfair trade practices which have been found to be actionable or culpable we give hereunder some of the recent cases in which temporary injunction has been issued by the MRTP Commission.

### 1. ACUPRESSURE THERAPY CASE

An Acupressure Therapy Health Centre had been making tall claims vide its advertisements to promote the sale of its Acupressure sandals :- (i) That one could walk away one's health problems by merely using acupressure sandals for only eight minutes twice a day before meals; (ii) that the sandals were designed on the basis of a 3000 year old therapy prevalent in China and India; (iii) that such therapy was approved by the World Health Organisation (WHO); and (iv) that the sandals had double health benefit without after-effects or medicines.

On investigation by the office of the Director General, it was found that :-

- (a) There was no approval accorded to such therapy by the WHO according to a letter from WHO categorically denying their approval.
- (b) The Heads of Departments of Rehabilitation and Neurology of All India Institute of Medical Sciences (AIIMS) conveyed in writing after testing that there was no evidence in modern medical literature in support of such acupressure therapy. Such therapy was not accepted by medical profession even in developed countries. That the claims of the manufacturer were base-

less, without scientific backing and amounted to cheating and quackery.

- (c) The advertisements did not contain the warning given in the packages of sandals that it should not be used for more than 10 minutes at a time in the morning and evening before meals and those with serious heart trouble or high blood pressure should consult their doctor before wearing them.

The conditions laid down under section 12A of the MRTP Act read with Rule 3 of Order XXXIX of the Code of Civil Procedure, to pass ex-parte interim injunction, having been satisfied, orders were passed restraining the respondent from :

- (a) indulging in unfair trade practice of issuing advertisements/literature which contained misleading facts in any form; and
- (b) giving publicity through misleading advertisements, literature or in any other form which would lure the public to purchase sandals as a cure for ailments advertised.

### 2. INVESTMENT IN EUCALYPTUS TREES CASE

A firm of New Delhi was engaged in raising money for a Project which envisaged allotment of one

acre of land to each investor and planting of eucalyptus trees thereon and treble the investment made by the investor in six years. The project was claimed to inculcate awareness on ecological consciousness. The claims made in their advertisements were found misleading in several respects namely :-

- (i) the investment to be made actually was 33% higher than that advertised;
- (ii) there was neither any technical collaboration with any Chamber of Commerce nor any association with the nationalised bank/insurance companies as asserted in the advertisement by using the emblems of banks without their approval;
- (iii) the risk factor involved in the scheme was blacked out while giving unequivocal assurance about return on investment;
- (iv) the company did not have sufficient resources to inspire confidence about its repaying capacity;
- (v) misleading information was given about the insurance cover being full at every stage whereas it was only for the cost of inputs and not for the market value of eucalyptus trees; and
- (vi) the return from the investment was stated to be tax free.

### 3. CHILD OF ONE'S CHOICE CASE

A firm advertised claiming that by getting their diet treatment before pregnancy, a woman could give birth to a child of any sex of one's own choice. This claim was found false and baseless on the basis of expert medical opinion. This was found to be an unfair trade practice and accordingly order was issued.

### 4. "RIDAKE" TABLETS CASE

A well known multinational drugs manufacturing company was issuing advertisements to promote the sale of its headache relieving tablets termed "Ridake Paracetamol tablets" by highlighting the harmful side

effects of aspirin while suppressing the injurious side-effects of paracetamol by quoting "New Ridake does not contain aspirin. It contains paracetamol - the safest internationally proven ingredient that relieves headaches" They also misquoted an editorial in a British Medical Journal and highlighted the harmful side effects of aspirin in their advertisements whereas the journal also carried in its editorial the harmful side effects of paracetamol. This was found to be an unfair trade practice and the company was restrained from repeating/issuing such misleading advertisements and also from disparaging aspirin, by a temporary injunction order issued ex-parte.

### 5. FANS GIFT CASE

In a scheme of 'great fans, great gifts' organised by a fans manufacturing company a purchaser of their fan, in order to obtain the gift coupon carrying a wide range of gifts of unequal value, was expected to pay Rs. 13 extra. The scheme was for a limited period till stocks lasted. This was clearly held to be an unfair trade practice followed by an interim injunction which was later made absolute.

### 6. CIGARETTE MANUFACTURER'S CASE

A contest titled 'made for each other' was announced by a well known cigarette manufacturing company in which only those couples could participate one of whom was a smoker. The eligible couples had to send their recent photograph together, which could be used by the company at its discretion for which no permission was to be required from the couples. The winners were to be given prizes as announced. The Commission observed that the language of relevant provision of MRTP Act abundantly showed that the Parliament intended to prohibit the conduct of any contest, lottery or game of chance or even a game of skill if it was intended for the purpose of promoting directly or indirectly the sale, use, or supply of any product or for that matter any business interest. Prima facie, the contest was apprehended to enlarge the smokers' circle to the prejudice of public interest and the Commission held it to be inherently unfair, and an interim injunction was issued restraining the company from continuing with the contest.

### 7 BUBBLEGUMMERS CONTEST

A famous shoe manufacturing company of India announced a contest and the availability of special shoes for children in a wide range of prices whereby only the purchaser of such shoes could participate in the contest. It was held to be an unfair trade practice prejudicial to public interest, as, in fact, when the consumers visited the various shops of the company, they could get only the high priced shoes and not the cheaper varieties as advertised. The contest was found to promote the sale of only expensive shoes in which prejudice to public interest was found implicit.

### 8. TOOTH BRUSH CONTEST

Price of the tooth brush was increased by 10 paise and unjustified restrictions were imposed by requiring consumers to buy two brushes as a precondition for entering the contest. It was held an unfair trade practice prejudicial to public interest followed by an interim injunction.

### 9. FUN BUBBLEGUM CASE

In this case a purchaser of certain bottles of drink had to collect two crown caps on the basis of which he could pick up a free Big-fun Bubblegum with a puzzle on its wrapper from the dealers of this drink. Further, a collector of 10 such wrappers of bubblegum could obtain a book containing puzzles and riddles called "Fun-Book". The Commission found that an increase of 30 paise per bottle which was made along with the introduction of the scheme coincided with the increase in excise duty in the budget proposal. As there was no proof that the cost of the gift was being covered by the amount charged for the drink, the Commission could not conclude that by such practice the public interest was in any way prejudicially affected.

### 10. A PAN MASALA CASE

Where the Commission did not find an increase in the price of the original transaction due to any gift scheme, it did not hold it prima facie to be an unfair trade practice and did not think that the issuing of injunction would be in public interest. The company had announced a lottery scheme for the purchasers of

the Pan Masala whereby all the Masala tins carried a coupon with a number which would be the ticket to a lucky prize. The Commission did not issue an interim injunction as prayed for by the complainant and decided only to order an investigation.

### 11. A TV MANUFACTURER'S BRAND

In this case, the Association of Indian TV Manufacturers made a complaint that the respondent company was marketing TV sets under a known international brand name which was unauthorised, illegal, and misleading as the company had only made an application under the Trade and Merchandise Marks Act to register the trade mark and no permission had been obtained. An interim injunction was sought to restrain the company from advertising that its TV sets were of the international brand name. The respondents contended that they were likely to get the trade mark registered and further they had an authorisation from the international company to use the trade mark even in the event of non-registration of their trade mark. Even though the Commission did not agree with the contention of the respondents it, nevertheless, accepted the assurance of the Indian company given subsequently not to use the trade mark.

### 12. A PAIN RELIEVING BALM

The respondent company organised a contest whereby a contestant could send as many entries as possible provided, with each entry, he sent an empty carton of the bottle of a known pain reliever. It was held to be an unfair trade practice as the customer would be tempted to purchase the balm bottles to participate in the contest more than what he would genuinely require. However, an interim injunction was not granted in view of the undertaking given by the respondent company that it would not repeat such contest, nor would it issue an advertisement to give effect to any such contest.

### 13. CEASE AND DESIST ORDER

In one case the Commission is known to have passed a cease and desist order following an interim injunction order. In this case the Commission issued

an interim injunction restraining the respondent from continuing with the advertisement whereby hosiery goods claimed to be of export quality were offered at ridiculously low prices, for too short a period, without the intention of selling the goods at the said bargain price, holding it to be an unfair trade practice in which prejudice to public interest was implicit. Subsequent to the grant of injunction, on the day of hearing, the Commission had to proceed ex parte, as the respondent failed to appear to contest the notice of enquiry that was issued. The Commission issued a cease and desist order on the following basis :- (a) The goods were falsely claimed to be of export quality as in one case the purchaser who obtained a frock for Rs. 5/- found that it got easily torn apart in one wash; (b) The respondent introduced himself as a humble person devoted to the public cause to justify his offering of goods at ridiculously low prices, which was found to be unethical; (c) The bargain sale was unreasonably short obviously to tempt people to rush to his premises immediately; (d) The advertisement in different newspapers quoted different prices for the same item.

#### 14. CASE OF TRAVEL BAGS

A known manufacturer of travel bags issued an advertisement in the newspaper announcing that by purchasing their Bags the purchaser could save as much as Rs. 5,000 as he would be given along with every purchase a booklet of rebate coupons on the

basis of which different articles mentioned in the coupon could be purchased at a discounted price from the specified shops. The said advertisement was found to be an unfair trade practice and an ex parte interim injunction was issued to save avoidable damage to consumers at large as the period of operation of the scheme was limited. The company was restrained from making further sales on the basis of the advertisement, issuing such advertisement again and indulging in any form of such misleading publicity. However, subsequently, when the case was heard, injunction was modified and the company was allowed to advertise its scheme with certain modifications as were directed by Commission.

#### 15. ANOTHER FANS MANUFACTURER

A known fans manufacturing company announced a scheme of "better fans, better gifts" whereby every purchaser of a fan would be given an envelope containing the name of the gift which that purchaser would get. The range of gifts varied from cars, scooters, etc., to watches, flasks, torches and cash discount. It was alleged that even though an impression was being created that the prizes were offered free of charge, they were fully or partly covered by increase in the prices of all the fans on the day of launching of the scheme amounting to an unfair trade practice. An ex-parte interim injunction was granted but it was subsequently vacated on the clarifying facts being submitted by the company.

## CONSUMERS MOVEMENT

From COMMON CAUSE we had taken the initiative to prepare and circulate a constitution for setting up the proposed new central organisation, Indian Council of Consumers Organisation (ICCO), in order to launch an effective platform for strengthening the consumers movement. The draft constitution was circulated to all the 181 organisations on our list. Their views and suggestions were invited. The response to this initiative was overwhelming. A few suggestions were received for making modifications. These were incorporated, and the constitution was thereupon finalised. The finalised constitution was then circulated for endorsement. We have since received the endorsement from a large number of organisations. We had suggested that the founder organisations of IFCO, and the members of IFCO, which are only a few, were welcome to become the signatories of the new

constitution, so that there would be no need of IFCO to continue as a separate organisation. To this suggestion too the response has been heartening, though in a couple of cases alternative suggestion has been made to strengthen the IFCO rather than to promote the establishment of another central organisation. It is generally recognised, of course, that IFCO has not been able to prove an effective organisation for launching and sustaining the consumers movement.

While, thus, the stage is set for the registration and initiation of the new central organisation, there has been an inescapable feeling that the work of launching a vigorous, effective and wide-spread consumers movement would need considerable resources of funds and of dedicated personnel. Both these have not yet been much in evidence. The local organisations of consumers are by and large very ill-equipped themselves. A large number of them are not even registered bodies. A number of them do not have sufficient funds even for acquiring typewriter and for undertaking purposeful correspondence. Hardly any organisations out of them have till now made themselves eligible for securing grants from the Government of India which have been available. Even the meagre available budget allotment of Rs. 5 lakhs for the purpose of giving these grants has not been utilised in a year.

We strongly feel that unless it can be ensured that there will be adequate availability of funds and of the dedicated, competent personnel, the establishment of new organisation in the shape at present envisaged is not likely to ensure the strengthening of consumers movement in the country. We have accordingly given more thought to this problem and have placed before the Government of India another alternative. This alternative envisages a more active support of the Government because we feel that whereas it is appropriate that the consumers movement should not partake of any financial assistance from the business and industry, in order to maintain its independence and credibility as a movement of the consumers, it is but appropriate for it, particularly in the nascent stages, to take assistance from the Government for strengthening itself. We feel that in taking such support the movement, provided it is handled appropriately by dedicated and motivated persons, will in no way be bartering its independence and will be actively able to serve the interests of the consumers. General apathy, bordering on indifference, of the large body of consumers, renders it absolutely necessary that any hesitancy to take the assistance of Government for strengthening the movement should be considered in the light of these circumstances.

In the light of these facts an effort has since been made to explore the possibility of persuading the Government that instead of creating the Government departments of Consumers Affairs at the Centre and in the States, as contemplated in the Consumers Protection Bill, they should promote the establishment of autonomous organisations, in the shape of registered societies, which would become the nodal organisations, at the centre and in the States, for stimulating the establishment of and supporting the consumers organisations and for assisting the consumers movement. There will be no need of Advisory Committees envisaged in the Consumers Protection Bill, if the suggestion of establishing the proposed autonomous organisations is accepted, because the Governing Bodies of these organisations will have on them the interests which are proposed to be represented in the Advisory Committees.

Our suggestions, which have been communicated to the Government of India, appear in the paragraphs that follow.

This note seeks to present specific suggestions for launching an effective consumers movement and to secure greater participation of the people in the operations of proposed Consumers Protection law. These suggestions range over various important fields including the operations at the Centre and in the States.

1. At the Centre, instead of the work of Consumers movement being dealt with in the Civil Supplies Department, there should be an autonomous organisation in the shape of, say, National Council of Consumers Affairs (NCCA). This organisation should become the apex body of all matters relating to consumerism. The administrative Ministry for dealing with NCCA will be the Ministry of Food & Civil Supplies. NCCA will operate, in the shape of Society registered under the Societies Registration Act, on lines similar to autonomous organisations like the National Productivity Council (NPC), Indian Institute of Foreign Trade (IIFT), Indian Council of Medical Research (ICMR), National Council of Applied Economic Research etc. which have been established for dealing with specialised subjects, thereby obviating the need of these subjects forming part the Government functioning. The NCCA will operate as a non-political, non-profit and fully autonomous, nodal organisation. As the consumers movement in the country, at the present nascent stage, cannot subsist without the support of funds, it is necessary that the NCCA should be provided the funds by the Government. In course of time, when the organisation secures a wide base of membership of consumers organisations and individuals in the country, it might be able to possibly secure assistance from international organisations of consumers movement and to supplement its finances by holding training programmes and research work, and the quantum of contribution of funds from the Government can be re-considered. Membership of NCCA will be open to the organisations of consumers and to individuals. The business and industry undertakings, as well as their organisations, will not be entitled to its member-

ship. Management of work of the organisation will be in the hands of a Governing Council, consisting of about 20 representatives elected in such manner that the interests of the local and state organisations and individuals are appropriately represented and the States secure representation by rotation if necessary. It is envisaged that there will be women and a couple of representatives of the Government, on the Governing Council. The Minister of Food & Civil Supplies be designated as the President of NCCA; Chairman of the Governing Council should be elected. The Governing Council should appoint an Executive Director and Secretary; they can be taken on deputation from the Government if required. Suitable provision should be made for the appointment of staff which will, in the initial stages, need to be only skeletal. Space will need to be provided to NCCA, and it would be desirable that a small suitable accommodation be allotted to it from the Government accommodation.

2. Under the auspices of NCCA, and directly under the Presidentship of the Minister, a Coordinating Committee should be set up in which there should be representatives of the concerned Ministries (particularly of Health, Food & Civil Supplies, Industry, Chemicals, etc.), for enabling coordination to be effected in the areas in which more than one Ministry is involved in the implementation of any laws which relate to the interests of consumers. Director of NCCA will operate as the Member Secretary of this Coordinating Committee.

3. The NCCA will operate as the apex body of the consumers organisations in the country. It is suggested that at the level of States, likewise, there should be similar autonomous organisations, registered as Societies, preferably called, say, Gujarat Council of Consumers Affairs. President of the State Council should be the State Minister of Civil Supplies; Chairman of the Governing Body should be elected by it, membership should be of consumers organisations and individuals; funds to the State Council should be provided from the State exchequer. The State Coun-

cil, like the National Council should operate autonomously; its executive head should be the Executive Secretary, appointed by the Governing Body of the Council; he can be taken on deputation from the State Government if required. At the State level there will be need of setting up a Coordination Committee of the State Council, under the Chairmanship of the Minister, which should enable coordination to be effected between the various Ministries which in their respective spheres are connected with the work relating to interest of consumers. With the establishment of the National Council and the State Councils there will be no need to set up the Consumers Protection Advisory Councils, because the Governing Bodies of these Councils will serve the purpose of continuous inter-action between the Government and the interests of consumers.

4. In between the National Council and the State Councils there may in due course be need of establishing Regional Councils at four or five places. This will secure more satisfactory representation of the States, and also enable attention to be focussed on the problems on regional basis. Besides the National Council and the State Councils, as above envisaged, there will be Consumers Organisations of the nature that exist at present. It is unfortunate that most of these organisations are at present very weak; they should be strengthened through the efforts of the State Council supplemented by the work of the National Council. It can also be envisaged that increasingly the State Council will be able to stimulate the establishment of consumers organisations in the rural areas. This will be one of the important responsibilities of the State Council.

5. With the establishment of National Council and the State Councils the work relating to consumers affairs will be handled almost completely in these autonomous organisations, and correspondingly there will be no need of duplication of this work in the Government secretariat, in the Centre as well as in the States. There will accordingly be no need of setting up Directorates of Consumer Affairs at the Centre and in the States. This transfer of the work will be in conformity with the requirement of decentralisation, and the development of expertise and operations in the specialised autonomous bodies. Even though at the present stage it need not be considered, it is possible that as time passes by there will be scope for transfer to these autonomous organisations the responsibilities relating also to public distribution work which at present is unnecessarily cluttered up in Government functioning and needs to be decentralised.

6. One important requirement yet to be met is that of setting up the redressal forum for taking cognizance of the complaints of consumers and their organisations. The redressal forum; preferably called the Consumers Complaints Tribunal, should be set up in each State as contemplated in the draft Bill of the Consumers Protection Act. The complaints of consumers and consumers organisations can be processed, where necessary, in the office of the State Council and presented to the Tribunal; the Tribunal of course will have the authority also to receive the complaints direct from the consumers and their organisations. Provision should exist for deterrent punishment by the Tribunal in cases of violation of the various laws dealing with the interests of consumers.

## OLD PENDING CRIMINAL CASES WHAT SHOULD BE DONE

In this issue of the periodical we have elsewhere reproduced the Writ Petition which has been submitted from the platform of COMMON CAUSE in the Supreme Court of India wherein we have



submitted certain concrete suggestions for reducing the huge accumulated backlog of criminal cases. In this accompanying write-up we present below certain old pending criminal cases which are obviously eye-openers on the functioning of the present judicial system. These are only a very small sample of the cases picked up at random out of the large number which have been reported to us from all over the country in response to the letters of the Director of COMMON CAUSE which appeared on this subject in various newspapers of India. These samples would show the extreme importance and urgency of the need of reform in the present procedures, without which the judicial system cannot only face utter collapse. In this context the recent decision of the Patna High Court is very relevant (1985 Criminal Law Journal - Page 584) wherein it was laid down that if a case has been pending for ten years and the accused has remained an under-trial prisoner, the case should be considered as quashed. Another judgement of the Patna High Court has laid down that a delay of seven years in investigation and trial for offences other than capital ones plainly violate the constitutional guarantee of a speedy public trial under Article 21 of the Constitution. The prosecution pending against the accused persons in that case was accordingly quashed. The Supreme Court of India is also recently reported to have similarly prescribed that where delay of years takes place in investigation of cases against children the prosecution should be considered as quashed.

While we bring these few cases to notice as illustrations of the existing malaise we are remitting the information relating to these, through this periodical, to the respective courts and their High Courts where these are pending, so that the Hon'ble Judges may take note of these and see whether steps can be taken to either quash them where such step is merited or secure their expeditious disposal. We would be grateful for information from the Registrars of the concerned High Courts about the action taken on these cases.

CASE I (no. : 1217/75)

One Poonaji M. Asawale, resident of Dhanori, Tal-Harchi, district Pune, who is in the service of Ammunition Factory at Kirkee, Pune, was charge-sheeted in 1975, over ten years ago, under Section 381 IPC (theft by employee) in relation to some stolen property, comprising a certain machinery part, stated to be valued at only about Rs. 100. The accused has been under suspension since then. He attended the court of Joint Magistrate 1st Class, Kirkee, from 1975 to 1978, but his name is stated to have been never called. He never received any summons or warrants, and continued presenting himself every month in the office for receiving his salary. He continued making enquiries from the court and eventually in 1985 came to know that the proceedings against him in court stopped in 1979 as he was reported to be not traceable. He has since submitted petitions to the Sessions Judge and to the Magistrate's court requesting them to take steps to decide

the case, but in spite of every effort the file of the case is not forthcoming and is reported to be untraceable. The accused meanwhile continues to be under suspension and his suspension allowance has also been reduced. He is anxious to face the trial in order that the allegation against him be adjudged, but more than a decade has passed by and the case against him remains undecided.

CASE II (nos : 1988/1973, 759/74 and 3059/74)

One B. N. Murthy (of 869 Vth Block, Rajajinagar, Bangalore 10) along with his son and an employee have been facing trial before the Chief Metropolitan Magistrate, Bangalore, in three cases for the last 12/13 years. B. N. Murthy was running a medicines selling shop. Six cases were filed against him by the order of the Karnataka Drugs Controller under the Drugs Price Control Order. In three cases they were acquitted. The other three cases have been dragging on since 1973. These three cases are stated to have been made out against the three persons by splitting

the sale relating to three items of medicines. No progress at all is stated to have been made in these cases for over ten years. For years the accused continued to face harassment in having to appear in court every two or three months. The son of B. N. Murthy was a minor when the cases were filed. He is now employed in a Bank, and has to take leave from his office for every appearance in the court. B. N. Murthy is now 70 years and a sick man. His employee, the third accused, died four years ago.

CASE III (Cases nos : S C. No : 2 of 1979, and CC no : 903 of 1979)

An advocate of Madras (Mr N. Krishnamurthy) has brought to notice two cases, one pending before the Chief Judicial Magistrate, Chennai, and the other before Sub-Divisional Judicial Magistrate Poonamallee. In the former the accused are a Deputy Tehsildar and three others. It is under the Medical and Toilet Preparations Act and some provisions of IPC. Its FIR was filed in 1975; it was lodged in court in 1978, more than three years later. In it 25 witnesses were cited for the prosecution. Till now only one witness is stated to have been examined. The Deputy Tehsilcar has been under suspension for over 11 years. In the second case the offence relates to Drugs & Cosmetics Act. It was alleged to have been committed 13 years ago; the case was put in court in 1979, six years after the alleged offence. Uptil now only one witness has been examined for the prosecution.

#### CASE IV

Nilamber Mishra of Khas Mahal Road, Patna, is standing trial in a case for the last 11 years in which he is stated to have drawn an excess amount of Rs. 333/- in a permanent transfer bill consequent upon his transfer as Upper Division Clerk from the Office of A. G. Assam to the office of Dy. Director of Audit & Accounts (P&T) Patna, now known as DA(P) Patna under the Department of Posts. During the pendency the accused remained suspended for six years from 1975 to 1981. He was then transferred to Hyderabad and for reasons connected with the case has been

without salary for the last two years. The case continues hanging on his head; meanwhile all his representations against transfer and non-payment of salary remain unanswered

#### CASE V (Cases nos : 17/77, 76/77, 1/82, 58/77)

These four cases relate to alleged felling of trees in Himachal Pradesh and are pending before Additional District & Sessions Judge, Sirmur. They relate to the felling alleged to have taken place in the years 1972 to 1974/1975. The cases are stated to have been lodged in court only after about ten years, having remained under investigation for 8 to 9½ years. Some of the accused persons in the respective cases are reported to have since died. One accused in three of the four cases is a Naib Tahsildar who retired from service in 1976. The cases were lodged against him four years after retirement which, according to his contention, is violative of the rules. Till now charges have been framed only in one case, and no charges have yet been framed in the other three cases, including the retired Naib Tahsildar, who is an ex-serviceman, now 68 years of age, with an adult son and a son-in-law killed in accidents.

#### CASE VI (no : 42/63 Court of Special Judge, Jaipur)

This case relates to the period of raising of ASC Centre at Alwar in 1962/64 in the wake of Chinese aggression. Four army officers and three civilians were proceeded against for allegedly conspiring to commit offence of unauthorisedly permitting a contractor to run the regimental centre and appointing the contractor who was not on the approved list. Delay of many years transpired and it was eventually only many years later that the evidence started being recorded in the case. 17 special judges changed in the interval. Out of 110 witnesses cited by the prosecution only 15 have so far been examined; the addresses of many other witnesses are stated to be not available. Concerned army officers remained under suspension since 1965. Challan was filed in 1966. Charges were framed in 1980. All the army officers have since retired. One of them has since died.

CASE VII (C.C. No : 5389 of 1975)

Mr. M. Venkataraman, Advocate of Madras, has informed us about a case which has been pending before the Additional Chief Metropolitan Magistrate, Egmore, for the last 11 years. There are 13 accused in the case. It relates to theft of copper plates from the general store yard of the Southern Railway in 1973. The case has been pending in court since 1973. 86 witnesses have been cited by the prosecution; out of them 23 witnesses have so far been examined, and nobody can give any estimate as to when the prosecution case will be completed. One of the accused has since died, one other has retired from service.

CASE VIII (Cr. Appeal no : 156/75)

G. A. N. Rajan, a qualified engineer has been fighting a case for the last 24 years. The allegation against him is that he along with four others abused his position as Executive Engineer in refunding an amount of about Rs 7500 to a contractor which was not due to him. The trial court acquitted all the five persons in the main case but convicted this person under another provision. Since then, for the past two decades the case has gone to High Court at Orissa and to Supreme Court. The accused submitted appeal to the Supreme Court in 1975. It was admitted. Since then the appeal is stated not to have come up for hearing. The accused is stated to have incurred the cost of Rs. 7160/- as printing charges of the paper books for the hearing of the appeal by the Supreme Court, and is now waiting for the past many years for the hearing of the appeal.

CASE IX

One Baldev Singh (of 131-R, Model Town, Ambala City), retired assistant of DC's office, is stated to have been accused in case u/s 120B IPC (conspiracy to commit offence) along with one Nand Lal who was charged u/s 409 IPC (embezzlement) for failing to deposit an aggregate amount of Rs. 13,415/- in the small savings scheme. The case has been going on for about ten years, having been initiated in 1977.

CASE X (Case no : 422-S-1974)

One S. K. Dam (of Maidan Laban, P.O. Laban, Shillong-4, Meghalaya) is facing prosecution for the last ten years before the Chief Judicial Magistrate of Shillong, in a case of alleged misappropriation. He has been under suspension for these ten years, since 1976. Till today no charge is stated to have been framed against him. The police submitted the case only in 1982, six years after the alleged offence.

CASE XI (CC no : 108/79, 277/79, 2239/77, 2228/78)

Mrs Karpagam Kamath, Advocate of Bangalore has informed us about four cases pending in the Court for Economic Offences in Bangalore City. These cases have been pending for more than eight years. Fourteen persons are accused in the first case, two in the second, and one in each of the remaining two. The cases involved allegations of cheating.

CASE XII

R. Mehra (of 260, Ashokegarh, Calcutta-35) has reported about a case in which he along with three brothers and ten others have been arraigned at the instance of the Central Bank of India in the court of CPM's Bankshall Court at Calcutta. For the last 16 years the case has been going on, involving allegation of cheating. The amounts involved in the case are stated to have since been written off, the basic foundation of the allegations having thus vanished. The case is alleged to be due to the attempt of crushing the workers union.

CASE XIII (CC 800/77)

P. U. Thangavelu (of 6/6 Norayanswamy Building, Dhooanahally, Bangalore 38), a Junior Stenotypist of Vikrambhai Space Centre) has been facing prosecution in a case relating to alleged offence committed in 1973. FIR in the case was filed only in 1975, and the accused was charged in 1977. The case involves allegation of misappropriation. For the last 11 years the accused has been under suspension. Orders in the case have been passed also by the High Court of Karnataka for early completion of the hearing.

Over half a dozen magistrates have dealt with the case in succession but the end of the case is nowhere yet in sight.

CASE XIV (Case no : 13 of 1975 - in the Court of the 4th Addl. Special Judge at Calcutta)

Mihir K. Ghosh (of JE. 45 Exch, External M&CC, Calcutta 27) has been undergoing prosecution for an offence since 1973. The case was submitted in Court in 1975 but for one reason or the other the prosecution witnesses against him have not been examined. He was placed under suspension, and was re-instated in 1979 at a fixed salary, denying him the annual increments. He is due to retire in October 1986 and has been repeatedly representing for early completion of hearing of the case. The case embodies allegation of cheating and misappropriation which are stated to have been committed during 1971 and 1972.

CASE XV (Cases nos : 7/1968 and 8/1969 before the 4th Addl. Special Court, Bankshall Court, Calcutta)

In the first case S. M. Wahi and 14 others stand charged for offences including falsification of accounts. In the second case four persons stand charged for offence of cheating. The two cases started nearly 18 years ago. Practically no progress has till now been made in completion of the prosecution witnesses in either of these two cases

CASE XVI (CS no : 28159/76 before 11nd Addl. Chief Metropolitan Magistrate, Egmore)

Mr. T. N. Manikanteswaran, Advocate of Madras has brought to our notice the case of 21 accused who

for the past 11 years are waiting for the decision of a pending case. One accused was running a consultancy service. He introduced prospective investors as lenders and businessmen as borrowers to his principals, for which he was paid remuneration by way of commission. One lender filed proceedings against him u/s 420 IPC alleging that he had introduced certain clients who were not credit worthy and were thereby wrongly given credits. The lenders were later paid off and 25 borrowers could not be discharged because the quantum of money remained in dispute. The matter went to High Court and the trial court was directed to decide the quantum of money and get the payments made. Case went on for seven years from 1976 to 1983 but no final decision could be taken. Meanwhile all papers were celled up by the High Court and it is stated that there are no papers with the lower court. Even after 1983 no decision has been taken to either discharge the accused or to pay off the money. During the pendency of the trial four accused have died. All efforts on the part of 21 accused to get themselves discharged have been unavailing because all papers of the case are stated to be in the High Court and the Trial Court expresses helplessness in dealing further with the matter.

CASE XVII (Case no : 2(2) 78 before Chief Judicial Magistrate Goalpara, Assam)

The case relates to offence alleged to have been committed in 1978. It is stated by Mr. M. Hussain, Advocate of Goalpara, that the case has not yet been committed to the Sessions Judge since receipt of the charge in 1978 and that the accused have been attending the court every month since then.

## BACKLOG OF COURTS

### WE PROPOSE A SOLUTION

The backlog of accumulated arrears in Courts of the country is frightening. The systems and procedures of the present judicial system are throttling the courts, with the result that disposal of cases does not keep pace even with the new institutions, and the accumulated arrears keep on

further expanding, making the disposal of cases all the more difficult. This vicious cycle of accumulation of arrears is proving extremely dangerous to the foundations of the entire judicial system, and it is no surprise in this context that Mr. Justice P. N. Bhagwati, the present Chief Justice of India, has himself expressed that the judicial system of the country is on the verge of collapse.

Like all others, we in COMMON CAUSE, have been feeling greatly disturbed by these facts. For tackling this huge accumulated backlog, as a beginning we have focussed attention on the criminal cases, which comprise about 70 percent of all the cases in courts. Among these accumulated cases we feel that there are certain categories of the cases which can be straightaway quashed without causing any problems, and with advantage to saving the judicial system from collapse. We have filed a writ petition in the Supreme Court of India on this matter. In it we have made specific suggestions about the specific types of old pending criminal cases which should be quashed. The reasons in relation to each category of the suggested cases are self-explanatory. We feel that the material of this Writ Petition be placed before our readers so that, firstly, they should be acquainted with the suggestions and the reasoning, and secondly, they should be also acquainted with the wording and text of a writ petition in order that they should know what matters of general public interest can thus be built up for placement before the lawyers for being taken to the High Courts and the Supreme Court.

In connection with this Writ Petition it will be of interest to know that on our enquiries we have been able to ascertain that following categories of criminal cases are at present pending in the Delhi courts. The figures given below show the arrears in Delhi courts at the end of May 1986. These figures of pending cases will be relevant when considering the specific suggestions made in the Writ Petition which follows and which is at present pending in the Supreme Court.

	Pending at the beginning of the month	Institution during the month	Disposal during the month	Pending at the end of the month
Police Challians	62,293	5,100	4,744	62,649
Complaints	38,873	2,467	3,145	38,195
Traffic Challans	1,84,950	14,710	8,707	1,90,953
State Transport Authority cases	32,726	2,394	2,051	33,069
Prevention of Food Adulteration Act cases	482	16	32	466
Delhi Development Authority cases	1,587	13	66	1,534
Punjab Municipal Act cases	3,757	302	38	4,021
Shop & Estt. Act	74,928	1,821	3,106	73,643
Municipal Bye Laws	19,616	2,240	2,830	19,026
	<u>4,18,212</u>			<u>4,23,556</u>

## OUR WRIT PETITION

To :

THE HON'BLE SHRI P. N. BHAGWATI  
CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUDGES OF THE  
SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE  
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH

1. That the Petitioner is a registered public interest, non-political and non-profit organisation engaged in ventilating common problems and grievances of the people for seeking redress through executive action or through the judicial process. This organisation has during the past five years taken up a number of public causes and secured redress from the Government or through the courts. Causes of pensioners have, for instance, been espoused by the organisation in three Writ Petitions submitted before this Hon'ble Court, two of which have already been decided, benefiting hundreds of thousands of pensioners. A writ Petition of the organisation relating to problems of property tax assessments by the Delhi Municipal Corporation has led to the prescription of specific guide-lines which have to a great extent ameliorated the problems encountered by the houseowners in this matter. By the present petition under Article 32 of the Constitution of India the Petitioner seeks to place before this Hon'ble Court the distressing problem of atrocious delays taking place in the disposal of cases in the courts with a view to finding a part solution to this problem. The problem of delays in disposal of cases has got accentuated to such an alarming extent that the entire judicial system of the country has come under serious pressure, which is a matter of very grave concern to the country. The backlog of cases in courts has accumulated to such an extent that the work of courts has become clogged, with the result that

whereas the institution of cases continues apace and is growing, the disposal is not keeping pace with the institution.

2. That present serious position of arrears pending in courts will be evident from the published Reports of the Department of Justice of the Central Government. It appears from the Report for the year 1984-85 that the arrears of cases in the various categories of courts in the country were the following at the end of 1982 :

	Institution	Disposal	Pendency
Magisterial Courts	80,77,950	76,76,075	66,14,765
Civil Courts (original side)	27,17,309	26,13,670	31,80,699
Civil Courts (Appellate side)	2,32,364	2,06,736	2,48,764
High Courts	6,67,677	5,37,701	11,08,326
Supreme Court	49,074	35,547	86,732

On 31.12.84 the figures of pending cases in the Supreme Court are reported to have been as under :-

Regular Hearing matters	:	46,368
Admission matters	:	39,865
Miscellaneous matters	:	62,158
		1,48,891

These figures of pendency will obviously have substantially increased during the period since 1982.

3. That these figures are frightening. The total number of pending cases, civil and criminal, aggregate to over one crore. In each case at least two parties are involved. If it is computed that on each side an average family of five persons has interest in a case, the total number of persons who are concerned about these pending cases constitute about 15 to 20 percent of the total population of the country. It is of paramount importance, therefore, in the interest of preserving the efficient functioning of the judiciary, that all ways and means should be considered

for effecting changes and reforms in the judicial system which would be more in consonance with the present situation and which would help to reduce the backlog of the pending cases.

4. That while the Parliament and the people as well as the Government at the Centre and in the States and Union Territories have to consider the measures for effecting reform of the law and the procedure for ensuring expeditious and inexpensive justice, the petitioner, through this petition, submits specific, practical and considered suggestions for removing from accumulated areas certain categories of criminal cases which, from all considerations, need to be quashed and the removal of which will not adversely affect any interests and will on the contrary help to cut away a part of the cancerous growth which has taken place in the judicial process. These suggestions are submitted in recognition of the fact that the present backlog of criminal cases in all the courts of the country will be of the order of about 70 lakhs if not more, and that out of this huge number a substantial number of cases will be such which are of minor nature and which even then have been pending for substantially long periods, clogging the disposal of more important cases. It is well known that in the Courts of many Magistrates a large number of cases relating to minor offences such as under Motor Vehicles Act, continue to remain pending for several years, and have delayed the disposal of other cases, hampering the operations of the Courts.
5. It is submitted that the delay in disposal of criminal cases is obviously violative of Article 21 of the Constitution. Such delay results in the accused persons, who may be innocent, being subjected to unmerited harassment and incarceration, and of persons who may have committed minor offences, being punished beyond what the offences justify. The suggestions made herein-below are, it is submitted, justified by the provisions of Article 21 which provides that no

person shall be deprived of his life or personal liberty except according to the procedure established by law. This Hon'ble Court has held that any procedure which results in unmerited harassment and deprivation of liberty is unjust and unreasonable and, therefore, contrary to Article 21 of the Constitution. The delay in the disposal of criminal cases is also violative of Article 14 because it is usually the poor and underprivileged sections of the society which suffer from the delay in the disposal of criminal cases.

6. That the specific suggestions of the Petitioner in this regard appear in the following paragraphs :
- (a) All cases against persons accused of offences under the Motor Vehicles Act where the proceedings were initiated more than one year ago and cases are still pending in any court in the country, should be quashed.
- (b) All cases against persons accused of offences under any penal enactments, either of the Central Government or any of the Governments of the States and Union Territories in the country, including the Indian Penal Code, wherein the proceedings in any court in India have been pending for more than three years from the date of institution, and wherein the offence (s) under which the proceedings were instituted in the court are such that the maximum sentence provided in the relevant statute is not more than six months or fine or both, irrespective of whether the proceedings were instituted by the Police or by any other government agency or through complaint, and irrespective of whether the persons accused for the offences are on bail or not, should be quashed and the accused persons if in Jail should be set at liberty forthwith.
- (c) All persons against whom any criminal proceedings have been launched and who have been in police or judicial custody for a period of more than three years from the date of arrest or remand to such custody, and where the offence (s) alleged

against such persons are of such nature that the maximum sentence provided in the respective relevant statutes is not more than seven years or fine or both, should be unconditionally released and the criminal proceedings against them should be quashed.

- (d) All persons who have been accused of offence of attempting to commit suicide, under S. 309 of the Indian Penal Code, and where the proceedings have been pending in any court in the country for more than six months from the date of institution, should be unconditionally released and the proceedings should be quashed.
- (e) The Respondents should be directed to determine and utilise means, in consultation with this Hon'ble Court, for giving immediate effect to the directions envisaged hereinabove and to ensure their expeditious implementation through the States Governments and the Governments of Union Territories.
- (f) These suggestions are related only to cases which are at present pending in the courts and will not have relevance to any criminal cases which may be instituted hereinafter i. e. from the date of the order by this Hon'ble Court in the event of acceptance of these suggestions.
- (g) The above suggestions should be made applicable in all the mentioned cases, taking into account their pendency from the date of first institution in court and disregarding whether the case is in appeal or at the stage of retrial or whether any interlocutory order relating to the case is in revision or review proceedings.

7. The Petitioner submits that appropriate writ/orders/directions as prayed are liable to be issued by this Hon'ble Court on the consideration of the following, among others :

(For the sake of brevity we have deleted the portion covering "GROUNDS" of writ petition because these mostly contain the material reproduced above).

#### PRAYER

On the above submissions the Petitioner humbly prays that this Hon'ble Court may be pleased to issue appropriate writs/orders/directions :

- (a) directing immediate quashing of all proceedings against persons accused of offences under the Motor Vehicles Act where the proceedings were initiated more than one year ago and are still pending in any Court in the country;
- (b) directing unconditional release and dismissal of proceedings pending against all persons accused of offences under any penal enactments, either of the Central Government or any of the Governments of the States and Union Territories in the country, including the Indian Penal Code, wherein the proceedings in any Court in India have been pending for more than three years from the date of institution and wherein the offence(s) under which the proceedings were instituted in Court are such that the maximum sentence provided in the relevant statute is not more than six months or fine or both, irrespective of whether the proceedings were instituted by the police or by any other Government agency or through complaint and irrespective of whether the persons accused for the offences are on bail or not;
- (c) directing the unconditional release and dismissal of criminal proceedings against any persons who have been in police or judicial custody for a period of more than three years from the date of arrest or remand to such custody, where the offences alleged against such persons are of such nature that the maximum sentence provided in the respective relevant statute is not more than seven year or fine or both;
- (d) directing the unconditional release of and dismissal of proceedings against all persons accused of offence under S. 309 of the Indian Penal Code where the proceedings have been pending in any court in the country for more than one year from date of institution;



- (e) directing the Respondents to determine and utilise means, in consultation with this Hon'ble Court, for giving immediate effect to the directions envisaged hereinabove and to ensure their expeditious implementation through the State Governments and the Governments of Union Territories;
- (f) directing that these orders shall relate only to

those cases which are pending in the court on the date of the orders and shall not be operative in relation to any cases which may be instituted thereafter; and

- (d) give such other directions or pass such other order (s) as this Hon'ble Court may deem fit in the circumstances of the case.

## FOR PENSIONERS

There are two matters of importance on which the pensioners are obviously eager to receive information. One relates to that of restoration of pension commutation. The other involves the future of pensioners which they are expecting at the hands of IVth Pay Commission. On both points we are providing information in this note.

### PENSION COMMUTATION

Our writ petition in the Supreme Court has not been yet decided. As the pensioners are aware, there have been a number of adjournments in this case, and despite our best efforts there continued to be delay in the final disposal of this petition. The last hearing was fixed for 18th August. On that date the case was fixed definitely for final hearing. The Government representative sought another adjournment. We opposed it, and to thwart another adjournment we submitted before the Hon'ble Court that we had already made our full submission, orally as well as in writing; accordingly, we closed the case. This compelled the Government also to close their case. The Hon'ble Chief Justice, the presiding judge of the Bench, thereupon treated the case as closed and said that the judgement was reserved. We are now waiting for the judgement along with numerous pensioners all over the country and hope that it will not be delayed. Meanwhile, it is a matter of great regret that despite our requests the Government has chosen not to issue any orders even according to the formula which they had placed before the court as long ago as 20th March '86, according to which they could at least have restored the commutation of those who have already attained more than 73 years age. There are numerous poor pensioners, in their 80's and 90's, and late 70's, who have been anxiously waiting for the restoration of the commutation. They are justified in saying that in this matter the Government has shown utter callousness.

### IVth PAY COMMISSION

The Pay Commission had sometime ago issued a questionnaire and circulated it widely for securing replies on it from the pensioners and their organisations. We received copies of a very large number of replies to the questionnaire submitted to the Pay Commission, and are grateful to the organisations and pensioners who were kind enough to send us the copies while submitting their replies to the Commission.

From the 8th September '86 the Pay Commission started hearing representatives of the organisations which were invited to make their oral presentation. COMMON CAUSE had the privilege of being the first organisation to appear before the Commission. We were represented by three members, including the Director, nominated by the President. In the oral presentation we highlighted and emphasized the points which were previously submitted in our memorandum and which were recently stated in our replies to the questionnaire. In this context it would be of interest to the readers to know the views we have placed before the Commission in our replies to their questionnaire. We are accordingly reproducing hereunder our replies which were deliberately kept brief.

"We would like to preface our replies to the specific points of the questionnaire by referring the Commission to the important decisions and developments in relation to pay structures and pensions which have come about in the past few weeks. These will inevitably influence any consideration of the problems relating to past and future pensioners. These are :

- (i) Recommendations of the Fourth Pay Commission relating to pay and allowances.
- (ii) Recent enactment of legislation prescribing the salaries, pensions and allowances to Judges of the Supreme Court and the High Courts.

Following important principles and decisions have emerged, which have repercussions on the problem of pensioners :

- (i) A serious attempt has been made to simplify and rationalise the pay structure;
- (ii) There has been a welcome step of consolidating the pay scales by merging the dearness and inflation elements;
- (iii) The "ceilings" in the matter of dearness allowance and dearness relief have been done away with;
- (iv) The concept of interim relief has been incorporated in the system;
- (v) The concept of minimum emoluments at the level of Rs. 750/- p.m. has been introduced.
- (vi) Serious effort has been made to find ways and means to simplify the administrative procedures and avoid delays in giving pensionary benefits;
- (vii) Financial constraints are no longer put forth as the paramount consideration when dealing with the problems of wages and allowances etc.

In prescribing 50% of the salary as the pension in the case of Judges in the new dispensation it is obvious that the Government has accepted this as the appropriate principle to govern the relationship of pay to pension. When this principle has been accepted for the highest pay levels, it stands to reason that the other categories of Government pensioners cannot be

less by any standard of ethics or economic need. In fact, there is a case for the lowest paid employees being given pension at even more than 50%.

The questionnaire seems to give an impression as though a retired Government servant is quite different from a serving one when it comes to the question of deciding the payment of living wage. The concept of 'wage' in this context is very important. Wage is given to the serving Government servant for the work he is expected to do. In the case of retired Government servant it is deferred pay or "retired pay", as mentioned in Article 366(17) of the Constitution, payable for services already rendered. Both on grounds of ethics or principles or standards guaranteed in the Constitution or consideration of economic needs, there can be no differentiation or discrimination between a serving Government servant and retired Government servant. The logic that follows from such an understanding is that whatever is paid today, or tomorrow or the day after, to a serving Government servant as pension, should ipso facto apply to a Government servant who retired yesterday, or 10 years or 20 years ago. The official, may be an Under Secretary or a peon, who retired 20 years ago and is still alive, performed the same functions as what an Under Secretary or peon is doing today, or may be expected to perform hereafter. There is no justification, therefore for looking at the retired person as different from one who is now serving or one who would be recruited hereafter to perform the same duties, when the question for consideration is the pension to be given or the relief to be extended. This position will obviously need to prevail unless the criterion for qualifying service for pension is varied. On this principle there cannot be any justification for any discrimination between the serving Government servant and a retired Government servant in the matter of determining the quantum of pension, and consequently whatever is payable to a future pensioner should automatically apply to a past pensioner.

It is recognised that the pay of a Government servant who retired, say, on 1.4.1973 was lower than the pay of his colleague in the same scale who

retires when the Fourth Pay Commission's recommendations are implemented. This is so because the Pay Commission has recommended merger of all allowances except HRA and CCA with small adjustments where necessary. This has resulted in substantial increases of basic pay : peon from Rs. 196 on 1 4 73 to Rs. 750; Clerk from Rs. 260 to Rs. 950; Class I Officer from Rs. 700 to Rs. 2200; Under Secretary from Rs. 1200 to Rs. 3000, etc. This has come about not because there has been any change in the quality or standard of service expected of these Government servants, which continue to be the same, but the basic pay has been increased by two to four times because of the increased cost of living index. If these increases are justified for a serving Government servant, no logic can deny these to the retired Government servant. For purposes of determining the pension eligibility of a retired Government servant his basic pay should be deemed to be the same as he would have drawn had he continued in service on 1.4.1986. The Pay Commission should devise suitable formulae to determine the pension entitlement of a retired Government servant as and when the pension entitlement of the serving Government servant is determined from time to time, to ensure that the previously retired Government servant should not draw less than a Government servant now retiring.

#### SPECIFIC POINTS

Against the background of these principles which we have considered it appropriate to explain in the Preface we submit following points in reply to the specific questions embodied in the questionnaire.

#### 1 & 2. PENSION, ITS STRUCTURE AND THE MINIMUM

Pension has been defined in Article 366(17) of the Constitution. It is "retired pay". It has been held to be deferred pay. It is earned by the Government servant after devoting entire life-time to his service. It is deferred compensation for the service rendered. In "structure" it is correlated to the emoluments, including pay and allowances, drawn by the Government servant. Pension structure will necessarily, therefore, have to be correlated to the pay

structure. In addition, pension is also a social welfare measure. The concept of "minimum living wage" will need to be extended also to the concept of "minimum living pension".

3 In the circumstances as they have evolved, it is necessary and equitable that employees retiring from the post of same responsibility at different times should get the same pension and that there is no invidious discrimination merely on account of the date of retirement. The past retirees need to be brought to a position comparable to those retiring hereafter. The past retirees have suffered on account of certain factors. One factor was the discrimination in the rate of dearness relief which has been only 2.5% for every 8 point increase in the cost of living index as against 4% upto Rs. 400 and 3% above Rs. 400 for serving employees. 3rd Pay Commission had recommended 2.5% for serving employees but Government raised it to 3% without applying it to pensioners. The 4th Pay Commission has recommended full neutralisation upto Rs. 3500 for serving employees. Since all previous pensioners are well below this limit, there is total justification for full neutralisation for past pensioners.

Secondly, the past pensioners were subjected to the arbitrary ceiling of Rs. 12.50 per instalment whereas for serving employees the ceiling was Rs. 30/-, and this too has since been lifted. Thirdly, the past pensioners were not given the benefit of interim relief to the same extent as the serving employees. We consider that if proper correctives are applied on these three counts, the benefits to past pensioners will probably be comparable to the new pensioners.

Past pensioners are getting dearness relief currently at four different rates, as follows :

S. No.	Category	Percentage as on 1.4.86	Max.	Min.
1.	Those retired prior to 30 9 77, those who retired between 30.9.77 and 30 4 79 but did not opt for merger of DA upto	130	650	130

272 points and Family Pensions			
2. Those retired between 30.9 77 and 30.4 79 and opted for merger upto 272 pts., those who retired after 30.4.79 but before 31.1 82, and those who retired after 31 1.82, but before 31.3.85, and did not opt for merger upto 320 points	110	550	110
3. Those retired after 31.1.82 but before 31.3.85 and opted for merger upto 320 pts.	95	475	95
4. Those retired after 31.3.85.	15	75	15

Firstly, the percentage in column 3 needs to be stepped up, by multiplying by 8/5 to ensure full neutralisation and the revised dearness relief should be added to the basic pension. The figure thus arrived at should be the basic pension. All future grants of dearness relief should be with reference to this revised pension, at the same rate as applicable to serving employees. It should no longer be necessary to have different categories of pensioners listed in the above table.

4 (a) & (b) The adjustment for past pensioners should be on the same basis as for future pensioners and for the serving employees, to be effected twice a year. Whenever a Pay Commission is appointed in future, the case of pensioners, past and future, should be included in its terms of reference.

5 and 7: Relief to the pensioners against price rise should be at the same rate as for serving employees drawing the same amount of Pay. It is obviously not valid to argue that the commitments and obligations of pensioners are smaller than of the serving employees, because weightage in regard to this factor has

already been given in fixing the basic pension. Relief against price rise is meant solely to protect real value of the pension and should not be allowed to distort the pension structure. It is obviously logical that when improvements are made in the pensionary benefits of serving employees, these should also be extended to persons who retired earlier.

On some of the other points of the present questionnaire we have expressed our views in the Memorandum which was presented earlier to the Commission. We invite reference to it.

#### RESTORATION OF PENSION COMMUTATION

One point which we specifically bring to the notice of the Commission is that of the pending problem of restoration of pension commutation. In our Memorandum to the Commission we made the following submission on this point :

"Among past pensioners there are quite a few who have reached the years of 70's, 80's and some 90's. On their securing commutation of pension on retirement they became subject to deduction of the pension which continues to be operative throughout life. This is a matter of great hardship to them, because in the process the Government has taken back from them two to three times, and more, of the amount they were given as commutation. Inequity of this measure has been repeatedly pointed out to the Government. The arguments put forth by the Government against acceptance of this demand do not carry conviction. The Parliamentary Committee on Petitions had also recommended restoration of the commutation. We strongly recommend that the Government should with grace restore the commuted pension where the period of commutation plus, say two years, has passed or where the pensioner has attained the age of 70 years, whichever is earlier".

We request that the Commission should make specific recommendation on this point. Our demand is that commuted portion of the pension should be restored after at most two years of completion of the period of commutation (i.e; commutation factor) and that this restoration should be effected from 1 4.1983.

The Commission would be aware that we submitted in 1983 a Writ Petition in the Supreme Court on this matter. We hope that this matter would not remain Sub Judge by the time the Commission formulates its recommendations, but even otherwise it would be appropriate that the Commission should make a pronouncement on this long-standing demand of the pensioners. We reproduce below the specific suggestion we have placed before the Supreme Court in regard to the restoration of pension commutation, suggesting that full pension should be restoted after the period in column III, in relation to the retirement

age mentioned in column I :

Column I Year of retirement	Column II Average of Multiplier	Column III Full pensjon after, following number years after retirement
Between 35 years and 40 years	16.30	18 years
41 to 44 years	15.27	17 years
45 to 49 years	14.09	16 years
50 to 54 years	12.65	14 years
55 to 56 years	11.55	13 years
57 to 58 years	10.94	12 years

## NOTICE

### ALL MEMBERS OF COMMON CAUSE

The Annual General Meeting of COMMON CAUSE Society will be held on Saturday the 22nd November 1986 in the Constitution Club, Rafi Marg, New Delhi, at 10.30 A.M. Members are welcome to this meeting. Agenda will be as follows :

- i) Consideration of the Annual Report and adoption of Annual Accounts along with Auditors' Report for the year 1985-86.
- ii) Appointment of Auditors for the year 1986-87.
- iii) Activities & Programmes.
- iv) Elections.

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

P. D. TAYAL  
Secretary  
COMMON CAUSE

## AUDITORS REPORT

We have audited the attached Balance Sheet of Common Cause as at 31st March, 1986 and the annexed Income and Expenditure Account of the Society for the year ended on that date which are in agreement with the books of account maintained by the Society.

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

- i) in the case of the Balance Sheet, of the state of affairs of the Society as the 31st March, 1986, and
- ii) in the case of the Income and Expenditure Account, of the excess of income over Expenditure for the year ended on that date.

Place : New Delhi

A.S.R. Gopal Rao

Date : 26th September 1986

Gopal Rao & Co.,  
Chartered Accountants

## ANNUAL REPORT FOR 1985-86

COMMON CAUSE has completed another year of satisfactory service to the people. It has continued to attract very heartening praise for its activities. A large number of persons have from time to time conveyed to us their deep sense of appreciation of the dedicated and selfless service that it has been rendering. It has been overwhelming to receive their feelings of gratitude for whatever help we have been able to render in relation to our different programmes and activities. This feeling, while giving humble satisfaction, has also continued to place heavier responsibility on the organisation for making further efforts to keep up the tempo of work and to expand the services.

Terms of membership of COMMON CAUSE were somewhat altered during the course of the year because of the enlarged expenses of the printing, stationary, despatch etc. It was rendered necessary to do away with the concessional membership which was previously available at Rs 10 per annum to those whose monthly income did not exceed Rs 500. Uniform annual membership subscription of Rs 25 per annum has been introduced with effect from the 1st April 1986. This was also rendered necessary in the interest of facility of accounts. It has been noticed that larger number of persons have since been opting to take up life membership, the subscription for which is Rs 150. We have throughout been urging that the people who seek membership of the organisation should consider the membership subscription as a contribution to a cause and not necessarily as payment in expectation of any individual services.

While our activities have, as usual, continued to operate over a very wide field, practically covering all the various problems which the people of middle class in the urban areas encounter, we mention hereunder some of the areas in which larger numbers of people are concerned.

### PENSIONS

The implementation of Supreme Court judgement on our writ petition relating to 1979 pension liberalisation scheme has by now been completely effected, excepting in some odd cases where either the records have not been traceable and consequent ad hoc revision has not been found acceptable or where the revision effected by the concerned accounts offices has been challenged by the pensioners. Likewise, we have cause for great satisfaction that the implementation of the judgement on the second writ petition, relating to family pension, has been by and large effected and that orders have also been issued by the government to grant the pensions or to revise the pensions on the basis of affidavits where records are not traceable. The implementation of these two judgements has given benefits to over two million central government pensioners and more than 100,000 widows; and these have had inevitable repercussions in the issue of similar orders by the State Governments whereby almost the same number of old pensioners have likewise benefited.

The pension commutation restoration case continued to be pursued in the Supreme Court. It is unfortunate that the case has not yet been finally decided. All the old pensioners, a large number in their 80's and 90's, have been most eagerly waiting for its decision. The case was finally closed on 18th August 1986, and the judgement has been reserved by the Hon'ble Supreme Court. The government has conceded in principle, in a letter produced before the Supreme Court, the principle of restoration of the commuted pension, but the formula put forth was contended by us to be derogatory to the interests of defence pensioners who retire early. We have submitted alternative formula for consideration of the Hon'ble Court. Meanwhile, it is very unfortunate that the government has chosen not to

issue orders for effecting restoration on the lines decided upon, pending the final decision of the case.

#### RENT CONTROL

COMMON CAUSE continued to strive to persuade the government to expedite submission before the Parliament of the proposed amendment of the Rent Control law. For many years the government, on the floor of the Parliament and before the concerned Parliamentary Committee has been repeatedly declaring that the amendment Bill would "soon" be laid before the Parliament, but this promise has not hitherto materialised. Meanwhile, the position has continued to worsen; relations between owners and tenants continue to further deteriorate, law courts continue to be clogged with the rent control cases; rents have mounted enormously; premises continue to be kept vacant rather than being let out; and expansion of housing construction continues to suffer. We can only hope that some day the government will realise that it is wrong to disregard the recommendations which have been made by the various committees and Commissions to rationalise the rent control law, and that the present dithering on this issue will cease.

#### HOUSE TAX

While the judgement of Supreme Court on our writ petition relating to House Tax of Delhi Municipal Corporation has helped to clarify various important issues, and the owners have now fully acquainted themselves with its implications, it is a pity that in certain matters the Corporation authorities are still acting in a manner which gives cause to the assessees to feel that they are flouting the decisions incorporated in the judgement. It is unfortunate that for one reason or the other the Application submitted by COMMON CAUSE seeking clarifications on certain issues of the judgement has not been finally heard by the Supreme Court though on a number of occasions it has come on the "Board" of the Hon'ble Court. We are still hoping that it will soon be heard and that the disputed matters will

get satisfactorily resolved between the Corporation and the assessees. In this connection we would like to place on record that the new official set up at the executive level of the Corporation, including the Commissioner and the Assessment & Collection staff, have shown greater responsiveness to the problems of the assessees than was previously in evidence.

#### LOK ADALATS

Under the auspices of COMMON CAUSE sessions LOK ADALATS were held at Delhi. A number of cases including small cause cases were brought before it and disposed of. We hope to expand this work when statutory base is provided to LOK ADALAT; as is at present contemplated.

#### OTHER MATTERS

A number of other matters have continued to be pursued. It was a matter of great gratification for us that a number of recommendations made by us in relation to the Budget of 1985-86 found acceptance and featured in the Budget. Their acceptance was obviously indicative of the fact that these were sound and had been very carefully made, taking into account the practicalities of the situation. Our writ petition on the functioning of telephones is still pending though we have the satisfaction that one of its main objectives, of securing bifurcation of the posts and telecommunications departments, has already been achieved. Likewise, our writ petition in the Delhi High Court against DESU is yet pending, though interim stay order has been issued against DESU, charging for period more than three years in relation to the cases mentioned in the petition. In the matter of general problems of consumerism COMMON CAUSE has taken the initiative of establishing an effective central organisation for providing an appropriate platform to over 180 organisations of consumers which exist in the country but which, with only a few exceptions, are at present operating without adequate resources and effectiveness.

We owe deep gratitude to the members and the people at large with whose support we have been able to continue to provide these various services.

## BALANCE SHEET AS AT 31st MARCH, 1986

LIABILITIES	AMOUNT RS.	ASSETS	AMOUNT RS.
<b>CAPITAL FUND ACCOUNT</b>		<b>CASH IN HAND</b>	100.00
LIFE MEMBERSHIP SUBSCRIPTION		<b>CASH AT BANK</b>	
Opening Balance 1.4.85	1,55,476.00	In S/B A/C with scheduled Bank	26,918.91
ADD : Subscriptions received		<b>STAMPS IN HAND</b>	2,264.80
during the year	<u>31,500.00</u>	<b>FIXED DEPOSITS</b>	
<b>CORPUS FUND</b>	1,86,976.00	With Indian Bank, Shanti Niketan,	3,55,000.00
Opening Balance		New Delhi	
1.4.86	1,73,525.65	<b>INTEREST ACCRUED</b>	
ADD :		On Reinvestments Fixed Deposits	22,177.45
Donations received		with Indian Bank, Shanti Niketan,	
during the year	<u>19,266.00</u>	New Delhi	
	1,92,790.65	<b>ADVANCE FOR EXPENSES</b>	1,259.13
<b>RESERVE ACCOUNT</b>		<b>FURNITURE</b>	
Opening Balance 1.4.86	<u>12,000.00</u>	Opening Balance 1.4.85	2,584.00
	3,91,766.65	ADD :	
<b>SURPLUS ACCOUNT</b>		Additions during the year	<u>1,628.00</u>
Opening Balance 1.4.86	17,123.97		4,212.00
LESS :		LESS : Depreciation	<u>421.20</u>
Excess of Expenditure over			3,790.80
Income per Annexed Income		<b>OFFICE EQUIPMENT</b>	
& Expenditure Account	<u>13,382.23</u>	Purchased during the year	841.50
	3,741.74	LESS : Depreciation	<u>126.20</u>
<b>INDIAN BANK LOAN</b>			715.30
	15,718.00		
<b>EXPENSES PAYABLE</b>			
	1,000.00		
	<u>                    </u>		
Total Rs.	<u>4,12,226.39</u>	Total Rs.	<u>4,12,226.39</u>

NOTE : 1. Subscriptions from members have been accounted on cash basis.  
 2. Indian Bank Loan has been taken on the security of a Fixed Deposit with the Bank.

Place : New Delhi  
 Date : 26th Sept. 1986

AS PER OUR REPORT OF EVEN DATE

### INCOME & EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31st MARCH, 1986

EXPENDITURE	AMOUNT Rs.	INCOME	AMOUNT Rs.
Printing & Stationery	26,405.30	<b>SUBSCRIPTION FROM MEMBERS</b>	
(Including Printing of periodical)		Ordinary	17,831.00
Duplicating Expenses	3,596.05	Associate	<u>7,100.00</u>
Postage, Telegrams & Telephones	14,767.10		24,931.00
Part Time Staff	19,030.00	<b>INTEREST RECEIVED</b>	
Other Establishment Expenses	2,400.00	From S.B. Account	875.12
Conveyance Expenses	5,910.00	From Fixed Deposits	<u>26,904.13</u>
Hire of Auditorium	350.00	with Bank	27,779.25
Legal Expenses	260.00	<b>INTEREST ACCRUED</b>	
Honararium to Auditors	500.00	On Reinvestment Fixed	
Books & Periodicals	939.00	Deposits with Bank	11,211.57
Repairs & Maintenance	342.00	Excess of Expenditure	
Bank Charges	696.60	over Income Transferred	
Miscellaneous Expenses	842.60	to Balance Sheet	<u>13,382.23</u>
Depreciation on Assets	547.40		
Interest on Bank Loan	718.00		
	<u>                    </u>		
Total Rs.	<u>77,304.05</u>	Total Rs.	<u>77,304.05</u>

AS PER OUR REPORT OF EVEN DATE

Place : New Delhi  
 Date : 26th September 1986

A. S. R. GOPAL RAO  
 GOPAL RAO & CO.,  
 CHARTERED ACCOUNTANTS

S. RANGANATHAN  
 President  
 P. D. TAYAL  
 Secretary

H. D. SHOURIE  
 Director  
 U. C. DUBEY  
 Treasurer

COMMON CAUSE  
 Regd. Office : 32 Anand Lok, New Delhi-49

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