

COMMON CAUSE

VOICE OF "COMMON CAUSE"

MULTITUDE OF MUDDLES

Every citizen in the country faces, practically each day, multitude of problems. Most of these arise from the multiplying complexity of present-day living; some of them are man-made. These collectively make life a constant struggle.

It is for equipping people to put up a good fight against these various problems that COMMON CAUSE has been taking up different causes of public interest, either for knocking at the doors of the concerned government departments or taking them to Courts for finding redress. The primary purpose in thus taking up these issues has been to demonstrate that this can be done, that injustices, inequities, discriminations, distortions and anomalies can be rectified, provided effort is properly made and directed towards the appropriate ends. We derive great satisfaction from the fact that concerned citizens and their organisations are increasingly taking initiatives on these lines and intensively and effectively pursuing their objectives. They have recognised that they have the capability and the power to set right the multiplying muddles of increasing complexity of existence.

A major complexity that has emerged during the recent months in the country is that of the multiplying divides among the citizens: rural versus urban, backward versus forward, caste versus class, north versus south, community against community, english versus hindi et al. A glaring manifestation has arisen in the shape of "reservations" for employment, ordered by the central government on the basis of Mandal Commission report which had been lying on the shelves for ten years and has suddenly been resurrected. The decision of government has led to a virtual shake-up of the country in the shape of demonstrations, protests, bandhs, and agonising loss of life and property. From COMMON CAUSE we have filed a comprehensive writ petition before the Supreme Court. This writ petition, alongwith others which have been filed, will come up for hearing in November. Meanwhile, in order to enable members to acquaint themselves with the pros and cons of the problem we have reproduced the writ petition in this issue of the periodical.

Another matter of importance, which has been faced by the people at a number of places, is that of strikes resorted to by the lawyers, paralysing the functioning of courts and jeopardising the interests of their clients. We felt it necessary to take this matter to the Supreme Court and have filed a writ petition. This writ petition too we have reproduced in this periodical in order primarily to demonstrate how problems of this nature, affecting large numbers of people, need to be tackled. In connection with this writ petition it may be mentioned that we have since received copy of a resolution passed by the Bar Association of India, which represents the Bars of India as a whole both within as well as outside the country, and which has sought intervention in the case, that the Association "expresses grave concern at the prolonged strike of lawyers in Delhi; as a result of these strikes the litigating public has been subjected to serious hardships; the continuance of such strikes tends to undermine the very basis of judicial system and the administration of justice". This resolution of the Bar Association of India will be of interest to the readers in the context of the writ petition filed by COMMON CAUSE.

In this issue of the periodical we reproduce an excellent write-up on the subject of writing of the WILL. This matter is of obvious interest and importance to everybody. There is no gainsaying the fact that it is a paramount necessity that everybody must write the WILL. Therefore, the guidance provided by this write-up is of inestimable value.

There are various other matters of importance on which information needs to be disseminated to members. Some of these are briefly mentioned below :

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Writ Petition on Reservations

Writ Petition Re: Lawyers' Strikes

On Writing your Will.

All are welcome to reproduce any material from this publication. This publication is not monthly. It presently issues once a quarter. There is no subscription. It goes free to members of COMMON CAUSE. All members are requested to promptly communicate their change of Address.

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WRIT PETITION ON RESERVATIONS

Reservation in jobs under the central government and public sector undertakings, which have been ordered by the Government of India, based on the recommendations of Mandal Commission, have attracted very wide comments and criticism. These have led to wide-spread agitations, demonstrations, bandhs, and destruction of property and lives. These have literally shaken up large areas of the country.

From COMMON CAUSE we have filed a writ petition in the Supreme Court. The grounds taken up in this writ petition primarily concern themselves with the issue whether the orders issued by the Government of India are within the parameters of the Constitution or whether they are violative of specific provisions of the constitution. Some other writ petitions have also been filed in the Supreme Court on the same subject, and some which were filed before certain High Courts have since been transferred to the Supreme Court. Notices have issued to the Government of India, and hearing presently stands fixed for November.

We reproduce our writ petition in the periodical. The purpose of doing this is to demonstrate to the readers that where matters of such importance come up it is necessary to examine ways and means of challenging the orders which are considered to be inappropriate or wrong. Writ petitions can be filed in the High Courts or the Supreme Court. In the High Courts relief is sought under Article 226 of the Constitution and in the Supreme Court under Article 32. The provision of Article 226 of the Constitution is much wider, for enabling various grievances to be ventilated; the provision of Article 32 is for specifically seeking remedy in relation to violation of fundamental rights. It is educative to be acquainted with the general format of a writ petition.

THE WRIT PETITION

IN THE SUPREME COURT OF INDIA AT NEW DELHI CIVIL EXTRAORDINARY JURISDICTION

CIVIL WRIT PETITION NO: _____ OF 1990

IN THE MATTER OF

COMMON CAUSE REGISTERED SOCIETY
THROUGH ITS DIRECTOR H.D. SHOURIE,
OFFICE ADDRESS :
C-381, DEFENCE COLONY, NEW DELHI -110024

UNION OF INDIA
THROUGH THE :

1. SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH BLOCK, SECRETARIAT
NEW DELHI - 110001
2. SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF PERSONNEL,
PUBLIC GRIEVANCES
AND PENSIONS,
NORTH BLOCK, SECRETARIAT
NEW DELHI - 110001

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING FOR ISSUANCE OF A WRIT OF MANDAMUS OR OTHER SUCH APPROPRIATE WRIT, DIRECTION OR ORDER TO THE UNION OF INDIA, SETTING ASIDE THE OFFICE MEMORANDUM NO: 36012/31/90-ESTT (SCT) DATED THE 13TH AUGUST 1990 ISSUED BY THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (DEPARTMENT OF PERSONNEL AND TRAINING), GOVERNMENT OF INDIA, AS BEING VIOLATIVE OF THE PROVISIONS OF THE CONSTITUTION ENshrined IN ARTICLES 14, 15, 16 AND 21 AND BASED ON CRITERIA WHICH ARE CONTRARY TO THE PROVISIONS OF ARTICLE 335 AND 340 OF CONSTITUTION.

To

HON'BLE CHIEF JUSTICE OF THE SUPREME COURT OF INDIA AND HIS COMPANION JUSTICES.

The humble petition of the petitioner above-named.

RESPECTFULLY SHEWETH

1. That the petitioner is a Society registered under the Societies Registration Act, which has taken up various common problems of the people for securing redressal. It has inter alia taken to the courts certain matters of general public interest for seeking redress. Through three Writ Petitions the Petitioner secured judgements from the Hon'ble Supreme Court extending certain pensionary benefits for more than two million Central Government pensioners including restoration of pension commutation, extension of family pension benefits for pre-1964 pensioners and the extension of pension liberalisation measures to pre-1979 pensioners who had remained deprived of these. through a Writ petition in the Hon'ble Supreme Court the Petitioner had taken up problems relating to anomalies and discriminations in the assessment of rateable values for the levy of Property Tax by the Delhi Municipal Corporation which led to the guidelines laid down by the Hon'ble Court. Another Writ petition submitted by the Petitioner relating to the accumulated criminal cases in the courts of the country is at present pending before the Hon'ble Supreme Court. The Petitioner has thus established its locus standi for taking up citizens' causes for seeking redressal.
2. That the respondent No: 2 has issued Office Memorandum No: 36012/31/90-ESTT (SCT) dated 13.8.90 (Annexure A) in which it has inter alia been laid down that effective from 7th August 1990 (a date preceding the date of issue of the communication) there will be reservations in operation in all civil posts and services under the Government of India. These reservations have been directed as follows :-
 - (i) 27% of the vacancies in civil posts and services under the Government of India shall be reserved for SEBC.
 - (ii) The aforesaid reservations shall apply to vacancies to be filled by direct recruitment. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued seperately.
 - (iii) Candidates belonging to SEBC recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.

(iv) The SEBC would comprise in the first phase the castes and communities which are common to both the list in the report of the Mandal Commission and the State Governments' lists. A list of such castes/communities is being issued separately.

(v) The aforesaid reservation shall take effect from 7.8.1990. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these orders.

Similar instructions in respect of public sector undertakings and financial institutions including public sector banks will be issued by the Department of Public Enterprises and Ministry of Finance respectively."

3. This decision of the Government of India has generated series of problems in various parts of the country, evidenced by demonstrations, bandhs, processions, protests and hartals, paralysing normal life in large number of towns and cities and leading to instances of violence and destruction of government property including public buses, railway trains, etc. This decision has caused enormous upheaval, and apprehensions are expressed that the agitations, protests and demonstrations are expected to further intensify in the coming months, causing serious damage to the unity and integrity of the country. It is contended that the root cause of these agitations and protests is the division of the people on caste basis, brought about by the issue of the above-mentioned decision of the Government of India, which is leading to great resentment, and that this decision will lead to perpetration of the castes and totally undo the progress that was gradually being made over the past many decades to remove the shackles of castes from the body politic of the society of the country. Fears are now being expressed that this decision of the Government will in fact tend to tear apart the fabric of Indian society and may even lead to conditions of civil war. Hon'ble Court would surely be in a position to take note of these conditions presently prevailing in the country and the apprehensions that are being expressed.
4. That the above mentioned decision, which has been communicated by Respondent No:2 and for the implementation of which Respondent No: 1 as well as Respondent No: 2 among the various wings and departments of the Government of India are directly responsible, and which has brought about such an upheaval in the country, has in it various elements of arbitrariness and injudiciousness which make it violative of fundamental rights enshrined in the Constitution of India in Articles 14, 15, 16 and 21. This decision being violative of these fundamental rights of the citizens deserves to be set aside and for this the Petitioner has approached this Hon'ble Court with the submission of his petition. The petitioner submits the following grounds among others which are without prejudice to one another :

G R O U N D S

5. That the above mentioned decision of the Union of India communicated vide office Memorandum No: 36012/31/90-ESTT(SCT) dated 13.8.90 (Annexure A) by the Respondent No: 2, as representing the Union of India, which has created such enormous upheaval in various parts of the country during the past weeks and which has caused serious apprehensions of fragmentation of the country into divisions based on castes and sub-castes and seriously affect its integrity, is stated to be based on the recommendations of the Second Backward Classes Commission called the Mandal Commission (hereinafter referred to as Mandal Commission). This commission was constituted in 1978 and gave its report on 19.12.80, the latter date being mentioned in Annexure A. For ten years the recommendations of this Commission remained with the Union of India but no decision was taken to effect its implementation. Reasons for not having given effect to these recommendations for this long period of ten years have not been given by Respondent No: 2 in the communication at Annexure A, and it can only be inferred that its recommendations were not acceptable to the Union of India for implementation all these

years. It has not been made clear by the Respondents as to why all of a sudden these recommendations have been found acceptable and enforceable, and it can only be inferred that there is element of arbitrariness involved in the issue of the decision in Annexure A inevitably involving element of discrimination between various persons who may or may not have been eligible for the benefits accruing in relation to this decision. It would obviously not be relevant in this connection before this Hon'ble Court that the decision has been taken by the present political leadership of the Union of India because a commitment to this effect was embodied in the election manifesto of their party. Merits of the decision and its implementation need to be considered without regard to any commitment made in the election manifesto of a political party.

6. That in the said Annexure A, which embodies the decision, the date of giving effect to this decision has been given 7th August 1990 in the words "the aforesaid reservation shall take effect from 7.8.90". It has not been clarified why this earlier particular date has been decided upon for starting implementation of this decision. If this has reference to any declaration made by a political leader on a date previous to that of the issue of the communication, this would inevitably amount to arbitrariness involving possibility of some persons being discriminated against on account of the decision taking retrospective effect.

Annexure A

7. Following ramifications of the decision communicated in Annexure A need to be particularly taken into account for purposes of determining whether it is in accord with the provisions of the constitution :

(i) The benefits given through this communication are extended to "the socially and educationally backward classes as opined by the (Mandal) Commission". The Mandal Commission was appointed under Article 340 of the Constitution which provides for the appointment of such a Commission to "investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the union or any other state and the conditions under which such grants should be made....." It will be noticed that there is a very clear requirement embodied in this provision of the Constitution. It is that the Commission has to investigate the conditions of "socially and educationally backward classes". In relation to this requirement it is particularly noticeable that the Mandal Commission did not come up with any criteria for categorisation of the socially and educationally backward classes. Instead, they based the approach of identification of the deprived sections only on the criteria of caste.

The Mandal Commission report fails to define the term "class" and assumes this to be synonymous with "caste". "Class" is a socio-economic phenomenon and admits of mobility while "caste" is static and is determined by the factor of birth. It is not unusual to find poor people even amongst upper castes. Similarly, certain individuals belonging to backward castes have worked their way up the social hierarchy to become well off and even affluent. In the assessment of the recommendations of the report of First Backward Class Commission (Kaka Saheb Kalelkar Commission), the Government of India had held that "the caste system was the greatest hindrance in the way of our progress towards an egalitarian society, and the recognition of specified castes as backward may serve to maintain and even perpetuate the existing distinctions on the basis of caste". The basis of approach of the Mandal Commission having been based on "caste" and not "class" for determining the socially and educationally backward elements of the society, its report was obviously not in consonance with the clear provisions of the constitution in Article 340. On this account any decision on the recommendations of this commission would obviously be tantamount to be violative of the Constitution. In

particular, also as the recommendations of Mandal Commission are not in accord with the requirement of Article 340m of the Constitution, and as the above mentioned decision of the Government of India has been based on these recommendations which suffer from this grave shortcomings, the decision communicated by the issue of Annexure A is violative of the fundamental right of citizens enshrined in Article 15 of the constitution as the requirements of sub-clause (4) of Article 15 have not been taken into account in the recommendations made by Mandal Commission. As the recommendations of Mandal Commission suffer from this serious shortcoming, any decision based thereon in respect of directing reservations in the matter of appointments and posts for any particular classes of citizens, under sub-clause (4) of Article 16 would also amount to violation of the fundamental rights of the citizens guaranteed under Article 16 which guarantees equality of opportunity for all citizens in matters relating to employment and appointment to any office under the State. Besides the scope of the fundamental rights guaranteed under Articles 15 and 16, the deprivation of equality of employment opportunities to the classes of citizens who are adversely affected by the issue of the communication at Annexure A also affects the quality of life of those citizens and consequently this is also violative of the fundamental right guaranteed to every citizen under Article 21 of the constitution. In sum, therefore, the petitioner submits that the decision of the union of India communicated by virtue of the office Memorandum at Annexure A, is violative of the fundamental rights enshrined in Articles 14, 15, 16, and 21 of the constitution and the approach of Mandal Commission in dealing with this matter entrusted to it was contrary to the requirements of Article 340 of the constitution.

- (ii) There is a lot of material which establishes that the Mandal Commission did not proceed on any scientific lines for defining the criteria for determining socially and educationally backward classes. Instead, the Commission appears to have proceeded on personal impressions or even imagination. This is borne out from what has appeared in the press in the shape of interview by an official of the Commission who was head of its Technical Committee. He has expressed that the Commission report is without any scientific basis and that it has exaggerated the number of "Other Backward Classes" (OBCS). Caste, according to this official of the commission, was not a satisfactory measure of backwardness. He has expressed that weightages without any scientific basis were applied for various criteria of backwardness and that the social scientists attached to the commission were not even shown the data stated to have been collected by it. The data, according to this official of the commission, was not even forthcoming from the Home Ministry of the Government of India to which the report had been submitted by the commission. Other two technical officials of the commission are likewise reported to have disassociated themselves from the conclusions of the commission.
- (iii) The capricious, arbitrary and prejudicial approach of the commission to this important problem has got further exemplified by a statement which is reported to have been made by the Chief Minister of Orissa who is stated to have pointed out to the Prime Minister in a letter its shortcomings. The Chief Minister has expressed his disinclination to accept the recommendations of Mandal Commission report and to make his own decisions about economic criterion being one of the main considerations for providing reservation for the backward classes. It has been reported that in relation to the State of Orissa twenty castes which were enumerated among the scheduled caste and scheduled tribes have been included in the list of other Backward Classes prepared by the Mandal Commission. The Chief Minister has pointed out that the list of 224 backward classes for Orissa in Mandal Commission report is full of errors. Some of the names included in the list by Mandal Commission amongst backward classes are state to be actually surnames used by upper castes, and certain castes which are affluent sections of the society have been included in the list and their population is stated to be quite large. West Bengal government too has said that they are not able to even trace some of the castes the Commission has listed. In the case of certain other states including Uttar Pradesh and Bihar

the Commission has listed certain castes as backward whereas they are in fact stated to be dominant and well off.

- (iv) Whereas the recommendations of Mandal Commission are not in accord with the requirements of Article 340 it is observable that the report of Mandal Commission suffers from various other deficiencies which affect the appropriateness and authenticity of its recommendations and basing thereon such an important decision as that of effecting reservations, as has been done by the Union of India, can lead to very adverse and service conclusions. The report itself inter alia has laid down as a criterion that "candidates belonging to Other Backward Classes (OBCs) recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27%". In effect, this implies that only those who do not qualify for the job on merit are to be considered for filling the reservation quota. The Mandal Commission has gone to the extent of recommending that the reservation of the quota for the OBCs should apply not only at the time of entrance to a service but also to promotion at all levels. Furthermore, it was recommended by the Commission that if sufficient number of candidates do not become available in a particular year to fill the quota, the unfilled margin should be carried forward for three years. Besides these recommendations Mandal Commission had also made other important sweeping recommendations, such as, for constituting separate network of financial institutions, separate network of technical institutions, and separate Backward Classes Development Corporation as also separate Ministries at the Centre and in the States for meeting the requirements of OBCs. These recommendations assume obvious relevance in relation to the present petition because the reason put forth by the political leadership of the present Government of India is that the decision regarding reservations, as communicated in Annexure A, has been made on the basis of the manifesto of their political party. In this context it is observable that the mentioned manifesto of the political party contained the commitment that "recommendations (obviously meaning all recommendations) of the Mandal Commission on scheduled castes and backward classed would be implemented expeditiously" If the decision of Annexure A is based on the fulfilment of the commitment made in the manifesto it can be envisaged that other recommendations made by the Mandal Commission can also feature in the implementation by the Government of India under the directions of present leadership. Consequence of implementation of one recommendation out of these, namely, relating to reservations of employment opportunities, in the context of the above mentioned recommendation relating to the disregard of merit as the basis of recruitment, can obviously have disastrous consequences for the governance of the country. This would be totally contrary to the specific provision incorporated in Article 335 of the constitution which enjoins that even in relation to the recruitment to jobs reserved for scheduled castes and scheduled tribes, these must be effected in such manner that it is "consistent with the maintenance of efficiency of administration".
- (v) It is on the basis of Mandal Commission recommendations that in the decision communicated vide Annexure A the percentage of 27 has been adopted for reservation of employment opportunities for the socially and educationally backward classes. The commission was aware that there was no caste-wise enumeration of India's population since 1931 i.e. about 16 years prior to the partition of the country. (It will be a great disaster for the country if caste enumeration, which was given up long ago, is adopted again for the enumerations in the next census; in this matter the country will have gone back centuries merely because caste as the basis of determining certain privileges is now being adopted, and demand for continuation on this basis will be perpetuated.)

The Commission has merely proceeded on the assumption that relative rates of growth of population of different castes of Hindus have been identical, and has thus concluded that the percentage of backward castes, scheduled castes and scheduled tribes to the total Hindu population would be the same as they were in 1931.

The Mandal Commission went to the extent of even identifying the OBCs also among other religions which pride themselves in not having any castes among them.

On the basis of assumed percentage of OBCs among Hindus being 52% Mandal Commission went even to the extent that there would be the same percentage of OBCs among the non-Hindus. And on the basis of these assumptions the Commission has assumed that 52% of the total population of the country comprised OBCs. Obviously, such general and crude assumptions of percentages of populations, deriving the basis from 1931 census which took place nearly two decades before the partition of the country, cannot be taken to constitute any satisfactory criterion for determining such important matters as determining the percentages of employment opportunities and other special measures and privileges that need to be reserved for certain sections of the society, depriving the others left out of these percentages from such employment opportunities etc.

- (vi) Another very important matter before the Mandal Commission obviously was to specify which castes in each State were backward. Reliance in these matters was placed by the Commission on unreliable, obsolete and incomprehensible data. The Commission itself admits that as many as eight states have notified lists of OBCs without ordering a formal enquiry into their conditions. These include : Haryana, Uttar Pradesh, Assam, Rajasthan and Orissa. The Commission sent out questionnaire for determining the backward castes but it is admitted by the Commission that despite repeated reminders information was not furnished to it and wherever replies were received they were inadequate. The Commission itself admitted that whatever replies were received they were inadequate. The Commission itself admitted that whatever information was supplied to it by some States was too sketchy for any meaningful inference which may be valid for the country as a whole. Prior to the setting up of Mandal Commission similar task had been taken up by the Kaka Kalelkar Commission. That Commission had also tried to identify backward castes. The number of castes enumerated by Kaka Kalelkar Commission differ very materially from number of castes identified by the State Governments. Mandal Commission noted this disparity between castes enumerated by Kaka Kalelkar Commission and the State Governments (namely, 124 versus 95 in Andhra Pradesh; 44 versus 119 in Assam; 88 versus 64 in Haryana; 27 versus 48 in Himachal; 64 versus 181 in Karnataka; 48 versus 76 in Kerala; 360 versus 196 in Maharashtra; 148 versus 111 in Orissa; 88 versus 62 in Punjab; 156 versus 124 in Tamil Nadu; 120 versus 56 in Uttar Pradesh). Mandal Commission did not succeed in collecting any reliable information from the states about the enumeration and identification of castes. This commission ordered a field survey for identifying the backward castes. This survey was admittedly a rough and ready tool for evolving a set of simple criteria in order to identify social and educational backwardness. The Commission evolved certain criteria relating to social, educational and economic indicators for the purpose. Certain totally arbitrary weightages were given to the various criteria, and these were added to by the Commission without any analytical base and merely on broad assumptions. The Commission itself admitted that the result of survey, based on such criteria, led to certain conclusions which were not borne out from social reality. Thereupon, the survey results were improved upon on personal knowledge gained merely through tours in the country. It is on the basis of such assumptions, surveys and conjectures etc that the lists of OBCs were prepared by the Commission. They added up to the figure 3743. And this enumeration, based on such inadequacies and adhoc findings, constitutes the basis of

such important matter as the prescription of privileges for claiming reservations of opportunities of employment in the posts and services of the states, to the detriment of the interests of those who remain out of such enumeration.

- (vii) Composition of Mandal Commission, the recommendations of which have assumed such enormously important issue for the entire country, is another matter which needs special mention. All members of this commission were members of the "Other Backward Classes" with the exception of one who was a scheduled caste. This scheduled caste member Mr. L.R. Naik recorded a note of dissent on the recommendations of the Commission. This note is of great importance in relation to the action taken by the Government of India in accepting the recommendations of this Commission. Mr. Naik recorded: "I hold very sincerely that castes/classes mentioned in the end list, each having homogeneous and cohesive characteristics, are not at the same degree or level of social and educational backwardness and I fear that the safeguards recommended for their advancement will not percolate to less fortunate sections among them and the constitutional objectives proclaiming an establishment of an egalitarian society will remain a myth". In its tours to the States the Commission and its sub-committees used to also coopt only members of Other Backward Classes. Such Composition of the Commission obviously excludes the possibility of its being objective in either analysing the problems or to formulate its conclusions and recommendations. It is singularly unfortunate that the Government of India has based the above mentioned decision of Annexure A on recommendations which are emanated from such a Commission, the composition of which was so heavily loaded in giving a perspective which was suitable only to the benefits and privileges of backward classes and could be totally disregardful of the wider ramifications and repercussions of such recommendations on the social fabric of the entire society.
- (viii) It is of paramount importance that reservations for certain castes among Hindus, of the nature decided upon as in Annexure A on the recommendations of the Mandal Commission, be considered in relation to their impact also on other communities in the country. This matter was particularly highlighted by Kaka Saheb Kalelkar, Chairman of First Backward Classes Commission, in the note with which he forwarded the recommendations of his commission to the Government of India. He wrote: "I was prepared to recommend to government that all special help should be given only to the backward classes and even the poor and the deserving among the upper classes may be safely kept out from the benefit of this special help. My eyes were however opened to the dangers of suggesting remedies on the caste basis when I discovered that it is going to have a most unhealthy effect on the Muslims and Christian section of the nation". In this context it will be of great interest that the Muslims and Christians have also now started raising demands for reservations of employment opportunities for them. This is indicative of the serious dismemberment and vivisection of the body politic of the country that is being brought about by acceptance of the recommendations of Mandal Commission. On behalf of Muslims voices have already started being raised by certain sections asking for universal reservations including quotas and reservations for all religious minorities besides the high castes. It is being claimed that the reservations should be so tuned as to benefit the backward sections of each of the communities. Demand has been made that quota of six percent should be instituted for the Muslim community.
- (ix) There are various pointers to the fact that the decision incorporated in the above mentioned Office Memorandum (Annexure A), and announced earlier by about one week, was taken in haste, ostensibly because of certain political compulsions and that it is not based on deep consideration of the repercussions it could involve in relation to the unity and integrity of the

country and the interest of maintenance of its social fabric. In this context it is observable that when the announcement of this decision started causing serious unrest in the country, evidenced by demonstrations, protests, processions and instances of violence, the Prime Minister made a declaration of an additional reservation of five to ten percent on the basis of economic backwardness. While, of course, reiterating that there will be no dilution of the decision already taken on the basis of Mandal Commission recommendations.

This was done ostensibly to assuage the feelings aroused by the decision to base the reservations only on the criteria of castes which had been adopted on the basis of recommendations of the Mandal Commission report. At a later stage the Prime Minister has offered also to have the reservations of five percent even for poorer sections among the so called forward classes. He is further reported to have stated, again ostensibly for assuaging the feelings, that the States are not under obligation to implement the decision communicated by the Government of India based on the recommendations of Mandal Commission, and that decision of the Government of India does not apply to admissions to the educational institutions. When the protests, demonstrations and bandhs further accentuated with the involvement of large numbers of students in various parts of the country, and the conditions worsened to an extent that Administration felt compelled to order the closure of schools and colleges for a period of 30 days in the capital of the country, the Prime Minister made statement that he was prepared to have dialogue with the students. There have been comments and criticisms by various political parties that recommendations of Mandal Commission report should have been first discussed with the parties and various interests before any decision on them was taken, particularly when the report had remained on the shelves of the government for ten long years. Very unconvincing statements were made on behalf of the Government of India, a senior Minister claiming that there was no reason to be upset on the enforcement of reservation of 27% on Mandal Commission report because, he claimed, that the employment opportunities in Central Government services amounted to only one percent of the total employment in the country and that at most the reservation amounted to only 27% of 1%. This surmise has been demolished in the Press wherein it is claimed that the services of the government including public sector and banks were 74% of the total employment in the organised sector and that the claim of its being only one percent is total misrepresentation of facts. Unfortunate statements are reported to have been made by two Ministers of the Central Government who are claimed to have thrown challenges that the backward classes would take this matter to the streets. These various incidents are indicative of the explosive situation created in the country by the announcement of the decision embodied in Annexure A and of inescapable conclusion that this decision has been taken in haste and on account of some political compulsions of the party in power in the Government of India.

- (x) Another very important matter arising from the present upheaval from the recommendations of Mandal Commission relates to a statement recently made in the Rajya Sabha by the Prime Minister wherein he is reported to have inter alia remarked that unnecessary bogey has been created in the agitation against this decision of the government that merit would suffer if this reservation policy is implemented. He is stated to have pointed out that Tamil Nadu has 69% reservation and Karnataka has 74% reservation but their administration, according to his statement, is no less efficient than the others and in fact the administrative machinery in these States is more efficient than in other states. It is to be noted in this connection that this Hon'ble Court has, in a well known judgement, laid down that the reservations should not exceed 50%. It would be desirable to find out whether the Government of India has instituted any enquiry as to how these States have been allowed to exceed the prescribed limit of 50% and whether the government would report the circumstances to this Hon'ble Court for appropriate action if default of its orders has been committed.

8. That the consideration of the above material inevitably leads to the conclusion that mandal Commission report, which forms the basis of the decision communicated vide Annexure A and which orders reservations of far reaching nature affecting the future and living conditions of vast number of people all over the country, has numerous serious deficiencies and shortcomings. It is based totally on unscientifically devised and conducted survey, unreliable data which has not been made available, impressions ostensibly buttressed by imagination, slipshod methodology adopted by persons who were obviously obsessed by certain pre-judged conclusions and who disregarded expert and scientific advice; its conclusions and recommendations could only therefore be arbitrary, motivated by considerations other than objectivity. It was, to all appearances, on these considerations that for ten long years the top political leadership in the country, consisting of eminent public men and belonging to different walks of life and to different political parties, did not take or advocate any action on these recommendations and the report lay on the shelves of the Government of India. Sudden acceptance of the recommendations of this report, and basing a very important administrative decision thereon, which inevitably involves element of discrimination against those who stand to suffer on account of reservations of employment opportunities for designated elements of the population, in the context particularly of the above mentioned positive requirements embodied in the Constitution and specific provisions made in the fundamental rights guaranteed to the citizens, obviously make the decision violative of these various provisions of the Constitution. While, thus, the Petitioner submits the present Petition to the Hon'ble Court for striking down the decision communicated vide Annexure A, the petitioner seeks indulgence and permission of the Hon'ble Court to submit any further grounds which may come to notice in relation to this important decision and also submit substance of previous decisions of this Hon'ble Court and other Courts which may have relevance to this important problem. The Petitioner also wishes to invite attention to following two important pronouncements, copies of which have been placed at Annexures B and C. The pronouncement reproduced in Annexure B is of Pt. Nehru, the pre-eminent architect of freedom of the country, and the pronouncement at Annexure C is of the well known jurist and eminent personality Mr. N.A. Palkhivala. These pronouncements have obvious substance which has relationship to the matter submitted in this Petition.
9. That the Petitioner has not filed any such or similar Petition either in this Hon'ble Court or in any High Court.

PRAYERS

10. Basing his submissions on these grounds the Petitioner respectfully says that this Hon'ble Court may kindly be pleased to :
- (i) issue a writ of mandamus or any other appropriate writ, order or direction, quashing the decision of the Union of India, represented by the Respondents Nos: 1 and 2, embodied in the Office Memorandum No: 36012/31/90-ESTT(SCT) DATED 13th August 1990 (Annexure A) as being violative of the fundamental rights enshrined in Articles 14, 15, 16 and 21 of the Constitution of India;
 - (ii) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Union of India represented by the Respondents Nos: 1 and 2, to constitute another properly composed Commission in terms of Article 340 of the Constitution to investigate the conditions of socially and educationally backward classes in the various states and Union Territories of India and the difficulties under which they labour and to make recommendations based on scientifically collected and analysed data as to the steps that should be taken by the Union Government or any State and Union territory and remove such difficulties and improve their conditions, and as to grants that should be made for the purpose by the Union Government or

any State or Union Territory and the conditions subject to which grants should be made. The Commission so appointed should be provided the guidelines about the procedure that should be followed by it keeping in view its recommendations should be such that they keep in view the basic requirements of maintenance of the unity and integrity of the country, not to accentuate the problems of communities and castes, and are within overall objectives and provisions of the Constitution of the country;

- (iii) issue any other appropriate order or direction to hear the present Writ petition expeditiously due to the obvious urgency of the matter; and
- (iv) pass such other and further order or orders or grant such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

DRAWN AND FILED BY

H.D. SHOURIE
PETITIONER

Place : New Delhi
Date : 3rd September, 1990.

DIRECTOR, COMMON CAUSE
A Registered Society

(In Person)

No:36012/31/90-Estt(SCT) Annexure 'A'
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)

New Delhi, the 13th August, 1990

OFFICE MEMORANDUM

Subject : Recommendations of the Second backward Classes Commission (Mandal Report) - Reservation for socially and Educationally Backward Classes in services under the Government of India.

In a multiple undulating society like ours, early achievement of the objective of social justice as enshrined in the Constitution is a must. The second backward classes commission called the Mandal Commission was established by the then Government with this purpose in view, which submitted its report to the Government of India on 31.12.1980.

Government have carefully considered the report and the recommendations of the Commission in

the present context regarding the benefits to be extended to the socially and educationally backward classes as opined by the Commission and are of the clear view that at the outset certain weightage has to be provided to such classes in the services of the Union and their Public Undertakings. Accordingly orders are issued as follows:-

- (i) 27% of the vacancies in civil posts and services under the Government of India shall be reserved for SEBC.
- (ii) The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.
- (iii) Candidates belonging to SEBC recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.
- (iv) The SEBC would comprise in the first phase the castes and communities which are common to both the list in the report of the Mandal Commission and the State Governments' lists. A list of such castes/communities is being issued separately.
- (v) The aforesaid reservation shall take effect from 7.8.90. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these orders.

Similar instructions in respect of public sector undertakings and financial institutions including public sector banks will be issued by the Department of Public Enterprises and Ministry of Finance respectively.

(Smt. Krishna Singh)
Joint Secretary to the Govt. of India

To

All Ministries/Departments of Govt. of India

Copy to

1. Department of Public Enterprises, New Delhi.
2. Ministry of Finance (Banking & Insurance Divisions) New Delhi.

It is requested that similar instructions may be issued in respect of public sector undertakings, public sector banks and insurance corporations.

WRIT PETITION RE: LAWYERS' STRIKES

During the last couple of years there have been quite a few instances of lawyers going on strike at various places in the country. This is very unfortunate indeed from the viewpoint of the interests of clients as well as of the administration of justice. Lawyers owe a duty to the litigants who engage and pay them; whatever their own problems may be, either as individuals or collectively. They need to consider whether the interests of clients can be disregarded by them as inevitably happens when they resort to strike. In Delhi a couple of years ago there was a long lawyers' strike; even presently there are strikes taking place in various courts of Delhi.

From COMMON CAUSE we have taken this matter to the Supreme Court, raising this as an all-India issue and citing Delhi as an illustration. In this writ petition we have cited as Respondents the Union of India, Attorney General of India, Bar Council of India, Delhi High Court Bar Association and two other local bar associations of Delhi. This writ petition will be of interest to the readers, particularly also being indicative of the action that can be initiated on problems of this nature which affect people in general. The writ petition has been admitted and notices have been issued to the Respondents. The petition is fixed for hearing in October.

IN THE SUPREME COURT OF INDIA AT NEW DELHI

CIVIL EXTRAORDINARY JURISDICTION

CIVIL WRIT PETITION NO: _____ OF 1990

IN THE MATTER OF

COMMON CAUSE
a registered Society,
through its Director
H.D. Shourie
Office Address:
C-381, Defence Colony
New Delhi - 110024

VERSUS

1. Union of India,
through the Secretary
to the Govt of India,
Ministry of Law & Justice,
Shastri Bhawan
Dr Rajendra Prasad Marg
New Delhi - 110 001
2. Attorney General of India
Mr Soli Sorabjee
c/o The Supreme Court of India
Tilak Marg, New Delhi - 110001.

3. Bar Council of India,
through its President,
AB/2, Lal Bahadur Shastri Marg
(Facing Supreme Court Building)
New Delhi - 110 001
4. High Court Bar Association,
through its President,
c/o High Court of Delhi
Shershah Road
New Delhi - 110003
5. Delhi Bar Association,
through its President,
c/o Teas Hazari Courts
Delhi - 110054
6. New Delhi Bar Association,
through its President,
Patiala House
New Delhi - 110001

SYNOPSIS

There have of late been manifestations of agitations by lawyers in the form of strikes in different courts of the country. In these strikes the work of courts gets paralysed and the litigants suffer extreme difficulties, frustrations and agony on account of their cases being not taken up in the courts. Due to enormous accumulation of arrears in courts the dates of hearing come after many long months, and if on account of a strike by the lawyers the cases are adjourned for dates after more months the agony and difficulties of the litigants can be imagined.

Lawyers owe a duty to the clients. They are also officers of the courts. They have special status in the society. The strikes by lawyers tends to lower the dignity of courts and cause the administration of justice to be seriously affected.

The Advocates Act of 1961 places certain responsibilities on the Union of India and the Bar Council of India for framing rules prescribing inter alia the standards of professional conduct to be observed by the advocates. It is of fundamental importance that the Union of India and the Bar Council of India should lay down positive guidelines and instructions in regard to the standard of professional conduct for strict observance by the lawyers in relation to strikes resorted to by them. In the absence of such instruction and guidelines, regulating the conduct of lawyers in behalf of such strikes, the fundamental rights of the citizens inevitably tend to get affected by not being able to secure the help of lawyers for being able to find access to courts and to look for speedy justice.

In this Petition the Union of India and the Bar Council of India have been impleaded for the purpose of ensuring that the omission to frame requisite guidelines and instructions do not continue to jeopardise the fundamental rights of the citizens in regard to the above matters. High Court of Delhi and the High Court Bar Association have been impleaded in this Petition for enabling this Hon'ble Court to examine, as illustration, the matters which have led to the lawyers' strike at Delhi during the past few months and the present continuing lawyers' strike in Tees Hazari District Courts. The Attorney General of India has been impleaded as he is the chief representative of the legal profession in the country.

The Petitioner begs to refer herein to the provisions of Section 32, Section 49 and Section 49A of the Advocates Act of 1961.

PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING FOR INSURANCE OF A WRIT OF MANDAMUS OR OTHER SUCH APPROPRIATE WRIT, DIRECTION OR ORDER INTER ALIA TO THE UNION OF INDIA AND THE BAR COUNCIL OF INDIA, ESTABLISHED UNDER THE ADVOCATES ACT OF 1961, TO PRESCRIBE SPECIFIC GUIDELINES AND INSTRUCTIONS AMONG STANDARDS OF PROFESSIONAL CONDUCT OF THE RULES FOR STRICT OBSERVANCE BY THE LAWYERS IN RELATION TO STRIKES RESORTED TO BY THEM.

To

HONBLE CHIEF JUSTICE OF THE SUPREME COURT OF INDIA AND HIS COMPANION JUSTICES

The humble Petition of the Petitioner above-named.

RESPECTFULLY SHEWETH

That this public interest organisation COMMON CAUSE has been feeling greatly concerned about the tendency that has of late manifested itself among the members of the Bar to resort to the measure of strike, paralysing the work of courts, severely prejudicing the interests of their clients, and in general generating an atmosphere detrimental to the interests of administration of justice in the country. Instances of the strikes resorted to by the lawyers at various places in the country have featured in the newspapers from time to time. In this Petition it is not the intention of the Petitioner to deal with the problems relating to any particular strike at a particular place; the objective is to submit before this Hon'ble Court, which is the repository of the control over and source of administration of justice and functioning of the courts in the country, to seek intervention of this Hon'ble Court to prescribe measures which need to be taken to obviate the distortions of administration of justice that inevitably result by the lawyers resorting to strikes. The instance of strike which is readily available at present in this regard is that of the strike that has been going on for three months in Tees Hazari District Courts of Delhi, where according to latest reports, the association of Tees Hazari lawyers is reported to have decided to have decided to further intensify the strike. It is stated that this association has decided that even bail matters will not be taken up by the lawyers, no lawyer would be allowed to enter the court premises, vigilance committees would be set up to see that lawyer members of the association cooperate in the intensification of the strike, and that all decisions of the General Body of the Bar are obeyed. It is reported that besides the civil and criminal courts this strike would henceforth be observed also in the labour courts, consumer protection courts, tribunals, sales tax appellate tribunal and revenue courts. The association is reported to have gone to the extent even of demanding that no miscellaneous work, typing work and stay matters would be taken up and that the oath commissioners and stamp vendors in the court area would also not be allowed to work. Instances of lawyers strikes presently going on at certain places and of the strikes which have come about in the recent past will be known to the Bar Council of India.

That instances of lawyers strikes, exemplified by the continuing present strike of Tees Hazari lawyers and the reported intensification of the strike, need to be considered in the context of extreme difficulties that these cause to the people in general and the litigants in particular. These strikes tend to lower the dignity and effectiveness of the courts in the public mind. Already and judicial delays and expense are causing extreme hardships to general public and the impression has gained currency all over the country that the courts can no longer be depended upon for expeditious justice. While accumulation of cases in courts and the resultant delays are causing serious frustrations to the parties and persons seeking justice, the lawyers' strikes are proving further stumbling blocks to the administration of justice and add to the agonies of the litigants. It is well known that because of the present accumulated arrears of cases in courts hearings are often adjourned and long dates of many months are often given by the courts because of their normal heavy cause lists. When the date matures for hearing after waiting for months, if the date is again frustrated by a lawyers' strike, the agony and exasperation of a litigant can well be imagined. Thousands of litigants, including widows and old persons such as in tenant-landlord's disputes and in various other cases, suffer indescribable misery on this account, being disabled from seeking alternative remedy for redressal of their problems.

That the litigants are made to suffer on account of lawyers' strikes without in any way being responsible for the circumstances which eventuated these strikes. Two years ago the long strike by the lawyers of Delhi courts resulted from alleged handcuffing of a lawyer by the police; presently the strike by lawyers of Tees Hazari Courts is reported to have been caused to pressing their demand for raising the pecuniary limits of the district courts vis-a-vis the limits presently operating in the High Court. It is most unfortunate indeed that such circumstances arise which necessitate the resort to strikes by lawyers for redressal of their demands and grievances, but the matter of fundamental importance is that these strikes lead to frustrations, exasperations and hardships to the litigants and tend to lower the dignity of courts and effectiveness of administration of justice in the country.

That members of the legal profession occupy a very high status and this carries with it high responsibilities. From members of the Bar the people expect a high standard of conduct, and it is a matter of serious concern that resorts to strikes by lawyers tend to bring them down in public esteem and regard. It is imperative that it should be acknowledged by the lawyers that besides their personal interests or interests and problems of their profession, they owe a duty to the clients whose cases they accept. They are, moreover, officers of the courts; on them lies the duty and responsibility of maintaining the dignity, reputation and decorum of the courts and of the administration of justice. If by their actions they prejudicially affect the interests of their clients, and also tend to lower the dignity of the courts, such actions would be tantamount to misconduct. It is not the question of enforcement of any legal rights but the matter is one of general rules of professional conduct accepted by and applied to the specially privileged class of persons who are charged with the responsibility of maintaining the status and dignity of the courts as officers of the courts.

That the Advocates Act of 1961 lays down the rules governing the conduct of lawyers and the procedures to deal with misconduct on the part of individual members of the Bars and the punishments for proven misconduct. This Act prescribes the responsibility which devolves on the Bar Council of India and the State Bar Councils in the work of enforcement of such discipline. Eventual authority vests in this Hon'ble Court in dealing with any appeals which may be preferred against the decisions of the Bar Council of India in the matter of enforcing discipline among members of the Bars. This Hon'ble Court, thus, has direct interest in the maintenance of discipline among members of the Bars, besides the responsibility it shoulders as the highest court for ensuring the standards of administration of justice in the country.

That the Advocates Act specifically provides in Section 33 that advocates alone have the right to practice in any court or before any authority or persons. It is, however, provided in Section 32 that the Court or authority or person has power to permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case. While it is essential that the advocates enrolled under this Act, and subject to the discipline imposed by the Act, alone should be entitled to appear in courts, it has become essential, in the circumstances of strikes which are being resorted to by the lawyers for matters for which their clients are not in any way responsible, to request that the courts should make it a point to freely encourage the clients to appear themselves to conduct their cases and freely allow the appearance of other persons to appear on behalf of the parties where they may desire provided that such persons are not regular practitioners in courts.

That in the interest of maintenance of dignity of courts and for an effective image of the administration of justice, this Hon'ble Court should, in consultation with the Attorney General of India and the Bar Council of India, prescribe specific norms and code to govern the conduct of lawyers in raising the issues concerning their common interests and welfare. There is obvious need of prescribing definite guidelines about what types of agitation they should not resort to and how the interests of the clients, from whom they have charged fees, should not be allowed to be jeopardised in their pursuing the joint and common interests. It also needs to be prescribed that if such a code and the guidelines are disregarded by any individual lawyers, including leaders among the agitators for joint agitations and strikes, such defiance and non-observance of the code would amount to misconduct as defined in the Advocates Act and the State Bar Councils as well as the Bar Council of India would be competent to take action prescribed under the Act. For the purposes of ensuring the observances of such a code and the guidelines the State Bar Councils and the Bar Council of India should constitute special committees which could take cognizance of such non-observance and defiance of codes for purposes of initiating action.

GROUNDS

That the Petitioner submits the following grounds among others which are without prejudice to one another.

During the past few years instances of resort to strikes by lawyers at various places in the country have become quite common. The lawyer's strike of some months at Delhi two years ago, arising from the alleged handcuffing of a lawyer by the police, and the present continuing strike by lawyers of Tees Hazari district courts on the matter of fixing pecuniary limits of cases to be dealt with in the Delhi High Court and the district courts, have caused great concern to the general public. Lawyers occupy a special high status in the society and this carries with it high responsibilities. They are officers of the courts and it is their responsibility to uphold the dignity of courts. Strikes by lawyers, cause extreme exasperations and frustrations to the clients who have paid fees to them and have entrusted their cases to them for being pursued in courts. Already the cases in courts are subjects to enormous delays because of accumulated arrears, which inevitably necessitate long cause lists in all the courts, and dates of hearing in a large number of cases come after waiting for many months. If the date of hearing is thus jeopardised on account of the strike of the lawyers, the agony and misery of the litigants can well be imagined, because this will eventuate in another wait of many months before the next date of hearing will approach. Lawyers owe a duty to the clients who engage them and also towards the courts whose dignity it is their responsibility to maintain. Their resort to strikes for purposes which may be of their common interest and concern tend to adversely affect the interests of the clients and the dignity of the courts.

That it is the fundamental right of a citizen to have access to justice and to secure speedy justice which is a part of the fundamental right to the quality of life. Lawyers constitute important part of the process of securing access to justice and to aim at securing speedy justice. Resort to strikes by the lawyers of any court or courts, if they are not restricted or prevented by the Union of India and the Bar Council of India as well as by the exercise of over-all authority of administration of justice by this Hon'ble Court or by the High Courts, can tend to seriously jeopardise the exercise of fundamental rights which accrue to the citizens under various Articles of the Constitution including particularly Article 21 as well as Article 20, 22 and 23, because such strikes deprive the citizens of the opportunity of benefitting from the help of lawyers in pursuing their cases before any authority or before the courts.

That under Sections 49 and 49A of the Advocates Act of 1961 responsibility has been placed on the Bar Council of India as well as the Central Government to frame rules for meeting various requirements of this statute and, in particular, relating to the prescription of standards of professional conduct of the advocates as provided for in Rule (c) of Section 49 of the Act. The Union of India and the Bar Council of India do not appear to have formulated any specific rules to govern the standards of professional conduct of the lawyers in relation to the resort to strikes, and in the absence of such rules the possibility of initiating action for misconduct, as provided for in this statute, is obviated. It is submitted that this Hon'ble Court, which is the repository and fountain-head of the administration of justice in the country, should direct the Union of India and the Bar Council of India to lay down specific guidelines and instructions, in relation to the standards of professional conduct of the lawyers, which would relate to the resort to strike by them. The Bar Council of India and the State Bar Councils might also consider the setting up of special committees which should examine any breach of the norms and the code which would be laid down in regard to such conduct, and initiate disciplinary action as contemplated in the Advocates Act against the individuals who are responsible for breaches of the code and norms of conduct.

That it is also submitted that this Hon'ble Court should issue general directions that in the event of a strike by the lawyers at any place the courts should freely resort to the measure of permitting non-practising individuals to represent persons whose cases may be pending in courts and for whom the lawyers may not be able to attend on account of the strike. Such permission can be accorded under Section 33 of the Advocates Act. The clients should also be encouraged by the courts and for whom the lawyers may not be able to attend on account of the strike. Such permission can be accorded under Section 33 of the Advocates Act. The clients should also be encouraged by the courts to personally come forth before them and make their submissions.

That in this Petition the Petitioner has impleaded the Union of India through the Secretary of Ministry of Law & Justice because under Section 49A of the Advocates Act of 1961 the Central Government has been authorised to make rules including Rule (c) of Section 49 of the Act prescribing the standards of professional conduct of the advocate. The Attorney General of India has been impleaded as he is the chief representative of the legal profession in the country and would obviously be concerned about the matter of inconvenience, exasperations and misery which are caused to the clients who entrust their cases to the lawyers who resort to strikes. The Bar Council of India has been impleaded because the responsibility has been placed on it under the Advocates Act to frame rules on various subjects prescribed in Section 49 of the Act including the Rule (c) regarding the standards of professional conduct. The High Court of Delhi through its Registrar, alongwith the High Court Bar Association of Delhi High Court, Delhi Bar Association, and New Delhi Bar Association have been impleaded for enabling this Hon'ble Court to examine the problems of strikes which have come about in Delhi in the recent months and about the strike which is now going on in Tees Hazari district courts, as illustrations of the general problem of the inconvenience and difficulties caused to the clients by lawyers' strike.

PRAYERS

It is, therefore, respectfully prayed that this Hon'ble Court may kindly be pleased to :

- (i) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Union of India and the Bar Council of India to lay down clear and specific guidelines and instructions among standards of professional conduct, in the rules framed under the Advocates Act of 1961, for strict observance by the lawyers in relation to strikes resorted to by them;
- (ii) issue a writ of mandamus or any other appropriate writ, order or direction, directing the issuance of general instructions by this Hon'ble Court to all High Courts and District Courts in the country that in the event of any strike by the lawyers in any courts the presiding officer of the court or of the authority before whom any case has to be taken up for hearing, should under Section 32 of the Advocates Act of 1961 freely allow persons who are non-practising professional to appear for any clients who may want to pursue their cases in the absence of their lawyers due to strike resorted to by them;
- (iii) issue any appropriate order or direction to hear the present Writ Petition expeditiously due to obvious urgency of the matter; and
- (iv) pass such other and further order or orders or grant such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Drawn & Filed by

(H.D. SHOURIE)
Director, COMMON CAUSE
A Registered Society
(In Person)

Place: New Delhi
Dated: 1.8.1990

ON WRITING YOUR WILL

Long ago we had published a short write-up on "How to Write Your Will". Even after years some enquiries occasionally come to us in connection with it.

The subject is of obvious importance. It is necessary that everybody should write a will. On this subject Mr B.P. Mital of Vasant Vihar, New Delhi, has put together excellent material. We have considered it appropriate to reproduce this material in the periodical. Some details, which were considered unnecessary for the immediate purpose have been deleted. If somebody is interested in securing copy of the full pamphlet, which is entitled TESTAMENTARY SUCCESSION (GUIDELINES) he is welcome to write for it to the address of Mr B.P. Mital, Government Servents Cooperative House Building Society Limited, Vasant Vihar, New Delhi-110057.

GUIDELINES

The purpose of this note is to give in brief, the basic legal requirements and procedures for writing a Will for the benefit of property owners to be of help to them in a smooth and free-from-dispute devolution of one's property after death. It does not purport to give an authoritative and comprehensive discussion of the law for which study of the legal treatises on the subject will have to be depended upon.

1. Succession laws :

There are two statutes governing succession to property after one's death, viz, (1) Indian Succession Act, 1925, and (2) Hindu Succession Act, 1956. Since the 17th June, 1956, on which date the Hindu Succession Act, 1956, came into force, the succession to the property of a Hindu (which term has been defined to include a Buddhist, a Jain and a Sikh) is governed by the provisions of that Act. The other communities, such as Europeans, Jews, Christians and Parsis, continue to be governed by the Indian Succession Act, 1925, and the Muslims by their own traditional Muslim laws.

Though the Hindu Succession Act, 1956, basically lays down the law relating to intestate succession among Hindus, Section 30 thereof confers testamentary power on Hindus, saying that a Hindu may dispose of his property by will in accordance with the provisions of the Indian Succession Act, 1925. As a result of this provision, the procedures and formalities regarding the execution, revocation, and interpretation of wills and about the grant of probate and legal representation and powers and duties of executors and administrators laid down in the Indian Succession Act, 1925, become applicable to Hindus also. Every Hindu, both male and female, has thus the option of making a disposition of his or her property according to his or her choice by executing a will according to the law laid down in the Indian Succession Act, 1925.

Any person is deemed to die 'intestate' in respect of whole or such part of his property in respect of which he has not made a will, and 'intestate succession' means succession according to the provisions contained in the Hindu Succession Act, 1956. 'Testament' is another name for a will and succession on the basis of a will is called 'testamentary succession'. In legal parlance, there are certain other terms also which are used in relation to testamentary succession, such as 'bequest' which is yet another word for a will, 'legatee' meaning anything which is bequeathed or passed on by a will to a 'legatee' who is a person or persons to whom a legacy is passed on by a will.

A will does not in any way impinge upon the freedom or capacity of the testator to dispose of any property included in the will during his life time. The disposition made in the will will hold good only in respect of the property owned by and belonging to the testator at the time of his death. If anything which had been specifically bequeathed does not belong to the testator at the time of his death or has been converted into property of a different kind before his death, the legacy cannot take effect (Section 152).

2. Bequeathable property

All property, movable and immovable, of which a person is owner by virtue of its being self-acquired can be disposed of by him by will according to which only the interest of the deceased in the coparcenary properties could be disposed of by will.

A Hindu woman may dispose of her stridhan by will. Under Section 14(1) of the Hindu Succession Act, 1956, any property possessed by a female Hindu is her absolute property and she is fully competent to make a will about it unless the will or award or other instrument by virtue of which she acquired the property expressly provided for a restricted estate e.g. if she has only a life interest in property, she cannot make a will of it.

Capacity to make a will

A testator must, in the language of law, have a sound and disposing mind and memory and must not be a minor. In other words, he ought to be capable of making his will with an understanding of the extent of the property he means to dispose of and of the persons who are the object of the bounty and the manner in which it is to be distributed between them.

If a person is sick, he should, at the moment of executing the will, be in his proper senses and fully aware of the effect of what he is doing. He must be conscious of the various claims persons have on his property and must be capable of realising the extent of the property he is disposing of. In such cases it is advisable to provide satisfactory evidence that the executant is in his proper senses. For this purpose it would be best to have the will attested by the medical attendant, who may also append a certificate of the fact of the will that he has satisfied himself that the testator is in his proper senses. Mere old age is no evidence of incapacity to make a will.

General requirements of a will

The following formalities are prescribed for the execution of a proper will :-

- (i) Except in the case of a soldier, an airman or a mariner, a will should be made in writing (Section 63);
- (ii) It should be signed or marked by the testator or some other person in his presence and by his direction (Sec. 63);

Though not obligatory, it will be prudent to register a will. If the will is registered by the testator himself, it will be a strong circumstance to support the genuineness of the will, to establish the identity of the testator and the fact of execution of the will by him. Another advantage is that in case the original will is lost, a certified copy of the will can be had from the Registrar.

Deposit of Will

There are special provisions in Part IX of the Registration Act under which testator may deposit his will in a sealed cover with the Registrar. On the death of the testator, any person can apply to have the will opened and copied in the Register. The court can also require the production of a such a will from the Registrar and he will open it and send it to the court after copying it out in his Register No. 3.

Joint Will

A joint will is a will made by two or more testators contained in a single instrument duly executed by each testator disposing either of separate properties or their joint property. An obvious illustration of a joint will is that of husband and wife who may dispose of their property by one joint will. Joint wills are revocable at any time by either of them or by survivor. A joint will may be made to take effect after the death of both testators. Such a will remain revocable during their lifetime by either of them with notice to the other but becomes irrevocable after the death of one of them if the survivor takes advantage of the provisions made by the other.

Mutual Will

A mutual will is the one where two persons by their respective will confer upon each other reciprocal benefits i.e. where the executants assume the role of both testator and legatee in respect of each other. In other words, a mutual will contemplates two separate wills executed on the same day containing similar provisions by two testators conferring reciprocal benefits. Such wills are revocable during the lifetime of testator, though notice of such revocation should be given to the other testator. But such a will becomes irrevocable on the death of one of them, if the surviving testator takes benefit under the will of the deceased.

Onerous Wills

If a will imposes an obligation on the legatee, he can take the will only if he accepts it in full. The legatee has no claim of election; he must accept or disclaim the whole. If he accepts it he takes it with all the benefits and burdens. (Sec, 122). If the legatee unequivocally disclaims it, he cannot afterwards claim it nor can he having once accepted the gift afterwards repudiate it.

A person may bequeath his estate to his son with an obligation attached to it, viz that he would make a monthly or annual payment of certain sum specified by him to his widow, daughter, son or any other person. In such a case if the legatee accepts the bequest he will take it subject to the obligation.

Vesting of legacy

A bequest is said to be vested (Section 139) in interest but not in possession when there is a present indefensible right to future possession or enjoyment e.g., testator named a bequeathes his house to his wife for life and after her death to his son B. On the date of A's death, his wife gets the life interest in the property but simultaneously his son B acquired a proprietary or 'vested' interest in the property though the right of enjoyment remains deferred for so long as the life interest of his mother remains operative. The intervention of the life interest does not prevent the vesting of the legacy in B who, in legal parlance, is called the "remainderman." If B subsequently dies before his mother, B's vested interest in the property does not get extinguished but is transmissible to B's heirs. Taking another set of circumstances, of testator A bequeathes his house to his wife for life and after her death to his two sons B&C, on the date of death of testator A his wife will get life interest in the house and simultaneously his two sons B&C will get vested interest in the

properly as remainderman. If after some, one of the two remainderman say, B, dies before his mother, while she was still enjoying life interest in the property, the vested interest which B had already acquired in the property on the date of the death of A, will not go to C, but to the heirs of B, though the right of enjoyment of the property will come to the heirs of B only after the death of holder of the life interest in the property i.e. B's mother.

Stamp Duty :

A will or a codicil is exempt from stamp duty.

Void Wills

A will or any part of it, the making of which has been caused by fraud, coercion or any such importunity or undue influence as takes away the free agency of the testator is void (Sec.61). A bequest with conditions which are impossible of performance, or are unlawful or are contrary to public policy or morality is also void (Sections 127 and 126).

Codicil

A codicil is a supplement to a will. When a testator wishes to make some slight alteration in his will, he should do so by executing a codicil to his will, making the addition or alteration and expressly confirming the original will. A codicil is treated as forming a part of the will. When the alterations and additions are considerable, it will be advisable to write a fresh will revoking the former will. Codicil requires the same formalities as a will.

Form of Will

A will is written as a deed poll in the first person. The format of a will can be divided into the following parts in the sequence shown below:

1. Commencement ; (essential)
2. Revocation of former wills and codicils, whether existing or not ; (essential)
3. Preliminary
4. Statement of properties which are being bequeathed.
5. Bequest proper.
6. Bequest of residue; (essential)
7. Appointment of Executor (where desirable or necessary)
8. Testimonium or closing part of the will and signature of the testator; (essential)
9. Attestation and signatures of attesting witness (essential).

While the words to be used in parts (1), (2), (3), (6), (7), (8) & (9) are more or less set requiring little variation, the parts (4) & (5) which will contain details of property and its disposition by the testator will necessarily vary widely with each testator with reference to his circumstances, his relations (e.g. wife, sons, daughters and others) to whom he would like to pass on the ownership or interest in the property he will be leaving behind and his wishes about the disposal of his property or any part of it in any other way. There is no limit to such variation. Besides passing the property to one's kith and kin, one can, for example, bequeath it to a trust, a charitable or religious institution or give recurring bounties from income from property or invested funds or parcel it out in any manner desired. It is important that whatever be the intentions of the testator, these should be expressed in clear and unmistakable terms and the interest conveyed should be clearly defined. This is particularly necessary in the case of will in favour of Hindu wives. If the intention is that the wife should take an absolute interest, it should be so stated clearly in the will by saying that she will be "full and absolute owner" of the interest bequeathed to her.

In the specimens of will annexed, (Annexure I to III) only three simple forms of bequest have been given, viz., (1) giving all property to wife or any one person fully and absolutely; (2) giving immovable property to wife for life and after her to others and moveable property (moneys and deposits to wife and sons/daughters or to others in equal or specified proportions, and (3) in the case of a person having more than one divisible immovable property, giving the principal property to his son or to one of his sons and the other immovable properties and financial interest/income to others. Specimens of alternative forms of attestation according to circumstances of each case, and attestation of alteration in the will and two specimens of codicils and one of revocation of a will have also been given (Annexure IV & V)

ANNEXURE - I

SPECIMENS OF WILL - I

Commencement: 1. This is the last will of me.....son/daughter/wife.....aged.....years, resident of.....made on this.....day of199.

Revocation: 2. I hereby revoke all former wills and codicils made by me.

Preliminary: 3. I am executing this last will and testament of mine voluntarily and without any compulsion or pressure from any source or person and in sound health and disposing state of mind.

Statement of properties owned and bequeathed: 4. I own the following moveable and immoveable properties which are all my self-acquired properties built or acquired out of my own earnings and income without any assistance of any ancestral estate and have absolute power of disposal of the same.

Here give details of all the immoveable properties (houses, plots, land etc) and moveable properties including insurance policies, deposits in banks, National Savings Certificates, shares etc, listing them seriatim.

Bequest: 5. I hereby bequeath all my movable and immovable properties as described above to my wife, Smt.....(or to my son Shri.....or any one else) fully and absolutely.

Bequest of residue: 6. I also bequeath all my money and other property movable and immovable, whatsoever and wheresoever, not otherwise disposed of by this will to my wife Shrimati.....(or to Shri.....or to any one else or my son).

Testimonium In witness whereof, I, the said.....have put my signature to each sheet of this my will, contained in this sheet and in the preceding one (or two or three sheets of paper) on the day and the year first above written, i.e. the.....day of.....1990.

Signature of Testator.

Attestation Signed by the above named testator in our presence at the same time and each of us has in the presence of the testator signed his name hereafter as the attesting witnesses.

1.

2.

ANNEXURE - II

SPECIMEN OF WILL-II

This is the last will of me son of Shri.....agedyears, resident of made on thisday of1990.

2. I hereby revoke all former wills and codicils made by me.
3. I am executing this last will and testament of mine voluntarily and without any compulsion or pressure from any source or person and in sound health and disposing state of mind.

4. I own the moveable and immoveable properties listed below. They are all my self-acquired properties built or acquired out of my own earnings and income without the assistance of any ancestral estate and I have absolute power of disposal of the same.

Here give details of all the immoveable properties (houses, plots, land etc) and movable properties including insurance policies, deposits in banks, National Savings Certificates, shares etc, listing them seriatim.

5. I hereby bequeath the aforesaid House built on plot No.....in.....colony, to my wife Shrimati.....with all household goods, crockery, furniture and other articles in the said house for her life without any power of alienation and after her death to my son/daughter Shri/ Shrimati.....Should the said son/daughter of mine, die before my said wife, then to so and so.

I bequeath the moneys and other properties listed above to-

(to wife and other children, sons and daughters/grandchildren or donations to institutions, etc., etc, as desired)

6. I also bequeath all my money and other property, movable and immovable, whatsoever and wheresoever, not otherwise disposed of by this will to.....

7. I appoint.....son/wife of.....resident of.....as the sole executor of my this will, if for any reason, he/they are unable to act as executor(s) of this my will, in that event.....son/wife of.....resident of.....will act as executor of this my will.

In witness whereof, I, the said.....have put my signature to each sheet of this my will, contained in this sheet and in the preceding one (or two or three sheets of pages) on the day and the year first above written i.e. the.....day of.....1990.

Signature of Testator

Signed by the above named testator in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as attesting witnesses :

1.

2.

ANNEXURE - III
SPECIMENS OF WILL - III

1. This is the last will of me A.B. etc. agedyears, resident of.....made on this day of 199.
2. I hereby revoke all former wills and codicils made by me.
3. I am executing this last will and testament of mine voluntarily and without any compulsion or pressure from any source or person and in sound health and disposing state of mind.
4. I own the following moveable and immoveable properties which are all my self-acquired properties built or acquired out of my own earnings and income without any assistance of any ancestral estate and have absolute power of disposal of the same.

Here give details of all the immovable properties (houses, plots, land etc) and movable properties including insurance policies, deposits in banks, National Savings Certificates, shares etc, listing them seriatim.

I bequeath to my wife for life the fixed deposits with.....Bank mentioned at item 4(e) above with the total interest therefrom for her maintenance after my death without any power of alienation. After her death, I bequeath the said deposits to my third and fourth sons.....A.B.....C.D. and my daughter.....in equal proportions.

I bequeath the aforesaid house in Mahanagar Lucknow to my second son Shri.....

I bequeath the other moneys and deposits to my wife and three sons and my daughter in equal proportions.

6. I also bequeath all my money and other property movable and immovable, whatsoever and wheresoever and otherwise disposed of by this will to.....
7. I appoint.....son/wife of.....resident of.....as the sole executor of this my will (or.....andas joint executors of my this will. If for any reason, he/they are unable to act as executor(s) of this my will, in that event Shri.....son/wife of.....resident of.....will act as executor of this my will.

In witness whereof, I, the said have put my signature to each sheet of this my will, contained in this sheet and in the preceding one (or two or three sheets of pages) on the day and the year first above written i.e. the day of 1990.

Signature of Testator.

Signed by the above named testator in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as attesting witnesses :

Attestation on acknowledgement The said A.S. (Testator) has personally acknowledged to us separately having made the above signature to this will and each of us has on such acknowledgement and in the presence of the said A.B. signed this will hereunder as attesting witnesses.

1.

2.

Where another person signs for the testator Signed by C.D. etc., with the name of the above named testator as his last will in the presence of and by the direction of the testator and in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as attesting witnesses :

- 1.
- 2.

When the testator has given his mark being incapable or illeterate or blind. Signed by the above named testator with his mark as his last will after the same had first been read over and explained to him in our presence and had appeared to be perfectly understood and approved by him in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as attesting witnesses :

- 1.
- 2.

continued from page 1

Price Printing on Packages. Some manufacturers have attempted to take undue advantage of the notification issued by the Government of India whereby price printing on packages has been changed from the basis of "Local Taxes Extra" to "All Taxes Inclusive". They have pasted slips on the existing packages indicating the price based ostensibly on the highest local taxes. We have complained against these attempts to the Government of India, bringing to their notice the specific instances, and have asked for immediate investigation to be conducted including the enquiries through the Bureau of Industrial Costs & Prices. Consumers Organisations all over the country have also been alerted for taking up this matter with the Government of India and for considering the launching of boycott of such products in the markets.

Urban Land Ceiling Act. On the basis of a detailed study of all the relevant provisions of the Urban Land Ceiling Act, and taking into consideration the depredations brought about by this statute in causing scarcity of urban land for development of housing and in raising the land prices to unimaginable limits, we have submitted to the Ministry of Urban Development specific suggestions for amendment of relevant provisions of the Act. The receipt of these suggestions has been acknowledged by the Minister of Urban Development as well as by the concerned Member of the Planning Commission.

Electricity Bills. Electricity bills of Delhi Electric Supply Undertaking are causing extreme exasperations to the consumers. Tens of thousands of people are bitterly complaining about defective bills received by them. Often the payments already made previously are shown as arrears, there is utter confusion about the period of bills and the dates of meter reading, and some miscellaneous unexplained charges. Consumers have to repeatedly go to the DESU offices and stand in long queues to get their bills corrected. Taking into account the harassments of the consumers COMMON CAUSE has written to DESU top management that in future the consumers will not go to the DESU offices for the purpose; the President of each housing colony will constitute a Committee of three knowledgeable residents who will examine the defective bills, DESU office will be informed about the defective bills and will be expected to rectify the defects; and that meanwhile no penalty will be levied for delayed payment nor will any attempt be made to cause disconnection of electricity. We propose to take this matter to Delhi High Court in the shape of writ petition for issue of appropriate direction to DESU.

Pensions. A number of letters continue being received from pensioners enquiring about the pending cases. The case of pre-1973 pensioners is still pending in the Supreme Court; we cannot do anything about it. The demand of "Same Pension for Same Rank", which emanated from the defence pensioners, is pending in the Central Government; we donot know what is happening to it. In any case we have already communicated the demand of civil pensioners that their claim for same benefits cannot be disregarded if these are sanctioned for the defence pensioners. Thousands of petitions have been addressed by civil pensioners from all over the country to the Prime Minister, with copies to COMMON CAUSE. Another matter on which we receive number of letters is that of restoration of commutation. Pensioners complain that the restoration of commutation should take place 15 years from the date of retirement and not from the date of commutation. We have been explaining that this decision has been taken by the government after careful consideration of all factors and we donot propose seeking its alteration.

Membership. a request to all members. We depend on you to kindly ask your friends, neighbours and colleagues to take membership of COMMON CAUSE and to strengthen it for enabling to serve people more. We earnestly hope you will kindly take effective steps. Where membership has been continuing on Annual basis, kindly consider change-over to Life Membership. To those who have yet to renew membership, individuals as well as organisations, we convey special request for timely renewal.

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(IN CAPITAL LETTERS)

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3. Kindly give full address, also at bottom of Money Order if fee is forwarded through M.O. Quote Membership number while remitting renewal fee. Membership takes effect from the date of enrolment.

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