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FROM THE LAWYERS COLLECTIVE

FOR A BASIC RIGHT TO HOUSING

Away with the Bands And Gowns

The unfortunate controversy raked up about the way women lawyers dress reflects a deep-rooted male chauvinism that exists among the lawyers and judges alike. The legal profession is still predominantly male in its composition and ideology. No one has yet considered making a national issue of the way male lawyers dress but the way women lawyers dress has become the subject matter of national debate. It is as if there is nothing else of any interest about women lawyers, except the way they dress.

As always, the best way to run down a woman is to attack her character. There have been several cases of women recommended for appointment to High Courts but who never made it because of some vague allegations about their 'loose character'. One woman recommended for appointment as a High Court Judge was not married, an unpardonable crime in Indian society, and hence of 'loose character'. False complaints against her were engineered and her appointment was sabotaged.

Others never made it because they were divorced. Presumably a divorced woman would go around breaking marriages; a state of affairs which the law cannot tolerate. And yet, men with known histories of sexual exploitation of women have been happily appointed as judges without any compunctions. A young woman lawyer at a recent Nagpur convention complained bitterly that when a woman lawyer is doing well professionally, many are quick to allege that she is using her sexuality to succeed with a colleague or with a judge. There is much talk of judges having affairs with women lawyers, yet in all such gossip sessions, it is the woman who is looked down upon, never the judge alleged to be having an affair.

The truth is that women are treated as second class citizens in the legal profession. Their small number is indicative of their low status. They are treated either with condescension or with amusement. At best they are considered fit for handling family disputes. Surprisingly, official policy also reflects this.

The controversy instead of being sexist, should become an occasion to decide to shed the bands and black gowns, an outmoded and inconvenient form of dress that lawyers are compelled to wear. After all, during vacation, both lawyers and judges manage very well without the official attire and neither suffer any loss of dignity on that account. So why can't we get rid of the ugly looking bands and gown for good?

Indira Jaising

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LETTERS

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Madhu Limaye's Letter

In our March issue of The Lawyers, we published a letter from Madhu Limaye to the Chief Justice of India. We have now received a letter from Soli Sorabjee addressed to Madhu Limaye, the full text of which is published below:-

Dear Madhu,

I recently came across your letter to the Chief Justice of India published in the March issue of THE LAWYERS.

I am pained to read in your open letter to the Chief Justice of India the statement:

"Palkhivala and Sorabjee earned fat fees for mentioning and for remaining present at the mentioning respectively, what did the Supreme Court judges gain?"

If only you had asked me before making this statement in your letter to the Chief Justice you would have known the correct facts.

I did not mention any matter before the Chief Justice. I happened to be in Court when Palkhivala was about to make a mention. I was requested by Mr. John, who is an advocate on record and who was understandably nervous on account of Mr. Palkhivala's presence, to point out to the Court that no adequate notice was given by the advocate instructing Mr. Palkhivala about the mentioning and no orders should be passed on the application. I acceded to junior advocate John's request. Thereupon the matter was listed for the following day. I did not appear in the matter on the next day.

Moreover I did not charge any fees for opposing the mentioning. Consequently your statement about my "earning fat fees" is untrue. Obviously you have been grossly misinformed by your source.

I am sure that as you now know the correct facts concerning me the least you will do is to give your irresponsible source a proper dressing down in true Limaye fashion.

For your information, long before the direction issued by the Supreme Court, I had made a self-imposed rule not to appear in matters for mentioning as also for ordinary applications for early hearing-except where I am appearing *amicus* at the request of the Court as in the case of Dr. Wadhwa-because I believe that junior advocates should have a chance and seniors should not appear in such matters. For that reason your statement has hurt me very much because, not only is it incorrect, but it is contrary to what I have maintained and practised as a Senior Advocate.

Soli J. Sorabjee
Senior Advocate Supreme Court of India
134, Sunder Nagar, New Delhi 110 003.

Allegation Against Judges

A news item appeared in Maharashtra Times dated 10th March 1987 that the advocates at Jalgaon have boycotted all the Courts since 23.2.1987, demanding an enquiry into the serious allegations made against one of the judges, namely Mr. Nandeshwar, and asking for his transfer. A representation listing the grievances against the said judge has already been sent to the Chief Justice of Bombay High Court. The news report stresses the fact that no cognizance seems to have been taken by the High Court and that this agitation is causing great inconvenience and hardship to litigants and junior advocates.

In the interest of a fair and clean administration of justice, litigants, lawyers and members of the public have a right to know whether the judge has indeed gone wrong, where and in what way. The boycotting of Courts by advocates is a pretty serious matter, involving hardship and loss of money to litigants and witnesses.

Is it not in the interest of judicial hygiene that such complaints should be speedily decided? If the allegations are untrue, why should judges be made to work in open Court with mud on their faces for years? If the allegations are found to have some basis in evidence, if the result of the enquiry is made known to the public and suitable action taken, people would carry more respect for law and the judiciary. And what is the Government doing? Has i[t] no stake at all in the administration o[f] justice?

V. R. Talasikar
Bandra East Bombay 400 051.

Missing Lord Krishna

And the Lordship said:"The demo[c]ratic dilemma is whether th[e] State, that limping Leviathan, shoul[d] be allowed to poke its gigantic walkin[g] stick into the ubiquitous umbrella [of] liberty. The layman as well as the law[-]man must put a quietus to the con[-]troversy to which I have animadvert[ed] with a single, monosyllabi[c] sledgehammer-like word : "No".

"But this is by no means the so[le] systemic problem. Societal ills a[re] many. Doctors who can dharmical[ly] diagnose are few, but Karmic quac[ks] are many. Raucous richness at one e[nd] of the scale and piteous poverty at t[he] other, grievous graft, land laws lac[king] with loopholes, an education system [in] need of an enema; all this and mu[ch] more must needs engage the attent[ion] of the forensic fireman. Legal [en]gineering and forensic architect[s] must enter into a creative conspirac[y to] pull down the rottenly ramshackle [and] put up the structurally strong, fu[nction]ationally fit, plinth wise proud [and] roof-wise radiant.

"Niagaras of nonsense [and] farragos of flapdoodle must dry up [be]fore the Shiva-like stare of the bro[w] of brevity. Obstreperous orality [in] advocacy must yield to conscient[ious] conciseness, and the vigorous ver[bos]ity of judgements must be replace[d by] breathtaking brevity".

Raju "Krishna Iyer" Ramachan[dran]
55, Lawyers Chambers, New Delhi 110...

For a Basic Right to Housing

While the Central Government has come up with the Draft National Policy as its response in the International Year of Shelter for the Homeless (1987), the activist groups have also determined their response and have demanded a Bill for Housing Rights through the instrumentality of the National Campaign for Housing Rights. **Anand Grover** *outlines the back ground giving rise to the two proposals.*

After the judgement in the *Olga Tellis* case [*Olga Tellis v. BMC* (1985) 3 SCC 545] in 1985, and in view of the fact that 1987 was declared as the International Year of Shelter for the Homeless (IYSH) by the U.N., the Governments, both at the Central and the State levels, were expected to come up with a concrete programme to deal with the problem of homelessness. Whatever policy that has been declared, by the Central Government and the State Government in Maharashtra, will be unable to deal with the problem, which is growing daily. If anything, the policies will exacerbate the problem. In the meantime, the conditions continue to worsen.

Deteriorating Conditions

The type of development policies followed by the State over the post- independence era has meant that larger and larger number of people in the rural areas are being displaced from their homes and are unable to eke out an existence. Deforestation in large tracts in the past has meant drought today. The devastating effects of it are being felt acutely all over the country now. Large scale development projects like dams, by submerging forests or opening up mines has rendered the poor, who could eke out a living from the land or forests, not only without means of livelihood but also without homes. Housing, which was not an issue for the rural activists is now increasingly becoming a priority.

With increasing pauperization on account of 'development', displacement and inflation, the pressure on the rural poor to migrate to the urban metropolises to earn two meals a day is becoming greater. The situation in the urban areas is no better. If anything it is worse. Bombay is a good illustration.

The annual housing need in Bombay (gap between housing supply and demand) which was 45,000 units per year in the 1971-81 decade, is likely to go up to 80,000 units per year by 2 000 A.D. This excludes existing slums and dilapidated buildings which will be required to be replaced by new buildings.

Given that urban land in Bombay is in the hands of a few persons, the selective release of it by them has meant phenomenal price increases over the last two decades. The cheapest

shelter (non-conventional) of 25 sq. mtrs. that would be theoretically available in Bombay would cost Rs.25,000. The latest housing budget profile available for Bombay shows that 40% of the population in Bombay cannot afford a dwelling of over Rs.25,000.

The result is that larger and larger number of persons are forced to live in unauthorised shelters, known as 'slums'. In Bombay, today, 45% of the population reside in 'slums'. The figure is likely to go up to 60% by the turn of the century.

Most unauthorised shelters lack the basic amenities, like roads, electricity, water supply, sanitation, sewage etc., notwithstanding the provisions of the Slum Acts, which are supposed to provide such amenities.

Response Of The State - Legislative Policy

Over the years the legislative policy of the State has veered towards protection of the homeless and promotion of policies to benefit the poor. This is reflected in the legislative policy which culminated in the 1970s in the passing of the Slum Acts in the various States and the enacting of the Central Urban Land (Ceiling and Regulation) [UL(C&R)] Act, 1976.

The Slum Acts provide for a declaration of an area unfit for human inhabitation as a 'slum'. The power to declare an area a slum vests with the Competent Authority established under the Slum Acts and is discretionary. On the declaration, the area is supposed to be provided with basic amenities. However, if an area cannot be improved the residents are obliged to be rehabilitated in alternative sites. The catch being that the offer of alternative sites is one which you cannot refuse.

Despite the fact that the Slum Acts have been on the statute book for over a decade, the vast majority of the 'slums' have not been declared to be slums. As a result, the residents of 'unauthorised' settlements have not been able to avail of the beneficial provisions of legislation. The Slum Acts, therefore, remain unimplemented.

Similarly, the laudable objects of the Urban Land (Ceiling and Regulation) (ULC&R) Act, 1976, viz., prevention of concentration of urban land in the hands of a few and prevention of speculation and profiteering remain only on paper. The UL(C&R) Act fixes ceiling limits of urban land in the hands of landholders. Different ceiling

limits are fixed for different urban agglomerations. The landholder owning excess vacant land (above the Ceiling Limit) is supposed to file a statement of excess vacant land with the Competent Authority, on the basis of which the Authority prepares a draft statement of excess vacant land. After receiving objections from the landholder, the final statement of excess vacant land is prepared.

After the final statement is served on the landholder the Competent Authority is mandatorily required to give notice in the Official Gazette, declaring his intention to acquire the excess vacant land. After inviting objections of the landholder the Competent Authority may publish a Notification under Section 10(3) declaring that excess vacant land is acquired by the State Government. Upon such a Notification, the excess vacant land vests in the State Government.

The unique feature of the UL(C&R) Act is that on acquisition the maximum compensation payable is Rs.2,00,000 (Rupees two lacs). The constitutionality of this provision has been upheld by the Supreme Court (AIR 1979 SC 1415, *Bhimsinghji V Union of India).*

The UL(C&R) Act also has 'exemptions' provisions, viz. Sections 20 and 21. Section 20 allows exemption from provisions of acquisition under the Act, if the State Government is satisfied that the location of land is such, or the purpose is such, and that it is in public interest to do so, or it will cause grave hardship to the landholder if acquisition is resorted to.

Section 21 allows the Government not to treat excess vacant land as excess if the person declares, according to the prescribed procedure, that he or she is going to utilise land for the accommodation of weaker sections of society, in accordance with the Scheme approved by an authority specified by the Government. There is no definition of the expression 'weaker sections'.

Section 21 Scheme

Under Section 21, the Central Government had framed a Scheme, under which the declaration had to be made by the landholders in 1979. The Scheme today obliges the landholder to construct tenements such that 25% are less than 25 sq. mtrs., another 25% less than 40 sq. mtrs. and the balance 50% less than 80 sq.mtrs.

The price originally fixed for such tenements was Rs.90/ per sq.ft., later raised to Rs.135/- per sq.ft. Thus the smallest tenement would cost about Rs.34,000/-, clearly out of the reach of 50% of the population in Bombay.

Moreover, the Government was 'implementing' the UL(C&R) Act, not through its acquisition provisions, but through its exemption provisions. Thus, not more than 0.2% of the excess vacant land has been acquired till date. Most of the proceedings are held up, not by the Courts, as the Government would have us believe, but at the stage of finalization of statements under section 21. In other words, the State itself is clearly not interested in implementing the UL(C&R) Act at all.

In the beginning of the 1980s the position was that the two most important pieces of legislation, the Slum Acts and the UL(C&R) Act remained unimplemented. On the other hand, the homelessness was increasing at a fast pace. Instead of trying to ameliorate the condition of the homeless, some State Governments enacted legislation criminalizing unauthorised settlements.

In Bombay, the Antulay Government resorted to an openly confrontationist stance by demolishing hutments of the pavement dwellers and deporting them. While the deportation was contrary to law the demolitions were challenged as being violative of Articles 14 (Equality) and 21 (Liberty and Life). The stay orders obtained in the Supreme Court in the *Olga Tellis* case gave a breather to the homeless to organize. As a result, today all large clusters of pavement dwellings in Bombay, and of course all 'slum dwellings', are in some way or the other organized. If nothing else, the development of organisation of the homeless has been a tremendous gain of litigation, which allowed the process to initiate and develop.

Hopes were pinned on the Suprem[e] Court to deliver goods to the poorest o[f] the poor. In a curiously written judgement in the *Olga Tellis* case, the Sup[reme] Court held that though the de[molition] of pavement dwellings an[d] eviction of the dwellers did deprive th[e] right to livelihood contained in th[e] right to life, the deprivation was n[ot] violative of Article 21 of the Constitu[tion] as it was authorised by law (in th[e] case the Bombay Municipal Corpor[ation] Act). The homeless were dow[n] and out but were still fighting it. Th[e] political parties, which had total[ly] ignored them, realizing their vot[e] catching potential, jumped on t[he] bandwagon, organizing morch[as] against the anticipated demolition [by] the authorities.

Though this fact also acted as [a] break on the demolitions and the co[n]frontationist strategy of the State, [the] State had also come to realise that [the] Antulay-type of demolitions were [not] going to yield any practical results, [be]cause the homeless, on account [of] sheer necessity to exist and live, wo[uld] simply move from one place [to] another. Moreover, the high pro[file] demolitions only attracted publi[city] and resistance. The policy of the St[ate] after the judgement in *Olga Tellis*, [at] least in Bombay, was to resort to [low] profile but extensive demolitions s[o as] not to attract the public eye.

Section 20 Scheme

In Maharashtra, in 1983, the State has also formulated a Scheme under Section 20 of the UL(C&R) Act for housing of weaker sections. The State is interested in making affordable shelter available not to the homeless but to the middle and lower middle class, which is extremely vociferous in articulating its demands.

Initially, the Maharashtra Government had framed a Scheme under Section 20 which was similar to the Scheme formulated under Section 21 by the Central Government. However, there were no price restrictions imposed on tenements to be sold on the free market, which constituted nearly 70% of the built up land available under Sections 20 and 21 of the UL(C&R) Act, 1976. This was challenged in the Bombay High Court. Justice Lentin upheld the challenge (*Colin Gonsalves V/s State of Maharashtra*, Writ Petition No.2376 of 1984). Thereafter, the Scheme was amended by fixing the price of the tenements on the free market. However, this was later withdrawn and a new Scheme dated 22nd August, 1986 has been formulated and notified in the Maharashtra Gazette (See *The Lawyers* - September, 1986). Under this Scheme 70% of the land under the UL(C&R) Act has to be utilised for EWS and LIG categories. The tenements for weaker sections are not to exceed 25 sq.mtrs. and Rs.25,000/-. Out of the remaining 30% of the land half must be used for tenements upto 40 sq.mtrs. and the remaining for tenements of upto 80 sq.mtrs. This Scheme has been challenged by the builders and stayed by the Bombay High Court (*PEATA V State of Maharashtra*, passed by Justice S.K. Desai and Justice Kurdukar).

Draft National Housing Policy

Specifically in response to the IYSH, the Central Government has published the Draft National Housing Policy (DNHP - see Box for further details). The DNHP has number of statements scattered throughout which give an impression that the tackling of homelessness is one of its primary objectives. This is stated to be achieved by providing "affordable shelter" to the homeless. A closer scrutiny of the DNHP however shows that its major thrust is to remove the restrictions on private building activity by various measures including legislative changes, land development and fiscal measures.

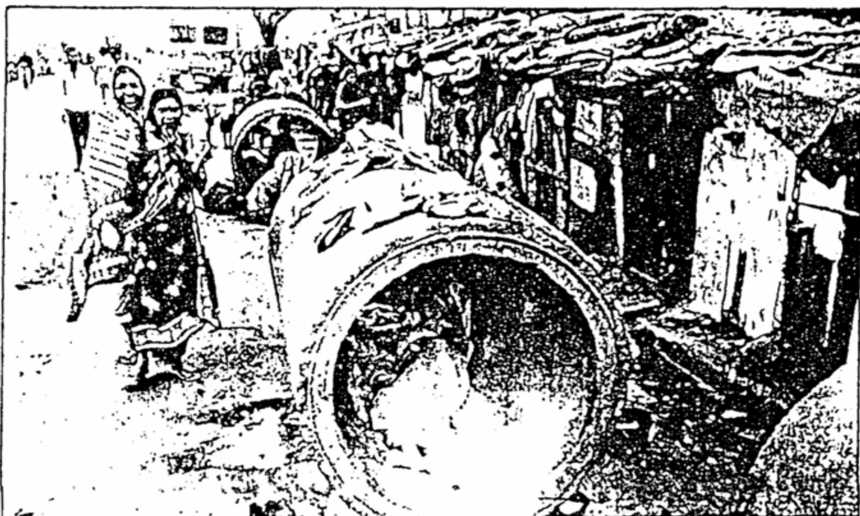
Amongst the legislative changes, rent laws are proposed to be amended to "ensure a reasonable return to the house owners", and thereby allow landlords to increase rent. In Maharashtra, the Rent Act has already been amended providing for leave and licence agreements to be entered into with no protection to tenants. The UL(C&R) Act is also proposed to be amended to remove restrictions, meaning thereby, to allow more exemptions and thereby circumvent the main provisions of the Act, viz., acquisition. Planning laws, development rules and regulations are also proposed to be amended to increase private building activity.

Moreover, land development is to be carried on by viewing land as a resource i.e. a commodity to be sold to the highest bidder. A National Housing Bank is also proposed to be set up, which is to identify and remove legal, environment and fiscal constraints to development and housing finance. Housing in future is proposed to be financed through loans. In other words, housing will be available to those people who can afford to take loans. The thrust of DNHP is, therefore, on increasing private building activity, supporting it by institutional finance and loans routed through prospective purchasers of tenements. It does not do anything for the homeless who cannot afford to buy the "affordable" shelter which is out of their reach.

In the situation that obtains today after the judgement in the Olga Tellis case, the homeless are in a precarious position. Threats of demolition and eviction have resulted in alternative accommodation only in a few cases being given by the Government arbitrarily. In the Sanjay Gandhi Nagar agitation, the homeless were able to succeed in getting alternative accommodation primarily because of the media personalities involved. It is interesting to note that an identical agitation by homeless from Rahul Nagar, at the same time, was totally unsuccessful, the difference being that no middle class personalities supported them. In other cases, courts have entertained petitions and granted stay of eviction on the ground that rehabilitation has not been provided to them whereas others in identical circumstances have been provided. (*Damodar Tambe V State of Maharashtra*, Writ Petition No.2601 of 1986 pending in the Bombay High Court.) However, in view of the judgement in the Olga Tellis case, there is no certainty which way the court will finally decide.

People's Bill for Housing Rights

In this context there is a growing realisation amongst activist groups and the homeless that the law as it stands today does not help them and what is needed is a law which provides for a basic right to housing for all. The National Campaign for Housing



Rights (NCHR), comprising various organisations all over the country which have come together, has as one of its primary aims the drafting of a Bill for Housing Rights. However, the process towards drafting, which is envisaged, is entirely different from the one adopted conventionaly. In a sense, a new experiment is being carried out. Instead of experts drafting a Bill and presenting it to acvitist groups as a fait accompli, the process undertaken by the NCHR is a series of consultations with activist groups, starting with the Draft Approach Paper and ending with a draft Bill. The Draft Approach Paper (DAP) was presented to the first National Consultation held in Bombay in the beginning of May, 1987.

The DAP recognises that the conditions relating to housing in the country are fast deteriorating and the existing laws are inadequate to deal with them. On the other hand, it also understands that housing is a fundamental means of establishing social relations. Moreover, it realises that instead of fighting for the defence of a few rights, which has been going on for the last ten years, it is important to forge new rights through the instrumentality of a Bill for Housing Rights.

The DAP, in trying to understand the inefficacy of the existing laws, points out that the machinery set up under the existing legislations is bureaucratized and alienated from the people, whose interests are different from them and who are vested with powers to implement or not to implement legislation. Further, the existing laws do not permit any freedom of information to the people (there is no right to know) so that they can partake in the process of implementation themselves. The DAP recognises that these characteristics in the existing legislation have to be supplanted by popular control and social monitoring as well as conferring a right to know.

The DAP proposes that as housing is so fundamental, a constitutional amendment should be introduced to include a fundamental right to a place to live in security and dignity. Various formulations have been suggested. The drafters of the DAP are quite aware that no amendments have been made till today to confer positive fundamental rights.

Essential conditions for the right to adequate housing are proposed. These are not only confined to the traditional concept of housing, four walls and a roof, with some basic amenities, but also other factors such as right to know about the availability of all housing resources, right to participation in local planning and decision making, access and affordability to building materials etc. Without this, a person would not be considered to be adequately housed. The elements of adequate housing, civic rights, are proposed to be conferred on all persons. The mechanism for achieving the civic rights and/or adequate housing is by declaration of inadequate housing, in cases which any one of the civic rights is lacking, and providing for it. The DAP also recognises that there are certain communities, who by their very nature homeless, such as victims of ri[...] natural disasters, industrialisation [...] urbanisation or certain work[...] populations like contract labour [...] migrant labour and categories [...] women i.e. deserted, divorced, se[...]rated or widowed, or single wo[...] without shelter as also categories [...] persons who are handicapped, [...] ought to be included in the catego[...] "homeless communities" entitled [...] adequate housing.

The DAP proposes that on dec[...]tion of inadequate housing made [...] mandatory basis, the residents o[...] adequately housed areas would be [...]tled to adequate housing, e[...] through improvement or rehab[...]tion. The ownership pattern that [...] be available on alternative entitle[...] could either be collective or indiv[...] and, in so far as legal relations bet[...] sexes are concerned, entitle[...] would be preferentially given t[...] woman.

The DAP also proposes that c[...] corrective provisions should be [...] as far as women are concerned to [...] about equality between sexes in a[...]ate housing. Specific areas th[...] proposed include joint matrir[...] property and co-tenancy. Howev[...] the first National Consultation [...] felt that special sections are not [...]sarily the correct way of attainin[...]der equality and what is require[...] integrated approach.

Special provisions for preven[...] further homelessness, increase [...]duction, supply and access to h[...] resources and emergency situat[...] also sought to be provided for.

The DAP has thrown up a [...] of novel ideas, which have to b[...]ed upon. Specifically, the aspec[...]cial control and monitoring, th[...] to know as well as the questio[...]cess to land, which are its majo[...]nesses, have to be seriously [...] Also the question of an in[...] approach on gender equality h[...] clarified. Most importantly th[...] which is now available in regio[...]guages, has to go to the activi[...] through them involve them a[...] the masses, in the consultation [...] before drafting the Bill. Only [...] there be a people's Bill for [...] Rights.

Draft National Housing Policy

The Draft National Housing Policy has recently been circulated by the Government. The main proposals are outlined in the following article.

The Draft National Housing Policy (DNHP) circulated by the Ministry of Urban Development, Government of India, is its response, or initiative, in the International Year of Shelter for the Homeless (IYSH) declared by the UN.

The DNHP euphemistically recognises that shelter ranks next to food and clothing as a basic human need. Accordingly "high priority has to be accorded to development of the Housing Sector particularly in respect of affordable housing to the disadvantaged".

The primary objective of the DNHP is to encourage investment in housing. The attendant objective is to motivate and help the "houseless population to secure itself affordable shelter". Tagged along, is the objective of promotion of repairs, renovation and upgradation of the housing stock. To give colour and perhaps a 'historical perspective', the fourth stated objective is the "preservation of the nation's rich and ancient heritage in the field of human settlements".

The DNHP has a number of palliatives for the homeless in the objectives and the priorities. The thrust of the DNHP, however, is to remove all constraints on private building activity based on profit. This is sought to be done by removing constraints imposed by legislative, administrative and fiscal measures on building activity.

Legislative Changes

According to the DNHP, existing laws "inhibit housing activity". The policy therefore proposes to amend the existing laws. Rent laws are proposed to be amended to "balance the interest of the landlord and tenants by ensuring a reasonable return on investment to house-owners". This means that the landlords will be allowed to increase rents. Thus, the protection of standard rent given to the tenants is proposed to be lifted.

The Urban Land (Ceiling And Regulation) Act is proposed to be "suitably amended to promote housing activity". Given that the Government has not followed the legislative policy of acquisition, the dominant purpose of the Act, and has allowed the Act to be circumvented through exemptions, the "suitable amendments" obviously imply that the acquisition provisions themselves are likely to be lifted, giving a complete free-for-all to the builders.

The Transfer of Property (T.P.) Act is also proposed to be amended to provide a speedy process of foreclosure (this debars redemption of a mortgage). Under the T.P. Act, the mortgagor can redeem the mortgage (freeing the property from mortgage) until the suit for foreclosure is decreed.

Urban planning laws, development control rules, zoning regulations, building regulations and bye-laws are also proposed to be amended to increase building activity.

Land Development

Though the DNHP aims to "counteract speculation in the land market and facilitate supply of serviced land for housing", land is now to be viewed "no more a physical asset but a catalyst for generating resources". In other words, land will be viewed and treated as a commodity to buy and sell to make more money i.e. subject it to the market forces which the DNHP ostensibly attempts to counteract. In consonance with this "the new approach will aim at setting up of "land banks".

Fiscal Measures

A National Housing Bank is proposed to be set up. The Bank is supposed to promote base level institutions and provide seed capital and expertise; identify and remove legal, environmental and fiscal constraints to the development of housing finance; provide finance and refinance facilities; regulate the working of housing finance; and mobilize financial resources for housing. In other words housing is proposed to be financed through loans. To facilitate this, housing is proposed to be declared as an industry. Finance for public sector housing construction will be diverted and channelized into housing finance to be loaned to individuals and co-operatives to develop their own houses. Public Sector housing agencies are to develop land and infrastructural facilities along with it.

Moreover, income tax, wealth tax and gift tax are proposed to be reviewed to attract private investment in housing through savings for housing, investment in new houses and deposits with institutions under the aegis of a National Housing Bank.

Informal Sector Housing

A "major trust" is to facilitate construction of houses by individuals and their voluntary associations. The strategy is to include making developed land available at affordable prices; introduction of minimum needs programme; minimal environmental norms; provision of easy access to institutional finance; recognition of semi-pucca structures as acceptable dwelling units, promotion of smokeless chula, biogas and solar energy.

Non-Governmental Organisations (NGOs) are proposed to be involved in providing shelter for the poor. Dialogue between NGOs is proposed to be institutionalized.

The National Campaign for Housing Rights

Jai Sen, *the Convenor of the National Campaign for Housing Rights, explains its objectives.*

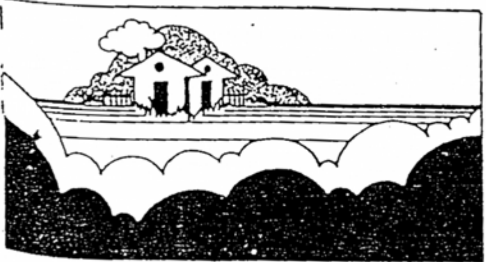
The National Campaign for Housing Rights (NCHR), a broad based coalition of organisations and individuals, with different kinds of interests was formed in July - August, 1986. It is a natural outgrowth of efforts that have been made in different parts of the country towards defending the rights of working and labouring people not only to have some place to live in security and with dignity but also improving housing conditions.

Housing conditions in urban and rural parts of the country are steadily worsening in all dimensions, not only physically but also legally for several laws have been passed in different states in the past five years, which declare 'unauthorised housing' to be a cognizable offence. The existing housing laws and policies are inadequate and ineffective. Further, the bad housing, dispossession, eviction, and displacement, particulary of the poor have profoundly negative social and political consequences and a 'housing' movement is a powerful way of getting people organised and conscious. Taking into consideration all the factors and several others the objectives of the Campaign were defined to be:-

(1) The draft and campaign for a Bill of Housing Rights, since 1987, has been declared by the UN as the International Year of Shelter for the Homeless (IYSH).

(2) The generation and dissemination of housing related information.

(3) The building of understanding and solidarity between a wider range of organisations and individuals, inclusive of trade unions, women's and environmental groups, civil liberties groups, who have been involved in housing related activities but were not necessarily conscious of the new definition of 'housing'.



A wide range of activities have been taken up in order to achieve these objectives. These include drafting the Bill after several consultations and interactions at different levels and a housing information process, partly through a Newsletter titled "Housing Struggle".

'Campaign Housing Information Index', prepared in collaboration with various documentation centres, a 'Film Festival on the Struggle for Housing', when films from India and abroad will be screened for one week at a time in 8-10 cities and nearby towns, during August - November 1987, other efforts such as a 'Poster Exhibition' and 'Campaign Research' are also taking shape.

The purpose of all these activities is to raise public conciousness at working and middle class levels on the vital issue of housing which is not an isolated issue but an integral part of the efforts and struggles being made to bring about social, economic and political changes in the country today. In the recently held National Consultation at Bombay between 5 - 8 May 1987, the question of women and housing was discussed in detail. It was agreed that although housing was one more process where men are further empowered and women further oppressed (particularly on account of property relations) the struggle for gender equality would not be achieved by 'sharing the cake equally' or even with positive discrimination as that would mean falling into the same trap which has dehumanised us so far. The entire question of social and gender relations in society as expressed in housing would have to be reviewed and directed twards humanising housing itself.

The National Consultation at Bombay can be perceived as the base of the Campaign: a process of lo[illegible] and mass-based consultations all over the country, periodically culminating in regional and national meetings to define and shape the proposed Housing Bill. Housing is recognised not as a 'product' but a process and a struggl[e] where people are in the front line an[d] where the State, industry and other[s] play supportive (or destructive) roles.

Parallel to this popular process is th[e] formation of a Legal Working Grou[p] whose work so far has been to prepa[re] the Draft Approach Paper (DAP) [of] the Bill, discussing the underlying le[g]al, political and constitutional aspect[s].

This DAP discussed the need to i[n]troduce the right to housing as a fu[n]damental right in the Constitution [of] India and the supportive statut[ory] rights which would lay down essent[ial] conditions for adequate housing, rig[hts] of workers, access to housing resour[ces] such as land, water, fuel, build[ing] materials, etc, emergency provision[s], the right to know, and mechanisms [for] the declaration of 'Inadequate Hous[ing] Areas' 'Homeless Communities' [as] well as question of eligibility priorit[isa]tion and social control.

After mass-based consultations [all] over the country, the Legal Worl[king] Group is expected to produce a [draft] Bill before a Second National Cons[ulta]tion later this year. The Governm[ent's] Draft National Housing Policy [pub]lished this year provided an imp[etus] for critical discussions by the NC[HR]. The Bill by the NCHR is propos[ed to] be placed before Parliament afte[r en]suring political support and will.

It is hoped that the Bill will be an instrument to advance the [...] struggle for housing.

If you want more informatic[on on] NCHR, join it or get its newsl[etter] contact: Convenor, NCHR, [Cam]paign Secreteriat, C/o Unnaya[n,] 1A, Garcha Road, Calcutta 70[...]

Family Courts Act, 1984 (Rules)

No. HMA 1685/1125(149)-X- In exercise of the powers conferred by clauses (b), (c), (d) and (e) of sub-section (2) and sub-section (1) of section 23 read with sections 5 and 6 of the Family Courts' Act, 1984 (66 of 1984), the Government of Maharashtra, after consultation with the High Court, hereby makes the following rules, namely:-

1. **Short title, commencement and application-**

(i) These rules may be called the Maharashtra Family Courts Rules, 1987.

(ii) These rules shall come into force on the 1st day of May 1987.

(iii) These rules shall apply to the Family Courts established in the State of Maharashtra, under section 3 of the Family Courts Act, 1984.

2. **Definitions** - In these rules, unless the context otherwise requires-

(a) "Act" means the Family Courts Act, 1984;

(b) "Centre" means a Counselling Centre';

(c) "Court" means the Family Court established under section 3 of the Act;

(d) "Principal Counsellor" means the Principal Counsellor appointed by the High Court; and includes Counsellor or counsellors, as the case may be, where the Principal Counsellor is not appointed.

3. **Appearance by Advocates excluded** - No party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner; and, save as otherwise provided by rule 8, no Court shall permit any legal practitioner to represent or appear on behalf of any party before it.

4. **Party entitled to legal advice-** A party will be entitled to take legal advice at any stage of the proceedings either before the counsellor or before the court. A party in indigent circumstances will be entitled to free legal aid and advice.

5. **Panel of lawyers for free legal advice** - The Court shall maintain a panel of lawyers willing to render free legal aid and advice. A party entitled to free legal aid and advice will be entitled to select any of the lawyers from the said panel provided the lawyer is available and willing to accept the case.

6. **Conditions of engagement** - The terms and conditions of engagement of such a lawyer and the remuneration, if any, to be paid to him from the State treasury will be as laid down in the Maharashtra State Legal Aid and Advice Scheme, 1979.

7. **Circumstances entitling a party to legal aid** - The circumstances under which such legal aid will be made available to a party will be as laid down by the High Court.

8. **Legal Experts as "Amicus Curiae"** - If the Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*. For that purpose, the Court shall prepare a list of legal experts who are willing to assist the Court as *amicus curiae* and such legal experts shall be paid fees and expenses out of the revenues of the State Government as per the scale of fees and expenses fixed by the Government, from time to time, by an order made in this behalf.

9. **Counselling Centre-** There shall be attached to the Family Court in each city, town or other area a Centre to be known as "The Counselling Centre of the Family Court at —"

10. **Composition** - Each such Centre may have a Principal Counsellor and shall have as many counsellors as may be determined by the High Court.

11. **Different units of counselling centre** - The Counselling Centre may be divided into different units and may be located in the Court premises and/or such other place or places as the High Court may direct.

12. **Appointment of counsellors** - The Principal Counsellor and other Counsellors attached to the counselling centre shall be appointed by the High Court in consultation with one or more professionally qualified experts in family and child welfare, preferably working with a recognised institution of social science or social work.

13. **Qualifications** - Persons having a Master's Degree in social work with a minimum experience of 2 years in family counselling shall be eligible for apppointment as counsellors.

14. **Counsellor to fix time and date for counselling** - The counsellor appointed to advise the parties shall fix the time and date of appointment. The parties shall be bound to attend the counsellor on the date and at the time so fixed.

15. **Failure to attend counselling** - If one of the parties fails to attend the counsellor on the date and at the time so fixed, the counsellor may fix another date and time and inform the absent party accordingly by registered post. If the said party does not attend the counselling centre on such adjourned date, the counseller may make a report to the court stating that one or both the parties have failed to attend the counselling centre. On such report being made, the court may proceed with the matter without prejudice to other power of the Court to take action against a defaulting party.

16. **Functions of a Counsellor** - Counsellor entrusted with any petition shall assist and advice the parties regarding the settlement of the subject matter of the dispute between the parties or any part thereof. The counsellor shall also help the parties in arriving at a reconciliation.

17. **Home visits** - The counsellor in the discharge of his duties shall be entitled to pay home visits to the homes of any of the parties.,

18. **Interviews** - The counsellor in the discharge of his duties shall be entitled to interview relatives, friends and acquaintances of parties

NOTICE BOARD

or any of them.

19. **Information from employer** - The counsellor in the discharge of his duties may seek such information as he may deem fit from employer of any of the parties.

20. **Reference to experts** - The counsellor may refer the parties to an expert in any other area such as medicine or psychiatry.

21. **Panel of experts** - The Principal Judge of the Family Court in consultation with the Principal Counsellor shall prepare a pan medical and other experts and such experts shall be paid fees and expenses (including travelling expenses) out of the revenues of the Government, as per the scale of fees and expenses fixed by the Government, from time to time by an order made in this behalf.

22. **List of Institutions, agencies etc.** - The Principal Judge in consultation with the Principal Counsellor shall also prepare a l institutions, organisations or agencies working in the area of family welfare, child guidance, employment or in any other area that he deem fit, in order to enable a counsellor or parties to obtain the assistance of such an institution, organisation or agency and may als down the manner and the conditions for association of such institutions, organisations or agencies with a Family Court.

23. **Assistance of other organisations etc.** - The counsellor may take the assistance of such as organisation, institution or agency i discharge of his duties.

24. **Confidentiality of information** - (1) Information gathered by the counsellor, any statment made before the counsellor or any or report prepared by the counsellor shall be treated as confidential. The counsellor shall not be called upon to disclose this inform statements, notes or report to any court except with the consent of both the parties.

(2) Such notes or report or statements or any material lying with the counsellor shall be kept in sealed packets by the counsellor and not form a part of evidence before the court. The same may, however, be used for the purpose of research or education with the perm of the Principal Judge on condition that the identities of the parties involved shall be kept concealed.

25. **Counsellor not to give evidence** - The counsellor shall not be asked to give evidence in any court in respect of this inform statements, notes or report, provided that the Counsellor may submit to the court a report relating to home environment of the j concerned, their personalities and their relationship with their child or children in order to assist the court in deciding the quest custody or guardianship of any child or children of the marriage;

Provided further that, the counsellor may also submit to the court a report relating to home environment, income or standard of of the party or parties concerned in order to assist the court in determining the amount of maintenance and/or alimony to be granted of the parties.

26. **Report from the counsellor** - The court may also request the counsellor to submit to it a report on any other subject in o assist the court in adjudicating upon the matter before it or any part thereof.

27. **Supply of copies** - A copy of the report submitted under rules 25 and 26 may be supplied to the parties on such request bein by the parties.

28. **Parties' right to make submissions** - The parties shall be entitled to make their submissions on the report.

29. **Counsellor not to be cross-examined**- The counsellor shall not be called upon to give evidence and shall not be cross-exam any court in respect of the report so made.

30. **Submission of memorandum** - Save as provided in these rules, the counsellor shall submit a brief memorandum to th informing the court of the outcome of the proceedings before him.

31. **Settlement before counsellor** - When the parties arrive at a settlement before the counsellor relating to the dispute or a thereof, such settlement shall be reduced to writing and shall be signed by the parties and countersigned by a counsellor. The co pronounce a decree or order in terms thereof unless the court considers the terms of the settlement unconscionable or unlawful or c to public policy.

32. **Counsellor's right to supervise custody of children** - The counsellor shall be entitled to supervise the placement of childre custody of a party and shall be entitled to pay surprise visits to the home where the child resides. In the event of the counsellor con conclusion that any alteration is required in the arrangement relating to custody of a child or children, the counsellor shall make a r the court in that connection. Thereupon the court may, after giving notice to the parties to appear before it, pass such orden connection as the court may deem fit.

33. **Counsellor's right to supervise reconciliation** - The counsellor shall also be entitled to supervise, guide and assist the re couples, even if the matter is no longer pending in court.

34. **Co-habitation in the course of reconciliation proceedings** - Co-habitation between the parties in the course of co proceedings before the counsellor or court shall not be deemed to be a condonation of the matrimonial offence.

Guardianship and Adoption

35, **Applications for Guardianship** - All applications for guardianship and adoption other than applications over which the Hi has jurisdiction, shall be filed before the Family Courts.

36. **Assistance of Social Welfare Agency** - In deciding a guardianship or adoption petition, the court may take the assistance c welfare agency or agencies for the scrutiny of the petition. The court may also ask such an agency for its report thereon.

37. **Fees** - The court may prescribe fees to be paid to the said agency for its work.

By order and in the name of the Governor of Maharashtra,

Sd/-
B. V. Chavan
Secretary to Government

No. HMA 1685/1125/(149
Law and Judiciary Depar
Mantralaya, Bombay 400
Date: 22nd April 1987

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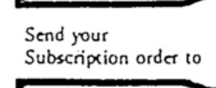

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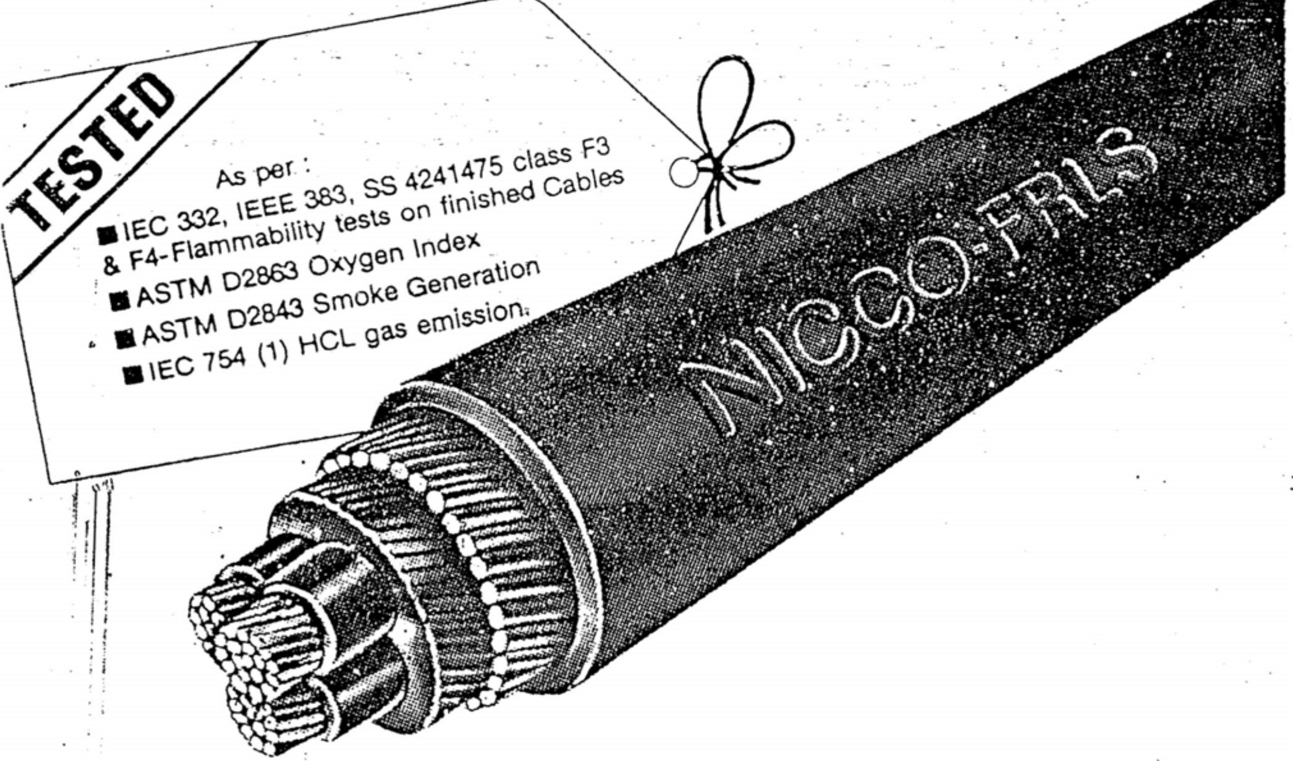

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The Bitter Story of Sugar

The harvesting and transport workers of the sugar industry of Maharashtra have been waging a bitter struggle against the Sugar Barons for years for the enforcement of their basic legal rights as workers. **M. M. Katre**, *reports on their struggles, in and out of court.*

Recently a Division Bench of Gujarat High Court has directed the State Government and the nine co-operative sugar factories in South Gujarat to pay their sugarcane harvesting workers at the time rate of Rs. 11/- per day. This is the minimum wage for agricultural labour for the relevant zone under the Minimum Wages Act. To ensure this minimum wage the rate for harvesting one tonne has been fixed at Rs.27. There are two lakh harvesting workers in South Gujarat alone. This decision of the High Court has once again focussed attention on the plight of the most downtrodden section of the rural masses.

Rich Harvests

Maharashtra has 91 working sugar factories, out of which 8 are privately owned. The rest are owned by co-operatives. Maharashtra produces on an average 35% of the total sugar produced in India. The sugar industry in Maharashtra has ever been ever prospering and expanding, and has been introducing the latest techniques in sugar production.

In Maharashtra, South Gujarat and North Karnataka i.e. in the area which prior to 1956 comprised the then Bombay State, the harvesting and transport of sugarcane is undertaken by the sugar factory owners themselves, while in the rest of the country the cane growers arrange for this. In these areas cane is purchased *ex-field* (prices at the fields) while elsewhere it is purchased by the factory owners *ex-gate* (prices at the gate). This is one of the reasons why the sugar industry in this tract is prospering at a greater pace than in the rest of the country.

Sugarcane, freshly cut, has to be crushed to get optimum sugar recovery. For this purpose the sugarcane which is ripe and mature has to be harvested according to a well-arranged programme. During the crushing season which runs from 150 days to 200 days in a year, the factories crush the cane 24 hours of the day and for all the days of the week. A continuous and adequate supply of fresh sugarcane ensures success in the season. The sugar factories in Maharashtra, South Gujarat and North Karnataka organise the harvesting programme through their Agricultural Department, which employs a team of employees numbering between 100 to 200 who supervise and control the harvesting operations. In co-operatives, the member cane-growners are helped and guided in the planting and growing of sugarcane all the year round through the team of Officers and employees of the Cane Development Department which ensures the supply of an adequate and good quality cane.

Huts of harvesting workers.

A Wretched Existence

For harvesting the sugarcane, the factories in Maharashtra employ about 3.50 lakh workers, who migrate to the sugar factories at the start of the crushing season from the worst famine-affected belt of the districts of Beed, Ahmednagar, Osmanabad, Latur, Aurangabad, Jalgaon, Sholapur, Sangli, Satara and the hilly tract of Kolhapur. The factory owners pay an advance amount to the contractors, who also hail from these areas and who, in turn, pay advances to the workers during the off-season and thus bind them to migrate to the factories for the crushing season. These workers migrate to the factories along with their bullock carts on which they transport the cane from the fields to the factories. The cane is then transported by trucks or tractor-trolleys.

After migrating to the factories by travelling a distance of 200 to 400 Kms., the workers are required to stay in make-shift hutments made of "bamboos" and "chatais", 3 feet high, admeasuring about 5' x 4'. Drinking water is not provided. Sanitation facilities, electricity, dispensary, primary school and all other elementary facilities are totally absent. Since their ration cards are at their villages, these workers do not get even sugar or cheap foodgrains. They have to shift these camps every fortnight or so. The wages for the work done is collected by the contractor every fortnight. The factory owners recover the advances paid to the contractors who, in turn, recover the advances paid to the workers besides making many other illegal deductions. The piece work rates are so low

and the deductions so heavy that a mere pittance is actually paid to the workers. This is not sufficient to keep body and soul together. The minimum wage for agricultural labourers is Rs. 10 per day, but the present piece-work rates are such that the average earning per day comes to Rs.5 or 6, out of which the advances are deducted leaving about Rs.2 per day for the worker. Working hours are not fixed. Harvesting is done in the day time, but loading of the bullock carts, trucks and trollys has to be done at any hour of the day or night, whenever an empty vehicle returns to the field after unloading at the factories. Needless to say, there is no weekly-off or festival holiday or any kind of paid leave facility. The service conditions are akin to those of *Vethbigars.*

The Battles In Court

The Bombay Industrial Relations (BIR) Act, 1946 is applicable to the sugar industry by virtue of the Notification of the then Government of Bombay, dated 4th October 1952 as amended on 30th April 1963. The Notification applies to the "industry, namely the manufacture of sugar and its by products including-

"i). the growing. of sugarcane on farms belonging to, or attached to, concerns engaged in the said manufacture.....

"ii) all agricultural and industrial operations connected with the said manufacture or with the growing of sugarcane on the said farms".

The Notification ends with the following note.

"For the purpose of this notification, all service or employment connected with the conduct of the above industry shall be deemed to be part of the industry when engaged in or by an employer engaged in that industry."

Unlike the provisions in the Industrial Disputes (ID) Act, the definition of the term "employee" given in Section 3 (13) of B I R Act includes "a person employed by a contracter to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of Clause 14. The said sub-clause (e) clause 14 defines the term "employer" which includes,

"Where the owner of any undertaking in the course of, or for the purpose of, conducting the undertaking contracts with any person for the execution by, or under, the contractor of the whole, or any part of, any work which is ordinarily part of the undertaking, the owner of the undertaking."

These definitions were interpreted by the Supreme Court in *Maharashtra Sugar Mills Ltd. v/s Its Workmen* (AIR 1951 SC 313). The Supreme Court held that if the owner employs the workers through contractors for the purpose of running the sugar industry as defined in the relevant notification, then the contractors' workers are the employees of the sugar factory owners themselves.

Some of the trade unions of sugar workers in Maharastra took up the cause of the harvesting workers in 1964 by raising general demands for wages and other service conditions on par with the regular sugar factory workers. The Industrial Court held the harvesting workers to be the workers of the factory owners and awarded 50% increase in the piece-work rates. The award was challenged in the Bombay High Court by Kolhapur Sugar Mills Ltd. The Writ Petition was dismissed. It was held that workmen engaged in the harvesting operations carried on the companies' farms or on the farms of the cane-growers who had entered into contracts with the owners for

Cane being transported by bullock carts

SPECIAL REPORT

supplying cane, are employees of the factory itself. *[Kolhapur Sugar Mills Ltd. v/s Syed Taki Bilgrami and another,* (1968) 1-L.L.J. Page 800]. The attempt to challenge this judgement in the Supreme Court was not successful.

The Industrial Court, Maharashtra had occassion to decide this issue again in the dispute between Kopargaon Taluka Sakhar Kamgar Sabha and three co-operative and three private sugar factories. After elaborate evidence and after inspection on the spot, the then President of the Industrial Court had decided that harvesting workers are employees of the factory owners and their demand for service conditions on par with the factory workers was granted. [M.G.G. part 1-L at page 4/03 (September 1971)]. The factory owners did not succeed in their attempt to challenge this award. A similar decision was given by the Industrial Court in 1972 in the dispute between Baramati Taluka Sakhar Kamgar Sabha and Malegaon Co-operative Sugar Factory.

Perturbed by these awards and by the harvesting workers' strikes for a wage rise, the powerful co-operative sugar lobby approached the Maharashtra Government with a request to exempt the harvesting operation from the definition of "industry" in the relevant Notification. The Maharashtra Government's response was peculiar. It neither agreed with the plea of the co-operative lobby nor did it ask them to implement the Industrial Court's awards at the State level. Instead, a meeting of the both the employers' and employees' representatives was convened and a tri-partite Committee was formed under the Chairmanship of the then Labour Minister, Shri Shankarrao Bajirao Patil, in 1974. This Committee increased the piece-work rates by about 50% but the old system continued in all other respects.

A Unique Struggle

Being a continuous process and the fact that local labour cannot withstand the hazards of the harvesting operations, the factories depend entirely on these migrant workers. But their bargaining strength at the factory sites diminishes with every passing day of the strike because there is no fodder (cane tops) for the bullocks and other cattle and no food and no credit in the factory area to survive. Thus every time, the workers are forced to enter into ad hoc type of agreements. At the end of the 6th day of the strike struggles in Ahmednagar District in January, 1980, 75,000 workers threatened and actually began to return to their native villages since there was no agreement and this compelled the factory bosses to reach agreements on the streets leading to their villages.

Realising the limitations of launching a strike at the factory sites, the workers organised themselves in their respective villages and, at the beginning of the crushing season of year 1980-81 a unique struggle was launched. The workers simply refused to migrate to the factories and just resided in their respective villages. All attempts to crush this strike proved futile. On 30th October, 1980, after 3 days of hectic negotiations, on intervention of the then Chief Minister A. R. Antulay and Labour Minister Narendra Tidke, an agreement was reached resulting in a 40% increase in the wage rates. By that agreement, a tri-partite Committee was appointed to decide about the other service conditions including elementary facilities like drinking water, medicines, primary school, ration shop etc. However the factory owners resisted each and every demand of the workers and the Chairman rejected almost all their demands.

Recently in October and November, 1986 these 4 lakhs workers again resorted to this form of struggle very successfully and consequently the commencement of the crushing season in the whole of the State was delayed by 15 days upto 20th November, 1986. A 25% wage increase was granted even though the workers had demanded 100% increase and improvement in other service conditions. But due to acute famine conditions, lack of foodgrains, fodder and even drinking water in their villages, these workers could not prolong the strike after 20th November 1986. Chief Minister S. B. Chavan assured them that he would favourably consider their demands within 2 months, but nothing has come of it. The workers are very sour about this and are thinking of strengthening their organisation by removing all th[e] weaknesses, including doing away wit[h] the contract system altogether.

Untrustworthy Trusts

All the Statewide agreements in re[spect] of these workers begin with th[e] preamble that "the factory owners con[tend] that harvesting workers are no[t] their employees while the Unions con[tend] that they are their employees'[.] The agreement is therefore reache[d] without prejudice to each others' con[tentions]. The co-operative sugar fa[c]tories during the last 6 years hav[e] amended their bye-laws. Previousl[y] the bye-laws provided that the respon[]sibility of harvesting and transport [of] sugarcane was that of the factory ow[n]ers. Now, with the consent of the Sta[te] Government, the bye-laws provide th[at] it is the responsibility of the can[e] growers who will be paid by the facto[ry] owners the expenses involved. At ea[ch] factory, a fictitious public trust or co-operative society of the cane gro[w]ers is formed. The harvesting contra[c]tors enter into contracts with the trusts or societies. However, ever[y]thing goes on as before except the add[i]tional paperwork for the purpose [of] these trusts or societies. The worke[rs'] organisations are now thinking of wa[g]ing a legal battle along the lin[es] adopted in Gujarat simultaneou[sly] with the ongoing direct struggles.

The Contract Labour (Regulation [and] Abolition) Act, 1970 is also applica[ble] to the sugar industry. The Mahara[sh]tra Government has not moved an i[nch] to help these workers. The contract[ors] do not obtain any licences or keep [a] muster rolls or pay sheets and the o[ffi]cials of the Labour Department for [en]forcing Minimum Wages Act and C[on]tract Labour Act knowingly keep m[um] in the face of this super-exploitat[ion] and *Vethbigari*. Given the fact th[at a] large number of the MLAs and Mi[nis]ters of Maharashtra heavily depend [for] their political survival on the sup[port] of the co-operative sugar lobby, th[e] workers cannot expect anything be[tter] from the Government machin[ery]. Their only alternative is struggle.

M. M. Katre is an activist of the Lal N[...] Party and has spent a life time organ[...] amongst others, the harvesting workers. He [...] the President of the Labour Law Practi[...] Association, Ahmednagar.

The Wages of Poverty

Even though the courts have recognised the utter injustice of imposing heavy surety amounts while granting bail to poor undertrials and recommended release on personal bond in fit cases, the practice remains otherwise. ***Sanober Keshwaar*** *narrates the case of a 20-year old woman activist who remained in jail for a full year after having been granted bail simply because she could not furnish the requisite surety.*

In 1980, the Hussainara Khatoon judgement of the Supreme Court [(1980) 1 SCC 81] came as a godsend to hundreds of under trials who had been languishing for years in the jails of Bihar and other States, some even for periods longer than the maximum sentence prescribed for the offences they were charged with, only because they were too poor to provide the surety for their release on bail ordered by the Court. This landmark judgement laid down in no uncertain terms that the prevailing system of granting bail only against a bond with sureties was oppressive and discriminatory against the poor, and that the Courts and the police should abandon this antiquated practice and permit release of the undertrials on personal bonds. For, heavy bail was tantamount to no bail at all.

But the judges in the many corners of India do not seem to have read this judgement at all because today, seven years after *Hussainara Khatoon,* undertrials still languish in jails and lock-ups unnecessarily for long periods of time not because they have been denied bail, but because they are too poor to provide the surety ordered by the Court. Such was Jaya Somanna's case.

Arrest And Detention

Jaya was born into a family of landless labourers in the Potaram taluq of Karimnagar District, Andhra Pradesh.

Jaya's own miserable existence made her determined to join the struggle of her people for a better life and so, in her early teens, she joined the Ryotu Coolie Sangham, a radical left organisation of the landless, poor peasants and tribals. The landlords, forest officials and contractors and the police in the area are, needless to say, hostile to this organisation and its activists, sometimes even killing them in fake "encounters".

Jaya was arrested by the police in April 1986 while she was organizing the women tribals in the forests of the Gadchiroli District of Maharashtra, which is adjacent to Karimnagar. The police foisted a series of charges on Jaya ranging from rioting to attempted murder. Jaya's only fortune was that she was not shot dead at point blank range.

Bail To No Avail

By July 1986, Jaya had been granted bail in almost all the cases foisted on her except one. In that case, the Sessions Judge of Chandrapur and Gadchiroli, Mr. G. K. [illegible]awayee, ordered her release on a bond of Rs. 3,500 with one solvent surety in the like amount. It is the established practice in the mofussil areas, in accordance with Rule 14 of the Criminal Manual issued by the Bombay High Court, that sureties above Rs.1,000 should be supported by a Solvency Certificate, which verifies that the person standing surety is solvent to a certain amount. It is imperative to own a house, some land or some immoveable property in order to obtain a Solvency Certificate. Moreover, getting such a certificate is a costly and time consuming affair. Interestingly, this practice is not followed in Bombay City, where the surety can produce provident fund certificate or a pay slip to show her solvency. Clearly the rural poor undertrials are grossly discriminated. Neither Jaya nor her parents knew anyone with land or a house who would be willing to stand surety for her. Her parents could not even afford the fare from their village to Chandrapur to come and visit her in the prison or bail her out. So Jaya remained incarcerated - a victim of poverty. She had to remain in prison for a full year.

Ultimately, in March 1987, an application was moved before the Nagpur Bench of the Bombay High Court under Section 482 of the Criminal Procedure Code, for Jaya to be released on a personal bond. Justice Ratnaparkhi ordered her release on a personal bond.

Shocking Treatment

Jaya Somanna's case has an added dimension. She used to suffer from periodical attacks of fits, especially when under pressure. As a result of the rigourous interrogation by the police following her arrest and the poor quality of the food and sub-human conditions in the prison, Jaya fell ill and had fits frequently. Although she never complained of mental illness, she was administered with Electro-Convulsive Therapy (ECT) on numerous occasions without her consent. As a result, she became mentally imbalanced and her physical condition deteriorated severely. She suffered loss of memory and could not recognize her lawyers and other acquaintances who came to visit her.

It is deplorable that this controversial treatment, which is only administered in extreme cases of mental illness where the patient has a tendency to become violent, was administered to a person without any authority of law, especially when her illness could have been successfully treated through psychotherapy. In Jaya's case the authorities succeeded in breaking her spirit, albeit temporarily, and rendered her incapable of political activity for a substantial period of time.

COMMENT

No Working At Night, Please, You're Female

Recently a judgement of the Bombay High Court upheld the ban on women working at nigh in shops and commercial establishments. We discuss the implications of this judgement.

Nocturnal Visit And Petition

Sometime in 1986 the Maharashtra State Labour Minister, with some officials in tow, went on a nocturnal binge of a different kind. He visited bars all over Bombay and was appalled to find, among other things, that women waitresses were working there well beyond the statutory limit of 8.30 p.m. as laid down by the Bombay Shops and Establishments Act. The Minister made the customary fracas that is associated with such discoveries; the Commissioner for Shops and Establishments sent out circulars to the errant bar owners in question including the one of Ambar Bar, situated opposite the University building in Bombay. And this last mentioned gentleman ostensibly did the smartest thing-- he induced his barmaids to challenge the validity of the offending Section 33(3) of the Bombay Shops and Establishments Act, 1948 in the Bombay High Court. Section 33(3) provides that, "no woman shall be required or allowed to work in any establishment after 8.30 p.m."

The barmaids contended that since the advent of the circular from the Commissioner, their employer had attempted to dispense with their services. Thus, this section was an unreasonable restriction on their right to livelihood and consequently, on their right to life guaranteed under Article 21. Thus, these few women unwittingly made history by challenging this discriminatory section 40 years after it was enacted.

The petition came up for hearing before Justice Daud of the Bombay High Court, who held that S.33(3) was a reasonable restriction on their right to work as its raison d'etre was to protect the morals and the health of women.

Discrimination Upheld

Such a blatant discrimination was upheld because , perhaps, the judge was dealing with the factum of women working in bars at night and, therefore, the question of morality clouded the issue. The owner of Ambar Bar, when interviewed, was quite straightforward about the fact that he employed women in order to boost his sales; he expects the barmaids to wait on the customers and induce them into having more drinks. This angle of the job is built into the whole contract of service - the barmaids are not paid a salary, but a 'commission' on how much liquor they are able to sell. The attitude of the Ambar Bar owner in using women to push his goods is in no way different from those who run the airlines. To be fair to the barmaids of Ambar, it must be added that, to their minds, they were doing a job like any other, out of economic necessity, and they all appeared to be adept at handling a difficult situation with over zealous customers.

If women want to work at night, they should be allowed to, by all means. A blanket ban will close a significant number of job opportunities for them, which are not too many as it is.

Protection Required

At the same time, women working on night shift must necessarily be provided with protective safeguard women working at night are es open to physical and sexual ac or attacks from male custom colleagues. In the US and i European countries it has b clared an 'Unfair Labour Prac the part of an employer if he neglects to protect his wom ployees from physical or assaults by male custome

Returning home late at nigh finitely fraught with danger, an employer must be made to prov transport from the place of wor respective homes of its wom ployees, as is done by the airli women reporters who wor shifts, some newspapers give taxi allowance while others space where the women can s night. In most hotels it is a women work at night only in pany of other women employ

We look forward to the tim women shall be employed wi to their skill and competenc job, and not for their value a jects to allure clients. We also ward to the times when wom able to work and travel at n from the dangers of physical assaults.

Barmaids...... only to sell?

Taxation of Charitable Trusts

R. L. Kabra *elaborates on the provisions of taxation in cases of Charitable Trusts.*

The provisions relating to charitable trusts are governed by Section 11 to 13 of the Income Tax (I. T.) Act, 1961. There are certain institutions like hospitals, sports associations, educational bodies and other funds or institutions, throughout India or in a particular State, which may also fall under the exemption provisions of sections 10(22), (22A), (23A), (23AA), (23B) and (23C). Educational institutions and universities are exempt from income tax u/s 10(22) provided that they exist solely for educational purposes and not for the purpose of profit. Hospitals are also exempted under specific circumstances.

Registration of Constitution

Before formation of a Charitable Trust or an Association, one should carefully note its constitution and the purpose for which it is formed; and the various statutes under which it can fall for registration vis-a-vis the provisions of the Income Tax Act. Registration can be:

(a) as a non-profit making company u/s 25 of the Companies Act, 1956;

(b) as a charitable trust under the Bombay Public Trusts Act;

(c) as Association or Institution registered under the Societies Registration Act, 1860;

(d) as an unregistered Association or Institution having its own bye-laws.

The modes of registration that may be resorted to depend on the purpose for which the body is formed. An Association or Institution registered under the Societies Registration Act need not be registered under the Bombay Public Trusts Act. A trust registered under the Bombay Public Trust Act has to pay a certain percentage of its income as contribution to the Charity Commissioner unless specifically exempted. Trusts are also governed by the rules and regulations of the Trust Act which puts them under strict discipline in all respects and in case of mismanagement.

Registration under the Income Tax Act

All trusts or Institutions wanting to avail of the beneficiary provisions of Sections 11 & 12 of the Income Tax (I. T.) Act have to make an application in the prescribed form (Form No.10A) and in the prescribed manner to the Commissioner of Income Tax (IT) before expiry of one year from the date of the creation of the trust. Belated applications may also be entertained at the discretion of the Commissioner.

Likewise, when the total income of the Trust or Institution exceeds Rs.25,000/-, it has to get its accounts audited by a Chartered Accountant and file the report along with its return of Income (Form No. 10B).

Voluntary and Specific Contributions

Any voluntary contributions received by a Trust or by an Institution shall be deemed to be income of the trust and the provisions of Sections 11 and 13 shall apply to them. However contributions or donations made with a specific direction (like forming a part of the corpus) may be exempt. They shall be added to the capital of the trust or to specific capital accounts. Therefore, one must plan contributions to the trust properly so as to avoid tax complications.

A trust deriving income from property held under trust has to spend at least 75% of its income within the same year and the balance (to the maximum extent of 25%) can be accumulated or set apart for future spending [Section 11(1)(a].

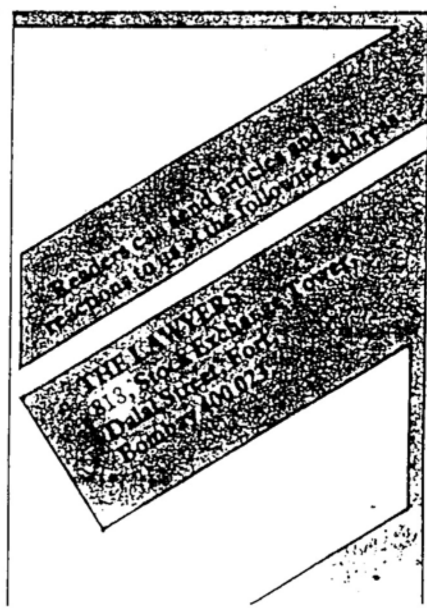
As provided under the explanation to Section 11(1), one can also exercise an option in writing for treating the income deemed to have been applied to the extent that such income was not received by the Trust. Likewise sub-section (1A) of Section 11 enables a Trust to treat the capital gain on the sale of capital assets as having applied if another capital asset is acquired.

Section 11(2) enables a trust to accumulate or set apart such income (consisting of 75% element) for specific projects which could not be spent during the previous year.

Consequences of Contraventions

Under Section 13 the Trust has to be established and the income to be applied should ensure benefit for the public at large and not for private religious purposes or for any particular religious community or caste. Also the income of the Trust should not be applied directly or indirectly for the benefit of persons connected with the Trust which will include founders, trustees and their relatives and their concerns. The setting out of the property of the Trust without adequate security or interest and other such undue favours will debar the Trust from exemption [Section 13(2)].

The investment of the Trust funds including that of the corpus are governed by Sub-section (5) of Section 13 which prescribe investment in saving certificates, immovable property, Post Office deposits, Bank deposits, Units, State and Central Government Securities and debentures of Government corporations or deposits with Government Companies. In the present pattern of investments, either debentures or deposits with Government Corporations fetches the maximum return to the trust as compared to other investments.



Advertising By Solicitors

Ranu Basu reports on some of the important changes by the Solicitors' Practice Rules 1987 and Solicitors' Publicity Code 1987 which were recently introduced in the U.K. relating to advertising by Solicitors.

The English legal profession has been traditionally divided into barristers and solicitors and continues to remain so despite periodic attempts at fusion of the two branches. With the result that generally speaking there is still a prohibition against the direct instruction of a barrister without the intervention of a solicitor.

However, another major aspect of legal work under the English system, namely, the prohibition against advertising by individual solicitors or firms, has undergone significant changes in recent years which culminated in the new Practice Rules and Publicity Code published earlier this year. Initially, the relaxations were in the area of collective advertising as opposed to advertising by individual solicitors or firms which continued to be prohibited under Solicitors' Practice Rules 1936/72. Subject to restrictions preventing claims of superiority, inaccurate or misleading statements and publicity likely to bring the profession into disrepute, the Law Society agreed with this view point and introduced a new national Solicitors' Directory as well as twenty-eight regional directories. This was followed by extensive consultations with members of the profession, including informal debates and ballots which in general favoured liberalisation of the rules on advertising. Finally, the Council of the Law Society approved the new Practice Rules and Publicity Code. The main changes are the repeal of Rule 1 of the Solicitors' Practice Rules 1936/72 (as amended), the rule prohibiting the obtaining of professional business of writing instructions, advertising or writing the introduction of Rule 2 of the Practice Rules 1987 allowing a solicitor to publicize his practice or permit another person to do so subject to the solicitor's publicity code promulgated from time to time.

Basic Principles

Since the new Publicity Code is not merely an advertising code but a publicity code, it applies to all forms of publicity including advertising, professional stationery, name plates, media appearances and so on.

Wherever necessary, a particular form of publicity is mentioned and specific prohibitions or regulations pertaining to that form of publicity are clearly set out. On the whole, the new code stands for a considerable liberalisation of the rules governing solicitors' publicity subject to the overriding necessity to ensure that publicity is in conformity with the five guiding principles set out in Rule 1 of the new Practice Rules, namely 1) the solicitor's independence or integrity, 2) the client's freedom to instruct a solicitor of the client's choice, 3) the solicitor's duty to act in the best interests of the client, 4) the good repute of the solicitor or of the solicitors' profession and 5) the solicitor's proper standard of work. While it was made clear that nothing must be done in the way of compromising or impairing these basic principles, it was equally imperative that the publicity must be "in good taste".

The Publicity Code 1987

The new Publicity Code has vastly expanded the use of media from a few specified ones to all media, with the exception of unsolicited visits and unsolicited telephone calls. As a result, subject to the general provisions of the Code, a solicitor is now permitted to advertise on radio and television and in public places, a significant departure from earlier practice. Also permitted are publicity in publications including directories, advertisements on miscellaneous items such as calendars, pens and books or matches and distribution of literature from mobile office and stands set up at an exhibition or show. However, there are restrictions on a solicitor distributing to the media any copy of his speech or address to a court, tribunal or inquiry. The scope of advertisement through direct mailing was also significantly expanded from only clients and professional connections under the 1985 guidance any person, subject to the general p visions of the Code. Apart from in vidual advertising the Code also p vides for institutional publicity by lo law societies which might refer to ir vidual solicitors or firms, "flag ad tising" or advertisement by a grou independent firms of solicitors some specified forms of third p advertising. The content of publi has also undergone significant cha under the new Publicity Code. R regarding statements as to qualit service have been significantly rela allowing a solicitor to refer to the q ty of his service although compar with and criticisms of the quali service of any other identifiable s tor remains banned. A solicitor i permitted to state his knowled qualifications and make claims th is experienced in a particular fi work if that is indeed the case.

While the Code has no restri on statements as to quantity of w fees income of a solicitor, the pr tion on references to his succe and any judicial appointment tinues. The Code makes detaile visions concerning statemen charges generally allowing the tion of gross fees and prohibiti mention of net fees. The use of aid logo by a solicitor willing to take legal aid cases is allowed p that the logo remains unalter

Conclusions

The changes in the attitude publicity by solicitors in the have influenced opinion and in this area in the countries of closer to the situation U.S.A. where publicity by law been viewed very liberally, par since the U. S. Supreme Cour Bates v. State Bar of Arizon Ed. 2d 8 10 (1977) that it was tutional to prevent lawyers fro tising the availability and cos services.

Ranu Basu is an attorney-at-law prac U.S.

Ramesh Tilekar

Ramesh Tilekar, an Advocate from Pune and President of the Lok Seva Samiti, has been on hunger strike since 11th May 1987 in support of a demand that all court proceedings in Maharashtra should be in Marathi. From 1973-1980 he was a full time trade unionist and a party worker of the CPI. He practiced mainly in the Labour and Industrial Courts. Since then he has been practicing criminal law. He is concerned mainly with the problems of the working class. He is also an accomplished actor, having acted in the well known play Ghashiram Kotwal. The demand to use Marathi as the language of the court has been launched in Pune by the Lok Seva Samiti of which he is the President. Though the demand relates to Maharashtra, similar demands have been and will be made in different States. We spoke to him on the nature of the demand. Excerpts of the interview are published below.

Tilekar on fast

Q. *What is your main demand?*

A. All evidence in all courts in Maharashtra should be recorded in Marathi. All judgements should be delivered in Marathi.

Q. *Don't you have the option even today to conduct the proceedings in Marathi?*

A. Yes. We can file a complaint or make an application in Marathi, but the judge will record his order in English. For example, even on a simple application for adjournment, the judge will not record "Manzoor". He will only record "Rejected" or "Granted" as the case may be. Even in the Sessions Court, all evidence is recorded in English.

Q. *How does this affect you?*

A. There is a vast difference between what the witness says in Marathi and what is actually recorded in English. In Pune, many of the lawyers themselves do not know English well. More than 60% of the judges themselves don't know English well enough to record evidence in English. Often the judge asks the lawyer what he should dictate. A lot of incorrect evidence gets recorded this way. Even the police complain that , guilty persons are acquitted as evidence is not properly recorded in court.

Q. *What motivated you to take up this demand?*

A. 95% of the population does not know English. They do not know what the lawyer is arguing. For example, a lawyer will tell his client: "I want to take a 'status quo' order, give me Rs.2000" or he may say: "I want to get an 'injunction'."The client does not understand the meaning of such words as 'status quo' or 'injunction'. Since court proceedings are in English, they are none the wiser and get fooled.

Q. *Are you saying that lawyers are taking advantage of clients who don't know English and are misguiding them?*

A. It is true that lawyers are taking advantage of the fact that the clients don't understand English. They are being misled and misguided. A lawyer will say to his client: "The case has been decided against you, but we will try our best to get you three months time to vacate". In actual fact, if they could read the court order they would find that the judge had already granted time.

Q. *Are you suggesting that this problem of lawyers misguiding clients will stop if proceedings are in Marathi?*

A. The problem will not end but the problem will be minimised. It is true that the language of the law is very complicated and even in Marathi, people may not understand the technicalities.

Q. *If all proceedings at the District Court level are in Marathi, what will happen at the High Court level?*

A. In the beginning this change should be implemented at the District Court level. Later it can be extended to the High Court also.

Q. *But all judges appointed to the High Court may not know Marathi?*

A. Proceedings can be translated into English for those who do not understand Marathi. Only about 5% of the litigation at the District Court level goes to the High Court.

Q. *There will be problems at the Supreme Court level also?*

A. I am told that only 0.5% of the litigation commenced at the District Courts goes to the Supreme Court. There is no reason why the proceedings cannot be translated.

Q. *Can you tell me something about the Lok Seva Samiti?*

A. It is an organization which has been set up to help the underprivileged sections of society. In 1979 when 3 workers were shot dead in Bajaj Auto in Pune by the police, we took out a mammoth protest procession and gave a call for a Pune Bandh. When General Vaidya was killed, we filed a criminal complaint against the Chief of Police for criminal negligence for its failure to prevent a breach of law and order. The hearing of the complaint has been stayed by the High Court. We also provide legal aid and advice to those who need it.

Q. *What support do you have in the legal profession and judiciary for this demand?*

A. The Criminal Bar and the Civil

Bar have both supported this demand. On 12th May 1987 some senior lawyers had called a convention in Pune. It was attended by Law Minister Sushil Kumar Shinde and also by Justice P. B. Sawant. Justice Sawant said that so far as the Judiciary was concerned they had long ago recommended to the State Government that Marathi should be introduced as the court language. The delay was inexplicable. Sushil Kumar Shinde said that large amounts of money were sanctioned for Marathi typewriters and for appointment of stenographers. He also said that the work of translating the Civil Procedure Code into Marathi had started and was likely to be completed within three months.

Q. *Why then is the demand not being recorded?*

A. It is due to pressure from those who represent the rich and vested interests in court.

Q. *Is your demand likely to be interpreted as a communal chauvinist demand? What about non-Maharashtrians, how do they react?*

A. It should not be interpreted as a communal demand. In fact we are still on strike in the Nava Peth area. There are Sikhs, Muslims and people from Kerala in this area. They have all supported the demand. They all speak in Marathi.

Q. *Most laws are in English, their interpretation is also in English. How will you deal with this problem?*

A. Where there is a problem with translation, we can use the English work. The problem will be transitional but it can be resolved..

Q. *Are there law reports published in Marathi?*

A. None at the moment. We will have to refer to the law reports in English until a time when they can be translated. It is like the chicken-and-egg problem. You have to begin somewhere.

Q. *What about Central legislation which is English? How will courts deal with the problem of interpreting central legislation?*

A. Judges will have to use the English texts until such time as translations are available.

Q. *The Marathi used in official communication is very complex and technical. How do you expect people to understand it?*

A. I agree that there is a need to simplify the language. The Maharashtra Language Advisory Board has a Law Committee which has taken up the task of simplifying the language of the law.

Q. *What is your experience with the Legal Aid Scheme of the State Government?*

A. It does not succeed. There is too much red tapism. A person has to visit ten different offices on several occasions before he can get legal aid. The scheme does not really provide legal aid to those who need it most and urgently.

Lok Seva Samiti members agitating

EMPLOYMENT GUARANTEE SCHEME BRINGS TANGIBLE RESULT

Over Rs. 1600 crore worth productive assets created in 15 years

Fifteen years ago, on May 1, 1972 Maharashtra's trend setting Employment Guarantee Scheme was launched. Maharashtra is the only State where a scheme guaranteeing employment to the needy in rural areas is in operation. Productive assets of a permanent nature are created through works undertaken under the EGS in the rural areas.

During the last 15 years 1,18,197 works have been completed (upto March 1986), thereby creating various productive assets like small, medium and major irrigation projects, labour oriented works, percolation tanks, village tanks, soil conservation, levelling of land, bunding, terracing and nalla-bunding afforestation, roads and others, all lasting and permanent in nature. Total expenditure incurred on these works upto March, 1987 is Rs.1602.38 crores. Total man-days generated are to the tune of Rs. 193.59 crores. The scheme has thus provided work to millions of our rural brethren and helped create productive assets worth over Rs. 1600 crores since its inception 15 years ago.

A scheme to help rural masses-Maharashtra's Employment Guarantee Scheme.

Directorate General of Information and Public Relations.

Strike and Counter Strike

That lawyers have a vested interest in disputes is something we all know about. But the lengths to which they will go to protect their 'territory' comes as a surprise. On the 5th of May, the historic Union Carbide case was fixed for hearing in the District Court in Bhopal. Much was expected of that hearing since on the earlier occasion the judge had suggested that interim relief should be granted to the victims and UCC was expected to make an offer on the 5th of May.

The Indian legal advisors of UCC and Government representatives had mad several trips to the USA, presumably to negotiate the interim relief. Came the day of the hearing and the court was found closed. The reason: lawyers in Bhopal were on strike! They were demanding the setting up of a High Court Bench in Bhopal. It did not occur to them that at least the Carbide case could be heard in view of the needs of the victims. But matters don't end there. Lawyers in Jabalpur were on strike opposing the demand to set up a Division Bench of the High Court in Bhopal. They felt threatened that a substantial portion of their work would go to the Bhopal lawyers. It is obvious that lawyers have mastered the art of going on strike in support of their right to work.

Another Legal Strike

And lawyers in Karnataka are equally indignant about the Family Courts that have been set up which excluded them from appearing in Family Courts. As usual, the argument is made in the name of the client. What will the poor woman do without the aid and assistance of a lawyer? they ask. And so, they are busy preparing to challenge the Family Courts Act on the ground that it violates the rights of the lawyers to carry on their profession under Article 19(1)(g). Good luck to them and too bad for the clients who will never succeed in getting rid of the chasing lawyer.

Tax Lawyers Unite

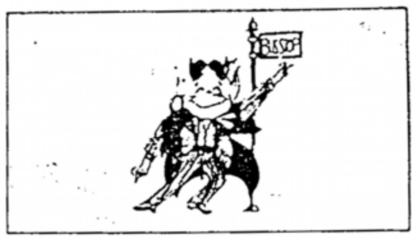
And while on the subject, the Karnataka lawyers are not the only ones jealously safeguarding their territory. A proposal to reform tax laws has been held up due to opposition from chartered accountants and lawyers. It is reported that the Government is thinking of abolishing the office of Appellate Assistant Commissioner, making the Commissioner of Income Tax Appellate Tribunal (ITAT) as the first appellate authority. It is also proposed to establish a National Court of Direct Taxes (NCDT). Both proposals are being vehemently opposed by lawyers because they will take away a substantial portion of their work. They also claim that such a Special Court will violate the right to equality guaranteed under Article 14. They have sworn to challenge any such move. All the Customs and Excise 'consent orders - lawyers in the High Court will find themselves briefless. It remains to be seen whether the Government will succumb to the powerful lobby of professionals.

Success At Last

The Gentleman Squatters of the Bombay High Court have finally quit. Success at last-no small achievment to be able to evict lawyers, even if it be after 30 long years. They have finally moved with every nail. The place looks a mess, in ruins. But one bright spark said that the Gentlemen Squatters would come out the winners anyway. "How would that happen?" I asked. He explained: "Now that these important and indispensable gentlemen have shifted, they had incurred huge and heavy expenditure in finding other places far away from the Court. Naturally, the cost of obtaining accommodation would be passed on to the client. Wait and watch" he said. "The fees will be jacked up. The poor clients will suffer. You should never have started a campaign against them. Maybe they will still have the last laugh. Who knows?" Let's wait and watch.

A Different Kind of Strike

The strike of the capitalists against the Supreme Court has begun. Almost before the ink was dry on the Sriram Foods and Fertilizer judgement imposing absolute liability for damage caused to any person by the escape of hazardous material, the Company filed a petition under Article 32 for a rehearing stating that the judgement violated its fundamental right. Many said at that time, that the petition was engineered by Union Carbide Corporation (UCC) as the



lawyers who were representing the two companies were common.

The UCC plot has now thickened. Union Carbide India Ltd. had shut down its Bombay plant for maintenance. It kept promising its workers that it would reopen. Now, it has given notice of closure. The reason: the Supreme Court judgement in Sriram is unacceptable. In their own words - "The Judgement of the Supreme Court in Sriram Food and Fertilizers Ltd. makes it clear that an employer handling hazardous chemicals in the plant would be absolutely liable for any damage caused to the citizens in the vicinity by reason of escape of such hazardous materials and that the limit of such liability is the employer's ability to pay. Considering the fact that liability of an industry handling hazardous chemicals under the principle laid down under the same case would extend even to the consequences of hazardous material escaping as a result of even a natural disaster or a deliberate act on the part of any person, it is impossible for the company to undertake the role of an insuror underwriting liability 'absolutely and without limit'" Hence, close down.

So the Supreme Court is not the court of the last resort after all. It is possible to strike against unacceptable decisions. While an application for permission to close has been made to the State Government, it remains to be seen whether the Government will submit to the economic coercion and allow the Supreme Court judgement to be sabotaged or stand by the Court and reject the application. For the moment UCC is the winner, inside and outside court.

Devil's Advocate

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