

COMMON CAUSE

VOICE OF "COMMON CAUSE"

PEOPLE'S POWER

COMMON CAUSE derives great satisfaction from the changes that are coming about in the attitudes of the people towards organising efforts to resist the wrongs imposed on them. There is mounting evidence of resistances developing among citizens, of their refusing to give in, and of their developing means to seek redress.

We reproduce below an editorial which appeared recently in "THE STATESMAN". It speaks of an instance where citizens have achieved the objective of overcoming a wrong which was being perpetrated. We have faith that such efforts will increasingly multiply, emboldening the citizens to not allow wrong being done to them:

"One of the many abuses of our educational system is that even the best of schools, including some truly venerable institutions in Delhi, Bombay and Calcutta, have sadly deteriorated into money-making businesses, principals and staff seeing no impropriety in fleecing parents under a variety of pretexts. But Gujarat seems to have demonstrated once again how people's power can fruitfully be mobilized against this kind of abuse that exploits parental determination to give children a good start in life. A concerted campaign by a voluntary body in Baroda, the Vadodara Vidyarthi Hitrakshak Samiti, against the illegal practice of collecting what are called "donations" from school children has already resulted in more than 50 school managements in that city refunding a sum of about Rs 5,000,000 to parents. Those schools that are still hesitating to return the donation money that has similarly been mulcted from pupils are said to have already been derecognized, and government grants have been withheld from 27 more. The campaign has also had the effect of bringing down fees to reasonable levels in most schools.

"It was reportedly the move earlier this year by a number of schools to change the pupils' uniform, obviously, with a view to making money out of the change, that touched off the present campaign, as long-suffering parents began complaining loudly not only about the expensive change of uniform but also about how money was being extracted from them by way of a variety of special fees, ranging from playground fees to video fees, as well as compulsory payments to funds such as for the construction of the school building or its maintenance. Moreover, there were other deposits and payments in addition to the normal school fees which nowadays seem

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CAN RENT CONTROL LAWS BE SCRAPPED ?

The Chief Justice of India, while inaugurating the National Conference of the All India Judges Association at New Delhi, expressed that a virtual paralysis has gripped the judicial system in the country. He apprehended that the judicial system would completely break down in a short while, with about two lakh fresh cases filed each year and disposal not exceeding 90,000. The workload of all the courts, subordinate, high and the supreme court, was doubling every seven years. More than 1½ crore cases are presently pending in these various courts.

The Chief Justice is quoted as having said : "There is bound to be catastrophe in about a year's time. I am not exaggerating. The delay and backlog will lead to disarray in the functioning of a constitutional government. In the High Courts which have original jurisdiction to try suits, trial is being adjourned from now to 1991 or 1992. It is not known if these suits will be taken up even then. In some High Courts the suits have been pending for 10 years or more." "Millions of men hours are being wasted every day throughout India by litigants and witnesses congregating near courts and returning home without their cases being taken up for hearing. The adverse effect of the delay is colossal: frustration, disenchantment, social tension; society is losing its shock-absorber."

The Chief Justice made some very important suggestions. The suggestions made by him were reported by newspapers to be somewhat unorthodox. One of the suggestions was to do away completely with the rent control laws. "The rent control cases have become the biggest problem the judiciary is facing. Today, every fourth case in the Supreme Court and in the High Courts is a rent control or eviction case. These laws have not helped much in solving the problem of housing." Instead, he suggested, use of unaccounted black money be allowed to build middle or low income group housing. Persons providing such housing need not say where that money came from; they would of course have to pay income and wealth tax on the houses, when built. Thereby, black money gets reduced, the problem of housing gets solved to some extent. And litigation also gets reduced correspondingly.

It can not at present be expected as to whether any serious thought will be given in the government and by the legislature to this suggestion of the Chief Justice of India. Most likely, political considerations will continue to prevail and the suggestion will remain without any possibility of action even though the stranglehold of pendency of cases in the courts will continue to increase, bringing the judicial system to total disruption and collapse. It is obviously necessary that people should give very detailed thought to this suggestion, weighing pros and cons from the point of view of houseowners as well as the tenants, examining the various facets of the problem for determining whether series of measures can be taken which would mitigate the problems between the owners and tenants with a view to bringing about reduction, and eventually elimination, of the pendency of the rent control cases in courts. It will obviously be very inappropriate and wrong on the part of the government as well as legislature to ignore the suggestion which has emanated from the Chief Justice of India and the anguish he has expressed in regard to the enormous backlog and continuous expansion of the workload in the courts.

In this context, we reproduce below two articles which have recently appeared in the STATESMAN on this subject, raising the question whether the rent control laws can be scrapped. These articles have been written by Santosh Bhattacharyya, former Vice Chancellor of Calcutta University and now Director of Centre for Studies in Economic Appraisal.

Knowledgeable citizens, and those who are in a position to analyse the problem and express its various aspects and the pros and cons, should address themselves to this suggestion of the Chief Justice of India, and the view points expressed in the two articles of Santosh Bhattacharyya. They should convey their views and suggestions to Mr. E.S.Venkataramaiah, Chief Justice of India (address : Supreme Court of India, Tilak Marg, New Delhi-110001) with copies to Mr. P.Shiv Shankar, Minister of Law & Justice and Mr. H.R.Bhardwaj, Minister of State for Law & Justice (address: Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001), and to COMMON CAUSE

The Rent Control Act is a telling example of how a policy instrument intended to secure relief from a problem in the short run adds to it if continued for a long period. It was brought into existence in the forties to prevent unconscionable increases in rents charged by houseowners taking advantage of the sudden increase in demand caused by the after-effects of the war and partition. But, instead of declining, demand went on increasing as an inevitable result of economic development and urbanization. One would have expected this increase in demand to create an adequate increase in supply. But this did not happen since the relevant market mechanism, viz. increase in rent, was blunted by the Rent Control Act.

Consider the case of a typical middle class person who owns a small plot of land with a small building of two or three storeys, a part of which he rented out in the past to recoup his investment. He cannot now charge the market rent from his tenant, nor can the tenant (or his successors) be ejected because of the Rent Control Act. He, therefore, desists from adding another storey for letting out, even if this is technically feasible, and from letting out the old space, even if it becomes vacant, because no one wants to hold a long term asset whose market value cannot be realized.

If he has sufficient means, he will rather invest in some other alternatives which assure him an increase in the realizable value of the asset along with an increase in income. If he does not, he can at least sell his house or a part of it, and realize the current market value.

Thus, the Rent Control Act along with the succession right of the tenant destroys the incentive either to let out existing housing space or to invest in creating more. The same argument holds true if the person concerned owns a plot of land. He will not build for letting out. He will hold on to it as long

as he can afford to do so, and then realize its capital value, unless he builds for his own use.

The Rent Control Act not only arrests the increase in the supply of new housing space for letting out, but also contributes to the decrease of the rented housing stock. It can prevent both market rent being charged and a tenant ejected. But it cannot prevent the owner from disinvesting. Because of the Act, owners also cease to have any interest in the maintenance and repair of tenanted houses. Unless a tenant is enlightened enough to undertake the job at his own expense, even comparatively new buildings take on the appearance of a rundown slum.

Most of the buildings in the old areas of cities need redevelopment. But the owners of such buildings have no intention of spending money and are waiting for the day when the house can either be pulled down under municipal orders or falls down by itself. In other words, a part of the rented housing stock that becomes unfit for human habitation every year because of old age is not replaced.

Thus, the supply of housing space for letting out has been bottled up effectively by the Rent Control Act. Middle class land-holders or houseowners, who were the traditional providers of such housing space, have withdrawn from the market. But the demand has gone on increasing. How can this increase in demand be satisfied? The efforts of the Government in this regard amount to a drop in the ocean. The Government just does not have enough resources. No Government has for such a herculean task. Moreover, the Government does not own much land to be released for residential housing. Hence the promoter-developer enters the scene.

The Rent Control Act discourages the construction of buildings to be let out, but does not discourage construction for outright sale. The promoter thus finds his field ready. On the one hand, there

is a large unsatisfied demand. On the other, there is the lack of supply of housing for letting out, even at rents that are much higher than the controlled rents in old tenancies. But the high rents can be paid, even without the help of black money, thanks to many public sector schemes for providing housing finance, often at subsidized rates of interest.

In other words, a prospective tenant who cannot command enough capital for building a small house of his own because of the high cost of land can become the buyer of a part of a building through the hire-purchase mechanism. If there is a group of such buyers, the cost-per buyer is reduced in a multistoreyed house. There is therefore, no mystery behind the construction boom in big cities. On the contrary, the mystery lies in the fact that it came so late.

The considerable margin of profit which induces the promoter-developer is natural under the circumstances. Basically this margin arises because of the difference in the price of land per square foot as such and the still higher price per square foot that the apartment buyer is prepared to pay. In addition, there are economies of scale, which add to the margin. Undoubtedly, the wide margin of profit enables the promoter-developer to bid for the price of whatever vacant land is available. It enables him also to buy up dilapidated old buildings and bustees by offering monetary incentives to sitting tenants. And, of course, it enables him to grease the palms of officials so as to be able to cut corners.

SERVICE

But one must not conclude that he can do all this just because of money power. If he cannot sell the space he has constructed at a profit, he will not be in business. But his business is roaring because there is enough demand.

In a way, he is rendering social service by increasing the supply of housing. Without him, the rents of new buildings would be still higher.

The only permanent way of stopping the apparent misdeeds of the promoter-developer is to increase the supply of housing space by other means also so that his profit margin is narrowed down to what

would be considered normal. Since the public sector cannot be expected to do this effectively, middle class landlords and homeowners, who have traditionally been the suppliers of residential housing, must be brought back to the housing market. But, as already explained, they will not come back unless the Rent Control Act is scrapped or rationalized.

The advocates of rent control rest their defence primarily on two grounds. First that the old owner is getting in rent as much as he would have got as interest if, instead of investing in land and building, he had put his money in the bank. He has no normal right, therefore, to enjoy a higher unearned income by increasing the rent as per the current market rate, which is higher not because of any increased investment by him, but because of social reasons. Secondly, that, in any case, most tenants are comparatively poor and cannot afford the free market rent.

IRRELEVANT

The first argument is irrelevant in an economy which accepts private property in land and buildings. As mentioned before, the owner may be prevented from realizing the market rent, but he cannot be prevented from selling his property. Even those who are wedded to the goal of abolition of private property should be able to appreciate that the Rent Control Act is bound to have an unfortunate on the supply of housing space.

The second argument is misplaced, even if factually correct. There cannot be any doubt that the economically weaker sections of society are not in a position to pay the increased rent that will induce the middle class to invest in house-building. If society thinks, as it should, that such persons must not be forced to pay beyond their means, then it is for society to arrange the required housing accommodation for them by providing appropriate subsidies.

To compel the house owner to bear the burden of such a subsidy by controlling the rent to which he is entitled is not only a clear case of discrimination against housing investment, but also self-defeating because the house owner cannot be

prevented from running down his housing stock. The solution for such problems is well-known, viz. state housing, the subsidy element being thus borne by society as a whole.

Repeal of the Rent Control Act will help to remove many distortions in the housing market. The available housing space will be redistributed much more in accordance with demand, the black market in housing will be discouraged, and the house owner will not be motivated to pass on all increases in the cost of common service to his tenants.

Moreover, if increased rents are openly recorded instead of being suppressed because of the Rent Control Act they will boost the woeful resources of the local authorities. Above all, by encouraging investment in the maintenance and expansion of the housing stock, repeal of the Act will be most effective in controlling any inordinate rise in rents.

Doing away with rent control will necessarily, bring in the question of security of tenure. Though a building is an investment, and accommodation is a commodity that cannot but be governed by the laws of demand and supply, it is an essential commodity whose price and supply cannot be left to the working of the free market only. A consumer can easily opt out of the market for most consumer goods, but cannot do so in the case of housing. Shelter is as much an essential commodity as food and medicine.

But the question is essential for whom and to what extent? It is understandable that the state should try to protect the interests of the economically weaker sections. But the Rent Control Act in its present form is like price control without rationing, the rich not being prevented from enjoying the benefits of price control while the poor do not have any guarantee of supply. If the interests of the economically weaker sections are truly to be protected, the logical step would have been for the state to impose rent control over housing accommodation not exceeding a norm which the state itself follows when it builds for the lower-income groups. There can be no reason for providing protection to those who demand housing space in excess of this norm.

One may refer in this connexion to the recommendations made by the National Commission on Urbanization in its interim report of January 1987. The commission recommended that, with effect from 1987, the Rent Control Act should be lifted from non-residential premises and from residential premises with a plinth area of 80 sq. mts. and above, constructed or rented for the first time after January 1, 1987. For smaller residential premises, the first agreed rent should be treated as the base rent. And, for all premises rented before January 1, 1987, irrespective of size and use, and for residential premises with a plinth area of less than 80 sq. mts. constructed or rented for the first time after January 1, 1987, the landlord should be allowed to increase the rent as per changes in the urban non-manual employees consumer price index, along with the additional increases permitted for the period 1974-86 to the extent of 100 per cent of the index for non-residential premises, and 50 per cent of it for residential premises with a plinth area of 80 sq. mts. and above.

It would thus appear that the commission recommended 100 per cent neutralization of inflation with effect from 1987 (and earlier, for non-residential or larger residential categories) for most of the existing housing stock, but protected the base rent and tenancies taken before 1987. While the principle of 100 per cent neutralization is unexceptionable, the commission failed to give any reason for treating rents prior to 1987 as base, irrespective of size and purpose. If with effect from 1987, protection of base rent and tenancy is to be given to residential premises with a plinth area of less than 80 sq. mts. only, why should this protection be given to other premises rented before 1987? Logically, such protection can be given to premises rented before 1987, to the extent of 80 sq. mts. only.

In Eastern cities, however, the norm followed by the Government for providing accommodation to the lower-income groups appears to be of the order of 50 sq. mts. There is thus no reason for protecting base rents and tenancies of any residential unit in these cities if the size exceeds 50 sq. mts.

CONSUMER PROTECTION

PASS LAWS & SLEEP

Reproduce below is an article by the Director of COMMON CAUSE which recently appeared in the HINDUSTAN TIMES of New Delhi. This article deals with the pending important problem of the inadequate implementation of the Consumers Protection Act. Despite the efforts which continue to be made by the Government of India there is yet considerable reluctance and delay on the part of State Governments in setting up the Consumers Disputes Redressal Forums in all the districts as contemplated under the Consumers Protection Act. All sorts of excuses are still being put forth by the State Governments for explaining the delay. The District Forums constitute the main fulcrum of this legislation and if they are not set up expeditiously and do not operate effectively, the achievement of the objective of this important legislation will be jeopardized. The operation of State Commissions and the National Commission, as provided for in the Act, depends considerably on the operations of the District Forums because appeals from the cases decided by the District Forums have to go to the State Commissions and the appeals against decisions by the State Commissions have to go to the National Commission. In the absence of effective operation of the District Forums the State Commissions and National Commission would be left mainly with the cases of original jurisdiction which are not likely to be many.

In this context it needs to be mentioned that COMMON CAUSE has already filed a Writ petition in the Supreme Court in relation to the inadequate implementation of the Consumers Protection Act. Suggestions have been communicated to the consumers organisations all over the country to take similar action and file Writ Petitions before the respective High Courts in order to pressurise the State Governments to expedite the implementation of the Act. The Patna High Court, on a writ petition filed before it, has recently directed the State Government to take all steps for the establishment and functioning of the District Forums.

We are in the era of passing legislations. Implementation does not appear to be the concern of those passing them. They feel it is enough to give the public the sop of legislations.

One recent glaring example is of the Consumers Protection Act. This legislation was enacted over 2 1/2 years ago with lots of fanfare. It was heralded as a path-breaking new law, to protect all consumers from the exploitation of unscrupulous elements, to spell out their rights, and to provide them means for expeditious redressal of their grievances. The Prime Minister was stated to have taken personal interest in the enactment of this law and in incorporating in it certain provisions of outstanding importance to the consumers. But, its implementation has sadly languished. It has so far achieved but a small fraction of what it set out to achieve.

THE FACTS

Let us consider the facts. It was on 24th December 1986 that this important law came into effect. This was the culmination of series of conferences and seminars in which the proposal had been examined from all aspects, based on dialogus with the states and representatives of consumers organisations. Rules under the Act were also framed with considerable alacrity; these were notified in four months.

Basic features of the Act greatly pleased the consumers organisations and activists; in fact, these went beyond their expectations. A special feature incorporated in the Act was that it covered not only "products" but also "services", and the latter were defined to include the services provided

by the public sector such as "banking, financing, insurance, transport, processing, supply of electrical or other energy" etc. Thus, while the consumer could take a manufacturer and trader to task for supply of a product of inferior quality or for charging unauthorised price, he could, for the first time, initiate action also, for instance, against railways for deficiency in service, or against airline for delayed flight, or against banks and insurance companies for excessive service charges and premium rates.

The rights of consumers were explicitly defined in the Act. These included the right to be informed about the quality, potency, purity and price of goods, to protect him against unfair trade practices; the right to be assured access to variety of goods, to avoid monopolies; the right to be heard; the right to seek redressal against unfair trade practices and exploitation; the right to be educated about consumer needs.

For assuring the consumers and for safeguarding their rights the Act provided for the establishment of advisory bodies in all the states and at the centre in the shape of States Consumers Protection Councils and the Central Consumers Protection Council with representation on them of all the concerned institutions, departments and ministries as well as the consumers organisations.

QUASI JUDICIAL MACHINERY

The provision of most fundamental importance in this new legislation was that of establishment of quasi judicial machinery for redressal of the grievances of the consumers in relation to their rights. This provision constituted the fulcrum of the entire legislation, and it was on the functioning of this redressal machinery that the implementation of this Act was to be judged. And, it is in relation to this touchstone of the legislation that its implementation has failed.

A three-tier machinery for redressal of the grievances of the consumers was provided in the Act. At the central level a National Commission, presided over by a person of the level of Supreme Court judge; at the level of each state the State Commission presided over by a person of the level of High Court judge; and at the level of districts the District Forums presided over by the persons of the level of District Judges. Their jurisdictions were defined, with appellate as well as original powers

to the State Commissions and the National Commission. The provisions were very satisfactory indeed. But the pace of establishment of this machinery has been very tardy and poor.

The most important ground-level constituent of the redressal machinery was obviously the provision for establishment of redressal forums in all the districts of the country. It was explicitly recorded in the Act that the district forums would be established "in each district". This was to be done by the State Governments, with the approval of central government. Representatives of the consumers organisations felt it was unnecessary to provide that each district forum would need to be approved by the central government, but they were assured that this was only a formality and every proposal emanating from the states would be accorded approval.

DISTRICT FORUMS

There are 439 districts in the country. Even after 2½ years of the enactment of this legislation it is only in about four dozen districts that the district forums have started functioning, and out of these as many as 23 are in Andhra Pradesh alone. Wherever they are functioning they give satisfaction to the consumers, operating within the provisions of the Act that the disputes must be redressed within 90 days. The consumers aggrieved about telephones or electricity bills and deposits etc. have started taking recourse to these forums. Delhi Forum alone has so far received about a thousand complaints, out of which it has already decided nearly half the number. State Commissions have started operating in only four states; the National Commission has started off, but with inadequate operation of the machinery in the states and in the districts its effectiveness will remain limited.

It is a matter of great concern that the pace of establishment of redressal forums in the districts has been so poor. At the present pace it will take not less than some decades, to expect the establishment of these forums in all the states. Another matter causing concern is a decision which has been taken to establish the redressal forums in the commissioners' divisions instead of in the districts. This is totally violative of the specific provision of the Act that the forums will be established "in each district", and will totally dilute its effectiveness. Wrangling goes on between the states and the centre as to who will bear the expenditure; the

centre claiming that it is "plan expenditure" and states must find the funds from their own resources; the states taking the position that the centre must finance the implementation of this legislation as a welfare measure.

WRIT PETITION

Against this background of the poor implementation of this important legislation, which affects the interests of consumers all over the country, the public interest organisation COMMON CAUSE filed a writ petition in the Supreme Court highlighting the delays and defaults. This was nine months ago. Only nine states were impleaded, along with the Government of India, to avoid delays in trying to reach out to all the states. Unfortunately, the procedural delays have till now brought the case only to the stage of service effected on the nine states; only the government of West Bengal has so far submitted its reply; and even till now the Government

of India, in the Ministry of Food & Civil Supplies, has not put in appearance before the court. The contention in the writ petition is that expenditure on setting up the redressal forums is very small, not more than about Rs. three lakhs per annum for each forum, and surely no state can take the position that it cannot afford this much expenditure, of about Rs. one crore for the larger states, which will give benefit to the consumers in all the districts. The Supreme Court has taken note of the procedural delays and has now directed that the Government of India as well as all the impleaded states should file their replies within four weeks whereafter the case will be taken up for hearing.

It is a matter of great concern for all that legislations of such important nature, which affect the interests of practically everybody, should be allowed to languish in this manner. This state of affairs can naturally cause people to ask : why pass legislations if they are not to be implemented ?

MORE ON CONSUMER PROTECTION

From COMMON CAUSE certain suggestions have been communicated to the Government of India to effect modifications in the Consumers Protection Act and the Rules which have become necessary in the light of operation during the last few months. These suggestions cover the following :-

- (i) Under the Act the National Commission consists of five members and the State Commission as well as District Forum consist of three members each. Occasions have arisen when all the three members of the District Forums and State Commissions are not always available for hearing the cases and recording decisions. It would be very unfortunate if on this account the interests of consumers are adversely

affected. It would be appropriate, therefore, that provision should be made for modification of the Rules as well as the Act where necessary, providing that the decision can be recorded even where the presiding officer of the District Forum or the State Commission alone is present for the hearing and final decision. Likewise, in the case of functioning of the National Commission it is desirable that provision should be made that cases can be heard and decisions recorded if three members of the Commission are present. In this context it is observable that provision has been made in clause 12(5) of the Rules promulgated by the Government of India on 15th April 1987 for a casual vacancy in the National Commission to be

filled by fresh appointment. Sub-clause (6) of the same Rule 12 provides that in the event of the vacancy occurring at the level of the National Commission the work can be carried on by the senior-most member. Where provisions of this nature do exist in the Rules to meet contingencies of a casual vacancy of member or the vacancy at the level of President, it would be desirable that the work of the Commission should not get disrupted merely on account of temporary absence of even two members. It is thus desirable, in the interest of continuity of the functioning of National Commission, to incorporate an appropriate Rule, even though it is clear from sub-clause (8) of Rule 12 that "no act or proceedings of the National Commission shall be invalid by reasons only of the existence of any vacancy among its President or members or any defect in the constitution thereof". Similar provision needs to be made in relation to the functioning of the State Commissions and District Forums.

- (ii) Difficulties are being experienced in the States in finding suitable retired persons of the prescribed experience of District Judges within the age limit of 65 years which has been laid down in the Act. This difficulty is likely to continue handicapping the expeditious establishment of the Forums, and consequently it is felt that requisite modification needs to be made in the Act to enable appointment of persons of the prescribed qualification even till the age of 70 years. Provision needs to be made that a person appointed as President of the Forum should continue to be in position for a period of five years or till the attainment of age of 70 years. Similar provision would obviously need to be made in regard to the Presidents of the State Commissions and the National Commission.
- (iii) For enabling the President of a District Forum to function effectively it appears necessary that he should be declared as Head of office with rank equivalent to that of Secretary to the

State Government, so that he should not feel handicapped in any manner in dealing with the problems of staff recruitment and discipline etc. He should be authorised to select the operative staff from other suitable departments and to himself recruit class-IV employees.

- (iv) A suggestion was made by some representatives of State Governments in a previous meeting of the Central Consumers Protection Council that the district Forums may initially be allowed to be established in the Commissioners' Divisions. We consider this suggestion to be most unfortunate and misconceived. It will obviously not be possible for an aggrieved consumer to go all the way to the headquarters of Commissioner's Division to seek redressal of his grievance. The establishment of Forums at the level of Commissioners' Divisions will constitute serious violation of the specific provision made in the Act in this regard and will make a mockery of this important statute. This matter was referred to the Government of India. The establishment of separate District Forums in each of the districts is a legal requirement, but we have been informed that appointment of the same set of persons as President/Members to simultaneously function in more than one District Forum, may not be legally objectionable. It is obvious, however, that in such cases, hearing of the cases arising from the territorial limits of the District Forum can be continued only in that district and not while sitting in another district or at the headquarters of Commissioner's Division.
- (v) Another very important provision that needs to be made in the statute is for enabling grant of stay to be accorded by the Forums and Commissions the powers whereof are provided to the civil courts. Unless such a power is made available to these authorities their functioning in matters of

urgency will remain severely limited.

- (vi) Consumers have strongly been expressing that provision should be made to the effect that lawyers should not normally be allowed to appear in the disputes before the Forums unless there is specific permission from the President of the Forum. Normal appearance of lawyers on behalf of the manufacturers and traders, at least at the level of Forums, will frustrate the objectives of the Act.

These various suggestions have been communicated by COMMON CAUSE to the Government of India. It is necessary that the organisations of consumers should also follow up these suggestions by writing to the Minister of Food & Civil Supplies conveying their views

on these points. Simultaneously, efforts should be made to persuade the State Governments to take up these matters with the Government of India.

Most important requirement, as mentioned above, is the need of pressing the State Governments to expeditiously set up the District Forums for enabling the consumers to seek redress of their grievances as contemplated under the Act. The estimate is that expenditure per District Forum will not exceed about Rs. 2-3 lakhs per annum. Surely, it cannot be contended by any State Government that they do not have sufficient finances to meet this requirement to set up the District Forums. Such a negative attitude on the part of a State Government will obviously constitute a serious reflection on their declarations to protect the interests of consumers.

ACCIDENTS - CONTROL & PREVENTION

The Regional Office of World Health Organisation at Delhi has brought out an excellent small pamphlet on control and prevention of accidents. The accidents dealt with in this pamphlet are of all various types, domestic accidents involving children and others, occupational accidents and traffic accidents. These matters are everybody's concern. We reproduce below excerpts from this pamphlet relating to i) traffic accidents and what needs to be done to prevent and control them and ii) what action needs to be taken in the way of immediate care of the injured in cases such as burns, sprains etc. The immediate care steps would be interest to everybody because they tend to shed some wrong taboos and remedies.

TRAFFIC ACCIDENTS

Vehicle characteristics and patterns of vehicular traffic in developing countries differ markedly from those in the rich, highly industrialized countries. In addition, the traffic mix varies greatly from country to country and from region to region within a country. For example, car occupants constitute a very small percentage of fatalities in the South-East Asia Region whereas they are the main victims in Europe. Therefore, we cannot blindly copy all accident prevention and control programmes from one nation to another. However, a great deal of scientific knowledge is now available which

can be used for developing appropriate action programmes particularly suitable for each situation.

Until recently it was believed that a vast majority of accidents are due to "human error". But professionals have now realized that it is not so easy to pin-point this "error" on one individual or organization. Let us consider the case of a bicyclist who is hit by a car turning in front of him. The bicyclist or the car driver could be at fault for not following traffic rules. The car designers could also be at fault for not providing turn indicators which can be noticed easily by the bicyclist. The bicycle manufacturers can be blamed for not making

the bicycle more conspicuous. The traffic police can be blamed for not controlling all crossings. The road designers can be blamed for not providing bicycle paths. The public transportation system can be held responsible for not organizing convenient and extensive mass transport services so that people don't ride bicycles or cars. The government can be blamed for not allocating enough funds for road safety research and for not implementing good ideas. It is clear that assigning "fault" is not as easy it appears to be.

We have to get away from the tradition of fixing blame and depending on behaviour change alone. Some of the widely accepted principles for promoting road safety are listed below :

- Average speeds of vehicles should be kept as low as possible.
- Safety should be built into vehicles, roads and the environment. Very often this is more cost-effective than huge public education programmes.
- All safety measures requiring action by the road user (e.g., use of safety helmets) must be enforced by laws and policing.
- Vehicles moving at very different speeds should be separated physically on the road.
- Small vehicles and pedestrians should be as conspicuous as possible.
- Young children (under 10 years) are not capable of crossing the road safely even if educated in road use behaviour.

COMMUNITY ACTION

- Identify spots where accidents occur frequently in each neighbourhood. Take photographs. Inform political representatives, police and road authorities.

- Have speed breakers (humps) constructed where you want vehicle speeds to be low.

- Insist on proper pedestrian paths which are well

maintained in all neighbourhoods.

- Make your bicycles, mopeds, scooters, motorcycles, etc., as conspicuous as possible. Paint them in orange or yellow colours. These are the only two colours conspicuous at all times. Fix reflectors in the front, back and sides.
- Keep your two-wheeler headlights on at all times. Research results show that accidents reduce when this is done.
- Organize traffic assistance wardens at schools at opening and closing time.
- Always carry children in back seats of cars. Front seats are very hazardous for children even in sudden breaking maneuvers.
- Mount pressure on authorities for safety regulations listed below.

POLICY ACTIONS

- Urban speed limits to be fixed at 40 kmph or lower.
- Provide bicycle lanes and pedestrian paths on as many roads as possible.
- Extensive use of scientifically designed speed breakers.
- Provide adequate public transport so that use of motorized two-wheelers is minimized.
- All vehicles should conform to international safety standards, especially the use of laminated windshields.
- Promote installation and use of seat belts and air-bags in cars. Efforts should be made to introduce such life-saving technologies in cars by 1995 in all nations.
- Use of helmets should be compulsory for all motorized two-wheeler riders.
- All bicycles should be painted only in yellow or orange colours.

- All urban buses should have speed governors set at 25 kmph and inter-city buses at 65 kmph,
- Vehicles should not be allowed to have any pointed or sharp surfaces on their fronts.
- Strict laws should be enacted and enforced against driving under the influence of alcohol.

IMMEDIATE CARE OF THE INJURED

Here are some pragmatic and inexpensive first-aid and immediate care methods.

WATER: THE BEST MEDICINE

In a large number of situations you just need water to take immediate care of the injured before taking them to a doctor.

BURNS:

Immerse the burnt part immediately in cold water until the pain subsides.

Reason: Burns are caused by heat in the tissues. The best way to remove the heat is with a lot of cold water, just like you cool a boiled egg or potato.

Warning: In no instance should grease, butter, oils, fats or any ointment be used.

SPRAINS:

Immerse the sprained joint in cold water for about 30 minutes.

Reason: In sprains there is internal bleeding. Lowering the temperature reduces the bleeding.

Warning: Do not massage or put weight on the sprained joint.

DOG BITE:

Wash the bruise with mild soap and water and then consult a doctor.

Reason: This washes out the saliva of the dog and the soap acts as a disinfectant.

Warning: Do not put ointments etc. It will infect

the wound.

POISONING:

Have the patient drink one or two glasses of water or milk.

Reason: This dilutes the poison in the stomach and slows its introduction into the blood stream.

Warning: Do not induce vomiting in the case of acids, dye, drain cleaner, kerosene, petrol, and chemical solvents.

CHEMICAL ON THE SKIN:

The areas of contact should be flushed with plenty water to wash off the chemical. Flushing should be done long enough to wash off all the chemical.

Reason: This dilutes the chemical and removes it from the skin at the same time.

Warning: For alkali burns water should be used only if available in large amounts otherwise in some cases it can cause heat-releasing chemical reactions.

FOREIGN BODY IN THE EYE:

Tears may wash away the foreign body. Or pour saline solution gently over the open eye. Opening the eye gently under running water is also effective.

Reason: By this method the foreign body is not pressed into the soft tissue of the eye.

Warning: Do not rub the eye or try to remove with the help of fabrics.

SMALL CUTS AND BRUISES:

Wash with mild soap and water. Apply direct pressure until bleeding stops.

Reason: Washing removes foreign bodies and pressure closes up the capillaries.

Warning: Do not apply pastes and ointments as these could infect the wound.

SKIN IRRITANTS (ITCHY PLANTS EYE):

Clean skin thoroughly with soap and water.

TOWARDS A CENTRAL CONSUMERS ORGANISATION

Everybody agrees that there should be a strong consumers movement in the country. It is only with a strong consumers movement that there can be greater dissemination of information to the consumers about their rights, about the problems that they encounter and about the remedies they can secure.

At present there is great helplessness and feeling of frustration among the consumers that the unscrupulous elements of industry and trade get away with their depredations and they do not have the means to withstand their onslaughts. The position in the urban areas is bad enough, but in the rural areas the consumers are totally at the mercy of these unscrupulous elements. In the urban areas there is at least the availability of the media for picking up and highlighting their problems, and there is also some bit of infrastructure emerging which is increasingly involving itself in activities for protecting the interests of consumers. But in the rural areas there is presently almost total absence of any organisational effort which can undertake this task.

GRASSROOTS ORGANISATIONS : Primary focus of all efforts in expanding the consumers movement should obviously be to develop, foster and strengthen the consumers organisations at the grassroots level. In every corner of each city, in the streets, neighbourhoods, colonies, there should be voluntary involvement of the people in their problems as consumers, provision of guidance to the consumers through these organisations, and development of efforts to take up and seek redressal of the difficulties and grievances of the consumers. Likewise, one hopes that in course of time in each village local effort will ultimately be generated for weaving the consumers together into organisations which would assume responsibilities of disseminating information and taking up the task of securing redressal of the grievances of consumers.

This task is not easy. The organisations of consumers in the urban and rural areas will not develop merely by wishing. Nor will this effort develop through official machinery or intermediacy. It will have to be assiduously developed and fostered through the emergence of voluntary effort, through the involvement

of dedicated people who feel concerned about the welfare of others and who are willing to devote their time and experience for the welfare and benefit of the people.

At present there are more than 300 local organisations of consumers in the country. These have developed mainly in the urban centres, though some have extended their operations also in the rural areas. When, however, it is considered that there are over 3,000 towns in the country, and hundreds of thousands of villages, one can envisage the huge task that has yet to develop for the emergence of a satisfactory network of the organisations which would take up the responsibility of protecting the interests of consumers.

ASSISTANCE TO LOCAL ORGANISATIONS : An important requirement for expanding the network of consumers organisations is that of providing guidance and assistance to them for expanding their activities and strengthening them. Majority of the existing organisations are very weak, in their membership as well as their finances. Amidst the prevailing apathy and feeling of helplessness it is extremely difficult to tap the resources of individuals for raising funds for expanding the consumers movement. The membership subscription presently operating in a large number of existing organisations is in reality a pittance, at the level of only Rs. two or Rs. five per annum. Even with this small subscription the membership of quite a few organisations is very small. Ways and means have to be developed for providing impetus to the local effort which would encourage and enthuse some knowledgeable and experienced persons to take up this task of dedication and devotion to the cause of consumers, and to facilitate and enable them to secure the support of sufficient number of people as functionaries and members. In this process there inevitably will be need of providing financial assistance to support and encourage the local effort. This financial assistance needs to come in the way of matching grants from the Governments.

Deriving strength from the grassroots level there should be emergence of consumers organisations at the regional levels, and ultimately at the central level. For this big country of huge population it is

obviously necessary and desirable that the central organisation, when it is established, should have intermediate linkage of regional organisations for effective cooperative effort carried to the local organisations. Regional organisations will be able to keep themselves abreast of the problems and the requirements of local organisations; they will provide the essential link between the central organisation and the local organisation; the central organisation will be in a position to determine its policies and programmes only on the basis of support and help of the regional organisations. It is not envisaged that these regional organisations should necessarily be at the state level, though in some cases this would be advantageous. These organisations can alternatively be in five regions of the country, north, south, east, west and north-east, headquartered at convenient places.

CENTRAL ORGANISATION : From all accounts the central organisation will have to be based in Delhi so that it remains in touch with the various Departments and Ministries of the Central Government. Its interaction with the Central Government Departments and Ministries will obviously have to be constant and continuous so that it keeps itself fully informed about all the developments which are of importance from the viewpoint of consumers, and also for the purpose of immediately reacting to any significant development for either contesting a move detrimental to the interests of consumers or for providing support to a proposal which would operate to their advantage.

The central organisation must have the competence and wherewithal of studying individual problems, formulating views and policies, taking up the tasks of convincing and influencing the formulation of Government policies for protecting the interests of consumers, and taking up the essential and important matters to the legislatures and courts for redressal where necessary. It would be necessary for the central organisation to secure the support of knowledgeable and experienced people who, in their respective areas of specialisation, can make detailed and comprehensive study of the problems and give the benefit of such studies to the organisations for initiating the requisite action. For instance, on the problems of phar-

maceuticals and drugs, it should be possible for the organisation to ascertain in detail the particulars of drugs which over the years have been banned, determine to what extent and through what channels they are being clandestinely sold in the market, and what steps need to be taken to tackle this problem. Likewise in this field the organisation should be able to ascertain the effect of Government policy of the pricing of drugs, whether the interests of consumers are safeguarded in the matter of pricing, whether and to what extent the pricing policy is actually observed in practice, and determine the ways and means to challenge any inequities or discriminations perpetrated in the pricing arena.

With the establishment of the National Commission for Consumers Grievances Redressal the central organisation should increasingly determine the areas where complaints can be filed for securing redressal of certain major problems and grievances of consumers, including those encountered at the level of public sector enterprises like banking, insurance, transport, etc. From the platform of COMMON CAUSE we have filed a complaint highlighting the deficiencies of service of the Indian Airlines, another complaint against the Delhi Electric Supply Undertaking relating to their deficiencies of service, and still another in relation to the failures in the matter of supply of prescribed standard of iodised salt, the use of which has been made mandatory in certain areas for checking the ailments of goitre etc.

There is great urgency and need of setting up the central organisation for providing support, guidance and fillip to the consumers movement in the country. It is unfortunate that for various reasons the establishment of this focal organisation has got delayed, but in a way this delay should not be considered harmful to the cause of consumers because its establishment will now, at the appropriate stage, be in fulfilment of the objective of bringing together all the organisations of consumers on a strong and effective platform which in its turn should provide strength to the regional and local organisations and secure support and strength from them.

THE CANCER OF SPURIOUS GOODS

Products of a large number of varieties presently sold in the markets in India are of the approximate aggregate value of about Rs. 75,000 crores annually. General impression is that a substantial percentage of the products, aggregating to not less than about Rs. 5,000 crores, are sub-standard, counterfeit, spurious and fake. This is obviously a matter of very serious dimensions and great concern.

The spurious and counterfeit products which are put into the market, in the packages or with the insignia of well known products, include items such as electrical appliances and automobile parts and ancillaries. They also include fake medicines and cosmetics, presently in the exact shape of well known brands. The hazards connected with the use of these fake and sub-standard products are very serious indeed. The perpetrators of such fake manufactures are obviously playing with the lives of the people. The counterfeits cheat the customers by passing off as more reputed, better quality, higher value-for-money branded products, in the process also cheating the organised industry as well as the government of its revenues. According to Mr. R.S.Ramanathan, President of Purolator (I) Ltd, who has been relentlessly pursuing this matter for some years, by the manufacture of counterfeits and fake products we are fast acquiring the dubious distinction of becoming the world leader in counterfeit trade, displacing traditional champions like Korea and Taiwan. His estimate is that the revenue losses to the government can be very conservatively estimated at Rs. 1,500 crores. The death and disabilities caused by the use of counterfeit products would also be a large number.

Amongst the myriad legislations designed to protect the consumer, including the Prevention of Food Adulteration Act to the recent Consumers Protection Act., the only legislation designed to curb counterfeiting is the Trade and Merchandise Marks Act. Unfortunately, from all accounts, this legislation is proving an ineffective statute, implementation of which costs the affected parties more than the counterfeiting criminals. It is alleged that counterfeiters convicted of violating this law by manufacturing and marketing unsafe, spurious products end up merely by paying a fine of about Rs. 500 and re-start their

operations from a new address. The government machinery is always inclined to take indulgent view on the people that these manufacturers are small entrepreneurs. It is no wonder, thus, that counterfeit trade thrives under such an understanding and nurturing environment.

For years India has been aiming to become an international industrial power and to reach out its exports to various parts of the world. This dream will, according to Mr. Ramanathan, soon be a nightmare if the cancer of counterfeit is allowed to flourish unchecked. If our domestic quality and values cannot be ensured, there can be no foundation for exports. If the country has to make progress in the field of projection of quality image and in the expansion of exports, we cannot afford to allow the domestic counterfeit trade to merrily go unchecked.

Various suggestions have been made for checking the spread of this cancer. The industry has to guard itself up to meet the challenge. Industry associations need to initiate consumer education campaigns to increase awareness of counterfeit products and the damage they cause to the markets and the image. Suggestions have also been made that industry can introduce anti-spurious packaging and product design including the utilisation of measures such as Hollowgraphic Stickers on the packages for reducing counterfeits. Likewise, consumers organisations need to promote consumer education and to lobby for more stringent legislation for ensuring that the counterfeiters are given exemplary punishment.

The most important and urgent requirement is for the Government of India to be persuaded to suitably amend the Trade and Merchandise Marks Act, 1958 for making the violations under the Act cognisable offences and to treat counterfeiting as a serious criminal offence in line with the Food Adulteration, through administrative controls. Section 78 of the Trade and Merchandise Marks Act lays down that any person who,-

- (a) falsifies any trade mark; or
- (b) falsely applies to goods any trade

- mark; or
- (c) makes, dispose of, or has in possession, any die block, machine, plate or other instrument for the purpose of falsifying, or of being used for falsifying, a trade mark; or
 - (d) applies any false trade description to goods; or
 - (e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer is or person for whom the goods are manufactured is required to be applied under section 117, a false indication of such country, place, name or address; or
 - (f) tampers with, alters or effects an indication of origin which has been applied to any goods to which it is required to be applied under section 117; or
 - (g) causes any of the things above mentioned in this section to be done;

shall, unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to two years, or with fine, or with both;

Provided that where the offence under this section is in relation to goods or any package containing goods which are drugs within the meaning of clause (b) of section 3 of the Drugs Act, 1940, or "food" as defined in clause (v) of section 2 of the Prevention of Food Adulteration Act, 1954, the offender shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Section 79 of the Act prescribes that any person who sells or exposes for sale or has in his possession for sale any goods or things which appear false trade mark or false trade description as provided under Section 78, will be punishable with imprisonment which may extend to two years or with fine, or with both. Section 80 of the Act lays down that where

person is convicted under S. 78 or S.79, the concerned court may direct the offence has been committed

These provisions under the Trade and Merchandise Marks Act appear to be stringent enough, but the fact is that they remain ineffective because the initiative has almost invariably to be taken by the manufacturer of the genuine product who is keen to meet the challenge of the spurious and wrongly branded product. It is necessary that the Government of India should make the offence under this Act cognisable and should also authorise the complaint to be made under the Act by a consumer or a consumers organisation, as has been done in relation to offences under the Prevention of Food Adulteration Act and the Standard of Weights & Measures Act. The concerned consumers and the organisations of consumers would thereby be enabled to lodge report with the police and get the matter urgently looked into instead of waiting for the government machinery to move on its own through the empowered inspectors.

COMMON CAUSE has taken up this matter and has written to the Department of Civil Supplies, Ministry of Food & Civil Supplies, Government of India. In the letter we highlighted the problems of spurious and false products which are extensively sold in the shops of unscrupulous traders. It was pointed out that the reports of the Crime Branch of Delhi during the last few months have shown recovery of spurious cloth of the value of Rs 14 lakhs, spurious electrical goods of the value of Rs 25 lakhs and more than 70,000 fake locks, 50,000 fans etc. These were detected only after some well known companies, whose products were copied and sold, approached the courts for issue of requisite processes. We pointed out that shockingly the Police cannot take action on their own in such cases because making or selling spurious and sub-standard products is not a cognisable offence. We urged that the Government of India should make requisite amendment in the Act for giving powers to the Police to take cognizance of such offences. It is unfortunate that no action has so far been taken by the Government of India even though the matter has been pending with them for more than four months. The Department of Civil Supplies has forwarded the proposal to the Ministry of Industry. We have again urged the Department of Civil Supplies to pursue it with the Ministry of Industry.

MISCELLANEOUS

MULTIPLICITY OF NAMES OF COLONIES AND STREETS

COMMON CAUSE has written to the Chief Executive Councillor of Delhi Administration about the problem which is being created by multiplicity of similar names which are being used for the various housing colonies and residential areas. There are, for instance, a number of colonies which are named with the variants of the word "Basant" or "Vasant" such as Basant Nagar, Basant Enclave, Basant Gaon, Vasant Vihar, Vasant Lok, Vasant Kunj, and likewise, Naraina, Narain Vihar, Naraina Village etc. Vihars, Nagars and Puris have multiplied all over Delhi. Similar variants of certain names are obviously being used in other towns and cities of the country. Such similarity of names obviously causes enormous lot of confusion to the people, particularly those visiting from outside, as well as to the postal authorities. The repetition of similar names apparently shows lack of inventiveness and imagination in coining good names of the localities and colonies.

We have suggested that this matter should be examined in great detail by a small committee of two or three officers. They should seek suggestions from the people and lay down criteria for selection of appropriate names for the respective colonies and areas. An effort should be made to effect change of the names where they are called for and where such change would be beneficial to the concerned colonies.

In reply to our letter the Chief Executive Councillor has indicated that he is taking action on the lines suggested.

Obviously, this matter is of general importance to other cities and towns. The local organisations of citizens need to take it up for ensuring that the multiplicity of similar names does not continue to prejudicially affect the future development. It would also be desirable that the citizens organisations should consider ways and means for adopting fresh names for identifying the various colonies, roads and areas

instead of allowing them to be given long names associated with dignities and personalities.

"LOCAL TAXES EXTRA"

Delhi Consumers Protection Council, a body established by Delhi Administration under the Consumers Protection Act, has passed a resolution of far-reaching importance for the consumers who have for long felt cheated by the words "Local Taxes Extra" printed on all packaged products sold in the market.

Almost about 85 percent of the products in the market are now sold in packaged form. It is prescribed under the statutory Packaged Commodities Rules framed by the Government of India that on each package the manufacturer must print the price either in the form of words "Maximum Price Local Taxes Extra" or the words "Maximum Retail Price Inclusive of all Taxes". The manufacturers have been choosing the first option, on the plea that sales tax differs from one state to the other. But, the consumers have been feeling that through this strategy the exchequer as well as the consumers lose enormous amount of money. They have also been objecting to the word "Maximum" because this strategem gives lever to the industry and trade to manipulate prices.

Through the initiative of the public interest organisation COMMON CAUSE this matter was recently taken up by the Delhi Consumers Protection Council. After considerable discussion the Council has now passed resolution that in future the manufacturers should print the price only in the form of second option, specifically indicating that the price is "inclusive of all taxes". It has been suggested in the resolution that if any manufacturers so desire they can print the price as applicable in three different group of states, taking into account the scales of sales tax applicable in those states.

In this context the Delhi Administration has already declared 63 items of manufacture for payment of sales tax at the first point and no difficulty should therefore arise to the manufacturers in printing the price on their packages.

The Council's resolution also emphasizes that all traders must prominently display in their shops the sales tax leviable on the products. This is a statutory requirement non-observance of which is punishable.

PARKING CHARGES

The levy of parking charges is increasingly becoming practically a scandal in almost all cities and it is necessary that organisations of citizens and consumers organisations should initiate action to curb the menace or to at least minimise its deprivations. All sorts of unauthorised contractors set up their own establishment for levying parking charges for demarcated areas. It is only in certain specific areas that the local municipal administration or the authorities concerned with an institution like a hospital, levy parking charges, but there too it has generally been felt that unnecessarily heavy charges are being levied for the parking of cars, scooters and bicycles. There are certain places, such as the areas outside the international airports like Delhi, where the charges are being levied @ Rs 3 per car, which are obviously exorbitant.

Ways and means should be explored by the local consumers organisations to file complaints before the District Forums established under the Consumers Protection Act, specifying the areas where heavy charges are being levied. The municipal authority or the authority concerned with the levy of charges should be made Respondents in the complaints. COMMON CAUSE proposes to launch this action at Delhi in relation to the charges which are being levied at the Delhi Airport and also in institutions like the AIIMS. We have already complained to the Delhi Administration that there should be no parking charges at places of the nature of public parks where people go for rest and recreation. New Delhi Municipal Committee had displayed a board, with bold letters "Free parking" thereon, after the matter was complained to them by us. Ostensibly, with the connivance of subordinate staff the board was thereafter removed and the parking charges have again been in existence. The matter continues to be pursued by us with Delhi Administration, New Delhi Municipal Committee as well as the Municipal Corporation of Delhi in relation to similar practices at various places in the city.

CONSUMERS PROTECTION ACT

COMMON CAUSE had filed a writ petition in the Supreme Court against the Government of India and nine State Governments pointing out that the implementation of Consumers Protection Act had been very tardy. The effective implementation of this enactment is of fundamental importance to consumers all over the country. Under the provisions of this Act District Forums have to be set up in all the 439 districts of the country and State Commissions have to be established in all the States and Union Territories. The District Forums so far established are only a couple of dozen other than 23 District Forums established in the State of Andhra Pradesh. Only seven State Commissions have so far been established.

We had impleaded only nine States in the writ petition with a view to focussing attention on the problems relating to some of the States, apprehending that the impleading of all the States and Union Territories would involve delays in their appearance before the court. However, when the matter came up for hearing on the 19th September 1989 the Director of COMMON CAUSE made an oral request to the court to implead all the States and Union Territories of the country. This request was accepted. The court expressed its serious dissatisfaction about the inadequate implementation of the Act and directed that all States and Union Territories must set up the District Forums and the State Commissions within a period of six weeks. It was directed by the court that telex messages to all the States and Union Territories be sent for this purpose.

This is a very welcome and healthy development indeed. It will be now for the organisations of consumers to ensure that delay is not allowed to take place at the level of the States and Union Territories. Where delays still continue they should write to us so that we can bring the continuing omissions to the notice of Supreme Court. Simultaneously, where necessary, they should also file petitions before the respective High Courts for effective implementation of the orders of the Supreme Court and the provisions of the statute.

DEFECTIVE AND STOPPED METERS

COMMON CAUSE and its Director had filed writ petitions in the Delhi High Court challenging the DESU demands in relation to instances of defective and stopped meters. The High Court had given verdict that the provisions of Section 26 of the Indian Electricity Act have to be rigidly followed in cases of defective and stopped meters. The High Court judgement is cited as "H.D. Shourie Vs MCD and Common Cause Vs MCD (pp27 & 73, Vol. 32, Delhi Law Times)".

In connection with this decision it may be mentioned that a similar matter had arisen in the Madhya Pradesh High Court which had given verdict on same lines. The Madhya Pradesh government appealed against that decision of the High Court. The Supreme Court has since decided the case against the Madhya Pradesh government. That case is cited as Madhya Pradesh Electricity Board and another VS Basanti Bhai reported as 1988 (1) Supreme Court cases page 23. This information would be of use to the electricity consumers who may seek redress of the grievances relating to the demands based on defective and stopped meters.

FOR PENSIONERS

The case of pre-1973 pensioners is presently ripe for hearing in the Supreme Court. It is likely that the hearing will take place before this issue of the periodical reaches the members. If the case is decided before the release of this issue we will incorporate the decision in it. Meanwhile, we reproduce hereunder the Written Submission which COMMON CAUSE has made in relation to the pending case which has originally been submitted by the All India Services Pensioners Association of Rajasthan alongwith certain other associations of all-India services.

1. COMMON CAUSE, the public interest organisation, was the original petitioner of the case which resulted in the well known judgement of D. S. Nakra & ors Vs Union of India, and is vitally interested in the matter relating to this appeal. We seek, therefore, to bring to the notice of this hon'ble court the main issues.

2. The pension liberalisation effected in 1973 was the first major liberalisation. It comprised four elements, namely, (i) converting the formula of calculation of the pension from 30/80 to 33/80, (ii) raising the maximum from Rs 675 to Rs 1000, (iii) raising the limit of gratuity and (iv) raising the limit of family pension. Out of these the latter two need not concern us in the appeal as it stands at present. The matter is of application of 1973 liberalisation to pre-1973 pensioners who remained deprived of it, and at present this application is restricted only to the benefits between 1.1.1973 and 31.3.1979 because the impact of these benefits for post -1979 period has already accrued to all pensioners by Nakra judgement.

3. All these pre-1973 pensioners are now more than 74 years old (58 years + 26 years since 1973). Most of them have already passed away. Out of total of about three million pensioners there will be hardly a few thousand who can benefit from this dispensation. The benefit accruing to them will not be any recurring nature; it comprises only one-time payment of arrears for 1973-1979 period. A pensioner, for instance, whose last pay drawn was Rs 1800 will be entitled to Rs 67 more per month for this period (his pension on 33/80 will be Rs 741 i.e. Rs 67 more than the previous maximum of Rs 675). Likewise a pensioner whose last pay was Rs 2000 will benefit to the extent of Rs 150 per memsem more. Total number of pensioners who will now benefit by this increase of the maximum from Rs 675 to Rs 1000 is estimated to be only about 3000, and taking the average of Rs 150 (because the maximum salary at that time was Rs 3500) the aggregate financial implication will be of less than Rs 3 crore as one-time payment. It needs to be borne in mind that to the larger body of pensioners, of lesser salaries, the ex-gratia payment of Rs 35 per mensem which was granted is continuing. This ex-gratia payment made to those with maximum of more than Rs 675 will need to be adjusted and this will be a saving.

4. The judgement in present case was delivered by Central Administrative Tribunal on 5.8.86, three years ago. It is unfortunate that the Union of India instead of implementing it in three months as they

were directed to do, have caused exasperation to these old pensioners by resorting to SLP, following up by "Review", then by application for "Clarifications and Directions" and three made years pass by.

5. When the Appeal was previously taken up before this court an understanding had been arrived outside the court between the counsel of petitioner and Respondent that the petitioner would not press for gratuity and the Respondent will not resist the matter of pension. It was on account of this understanding that the judgement on the Appeal was restricted to the matter of gratuity. Reference is invited specifically to the opening words of the judgement and the last sentences of its second para. If necessary, the then counsel of the petitioner can be asked to state about this matter before this hon'ble Court.

6. The Respondent chose later to go back on this understanding and filed Review, stating that there had been a "misunderstanding and a communication gap". The Hon'ble Court recorded on the Review that matter of pension was "left open". The Respondent has since been pursuing and has brought the case to present position of re-opening the question of pension.

7. The pension case of the petitioner is covered by the Nakra judgement which expounded the basic principle that pensioners form one class and that all are entitled to the benefits of liberalisation irrespective of the date of retirement. The 1973 measure of liberalisation should, on this principle, be made applicable also to pre-1973 pensioners.

8. This principle has since been followed by this Hon'ble Court in a number of cases which have come before it and it has been followed in numerous cases before the High Courts and the Central Administrative Tribunal. The cases which have come before this Hon'ble Court include those of Malik (1984-SCC-(L & S)354), Gautam, Abhyankar (1984-SSC-(L&S)486), Ratilal Hiralal (Civil Application no: 9469/85 and Civil Writ 502/87).

9. Individual pre-1973 officers, such as Gautam, Reinboth and others have been able to secure verdicts in their favour for the grant of benefits of pension and

gratuity. In the present case also the Government counsel had at a previous hearing agreed that the individual officer, Mathur petitioner, can be given the benefits, but the Association petitioner cannot be allowed. It is singularly unfortunate that the Government has taken this view.

10. The vital matter which the Intervention Application COMMON CAUSE desires to submit is that the benefits of 1973 liberalisation cannot be restricted to any single individuals and that these cannot also be restricted only to the members of Association of All India Services who are the petitioner in this case. There are other all-India service officers who are not members of these Associations; they obviously cannot be deprived of these benefits. Likewise, there are those who were not members of all-India services; they too cannot be deprived of these benefits.

11. The Respondent, Union of India, is desirous that this Appeal should be linked with some pending petition of the Bharat Pension Samaj so that the entire matter relating to pension is heard by the Constitution Bench. The Bharat Pension Samaj Petition, according to our information, embodies omnibus demands: refund of two-months salary collected towards family pension, re-calculation of pension based also on Dearness Allowance, Special Pay, and Officiating Pay, and gratuity etc. Present petition is restricted only to the matter of pension, and that too only to the extent of application of 1973 liberalisation and within the ambit of Nakra judgement which was given by the Constitution Bench and against which review was filed by the Union of India and was rejected by this Hon'ble Court. Therefore, there is no cause for linking this case to the pending Bharat Pensioners Samaj petition.

12. It is also argued on behalf of the Union of India that the conceding of the demand on pension of this case will open Pandora's box and bring in all sorts of petitions relating to orders passed by the Government decades ago. This is obviously a case of overstretching the argument. Each of the old orders cited in this argument needs to be examined in the light of its impact and the fact that such pensioners are no longer alive.

SERVICE GUARANTEES

When you buy a car, a toaster, a refrigerator or any other consumer product, you receive a warranty, which is a guarantee that the product will work. In our country, such guarantees however, invariably have a lot of conditions attached to them, which makes them, for all practical purposes, useless. For example, a tyre manufacturer gives a guarantee for 40,000 kms, provided, the car is driven on good roads, has 100% perfect alignment and its steering mechanism is perfect. A TV manufacturer guarantees all other parts for one year, but the tube only for 3 months, and that too, provided you can guarantee no voltage fluctuation, a condition impossible to attain in India. A water filter maker guarantees his product, only if the intake water is not murky. One can keep on giving such examples adinfinitum to prove the non-effectiveness of such conditional guarantees.

However, whereas some sort of a guarantee, even if useless, is given for some consumer product, how often, if ever, in our country do you receive any warranty for a service rendered, such as, for auto or TV repairs, supply of power or water, pest control of your house, etc; virtually never. Yet, it is here, i.e. in buying a Service, as distinct from a product, that, the assurance of a guarantee counts most, and where the consumer gets duped always.

In a society, where any service rendered is considered an obligation, the feeling appears to be that, by definition, services simply can't be guaranteed. Services are generally delivered by human beings, who are known to be less predictable than machines, and they are usually produced at the same time they are consumed. It is one thing to guarantee a camera, which can be inspected before a customer sets eyes on it and which can be returned to the factory for repairs. But how can you preinspect a car tune-up or send an unsuccessful legal argument or bad hair cut back for repair? Obviously you can't.

In countries like USA, the service guarantee has even more sanctity than the product warranty. A good example of this is, the service guarantee given to hotels and restaurants by the pest control company Burger Bug Killers Ltd (BBKL) which promises-

Brig. N.B. Grant (retd.), Pune.

- (a) you don't owe one penny until all pests on your premises have been eradicated.
- (b) If you are ever dissatisfied with our service, you will receive a refund for upto 12 months of the company's services-plus fees for another exterminator of your choice for the next year.
- (c) If a guest spots a pest on your premises, BBKL will pay for the guest's meal or room, and pay for a future meal or stay.
- (d) If your facility is closed down due to the presence of roaches or rodents, we will pay any fines, as well as all lost profits, plus \$ 5,000."

The main reason that the BBKL Burger guarantee is a strong model for the service industry is that, it began with the concept of the unconditional guarantee and worked backward, designing its entire organization to support the no-pests guarantee-in short it started with a vision of error-free service, which says, "If we don't satisfy you 100%, we don't take your money".

What should constitute a good guarantee, whether it be for a product or service? It must be (a) unconditional, (b) easy to understand and communicate, (c) meaningful, (d) easy to invoke, and (e) easy and quick to collect on.

Unconditional- For example at the well known US retail store LL Bean, a customer can return a product at any time and get, at his option, a replacement, a refund or a credit, even after 10 years, and no questions asked. Catch any Indian firm doing this even after a week!

Easy to Understand - A guarantee should be written in simple, concise language that pinpoints the promise. Customers then know precisely what they can expect and employees know precisely what's expected of them. "Five-minute" lunch service, rather

than "prompt" service, creates clear expectations, as does "no pests," rather than "pest control."

Meaningful- A good service guarantee is meaningful in two respects. First, it guarantees those aspects of your service that are important to your customers. It may be speedy delivery. Bennigan's, a restaurant chain, promises 15-minute service (or you get a free meal) at lunch, when many customers are in a hurry to get back to the office, but not at dinner, when fast service is not considered a priority to most patrons.

Easy to Invoke - A customer who is already dissatisfied should not have to jump through hoops to invoke a guarantee; the dissatisfaction is only exacerbated when, like in India, the customer has to talk to three different people, fill out five forms, go to a different location, make two telephone calls, send in written proof of purchase with a full description of the events, wait for a written reply, go somewhere else to see someone to verify all the preceding facts, and so on.

Easy to Collect - Customers shouldn't have to work hard to collect a payout, either. The procedure should be easy and, equally important, quick - on the spot, if possible. What you should not do in your guarantee is to promise something your customers already expect; neither should you shroud a guarantee in so many conditions that it loses its point; and in any case, don't offer a guarantee so mild that it is never invoked. A guarantee that is essentially risk free to the company will be of little or no value to your customers - and may be a joke to your employees.

What is not appreciated is that, a guarantee is a powerful tool - both for marketing service quality and for achieving it - for five reasons.

First, it pushes the entire company to focus on customers' definition of good service - not on executives' assumptions. Second, it sets clear performance standards, which boost employee performance and morale. Third, it generates reliable data (through payouts) when performance is poor. Fourth, it forces an organization to examine its entire service-delivery system for possible failure points. Last, it builds customer loyalty, sales, and market share.

A guarantee also forces you to focus on customers. Knowing what customers want is the *sine qua non* in offering a guarantee. A company has to

identify its target customers' expectations about the elements of the service and importance they attach to each. Lacking this knowledge of customer needs, a company that wants to guarantee its service may very well guarantee the wrong things.

A guarantee also generates feedback. A guarantee creates the goal, it defines what you must do to satisfy your customers. Next you need to know when you go wrong. A guarantee therefore, forces you to create a system for discovering errors - which the Japanese call "golden nuggets" because they're opportunities to learn.

One does not realize, but, a guarantee forces you to understand why you fail. In developing a guarantee, managers must ask questions like these. What failure points exist in the system? If failure points can be identified, can their origins be traced - and overcome? A company that wants to promise timely service delivery, for example, must first understand its operation's capability and the factors limiting that capability. Many service executives, lacking understanding of such basic issues as shown throughput time, capacity, and process flow, tend to blame workers, customers, or anything but the service-delivery process.

Finally, what is not understood is that, a guarantee builds marketing muscle. Perhaps the most obvious reason for offering a strong service guarantee is its ability to boost marketing; it encourages consumers to buy a service by reducing the risk of the purchase decision, and it generates more sales to existing customers by enhancing loyalty. If customers aren't satisfied, the marketing money has been poured down the drain and may even engender further ill will.

The only way India can compete for its products and services in the international market, is to make its guarantee acceptable to the developed world, as a measure of her excellence, and more than that, her credibility. Today there is a very big gap in this. To quote one example -

Whereas our Maruti's warranty period limits itself to 1 year or 2000 kms, whichever is earlier, the average US car guarantee period extends to 5 years or 2,00,000 miles (not kms), whichever is later; during this period, perhaps one would have changed two Maruti cars.

Continued from page 1

to cover nothing at all. For none of the amounts thus raised was a proper receipt ever given, all of them evidently being illegal. The assistance of the Government, which has been forced by the power of the campaign to sit up and take notice, has helped, and the organizers are said to be examining the records of all schools and calculating the amount of money that is illegally, and perhaps fraudulently, collected from children. The campaign looks as if it will soon spread to all of Gujarat, and, perhaps, to other parts of the country as well, going by the keen inquiries said to be received from States where the donation collected at the time of admission is anywhere between Rs. 5,000 and Rs. 25,000.

"The Baroda campaign needs to be hailed not only because it has highlighted the seemingly endless greed of school heads and managements practically everywhere and the consequent fleecing of parents, many of whom can ill afford the payments they are compelled to make. What is also noteworthy is that amidst the growing negativism of our politics, this campaign is a positive effort at focussing attention on a major area of public grievance. Imagine the remarkable benefits that would flow to the ordinary citizen if similar campaigns were to be launched in other fields also—such as to ensure the supply of quality goods in fair price shops and the use of proper weights and measures by all vendors. But the first need is to stop schools from taking advantage of the demand for education and extracurricular activities. It is criminal, for instance, for a school to make a class drama the excuse to extort a full set of cosmetics from each and every child when just one set suffices for the entire class. Or for the school to charge a grossly inflated price for costume that it has had made for a fraction of that amount. Or to demand that children provide expensive items of stationery that are then kept back by the school. Such case can be multiplied. Unfortunately, the best of our schools seem to exist only for profit-making, and it is to be hoped that the spirit of the Baroda resistance will spread throughout the country."

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