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JOURNAL OF INDIAN SCHOOL OF POLITICAL ECONOMY is devoted to a study of the Indian Economy, Polity and Society. Emphasis is on reviewing developments since Independence with roots in the British administration where relevant. When a review is based on statistical data, as far as possible, full statistical base data are presented.

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THE MODERN INDIAN PRESS : GROWTH, PERFORMANCE AND OWNERSHIP

Tara S. Nair

The Indian press industry has grown in terms of number of publications, extent of circulation and economic performance since the 1950s. This growth has been induced as much by increase in the level of literacy, development of infrastructure and urbanization as by technological upgradation and rapid leaps in the advertising industry. Along with expansion, the Indian Fourth Estate witnessed greater degree of concentration in its ownership over the last four decades. The paper examines the major trends in the newspaper publishing activity in the country with reference to its nature and extent of growth, pattern of ownership and control structure and economic performance.

INTRODUCTION

The Indian newspaper could perhaps, be traced back to the reports of the news writers (*vaquianavis*) under the Mughal regime. 'Some hundreds of original newspapers of the Moghul Court were sent by Col. James Todd in 1828 to the Royal Asiatic Society in London; the papers 8 inches by 4 1/2 inches in size on an average, written in various hands, record notices of promotions, visits by the emperor, hunting expeditions, bestowal of presents and news of similar interests' [Rau, 1974, p. 9]. News reporters were made use of extensively by the East India Company too to report the affairs of the British [Rau, 1974, p. 11]. A newspaper, as it is understood today, was first published in 1780 by James Augustus Hicky, a 'disgruntled' employee of the Company. It was called the *Bengal Gazette* or *Calcutta General Advertiser*. It was a weekly paper published from Calcutta that consisted of two pages of 12 inches by 8 inches in size. Since then, the Indian press underwent phases of absolute control and liberal support from the colonial rulers through the eighteenth and nineteenth centuries [See Parthasarathy, 1989; Rau, 1974; Moitra, 1969].

In the early phase of growth of the Indian press, the British authorities watched it very closely and put serious restraints upon its independence. The policy was generally one of discouragement and rigorous control (See Appendix 1). Between 1791 and 1799, several editors were deported at short notice to Europe without trial while several others were censured and made to apologise [*India Year Book*, 1920].

During the time of Lord Wellesley (1798-1805), an official censor was appointed before whom newspapers had to submit complete information well in advance of commencement of publication. Failing to do so was punishable and could even lead to deportation. This resulted in a period of 'Strict Regulation' followed by John Adam, the Chief Secretary to the Government. Censorship was abolished by Lord Hastings (1813-23), the Governor-General, in August 1818 and more qualified people started opting for a career in the press. A point worth noting is that the native press got an impetus to publish newspapers during this period. The first ever Indian language newspaper *Samachar Darpan* (Bengali) was started by the Serampore Missionaries in 1818. This was followed by the launching of *Bombay Samachar* (Gujarati). Thus, the foundation of the Indian language press was laid, patronisingly called by the colonial rulers as the 'vernacular press'. John Adam succeeded Lord Hastings as Governor General in 1823 for a short period and a phase of strict censorship of the press was again implemented. With the advent of Lord Amherst (1823-28) and William Bentick (1828-35) as Governor Generals, the press was left practically free, as they did not insist on the enforcement of the existing regulations. The Indian press went through another phase of 'emancipation' around the middle of the 1830s during the period of Lord Metcalfe. It was during this phase that the *Bombay Times* (1838) was started by leading merchants in Bombay which later became *The Times of India* in 1861 [*India Year Book*, 1920].

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Comprehensive statistics relating to newspapers published in India for the period prior to 1956, are difficult to obtain, especially their circulation details. However, *The India Year Book* published by Bennett Coleman & Co., Ltd. used to provide data on the number of newspapers in pre-Independence India. These figures indicated in a limited way, the dynamism demonstrated by the press in those days of hectic political activity.

As far as the pace of growth is concerned the twenties witnessed the maximum growth in dailies,whereas the decade prior to it experienced the highest growth in periodicals. In terms of overall growth during the first three decades of the twentieth century, the periodicals registered an annual average growth rate of about seven per cent against the four per cent growth rate in dailies (Table 1).

TABLE 1. PRESS IN THE BRITISH INDIA, 1901-02 - 1934-35

Year	Number of	
	Dailies	Periodicals
1901-02 - 1904-05	2,787	2,654
1905-06 - 1909-10	3,708	4,552
1910-11 - 1914-15	3,661	12,401
1915-16 - 1919-20	4,324	12,298
1920-21 - 1924-25	6,157	13,142
1925-26 - 1929-30	7,776	15,687
1930-31 - 1934-35	8,981	15,071
Growth Rates		
		(per cent per annum)
1901-02 - 1909-10	0.40	5.34
1910-11 - 1919-20	2.94	15.50
1920-21 - 1929-30	6.18	4.07
1930-31 - 1935-36	5.17	0.25

Note: Point to point growth rates.
Source: *The India Year Book* (various issues), Bennett Coleman & Co., Ltd.

The 1920s, thus, appear to be the beginning of a dynamic phase in the history of Indian dailies. This was the period of general political awakening and significant political activity in the country. It also coincided with a relatively more liberal approach from the British government towards the press. The 1922 legislation repealed the Newspapers Act of 1908, as also stringent provisions in the Press Act of 1910 that sought to control publishing activity in the country. Further, the First World War had already aroused curiosity among the educated readers about happenings in the world around them. All these created a conducive atmosphere for the growth of newspapers in the country.

The imperfections in the social and economic environment of India, like massive illiteracy and poverty, constrained expansion of the Indian press beyond certain limits. The repressive press laws enacted from time to time also deterred the growth of newspapers. At the same time it stood to benefit from the innovative government initiatives like setting up of the public postal system, establishment of telegraphic connections between Indian cities as also between India and Europe. The coming in of better technology in the form of steam-powered printing press, newsprint-making machinery, mechanical type-setting, etc., also contributed positively to the growth of the Indian press. In 1947, at the threshold of Independence, the Indian press appeared quite paradoxical. On the one hand, it was beset with physical limitations like expensive imported machinery, restricted communication network and limited readership [Rau, 1974]. On the other, it had proved its potential to survive against odds, thanks to the long and eventful saga of colonial administration.

The newspaper publishing sector in India grew steadily during the post-Independence era, though unevenly and often insensitive to social needs and responsibilities. Its character too underwent significant changes. After the attainment of political Independence the missionary spirit of newspapers gave way to commercial interests. Many of the small papers had disappeared and the ones that survived had either diversified their activities or the owners had changed hands. The relative significance of newspapers associated with private industry had increased in a noticeable manner. These changes had altered the character of the press. According to the *Report of the Press Commission, 1954*, the profit motive replaced the idealistic and missionary spirit of the former days; the individually owned or family concerns got converted into joint stock companies; the number of papers under the control of each individual concern increased, leading to concentration of ownership; even the

editorial control got transferred to the management, and public interest subordinated to the business and commercial interests of the owners.

At the end of the eighties, there were around 27,000 newspapers published in India with an overall circulation of nearly 60 million. The Indian press brought out newspapers in as many as 95 languages and regional dialects that included English and 15 other principal languages enumerated in the Eighth Schedule of the Constitution.

This paper presents an overview of the significant trends in the Indian newspaper publishing sector since the 1950s. This time frame has been chosen primarily because it was in 1956, with the inception of the office of the Registrar of Newspapers, that systematic recording of data on newspapers started in the country (Appendix 2). The paper consists of four parts. The nature and extent of growth of newspapers are discussed in Section I. Section II analyses the ownership pattern and control structure of the Indian press and Section III provides some indicators relating to the economic performance of the newspaper industry in the country. The conclusion to the paper is given in Section IV.

I MAJOR TRENDS IN NEWSPAPER PUBLISHING IN INDIA

The press in the country has grown in terms of both size and reach over the past four decades. Between the years 1956 and 1989, the publication of newspapers, weeklies, magazines, etc., rose by about 20,000, and the circulation increased by 32 million. The annual average growth rates reveal that it is in the seventies that the maximum growth was recorded in both the size of newspaper production and circulation (Table 3).

The absolute circulation figures, however, do not represent the reality adequately. Data presented in Tables 2 and 3 show that circulation has been steadily declining in the eighties, both in terms of absolute numbers as also growth rates. Obviously, this is a difficult proposition to subscribe to, especially due to the fact that the number of newspapers published has not been declining at a comparable pace. The discrepancy arises due to the decline in the proportion of newspapers that report data on circulation. The number of newspapers reporting data on circulation has steadily declined over the years: from 61 per cent in 1960 to 59 per cent in 1970, 49 per cent in 1980 and barely 15 per cent in 1989.

It is to nullify this effect that the average circulation figures have been calculated (Table 2). The data now clearly show the upward trend in circulation per Indian newspaper. Average circulation in the eighties has been growing at an annual average growth rate of 11 per cent. In fact, after the initial growth phase in the sixties it is only in the eighties that the press in the country experienced expansion in circulation.

TABLE 2. GROWTH IN NUMBER AND CIRCULATION OF NEWSPAPERS IN INDIA (1956-1989)

Year	No. of Newspapers	Circulation ('000s)	Average Circulation
1956	6,570	9,207	--
1960	7,651	18,219	3,917
1966	8,640	25,236	4,084
1970	11,036	29,303	4,519
1976	13,320	34,075	4,389
1980	18,140	50,921	6,017
1981	19,144	51,102	6,038
1982	19,937	50,094	7,056
1983	20,758	55,391	7,803
1984	21,784	61,147	8,022
1985	22,648	61,981	8,528
1986	23,616	64,051	9,340
1987	24,629	56,830	13,756
1988	25,536	54,873	13,283
1989	27,054	50,284	14,593

Note: Average circulation is calculated by dividing the circulation figures by the number of newspapers for which circulation data is available.
Source: *Annual Report of the Registrar of Newspapers* (RNI), (various years), Government of India.

TABLE 3: AVERAGE ANNUAL GROWTH RATES OF NEWSPAPERS

(per cent per annum)

Period	Growth rates of	
	Number	Circulation
1960-70	34.67	6.50
1970-80	36.66	7.45
1980-89	34.66	2.52
1960-89	35.06	7.44

Note: Point to point growth rates.

The trends in circulation growth, nonetheless, have been varied across newspapers of various periodicities (Table 4). The circulation of dailies registered consistent growth throughout the period of the sixties to the eighties. Between 1960

and 1970, there was an increase in the circulation of dailies to the tune of over 3 million; between 1970 and 1980, the increase was over 7 million. In the case of weeklies and monthlies, the expansion in the second period was higher than in the first period.

TABLE 4: CIRCULATION TRENDS ACROSS NEWSPAPERS OF VARIOUS PERIODICITIES

Year	Circulation (in '000s)			Average Circulation (in numbers)		
	Dailies	Weeklies	Monthlies	Dailies	Weeklies	Monthlies
1960	5,247	6,064	7,469	13,117	4,125	2,905
1970	8,299	8,424	8,869	17,111	4,073	3,386
1976	10,672	10,148	11,404	17,698	4,705	3,849
1980	15,531	14,303	14,792	20,819	5,967	4,721
1986	21,587	18,201	15,836	21,184	8,602	7,519
1989	23,097	18,293	10,982	23,984	11,855	13,231

Source: As in Table 1.

The Magazine Press

The study of the magazine press, known in the western media circles as 'the most specialized of all the mass media', in itself is quite revealing because of its distinct pattern of growth. The magazines (periodicals) are said to have either 'unit' specialization or 'internal' specialization. The ones with unit specialization target readers with special interests; sports, films, computer or career magazines fall in this category. Internal specialization magazines attract a wide variety of readers through articles on diverse topics.

It has been argued by communication scholars that the media evolves through a 'progression cycle' as the societies develop and start moving from the industrial age to the information age [Merrill and Lowenstein, 1971; Toffler, 1980]. To put it differently, there occurs, what Toffler calls, 'demassification of the mass media', and a phase emerges where the output of the media will be fragmented across various segments of population. This is called the 'specialization stage' in the progression cycle. Fragmentation and specialization accompany greater degree of consolidation among the leaders in the field..

Specialized magazines, approached from a different angle, appear as those that sell readers to particular advertisers and, hence, contain more 'revenue-related reading matter' [Bagdikian, 1983]. In the U.S.A. the specialization stage ushered in around the 1950s, as general interest magazines began to go out of business and the ones with internal specialization started establishing themselves. The latter finally took over the former around the 1960s [Roy Wilson, 1989, p. 95].

The Indian press sector started showing signs of a movement towards some kind of a specialization in the mid-seventies, the period that witnessed the magazine boom.[1] This phenomenon got clearly reflected in the National Readership Surveys (NRS) conducted by the Operations Research Group in 1970 and 1978 (Table 5).

TABLE 5. GROWTH IN URBAN READERSHIP OF PERIODICALS

Periodicity	Readership of Periodicals (in '000s)		Per cent increase
	NRS I(1970)	NRS II(1978)	
Any daily	24,147	33,666	39.4
Any weekly	14,667	27,604	88.2
Any monthly	13,496	23,702	75.6
Any publication	26,468	47,670	67.3

Source: *Report of the Second Press Commission, 1982.*

Analysed in terms of their content-emphases, the news and current affairs category accounts for nearly a third of the total periodical circulation in the country, followed by literary and cultural magazines. The average circulation of all types of magazines, has been on the increase through the 1970s and 1980s. The rise has been particularly marked during the latter period. Thus, the special interest magazines in general experienced an upswing in average circulation in the 1980s

(Table 6). However, two categories stood to gain tremendously from this overall situation of boom - film magazines and literary and cultural magazines. Women's magazines also gained in circulation, more strikingly so during the 1980s. Nevertheless one cannot say that specialization as it was observed in the west, had come to stay in India.

TABLE 6. AVERAGE CIRCULATION OF NEWSPAPERS: ANALYSIS BY CONTENT

Classification / Year	1970	1980	1989
News and Current Affairs	3,101	3,972	8,511
Literary and Cultural	5,890	7,726	28,699
Religion and Philosophy	2,248	2,920	7,380
Commerce and Industry	1,861	2,028	5,486
Medicine and Health	2,862	2,925	7,187
Film	9,818	14,818	38,103
Children	11,312	26,612	31,344
Science	2,675	2,898	6,731
Women	9,239	22,108	42,818
Sports	2,286	10,841	23,357
Finance and Economics	2,465	5,415	6,905

Source: *Annual Report of the Registrar of Newspapers*, (various years), Government of India.

The Language Press

It is true that the existence of a multitude of languages makes the Indian press a unique institution. But the heterogeneity in the processes and patterns of the development of different language newspapers makes it difficult to analyse the internal dynamics of the 'Indian' press as well as the external forces that moulded it. Hence, without looking at the trends in growth of the press across various languages, one cannot describe the Indian Fourth Estate meaningfully.

Here again average circulation figures have been used as indicators of growth. Average circulation across various languages have indeed expanded over the years, more so in the 1980s. The most conspicuous growth has been registered by the Malayalam press, the average circulation of which stood at around 50,000 at the end of the eighties. Even the low circulation language newspapers - Assamese and Oriya - have taken off on the path of growth during this period indicating the existence of a vast potential for expansion in the regional language press. It is interesting to observe that the English press has gone down in prominence in relation to other languages when average circulation figures are calculated, though in terms of absolute circulation its position is still second only to Hindi, the largest language press.

TABLE 7. TRENDS IN CIRCULATION OF NEWSPAPERS - ANALYSIS BY LANGUAGE

Languages	Number			Circulation ('000s)			Average Circulation		
	1970	1980	1989	1970	1980	1989	1970	1980	1989
Assamese	38	64	119	106	251	517	6,235	8,655	17,233
Bengali	707	1,376	1,885	1,388	3,304	3,325	3,761	4,049	10,076
Gujarati	577	688	860	1,924	2,745	2,833	5,010	7,130	24,422
Hindi	2,694	4,946	8,924	5,852	13,709	19,808	4,000	6,245	12,265
Kannada	247	592	932	844	1,843	1,921	4,652	6,003	22,869
Malayalam	432	719	1,037	2,295	3,960	6,351	9,683	12,652	49,617
Marathi	680	1,047	1,337	1,920	2,896	2,874	4,486	5,569	13,123
Oriya	103	240	405	224	451	978	3,446	4,063	16,033
Punjabi	236	384	592	369	946	1,356	2,754	5,375	10,594
Tamil	521	771	1,111	3,383	4,939	5,010	10,808	14,831	28,305
Telugu	361	520	699	1,057	1,478	1,945	4,893	7,820	17,061
Urdu	898	1,234	795	1,455	2,076	2,826	2,714	3,754	8,642
English	2,247	3,440	4,627	7,173	10,532	8,675	5,492	6,497	18,225
Total	11,036	18,140	27,054	29,303	58,921	58,284	4,520	6,017	12,590

Note: Average circulation refers to the circulation figures for newspapers for which circulation data is available, and not necessarily for the number of newspapers indicated in the table for 1970, 1980 and 1989.
Source: As in Table 5.

TABLE 8. SHARE OF DIFFERENT LANGUAGE NEWSPAPERS

(per cent)

Languages	Number			Circulation		
	1970	1980	1989	1970	1980	1989
Hindi	24.41	27.26	32.98	19.97	26.92	33.98
English	20.36	18.96	17.10	24.68	20.68	14.88
Urdu	8.14	6.80	2.93	4.96	4.08	4.84
Bengali	6.40	7.58	6.96	4.73	6.48	5.70
Marathi	6.16	5.77	4.94	6.55	5.69	4.93
Gujarati	5.23	3.79	3.18	6.56	5.39	4.86
Tamil	4.72	4.21	4.11	11.58	9.70	8.59
Malayalam	3.91	3.96	3.83	7.83	7.78	10.89
Telugu	3.27	2.87	2.58	3.61	2.90	3.33
Kannada	2.24	3.26	3.44	2.88	3.62	3.29
Punjabi	2.14	2.12	2.19	1.26	1.86	2.33
Oriya	0.93	1.32	1.50	0.76	0.88	1.68
Assamese	0.34	0.35	0.44	0.36	0.49	0.89

Note: The percentages do not add up to 100 as certain languages and categories like bilingual and multilingual are not included.
Source: *Annual Report of the Registrar of Newspapers*, (various years), Government of India.

These trends are also manifested in the shares of different language newspapers in the overall circulation (Table 7). A noteworthy feature of this era of expansion and diversification is the decline of the English press and the increase in the robustness of the regional language press. In fact, the English press has been losing out to others on both fronts - number of papers and circulation. This may be explained by two factors: (1) the erosion in readership in the urban centres, the base of the English press, in the wake of the increasing popularity of television; and (2) rise in levels of literacy in the various linguistic regions that acted as the much needed stimulus to the regional press.

The Hindi press seems to have been widening its reach much faster than any other Indian language press. Another notable observation is that the Malayalam press has taken over Tamil's position as the largest language press other than Hindi. Languages like Malayalam, Punjabi and Assamese could improve their shares in circulation while retaining those in the number of newspapers published. The period also saw English publishers making efforts to diversify into other regional languages in order to expand their reach. This, in fact, is in tune with the emerging situation the world over wherein newspapers, aided by the modern technological know-how, increasingly target local and regional markets in their pursuit of profits and social power.

Trends in Concentration

A significant aspect of the press in any given context relates to trends across various circulation brackets. This, for one thing, would indicate the relative contribution of newspaper enterprises belonging to different size-classes in the overall expansion in circulation and also would indirectly serve as rough estimates of concentration within the Indian press (Table 9). The term 'concentration', however, could convey varied messages. We consider here two specific aspects: size concentration and urban and regional concentration.

TABLE 9. AVERAGE CIRCULATION ACROSS SIZE-CLASSES: 1970-89

(Numbers)

Size-groups	Average Circulation			Gain per paper	
	1970	1980	1989	in 1980 over 1970	in 1989 over 1980
Above 1 lakh	150,050	178,827	202,079	28,777	23,252
50,000 - 1 lakh	69,264	70,989	70,400	1,725	(-)589
15,000 - 50,000	26,591	27,435	25,567	844	(-)1,868
5,000 - 15,000	8,398	10,083	9,094	1,685	(-)989
Upto 5,000	1,397	1,674	2,184	277	510

Source: *Annual Report of the Registrar of Newspapers*, (various years), Government of India.

Only the large circulation newspapers seem to have significantly benefited from the gains in circulation in the seventies and eighties (Table 9). This trend is discernible in the case of most of the Indian language newspapers (Appendix 3). It is obvious that when the markets are given, as is the case with Indian language newspapers, the firms that can afford to be flexible and can cultivate specialist markets are the ones that will survive. This essentially involves intense competition among firms to expand their captive market segment by penetrating the contested as well as the rivals' captive segments.[2] The big newspapers can gain competitive advantage in this game mainly through technical change. They are also aided generously in their efforts to consolidate the market position by the burgeoning advertising market, which has come to assume the role of providing sustenance to the print and electronic media. The advertising market is clearly geared towards the *numero uno* in the scene. In the face of aggressive competition from the electronic media, the inflow of advertisements to the newspapers is severely restricted. Under such a situation only the leaders can afford to survive.

TABLE 10: CONCENTRATION OF NEWSPAPERS: BY PERIODICITY AND CENTRE OF PUBLICATION, 1989

(per cent)

Centers of Publication	Dailies		Weeklies		Others		Total	
	Number	Circu-lation	Number	Circu-lation	Number	Circu-lation	Number	Circu-lation
Metropolitan Cities	14.5	27.1	12.6	33.9	41.3	55.6	23.7	37.4
Big Cities	66.4	60.4	61.4	40.3	42.2	36.2	55.6	47.2
Small Towns	17.9	10.8	25.2	25.4	15.3	7.5	19.8	14.5

Source: *Annual Report of the Registrar of Newspapers*, 1990, Government of India.

A close look at the spatial aspects of concentration reveals that the newspaper publication is still an urban phenomenon in the country with more than 80 per cent of the circulation being accounted for by big cities including the metropolis (Table 10). When it comes to regional concentration, Maharashtra, Tamil Nadu, Uttar Pradesh, West Bengal and Kerala accounted for more than 55.9 per cent of the overall circulation in the country over the two decades 1970- 89 (Table 11). This proportion has, however, been on the decline from 63.9 per cent in 1970 to 60.0 per cent in 1980 and 55.9 per cent in 1989. Tamil Nadu and Kerala deserve special mention as they claim higher circulation with relatively lesser number of newspapers (as reflected in the average circulation figures) thus pointing to concentration in circulation within their respective market segments.

TABLE 11: TRENDS IN GROWTH OF NEWSPAPERS: ANALYSIS BY STATE

States	1970			1980			1989		
	Number	Circulation (000s)	Average Circulation	Number	Circulation (000s)	Average Circulation	Number	Circulation (000s)	Average Circulation
Maharashtra	1,706	6,145	3,602	2,441	9,381	3,843	3,137	7,589	16,790
Uttar Pradesh	1,473	2,273	1,543	2,503	5,093	2,035	3,711	6,821	12,654
West Bengal	1,204	2,729	2,267	2,205	5,057	2,293	2,684	5,040	12,353
Tamil Nadu	870	4,942	5,680	1,171	6,624	5,657	1,551	6,294	25,585
Andhra Pradesh	587	848	1,445	1,007	1,581	1,570	1,399	2,485	11,947
Rajasthan	572	634	1,108	962	1,401	1,456	1,735	1,963	5,530
Kerala	569	2,536	4,457	944	4,348	4,606	1,291	6,596	46,450
Gujarat	527	1,544	2,930	642	2,091	3,257	813	1,945	19,847
Madhya Pradesh	467	605	1,295	658	1,011	1,536	1,534	3,425	7,462
Punjab	427	595	1,393	587	1,046	1,782	818	1,689	11,490
Karnataka	398	1,235	3,103	910	2,335	2,566	1,381	2,399	19,504
Bihar	225	578	2,569	542	1,740	3,210	1,100	2,341	12,654
Orissa	119	208	1,748	292	452	1,548	486	901	15,017
Assam	110	186	1,691	143	411	2,874	241	754	14,500
Delhi	1,242	3,668	2,953	2,209	6,959	3,150	3,565	6,856	19,090
All India	311,036	29,303	2,655	318,140	50,921	2,807	27,054	58,284	14,593

Source: *Annual Report of the Registrar of Newspapers*, (relevant issues), Government of India.

II OWNERSHIP AND CONTROL STRUCTURE

The type of ownership, extent of control and the extra-newspaper business affiliations of Indian press industry are considered here for detailed discussions.

The process of centralization and concentration is reflected in the stratification of business as also transformation in the legal forms of organization.[3] Joint stock companies have been the predominant form of ownership of the Indian newspaper industry, implying thereby the control of the industry being vested in the hands of a few shareholders (Table 12). It has other implications too; all publishers, barring a few (certain political groups or government organs), are primarily motivated by the desire to make profits. The urge for profit-making, however, may vary across ownership forms. A closely held firm or a firm under individual ownership may forgo some profit in favour of power or prestige. But a joint stock company has an extra constituent - the shareholders - to whom consistent profitability has to be shown. As it is answerable to the financial market, profit making becomes its dominant concern. At the same time, its very constitution and holdings in disparate markets enable a joint stock company to have access to information and management practices that give them a competitive edge over other forms.

TABLE 12: OWNERSHIP PATTERN OF INDIAN NEWSPAPERS

(per cent)

Type of Ownership	Share in Number			Share in Circulation		
	1970	1980	1989	1970	1980	1989
Individuals	61.1	64.9	69.8	32.5	34.0	38.9
Societies & Associations	18.9	17.3	14.3	9.6	8.7	3.8
Firms and Partnerships	6.0	5.0	4.6	10.5	8.2	11.6
Joint Stock Companies	4.6	4.1	4.4	37.4	39.0	38.9
Government	3.6	3.2	2.5	--	2.6	0.6
Others	5.8	5.5	4.4	5.3	7.5	1.0

Source: *Annual Report of the Registrar of Newspapers*, (relevant issues), Government of India.

It will be seen from Tables 12 and 12A that while the share of the joint stock companies in the publishing business has declined since 1970, their share in circulation has been quite substantial.

TABLE 12A: SHARE OF JOINT STOCK COMPANIES IN NUMBER AND CIRCULATION OF NEWSPAPERS

per cent

Year	Number	Circulation
1956	9.59	--
1960	7.64	28.4
1965	5.62	38.2
1970	4.60	37.4
1975	4.53	37.5
1980	4.05	38.5
1989	4.40	38.9

Source: As in Table 12.

In other words, fewer companies have begun to control greater circulation.

A break-up in terms of the size of the newspaper establishments gives an idea about the discrepancies existing in the extent of control exercised over circulation by large and small establishments. Any industry's behavioural pattern depends not only upon the number of firms but also their disparity in size. 'If a small number of firms produce a large proportion of the industry's output, then these companies are said to possess market power, in the sense that their decisions can alter the quantity of goods sold and influence price' [Jones and Cockerill, 1984, p. 30].

The Second Press Commission [1982] pointed out that in 1979 more than 72 per cent of the national circulation was controlled by nearly 16 per cent of the newspaper establishments in India. In 1989 around 20 per cent of newspaper enterprises could control 74 per cent of the national circulation. Moreover, during these ten years a rise in concentration in the top circulation brackets had been observed. In 1989, just about two per cent of the mega newspapers were found to be controlling 31 per cent of circulation as against four per cent controlling 40 per cent in 1979. Simultaneously, the tiny newspapers have improved their shares in both number and circulation (Table 13). It is the middle rung of newspapers that appears to be bearing the brunt of transformation that is taking place in the sector.

Another indicator of the relative positions of various sizes of newspaper establishments is the extent of circulation controlled by the big Common Ownership Units (COUs). A COU, as per the definition of the Registrar of Newspapers, is a newspaper establishment owning two or more news-interest newspapers, of which at least one is a daily. As a concept, this is closer to 'chain ownership units' that exist in the U.S.

A chain or a common ownership unit enjoys definite economic advantages that arise from the large scale of production and shared facilities like common management, common pattern, common editorials and articles, common press and common correspondents. All these make for appreciable savings in the cost of production. Such an establishment can afford to have its own research department and hire professional managers that add non-economic benefits by enhancing the overall quality of the newspapers that it publishes.

TABLE 13: NUMBER AND CIRCULATION OF NEWSPAPERS: BY SIZE-GROUPS, 1989

Size Group	Number	Circulation ('000s)
Above 1,00,000	89	17,985
	(2.2)	(30.8)
50,001 - 1,00,000	130	9,152
	(3.2)	(15.7)
15,001 - 50,000	626	16,005
	(15.7)	(27.5)
5001 - 15,000	1,196	10,877
	(29.9)	(18.7)
Upto 5000	1,953	4,265
	(48.9)	(7.3)
Total	3,994	58,284
	(100)	(100)

Bracketed figures are percentages to total.
Source: *Annual Report of the Registrar of Newspapers*, 1989, Government of India.

As in 1989, there were 112 COUs in India controlling 37 per cent of the national circulation of newspapers and 62.8 per cent of circulation of dailies. Joint stock companies dominated the COUs too, their share being 76.2 per cent.

At the level of the language press, one finds a greater degree of dispersal of circulation among COUs in the English and Hindi (and to some extent in Gujarati and Marathi) press. Besides, many of the national COUs have started diversifying into different regional languages. For instance, the *Indian Express* group of newspapers

publishes, apart from English, newspapers in Kannada, Tamil, Telugu, Marathi, Gujarati and Hindi.

TABLE 14: SHARE OF COUs IN DAILY CIRCULATION BY LANGUAGE, 1989

Language	Share in Circulation
Telugu	81 (Ushodaya Publications - 42)
Malayalam	67 (Malayala Manorama - 35)
English	54 (Bennett Coleman & Co., Ltd. and Express Newspapers - 33)
Bengali	54 (Amrit Bazar Patrika - 35)
Gujarati	67 (Sandesh Ltd. and Saurashtra Trust - 31)
Tamil	64 (Thanthi Trust - 30)

Note: The bracketed information relates to the share of the largest unit(s).
Source: As in Table 13.

The concentration trends in the Indian press were taken serious note of by the Fact Finding Committee on Newspaper Economics [FFCNE, 1975] and the Second Press Commission [1980-82]. The latter appointed a study team to determine the precise degree of domination and control by Indian big business of the press. The main conclusions of the study were: (a) Indian newspaper industry has a high degree of concentration, which is on the increase over time; and (b) ownership and control of the press do not rest within the industry. The managements have vested interests and strong connections outside the newspaper industry.

The study identified the following as National Monopoly Houses: (1) Express Newspapers, (2) Bennett Coleman & Co., Ltd., (3) Hindustan Times and Allied Publications, (4) Malayala Manorama Company, Limited, (5) The Statesman, Limited, (6) Pioneer, Limited, (7) Sanmarg, (Private) Limited, and (8) V.S. Dempo and Company, (Private) Limited. These 8 Monopoly Houses forming 0.01 per cent of all the newspaper concerns and producing 50 newspapers (i.e., 0.06 per cent of all the published papers) could control 30 per cent of the national circulation in 1979. It was also found that as far as the readers were concerned the big newspaper turned out to be 'cheaper' as the return per paisa was nearly 73 per cent higher in their case. Two factors need to be emphasised here as being responsible for 'making big newspapers cheaper' to the buyer - (a) access of big papers to larger share of newsprint; and (b) their capacity to carry high revenue yielding advertisements on account of wider circulation and possession of better technology.

The access to larger share of newsprint is directly related to the newsprint allocation policy of the state that helps the big enterprises obtain a disproportionately larger share in the allocation of newsprint. Nearly 53 per cent of the cost of production of newspapers is incurred on newsprint alone. Only those establishments with sufficient economic backing could therefore afford to incur such expenditure. This is reflected in the fact that over the years the top ten units have been consuming around 50 per cent of the newsprint available in the country (Table 15).

TABLE 15: CUMULATED NEWSPRINT CONSUMPTION BY THE TOP 25 NEWSPAPER HOUSES

(per cent)

	Proportion of Consumption to total newsprint available 1985-86 - 1988-89
Top 5	34.19
Top 10	47.13
Top 15	57.69
Top 20	64.55
Top 25	67.70

Note: Availability of newsprint in a given year is equal to indigenous production plus imports
Source: As in Table 2.

Newspaper industry presents a case where economies of scale work through higher circulation. It is worth noting here that the emergence of monopoly papers in the United States has been characterised as a direct consequence of the alliance between large circulation and mass advertising and the associated scale economies [Bagdikian, 1980, Pp. 59-64]. On the revenue front, thus, the large circulation papers are placed comfortably, as they are 'the most favoured' in the allotment of commercial advertisements. The advertisement market for the press in the country has grown fourfold between 1980 and 1989. However, 60 per cent of this has gone to nine English and 13 language dailies owned by large units. Similarly, 55 per cent of the advertisement expenditure has gone to 15 magazines of top companies [Srinivasan, 1991]. The large share of big enterprises in the advertisement market thus acts as a 'concealed subsidy system' helping them

absorb the high costs incurred. This is how growth in advertisement has continuously been fuelling the newspaper economy in acquiring a monopolistic character.

An added dimension to the issue of ownership and control of newspaper concerns could be their association with other business interests. Both the Fact Finding Committee on Newspaper Economics and the Second Press Commission unequivocally pointed out the existence of linkages between non-newspaper business and that of publishing newspapers. These linkages are the strongest in the case of the daily press. Table 16 compiled by the Second Press Commission testifies the above point.

TABLE 16: LINKAGES BETWEEN NEWSPAPER AND NON-NEWSPAPER BUSINESS

Category	Number	Circulation	Per Cent of Total Circulation
1. Newspapers owned or controlled by companies or undertakings or businessmen with interests in other business or industries	27	54,05,711	40.87
2. Newspapers owned or controlled by companies or families or individuals with primary interest in newspaper business	20	24,86,969	18.80
3. Newspapers owned or controlled by individuals or groups of individuals representing a variety of interests	1	3,08,833	2.33
4. Newspapers owned or controlled by trusts or educational organizations with primary interest in newspaper business	1	1,56,689	1.18
5. Newspapers owned and controlled by Trusts or educational, cultural or religious organizations as a means to achieve their wider objectives	5	3,33,515	2.52
Total	54	86,91,717	65.70

Source: *Report of the Second Press Commission, 1982*, Abstract of Recommendations; Chapter No./Para Nos. X 12 & 13.

The FFCNE pointed out a number of cases where the nexus between newspaper and non-newspaper interests were clear. To substantiate on the close connection between non-newspaper business and the business of publishing newspapers, the following observation made by the FFCNE is worth quoting: 'Sometimes the subsidiary companies are entirely unrelated to printing. To take an instance, The Indian Express Newspapers (Bombay), Pvt. Ltd. and its three subsidiaries, namely, Indian Express (Madurai), Pvt. Ltd., Andhra Prabha, Ltd. and Express Newspapers, Pvt. Ltd. owned jointly a firm known as Express Traders which dealt in Indian Iron shares. Indian Express (Madurai) had also a subsidiary of its own, namely, Ace Investments Co., Ltd. which had been holding the shares of national companies' [FFCNE, 1975, p. 51]. The most disturbing aspect of the newspaper industry in the country has been the clustering of companies bringing out large circulation newspapers within 'the penumbra of giant industrial and business houses'. The Second Press Commission Report said that the leading newspaper company, Bennett Coleman & Co., Ltd., had the House of Sahu Jain as its 71.15 per cent shareholder and Bennett Coleman & Co., Ltd. had, in turn, cross-holdings in companies of Sahu Jain House. The Goenkas, who control the Express Group of newspapers and the Sahu Jains are related by marriage. The newspaper companies had huge investments in concerns other than publication, such as banking, jute, sugar, Ayurvedic medicines, automobile parts, electronics, textiles and so on [Second Press Commission, 1982, Recommendations X. 58]. Additionally there are

inter-relations between large publishing houses. 'For instance, the Goenkas and the Jains are not only related to each other, there also exist inter-corporate investments and interlocking of directorships. Similarly, while Gwalior Rayon (a Birla Company) had held investments, and K.K. Birla was even chairman of a newspaper company of the Goenkas, Bharat Nidhi (a company of Jains) held shares in Birla's establishments. In its turn, a Goenka company had held investments in 'Bharat Nidhi' [Goyal and Rau, 1981, p. 241].

The domination of business interests in the Indian press continues to be quite strong. The small and medium newspapers, especially the language papers, are constantly under the threat of being relegated to the background or being taken over by the big establishments. The controversy regarding the sale of a large number of shares of the second largest Malayalam daily *Mathrubhumi* to Bennett Coleman & Co., Ltd., Bombay is a case in point. This attempt awakened the press world to a new reality - the possibility of the regional press being converted into satellites of big chains.

Apart from raising serious economic questions, the socio-political implications of such a situation are more disturbing. The media plays a critical role in defining the power structure of the society. Ownership and control structure of a newspaper establishment determines the character of the news reports, style and news display and the editorial viewpoint and other comments. With the increasing grip of business interests over newspapers a tendency has appeared towards transfer of even editorial control to the management. This has led to the emergence of designations like 'managing editors' who exercise managerial control on behalf of the owners, and ensure that the newspapers do not cause harm to their overall interests [First Press Commission, 1954, Chapter XV]. In sum, the impact of ownership and control of the press on news, views and features appearing in the newspapers cannot be ignored.

Another major aspect of the newspaper economics that leads to centralization in mass media is the heavy dependence on advertisements for revenue. When a newspaper establishment is owned or controlled by an industrial house, it can easily be made into an economically viable unit through assured advertisements. Many an article or feature may be aimed at promoting markets for advertisers. The control over press is sought not only for the limited objective of earning high rates of financial returns on investments, but also for social and political gains of big industrial houses.

III ECONOMIC PERFORMANCE

The Second Press Commission [1982] pointed out that there has been a striking increase in the profitability of the newspaper undertakings since the mid-seventies. Later, in 1990 the Wage Board under the chairmanship of Shri R.S. Bachawat entrusted primarily with the question of revising the wages of working and non-working journalists of newspaper establishments made observations on the financial position of the industry. Albeit based on a limited sample, the Report showed that the average gross revenue of newspaper establishments increased between 1980-81 to 1982-83 and 1984-85 to 1986-87 by 90 per cent, average gross profits by 196 per cent, average net worth by 104 per cent and average paid-up capital by 56 per cent. It was also found that the increase in average paid-up capital was relatively lower because newspaper establishments preferred to borrow rather than increase equity on fear of erosion of their control. Ranabir Samaddar [1990], after analysing revenues of 60 newspaper companies, reported that between 1979 and 1985, the revenue from advertising increased by nearly 200 per cent whereas that from circulation rose by around 160 per cent (Table 17).

TABLE 17: CIRCULATION AND ADVERTISEMENT REVENUES OF 60 NEWSPAPER ESTABLISHMENTS: 1979-85

(in Rs lakh)

Year	Adrvertisement	Circulation
1979	8,274	9,076
1980	9,890	10,889
1981	12,790	13,055
1982	16,610	13,702
1983	20,235	17,678
1984	21,009	19,842
1985	24,657	23,640

Source: Samaddar, Ranabir, 1990, *New Technology in Indian Newspaper Industry*, p. 74.

Previous reports like the Small Newspapers Enquiry Committee, 1964-65 and the Fact Finding Committee on Newspaper Economics, 1975 had also pointed to the economies enjoyed by the bigger units by virtue of their large scale of operation which checked the degree of capitalization from going down significantly. On the other hand, due to their uneconomic size, the small newspapers with the same degree of capitalization experienced diseconomies of scale and were unable to compete effectively with the big ones.

The employment situation in the press industry is one of the least discussed areas in the literature, and remains the most secretive aspect of the industry. However, it is highly unlikely that with the growth of newspapers, the number of workers has increased in this industry. Greater productivity and more profits are derived from the existing staff only. With the introduction of sophisticated technology based on computers, lasers and satellites and development of wire services and syndicates, the big newspapers can afford to do away with employment and move towards more capital intensive and cost reducing techniques [Paletz and Entman, 1981]. The Second Press Commission took note of the reduction in the share of wages and salaries of employees between 1973 and 1977-78, (from 21.96 per cent to 18.18 per cent), which was more drastic in the case of the bigger undertakings. A study in the early eighties by the *Statesman* Employees Union estimated a reduction of about 500 workers once photocomposition and offset printing were introduced [Samaddar, 1990, p. 54].

The pattern of utilization of the available technological options by the Indian daily press is varied across size classes. A study undertaken by the Registrar of Newspapers in 1960 on the organization of daily papers in the country reported that rotaries represented the most modern technology in the sixties followed by flatbed and cylinder press. The medium and big dailies in Gujarati and Marathi (other than English which was characterized as 'the best equipped' in terms of printing technology) had more rotaries compared to other languages like Hindi, Malayalam and Tamil. According to the information available for the year 1988 (pertaining to nearly 200 dailies of different languages) offset and rotary (or a combination of both) were found to be used widely by big and medium dailies. Among the small dailies cylinder press or treadles appeared to be equally popular.

By the late eighties big and medium dailies were predominantly photocomposed (the big ones being almost exclusively so) (Table 18). In the 1960s, big newspapers in various languages employed mechanical and manual typesetting. Although photocomposition made its way in the eighties into the press rooms of small dailies too, hand composing still remained the widely used technique in them. Combining mechanical composing techniques (lino- and mono- typing) and/or photocomposition with manual typesetting is also followed by them.

TABLE 18: USE OF PRINTING AND COMPOSING MACHINES BY SIZE CLASS: 1988

Type	Big	Medium	Small
PRINTING			
Rotary	3	12	17
Offset	12	29	34
Rotary & Offset	10	14	6
Cylinder	-	-	27
Offset with Others	1	7	6
Treadle & others	-	-	35
Total	28	66	125
COMPOSITION			
Photo- composition	26	49	29
Fully Mechanical	-	-	14
Fully Manual	-	4	52
Mechanical and Manual	2	4	20
Others	-	6	23*
Total	28	66	138

Note: * Exclusively using calligraphy.
Source: *Annual Report of the Registrar of Newspapers*, 1988, Government of India.

Printing and publishing of newspapers as a separate industrial activity was included in the *Annual Survey of Industries* for the first time in 1973-74. Prior to that it was clubbed along with the general category, printing and publishing. Using the three digit level data from the *Annual Survey of Industries* for the years 1973-74 to 1988-89, the trends in employment as also the increasing contribution of technology in the newspaper printing and publishing industry in the country during the seventies and the eighties have been worked out in Table 19.

The near stagnation in employment in the Indian newspaper industry since the mid-seventies is clear from Table 19. As regards the contribution of technological change to productivity, it is observed that since the mid-seventies both the capital-output ratio and capital-labour ratio have been declining in the industry. The rate of decline in the latter is more than that in the former, a trend better visible when indices are worked out (Table 20).

TABLE 19: EMPLOYMENT SITUATION IN THE INDIAN NEWSPAPER INDUSTRY: 1973-74 TO 1988-89

(per cent)

Year	Growth Rate in Employment
1973-74	
1974-75	(-)10.46
1975-76	(-)13.35
1976-77	13.09
1977-78	4.77
1978-79	(-)1.61
1979-80	1.49
1980-81	0.89
1981-82	7.26
1982-83	(-)2.83
1983-84	4.88
1984-85	(-)8.65
1985-86	3.33
1986-87	2.04
1987-88	7.03
1988-89	-)8.63
Annual Average growth	(-)0.05
Compound Growth Rate	
1973-74 - 1979-80	(-)0.0122
1979-80 - 1988-89	0.0032

Source: *Annual Survey of Industries: Summary Results*, (relevant years).

TABLE 20: MOVEMENTS IN CAPITAL- AND LABOUR- OUTPUT RATIOS: 1973-74 TO 1988-89

Year	K/O (1)	L/O (2)	Rate of Change in (1)	Rate of Change in (2)	Indices of K/O	Indices of L/O
1973-74	0.30	5.41			1.00	1.00
1974-75	0.31	4.32	3.10	(-)20.07	1.03	0.80
1975-76	0.26	3.80	(-)14.18	(-)12.03	0.88	0.70
1976-77	0.17	2.87	(-)36.96	(-)24.65	0.56	0.53
1977-78	0.16	2.76	(-)5.87	(-)3.81	0.53	0.51
1978-79	0.14	2.62	(-)12.84	(-)4.81	0.46	0.49
1979-80	0.14	2.17	3.54	(-)17.33	0.47	0.40
1980-81	0.16	1.76	12.86	(-)18.82	0.53	0.33
1981-82	0.16	1.45	2.34	(-)17.90	0.55	0.27
1982-83	0.17	1.14	7.28	(-)20.96	0.59	0.21
1983-84	0.20	1.14	12.80	(-)0.63	0.66	0.21
1984-85	0.16	0.90	(-)17.13	(-)20.92	0.55	0.17
1985-86	0.21	0.90	28.61	0.42	0.71	0.17
1986-87	0.21	0.69	(-)1.88	(-)23.07	0.69	0.13
1987-88	0.20	0.63	(-)3.57	(-)0.75	0.67	0.12
1988-89	0.18	0.52	(-)7.78	(-)17.20	0.62	0.10
Average Rate of Change			(-)1.90	(-)14.04		

Note: K - Capital; L - Labour; O - Output
Source: As in Table 19.

IV CONCLUSION

Any meaningful analysis of the dynamics of an industry requires reliable sources of data. However, no mechanism exists in India to systematically record data relating to the press sector. This has rendered the industry somewhat 'dubious', a situation which has so far helped it evade any kind of social and economic auditing.

The changes, that have come over the press scene in the country due to the advent of new technologies, growth in the advertising industry, sudden spurt in the growth of multiple media institutions and systems, and above all, the structural changes in the overall economic scenario, demand more focussed studies on the media industry in the Indian context. The press being the precursor to all mass media organizations, the process of its evolution and growth need to be

properly analysed and comprehended as a first step towards understanding the media. In the case of India, the most formidable obstacle in the way of exploring the press is in its division into linguistic entities which are at varying stages of evolution.

NOTES

1. This has been referred to as the 'magazine boom in the literature'. See, *Report of the Second Press Commission* [1982].

2. The terms 'contested' and 'captive' markets are used here in the sense Basu and Bell had explained them [Basu, Kaushik and Clive Bell, 1990, Pp. 145-165].

3. See, Tyabji, [1981]. He points out that the centralization process is clearly mirrored by the transformation from proprietorship to partnership to private limited company to public limited company.

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APPENDIX 1

SOME IMPORTANT LEGISLATIONS IN THE HISTORY OF COLONIAL INDIAN PRESS

1867	The Press and Registration of Books Act (PRB Act)	Regulated printing press and newspapers and the registration and preservation of books and newspapers published in the country.
1878	The Vernacular Press Act (VP Act)	Discriminated against the Indian language press. Many papers became fully English to defeat the Act. E.g., *Anand Bazar Patrika*, initially a bilingual newspaper, became a fully English paper after the VP Act.
1908	The Newspapers (Incitement to Offences) Act	Provided that no action could be taken against a press without application from the local governments. Only in special cases, where the order of forfeiture was made by the magistrate, the local government was empowered to annul the declaration made by the printer and publisher under the PRB Act of 1867.
1910	The Press Act	Passed during Lord Minto's time. Sought to check seditious writing. Made applicable to the entire British Indian Press.
1922	The Repeal of Press Legislation	The PRB Act, 1867 was amended; The Newspapers Act, 1908 and the Press Act, 1910 were repealed.
1931	The Indian Press Act (Urgent Powers)	

APPENDIX 2

SOURCES OF DATA AND LIMITATIONS

The major sources of newspaper statistics in the country are the *Press in India*, the newspaper statistics published annually by the Registrar of Newspapers, India (RNI) and Audit Bureau of Circulations (ABC) data. The former is a compilation of the annual statements submitted by the newspaper concerns. Under the Press and Registration of Books Act all newspaper publishers are required to furnish, annually, data on circulation, ownership and other details. The information given by the ABC, though detailed, does not cover the entire press in the country since its membership is limited, especially in the case of small newspapers. As of 1981, the membership of ABC was 118 dailies and 132 periodicals only.

The following are the major drawbacks of the annual reports of the RNI. Firstly, in any single year one can observe a discrepancy between the number of newspapers on the RNI list and the number of newspapers for which circulation figures are available. For example, in 1970, out of a total of 13,697 newspapers, only 8,736, i.e., only 63.8 per cent furnished circulation data. The proportion came down to 46.6 per cent (8,463 out of 50,921) in 1980 and 15 per cent (3,994 out of 27,054) in 1989. This happens mainly due to two reasons: (a) delay in removing the defunct newspapers from the list, and (b) non-reporting by a section of newspapers. This discrepancy also leads to unreliable estimates of the mortality rates of newspapers. Secondly, the reported circulation figures are often inflated to attract more advertisement and extra newsprint. Another serious lacuna in the annual reports of the Press Registrar is that the circulation figures do not indicate the area or areas where a newspaper has substantial circulation. Though the ABC provides such information, in any given year it corresponds to that year's membership only. As a result, it is virtually impossible to generate data for any selected sample across years.

Besides, the reports of the two Press Commissions [1954-55, 1978-80], the Small Newspapers Enquiry Committee [1964-65], the Fact Finding Committee on Newspaper Economics [1972-75] and the Committee on News Agencies [1977] made available some qualitative data relating to the Indian Press.

APPENDIX 3

SHARE OF NEWSPAPERS ACROSS CIRCULATION BRACKETS: BY LANGUAGE, 1989

Language	Share of Newspapers with Circulation							
	> 1lakh		50,000-1 lakh		15,000-50,000		5,000-15,000	
	No.	Cir.	No.	Cir.	No.	Cir	No.	Cir.
Assamese	--	--	--	--	30.00	70.21	50.00	26.69
Bengali	1.20	26.56	3.03	20.75	8.48	23.97	14.24	13.71
Gujarati	6.03	37.17	5.17	15.88	32.76	37.59	13.79	5.61
Hindi	1.55	24.33	1.98	11.26	13.81	27.43	37.21	27.23
Kannada	3.57	29.83	9.52	30.09	19.05	27.12	25.00	9.63
Malayalam	1.09	66.24	7.03	10.44	26.56	16.09	31.25	6.20
Marathi	2.28	26.65	3.65	20.64	14.15	26.72	25.11	17.29
Oriya	3.28	23.11	4.92	18.30	24.59	37.93	22.95	14.11
Punjabi	--	--	3.12	22.12	18.75	41.22	31.25	25.37
Tamil	5.65	43.95	6.21	16.27	28.81	26.71	29.94	11.18
Telugu	1.75	11.67	7.02	31.25	22.81	39.12	26.31	13.21
Urdu	--	--	0.91	7.25	12.23	28.38	42.51	53.08
English	3.57	37.64	5.88	22.37	16.60	25.17	18.91	9.45

Source: *Annual Report of the Registrar of Newspapers*, 1990, Government of India.

APPENDIX 4

NEWSPAPER INDUSTRY IN INDIA: IMPORTANT CHARACTERISTICS, 1973-89

Year	FK	WK	IK	Workers	Employees	Wages	Emoluments
1973-74	2,356	1,412	3,289	15,105	27,651	706	1,658
1974-75	2,721	1,542	4,340	13,808	24,474	712	1,854
1975-76	2,300	1,403	3,600	11,731	21,439	630	1,534
1976-77	2,176	1,838	3,439	13,111	24,400	856	2,205
1977-78	2,231	2,120	3,465	13,539	25,763	919	2,378
1978-79	2,010	2,021	3,376	13,332	25,339	980	2,595
1979-80	2,555	2,689	4,228	13,552	25,697	1,189	2,888
1980-81	3,584	3,487	5,660	13,665	25,935	1,329	3,149
1981-82	4,792	5,023	8,189	14,290	28,184	2,836	4,386
1982-83	6,320	5,234	9,770	14,157	27,113	2,110	4,905
1983-84	7,524	5,311	10,902	14,692	28,593	2,365	5,521
1984-85	7,202	5,945	10,951	13,056	26,483	2,406	5,327
1985-86	9,531	6,847	13,914	13,831	27,026	2,601	5,915
1986-87	12,404	8,885	16,935	13,955	27,734	3,031	7,099
1987-88	14,029	9,464	19,269	14,777	29,843	3,712	9,034
1988-89	14,275	8,899	19,381	13,657	27,111	3,750	8,666

Note: Values are given in Rs lakh and others in number.
FK: Fixed Capital; WK: Working Capital; IK: Invested Capital.
Source: *Annual Survey of Industries*, various volumes.

CAPITAL GOODS EXPORTS FROM INDIA: AN ANALYSIS OF TREND, STRUCTURE AND DETERMINANTS

Saikat Sinharoy

The study analyses the trend, structure and determinants of capital goods exports from India with the economy emerging as the major capital goods producing LDC. It is observed that capital goods exports grew till 1980 and relatively stagnated thereafter. The commodity composition changed significantly. Though newer markets emerged along with the existence of traditional ones, world demand patterns and movements in real effective exchange rate did not play a significant role in determining such exports. On the other hand, domestic demand pressure and in-house R&D are found to have significant impact. As a depreciating rupee and changes towards a more liberal policy did not have any perceptible influence on capital goods exports, it is concluded that a policy of product specific export promotion through the development of non-price factors might contribute to sustained export growth.

Since the early sixties emphasis began to be placed on export growth within an import-substituting regime in India. The exports of non-traditional manufactures in general and capital goods in particular gained momentum since 1965 [Kumar, 1988] and India emerged as a major capital goods exporting Less Developed Country (LDC). The share of capital goods in total Indian exports rose from 1.22 per cent in 1965-66 to 8.09 per cent in 1981-82. This study, thus, aims at delineating the growth, structure and plausible determinants of capital goods exports from India for a twenty-year period from 1965-66 onwards.

The export growth of LDCs like India has to be situated in the context of major changes in the world market during the period. The analysis of India's export performance, thus, has to take into account significant changes in the world trade patterns, high rates of inflation both in the domestic and the world economies and the changes from a fixed to a floating exchange rate payments system. These factors contribute to the difficulties in analysing Indian exports performance for the post 1970 period [Nayyar, 1988]. In addition, the above issue of growing capital goods exports from India has been examined against the basic postulates of high domestic demand for capital goods and the crucial dependence of capital goods exports on the level of technology and the skilled labour endowment of the economy.

Theoretically, commodity trade is explained in terms of Ricardian or Heckscher-Ohlin comparative advantage. The empirical findings (in the Indian context), however, do not lend support to these theories: an examination of capital goods exports reveals that these goods are either physical or human capital intensive.[1] Later theoretical developments confirm the existence of a third factor of production such as technology or skilled labour in explaining commodity trade. Deardroff [1984] reviews this literature extensively. Thus, apparently it is not factor endowment which determines the growth of capital goods exports from India. The phenomenal growth in engineering goods exports from India is either explained in terms of growth in world demand [Harinarayana, 1983; Rath and Sahoo, 1990; Banerjee, 1975] or in terms of movements in relative prices [Rath and Sahoo, 1990].[2] It is also established that non-price factors as product quality, technological characteristics, learning processes and marketing strategies are determinants of such exports [Kumar, 1988; Goldar, 1989; Suvrathan, 1991]. In an import substituting economy, domestic market conditions also seem to determine exports [Wolf, 1982; Harinarayana, 1983; Goldar, 1989]. In addition to the above factors, the pursuance of different trade regimes explain the pattern of non-traditional manufacture exports growth from India.

The definition of capital goods and a note on data and methodology used are discussed in

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Appendix I. The paper is structured as follows: the following section deals with the performance of the capital goods sector in terms of growth and structure of production and exports. The third section provides with estimates of the plausible determinants of such exports. The concluding section notes certain policy implications on the basis of the major findings of the study.

TREND AND STRUCTURE

Capital Goods Production

The planning design emphasised the strategic importance of domestic production of capital goods in the industrialisation process in India to boost the capacity to invest and come out of external dependence [Mahalanobis, 1955]. The capital goods sector, as a result, recorded high average growth in production between 1961 and 1965, followed by a marked downturn in growth thereafter.[3] The value- added by the capital goods sector from 1973-74 onwards can be traced out from Figure 1.

DATA FOR FIGURE 1: TABLE: CAPITAL GOODS VALUE-ADDED
(Rs Lakh, 1970-71 Prices)

Year	GVA	Average Annual Growth Rate
1973-74	68,853.46	-
1974-75	69,989.53	1.65
1975-76	71,040.57	1.50
1976-77	81,934.00	15.33
1977-78	84,428.43	3.04
1978-79	90,902.28	7.67
1979-80	103,195.45	13.52
1980-81	110,248.40	6.83
1981-82	116,710.29	5.86
1982-83	133,435.38	14.33
1983-84	142,061.98	6.46
1984-85	165,453.62	16.47

Note: Growth rates are in percentages.
Source: Calculated from *Annual Survey of Industries, Factory Sector, Summary Results*, (various years), Government of India, New Delhi.

FIGURE 1. CAPITAL GOODS VALUE-ADDED
(1970-71 PRICES)

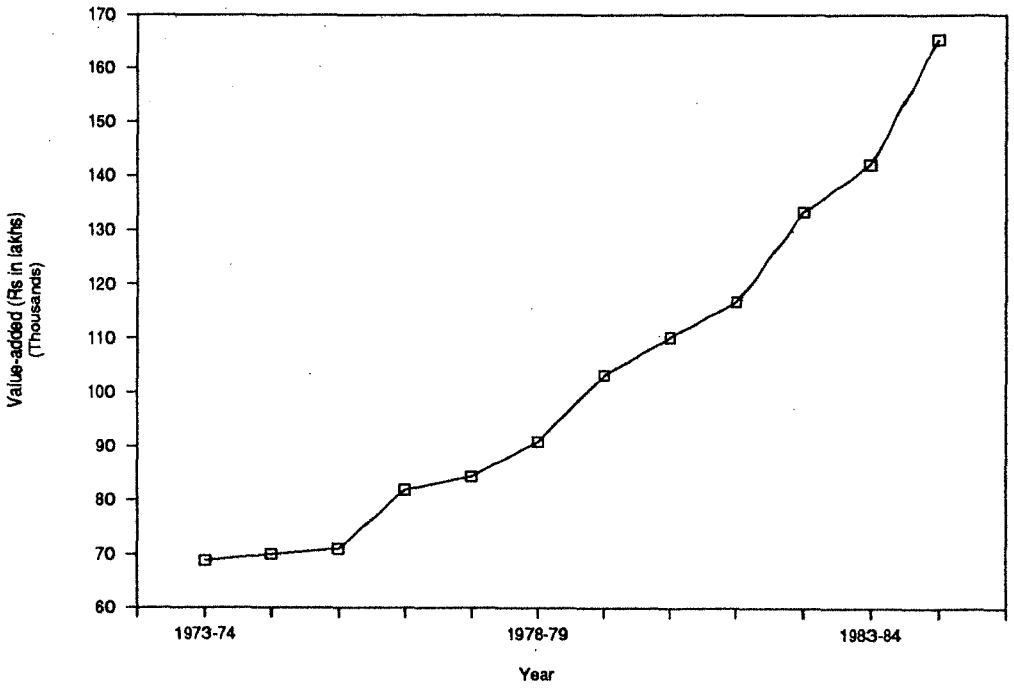


Figure 1 ascertains that the value-added by the sector grew at a lower rate during 1973-74 to 1975-76 as compared to the later years. After 1975-76, value-added by capital goods production grew at the compound rate of growth of 8.83 per cent till 1984-85. Studies such as by Pradhan [1990], following a different scheme of periodisation, conclude that the capital goods industries started reviving within three or four years after 1965 and the value-added by the sector accelerated thereafter. But it was not uniform across all products. However, it was claimed by other studies that the rate of growth of the capital goods sector came down in the eighties [Chandrasekhar, 1987; Singh and Ghosh, 1987]. The rationale behind such findings is: with the onset of a regime of external decontrol since the late seventies, the domestic producers were at a relative disadvantage and moreover, external liberalisation led to a relative rise in input cost. On the contrary, the findings of the present study do not lend empirical support to the above claim of deceleration in such industries during the eighties (Table 1).

The structure of capital goods production showed from 1975-76 onwards a marked shift towards non-electrical and electrical machinery, with higher growth in these sub-sectors during the eighties in comparison to others (Table 1). Nevertheless, transport equipment contributed a significant proportion to total capital goods value-added, despite declining share during the seventies as compared to the sixties [for figures in sixties see Bhagavan, 1985]. The relative low growth of metallic manufactures did not affect the sectoral rate as the sub-sector contributed insignificantly to the sectoral value-added.

TABLE 1. GROWTH AND STRUCTURE OF CAPITAL GOODS VALUE-ADDED IN INDIA: 1975-76 ONWARDS

(per cent)

Sub-Sector	Share in Value-added*			Growth Rates		
	1975-76	1979-80	1984-85	1975-76 to 1979-80	1980-81 to 1984-85	1975-76 to 1984-85
C.G.	19.17	17.96	19.91	8.33	8.05	9.40
M.M.	5.77	6.82	4.46	8.99	0.89	4.32
N.M.	35.43	34.07	35.06	6.37	8.07	7.35
E.M.	28.64	24.74	29.11	7.63	13.29	10.89
T.E.	30.16	34.38	31.37	10.21	8.38	9.15

Note: C.G. refers to capital goods, while M.M., N.M., E.M. and T.E. refer to metallic manufactures, non-electrical, electrical machinery and transport equipment respectively. (*) indicates that the share of capital goods is with respect to total manufacturing value-added, but the shares of the respective sub-sectors are with respect to total value-added by the capital goods sector.
Source: Calculated from *Annual Survey of Industries, Factory Sector, Summary Results* (various years), Government of India, New Delhi.

TABLE 2. GROWTH AND STRUCTURE OF CAPITAL GOODS VALUE-ADDED: A DIS-AGGREGATED ANALYSIS, 1975-76 TO 1984-85

(per cent)

Industry	Share of Product Groups*			Growth Rates		
	1975-76	1980-81	1984-85	1975-76-1979-80	1980-81-1984-85	1975-76-1984-85
Hand Tools, etc.	4.52	4.26	2.78	8.38	1.58	2.64
Agricultural Machinery & Equipment	2.78	3.68	3.19	13.92	4.93	8.74
Drills, etc.	2.37	3.03	2.85	6.33	11.50	9.31
Prime Movers, etc.	7.20	5.92	8.27	0.92	11.77	7.16
Food & Textile Machinery	5.97	6.26	4.45	10.77	0.75	4.14
Other Industrial Machinery	5.35	3.44	3.78	0.49	9.22	5.52
Non-electrical Machinery n.e.c.	6.11	6.63	6.51	9.60	8.09	8.73
Machine Tools	4.77	3.85	5.28	5.62	13.31	10.05
Electrical Industrial Machinery	19.41	15.74	19.07	3.46	14.02	9.54
Wires, Cable, etc.	4.51	5.64	3.39	17.28	6.61	11.14
Batteries, etc.	2.32	2.07	2.13	7.69	10.02	9.03
Electronic Equipment	1.50	2.04	2.44	18.85	19.01	18.94
Ship Building	3.49	3.66	2.33	12.32	0.06	5.26
Locomotives, etc.	9.01	11.03	9.85	11.93	8.29	9.84

Note: (*) The shares are with respect to capital goods value-added.
n.e.c.: not elsewhere classified.
Source: As in Table 1.

At a disaggregated level, figures (reported in Table 2) reveal that the shares of electrical industrial machinery, prime movers, locomotives and non-electrical machinery n.e.c. (not elsewhere classified) continued to contribute more in sectoral value-added from the mid-seventies through the eighties. The industries which grew most in the early eighties were electrical industrial machinery, computers and electronic equipment, batteries, etc., machine tools, prime movers, boilers, etc., drills, etc., and other industrial machinery, but rates of growth for locomotives, etc., ship building, wires and cables, agricultural machinery, non-electrical machinery n.e.c. were lower in the eighties than in the seventies, while hand tools and food and textile machinery registered negative growth in the later phase.

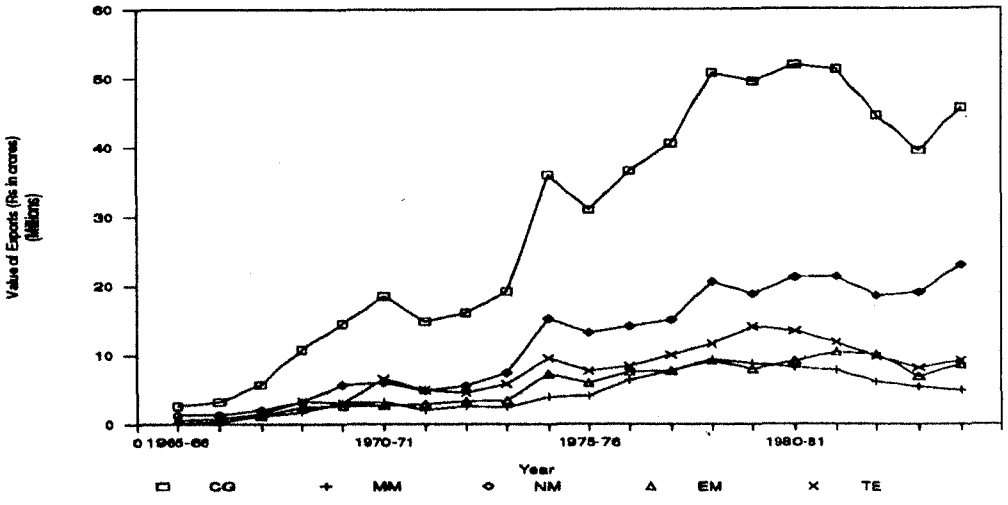
The contribution of machine tools in total value-added showed a minor increase in spite of significant growth in value-added in the eighties [Singh and Ghosh, 1987; Ramana, 1984]. However, there was considerable product diversification into the production of complex machine tools along with the rest of the non-electrical machinery sub-sector [Subrahmanian, 1985]. Edquist and Jacobsson [1982] viewed that the products structure of the sub-sector was comparable to that of the developed world and other newly industrialised countries (NICs). Table 2 shows that the electronic equipment industry grew at high rates throughout the period from 1975-76 to 1984-85. This segment of the capital goods sector also diversified constituting a spectrum of heavy and light products in the eighties [Pillai and Joseph, 1988]. The structure diversified from simple to complex products not only in case of machine tools and electronics, but over the entire range of capital goods production [Chudnovsky, 1986]. With domestic orientation of production, changes in the commodity composition reflect the changing domestic demand for capital goods, which has considerable implications for exports of such goods.

Capital Goods Exports

Capital goods exports, as reported in Figure 2 and Table 3, grew notably over the years from 1965-66 to 1984-85. In the initial years the rate of growth was slow, but it picked up in the following years till there was a break in trend in 1980-81 and capital goods exports stagnated thereafter. For the first fifteen years of the period, capital goods exports grew at the rate of 19.1 per cent while the rate fell to -2.95 per cent after 1980-81.

FIGURE 2. CAPITAL GOODS EXPORTS

(1978-79 PRICES)



DATA FOR FIGURE 2. EXPORTS OF CAPITAL GOODS FROM INDIA (IN RUPEES, 1978-79 PRICES)

Year	CG	MM	MN	EM	TE
1965-66	2,663,692.38	185,392.99	1,372,867.05	553,248.91	552,183.43
1966-67	3,233,772.41	288,129.12	1,359,477.92	794,214.50	792,274.24
1967-68	5,740,823.07	1,128,645.82	2,009,862.16	1,140,701.54	1,461,613.55
1968-69	10,805,174.89	1,722,344.88	3,273,967.99	2,457,096.77	3,351,765.25
1969-70	14,540,625.23	3,108,785.67	5,692,654.78	2,668,204.73	3,070,980.05
1970-71	18,502,783.35	3,197,280.96	6,046,709.60	2,688,454.42	6,570,338.37
1971-72	14,826,531.31	2,059,405.20	4,863,102.27	2,941,583.81	4,962,440.03
1972-73	16,088,661.28	2,603,145.40	5,574,721.13	3,352,877.01	4,557,917.74
1973-74	19,193,868.82	2,447,218.27	7,437,624.17	3,476,009.64	5,833,016.73
1974-75	35,981,559.42	3,943,578.91	15,245,386.73	7,268,275.00	9,527,916.93
1975-76	30,992,009.26	4,109,540.43	13,205,695.15	5,975,259.39	7,698,415.10
1976-77	36,546,221.10	6,402,897.94	14,147,042.19	7,590,650.12	8,409,285.48
1977-78	40,435,319.96	7,702,928.45	15,017,677.83	7,706,971.98	10,011,785.22
1978-79	50,759,857.59	9,420,658.37	20,546,780.75	9,156,717.51	11,633,700.96
1979-80	49,474,855.23	8,761,996.86	18,726,232.70	7,935,766.78	14,045,911.40
1980-81	51,856,983.97	8,172,660.67	21,157,649.46	9,095,714.99	13,425,773.15
1981-82	51,200,361.32	7,797,815.03	21,248,149.95	10,373,193.20	11,781,203.14
1982-83	44,414,696.73	6,151,435.50	18,467,630.90	10,068,811.75	9,726,818.58
1983-84	39,411,500.80	5,387,552.16	18,972,696.49	6,904,894.94	8,146,357.22
1984-85	45,581,120.20	4,890,854.20	22,922,745.35	8,601,157.38	9,166,363.27

Note: The abbreviations are same as stated in Table 1.
Source: Calculated from *Monthly Statistics of Foreign Trade in India, Vol. 1*, March issues, various years, Government of India, New Delhi.

TABLE 3. GROWTH RATES: CAPITAL GOODS EXPORTS AND ITS CONSTITUENTS, 1965-66 TO 1984-85

(per cent)

Period	Categories				
	Capital Goods	M.M.	N.M.	E.M.	T.E.
1965-66-1980-81	19.10	19.37	19.60	18.24	19.53
1981-82-1984-85	- 2.95	-12.80	3.17	- 3.51	-7.33
1965-66-1984-85	14.73	12.91	15.10	13.65	13.18

Note: All growth rates in the first two rows are calculated from piece-wise regression as there was a break in trend in 1980-81. As the components of capital goods exports followed a logistic pattern, logistic growth rates are calculated, as shown in the four columns of the last row. The growth rate of capital goods exports for the entire period is calculated from a semi-log fit. The abbreviations M.M., N.M., etc., are same as in Table 1.
Source: Calculated from *Monthly Statistics of Foreign Trade in India*, Vol. 1, (March issues of various years), Government of India, New Delhi.

The trajectory of the constituents of capital goods showed a logistic pattern over the years (Figure 2), showing relative stagnation since 1980-81. Non-electrical machinery grew at the trend rate of 15.10 per cent, which was higher than the rates of export growth for the other sub-sectors. Along with slower growth of non-electrical machinery exports in the post 1980-81 period, exports of the other three segments of the capital goods sector also retarded and the magnitude of negative growth was high for metallic manufactures and transport equipment. This slowing down of capital goods exports from the early eighties hints at the functioning of a complex set of internal and external factors, which is dealt with in the following part of the analysis. During the eighties, Indian exports were constrained by internal factors such as domestic demand, supply bottlenecks and certain non-price factors and external variables as protectionist policies of the developed countries [Nayyar, 1988].

At a disaggregated level, as seen from Table 4 that, shares of structural tools and parts and hand tools increased during the seventies, but declined in the eighties. Within non-electrical machinery, other industrial machinery and machine tools increased their respective contributions over the years, while non-electrical power generating machinery and non-electrical machinery n.e.c. maintained their respective shares, while the

share of textile and leather machinery declined to a considerable extent. In the electrical machinery sub-sector, the performance of power generating machinery was commendable, but electronic equipment continued to contribute insignificantly to the total. For transport equipment, a mixed performance was observed. The share of commercial vehicles exports increased during the seventies followed by a decline thereafter. The period as a whole witnessed a falling share of railway equipment exports, which India supplied on a significant scale to the world market in the earlier years.

TABLE 4. STRUCTURE OF CAPITAL GOODS EXPORTS AT A DISAGGREGATED LEVEL: 3-DIGIT CLASSIFICATION, 1966-67 TO 1984-85

(per cent)

Commodity Group	1966-67	1970-71	1975-76	1980-81	1984-85
Structural Tools	2.88	11.63	5.56	6.49	4.45
Hand Tools	6.03	5.64	7.70	9.27	6.27
Non-electric Power Generating Machinery	11.17	6.26	11.32	12.80	10.79
Agricultural Machinery	1.09	0.60	1.32	0.86	2.74
Office Machinery	2.63	2.35	1.78	0.34	1.63
Machine Tools	3.02	2.91	2.84	4.97	5.43
Textile & Leather Machinery	8.33	8.92	9.16	3.90	3.33
Other Industrial Machinery	3.36	1.83	3.16	6.50	12.41
Machine appliances	13.29	9.82	13.11	10.87	13.97
Electric Power Generating Machinery	3.54	5.19	6.53	5.14	5.34
Power Distribution Machinery	5.42	4.10	6.86	4.00	3.35
Electronic Equipment	3.09	0.89	0.90	1.29	0.78
Electric Machine Appliances	12.51	4.34	4.99	7.11	9.39
Railway Vehicles	5.48	3.24	5.31	4.47	1.57
Road Motor Vehicles	9.68	18.17	11.13	14.00	9.83
Bicycle Parts	5.69	5.35	7.12	7.43	5.77
Aircrafts & Parts	3.65	0.94	0.15	0.33	2.59
Ships & Boats	0.01	7.81	1.14	0.25	0.36

Source: As in Table 3.

The shares of all the four constituents of capital goods behaved erratically, depicting no clear trend in their contribution to total capital goods exports. However, on the whole, non-electrical machinery contributed a dominant share in capital goods exports throughout. Its contribution in capital goods exports approximated around 50 per cent in 1984-85. The structures of capital goods production and exports moved in the same direction. So, it would not be too far reaching to conclude that prior import-substitution led industrialisation laid the basis for higher capital goods export growth from the economy. This finding, however, does not always tally with the observations at the disaggregated level. This picture would point to the fact of changing domestic and world demand patterns and competitiveness of individual products in the world market.

The changing pattern of world demand also got reflected in the market diversification of such exports. The markets widened from the developed countries such as the UK and the USA to the erstwhile USSR, African countries and the Middle East. The product characteristics and structure of export flows to different markets are to be looked into to adjudge the pattern of world demand. It is observed that the developed countries purchased mostly hand tools, structural tools and parts, office equipment and machine tools (see Table 5). The electronic equipment, which went to the developed countries in greater proportion in 1966-67, found markets in Africa and the Middle East. The exported machine tools were mostly of the conventional variety, which are relatively labour intensive. The newer varieties of machine tools did not figure in the export basket till 1984-85. In the socialist countries, however, a shifting demand pattern for Indian capital goods can be noted. A marked shift in product flow was also observed from mid-1970s onwards with Africa and the Middle

TABLE 5. STRUCTURE OF CAPITAL GOODS FLOWS FROM INDIA: COUNTRY-WISE DETAILS

(in percentages)

Commodity Groups	1966-67				1974-75				1984-85			
	D.C.	S.C.	A.C.	M-E.C.	D.C.	S.C.	A.C.	M-E.C.	D.C.	S.C.	A.C.	M-E.C.
Metallic Manufactures	44.28	30.76	7.35	17.62	57.95	10.60	17.42	14.03	54.53	16.74	15.66	13.17
Non-electric Power Generation Machinery	32.16	0.76	13.86	53.22	39.64	1.23	14.25	44.88	37.58	4.93	18.85	38.64
Agricultural Machinery	2.96	0.00	76.93	20.11	8.95	2.11	67.11	21.83	3.91	0.56	73.81	21.72
Office Machinery	91.35	0.07	7.37	1.20	95.73	2.83	1.30	0.14	94.85	1.95	2.06	1.14
Machine Tools	26.70	53.06	13.92	6.32	79.13	1.43	11.53	7.91	65.43	6.18	12.13	16.26
Textile & Leather Machinery	16.96	0.30	70.75	11.98	25.44	36.98	28.25	9.33	27.51	38.50	25.24	8.75
Other Industrial Machinery	52.23	3.51	40.39	3.86	8.28	1.35	58.95	31.42	6.06	0.78	60.25	32.91
Machinery Appliances	10.12	11.60	27.35	50.93	28.40	12.10	19.08	40.42	26.20	14.98	17.35	41.47
Electric Power Generation Machinery	17.81	0.04	56.63	25.53	20.20	2.04	31.14	46.63	25.91	3.68	30.08	40.33
Power Distr. Mach	5.86	0.00	10.89	83.25	1.05	44.25	2.41	52.29	6.80	35.53	12.83	46.84
Telecom Equipment	91.61	0.00	3.98	4.41	32.06	0.01	45.12	22.81	27.95	2.51	38.93	30.61
Electric Machinery n.e.c.	9.46	62.73	21.69	6.12	33.52	38.84	8.45	19.19	35.03	31.28	11.13	22.56
Railway Vehicles	7.27	0.00	92.73	0.00	10.53	3.35	84.24	1.88	12.83	6.85	17.01	1.23
Road Motor Vehicles	17.31	16.44	51.07	15.18	12.65	3.85	54.32	29.18	10.58	4.52	53.69	31.20
Bicycle Parts	1.26	0.00	83.52	15.22	11.74	1.65	69.01	17.61	13.51	6.89	60.07	19.53
Aircrafts & Parts	17.44	0.00	82.53	0.03	55.42	16.59	0.18	27.82	41.21	18.16	15.17	25.42
Ships and Boats	0.00	0.00	0.00	100.00	0.01	0.00	0.00	99.99	0.44	0.00	0.00	99.56

Note: Figures are rounded to the second place after decimals. D.C. implies Developed Countries, S.C. implies Socialist Countries, A.C. implies African Countries, and M-E.C. implies Middle East Countries.

Source: As in Table 3.

East importing very high proportions of agricultural machinery and equipment, other industrial machinery, power generating and distributing machinery, and all transport equipment.

The above structure reveals that the developed countries purchased relatively less capital-intensive capital goods from India. The relatively more capital-intensive ones were mostly exported to the other developing countries which were at a lower stage of economic development than the Indian economy. These categories of products were not able to penetrate significantly the developed country markets. However, product flows to developed countries continued to determine the trend path of Indian capital goods exports to a considerable extent. The reasons underlying the clustering of certain products in some particular groups of countries and hence, the market penetration power of these goods might, along with other factors, be due to the pattern of technology acquisition and the resulting level of technology prevailing in the economy.

THE DETERMINANTS

Conventionally, export flows are expressed as a function of world demand and relative prices of exportables, where the supply side is generally assumed away. However, capital goods exports from an import-substituting economy depends on the confluence of various demand and supply-side factors. World demand, expressed either in terms of real world income [Khan, 1974] or the real income of trading partners [Sato, 1977; Goldstein and Khan, 1978], is found to have a positive impact on exports. The demand for Indian capital goods in the world market comes not only from advanced capitalist and socialist economies but also from oil exporting and African economies. Thus, exports of machinery and transport equipment crucially depend upon the level of income and investment pattern of these importing economies. Changes in world income gets reflected in the shift of the demand schedule, while relative price changes result in movement along the curve signifying price substitution effect. The relative prices of exports in the world market can be captured through real effective exchange rates. In a floating exchange rate system, currency depreciation of any magnitude would necessarily lead to a permanent improvement in exports through relative price mechanism or resource allocation effects.[4] However, as the world market is imperfect, non-price factors are vital in export determination.

Apart from the above factors, supply-side variables such as domestic demand pressure has a significant impact on the export growth of any import-substituting economy. Generally, two viewpoints prevail indicating the relationship between domestic demand and export performance: one hypothesising a direct relationship while the other views it as an inverse one. One set of formulations finds that with rising domestic demand, the industry gains economies of scale resulting in reduced cost and prices. This leads to higher factor productivity, which can also be due to adopting better techniques of production. This enhances the competitiveness of the products in the world market leading to higher exports [Basevi, 1970; Ahmed, 1976]. The alternative line of thought states that with growing domestic demand, less resources are allocated to export-oriented industries, leading to increasing cost and hence, higher prices of exportables. This makes the products uncompetitive in the global market, retarding exports to a considerable extent [Ball, Eaton and Stuer, 1966; Artus, 1970; Ziberfarb, 1980]. As production in India is oriented towards the domestic market, domestic demand seems to have a negative impact on the exports of capital goods.

Along with the domestic demand factor, there are a couple of other supply side variables such as technological development and policy changes which affect capital goods exports from India. The capital goods sector in India was developed through transfer of technology from developed economies and consequent domestic adaptation. Here lay the logic of advantage of producing these goods in LDCs like India. Domestic Research and Development (R&D) in the Indian capital goods sector, though more adaptive than innovative, could have had some impact on export performance.[5] The extent of R&D effort of any economy depends on the discretion of firms and on the policy environment within which the firms function. But below a threshold R&D activity

level there is no impact of R&D on exports. The spread of R&D, in turn, depends on the extent of exploitation of the technological potential of the specific industry, beyond which R&D activity does not have any effect on exports [Hughes, 1986].

The period under study covers the earlier phase of regulatory planning in the late sixties and seventies, followed by the later phase of partial economic liberalisation in the early eighties. The latter phase observed significant domestic decontrol along with partial external sector liberalisation to impart competitiveness in Indian industries. Both of these regimes fostered extensive technological learning though of different qualitative dimensions and consequent industrialisation and export growth [Subrahmanian, 1991]. This exercise would, thus, look into the impact of the changing policies on the capital goods export performance.

As demand and supply-side factors jointly determine exports, the single equation model outlined below encompasses both demand and supply side variables. The export determination model would also define the anticipated impact of each of the independent variables on the dependent one. The functional specification is:

$$\text{Capital Goods Exports } (X) = f(W, R, U, T, P) \qquad \ldots.(1)$$

where W is world demand; R is relative prices; U is domestic demand pressure; T is technological development and P is domestic economic policies.

The specification of the independent variables would be $f_w>0$, $f_r<0$, $f_u<0$, $f_t>0$ and $f_p>0$, where f_i's indicate the first order derivative of the dependent variable (X) with respect to the independent ones.

World demand for capital goods is proxied by world engineering goods exports at constant prices. Studies on world demand for Indian manufactured goods have either taken into account temporary or permanent effects in growth of world GDP through a lag [Virmani, 1991] or world imports [Lucas, 1988] or in terms of a quantum index of world demand. Rath and Sahoo [1990] took index of world capital goods exports along with relative prices as a proxy for world demand, while Goldar [1989] used a weighted index with weights in accordance with India's export market shares. In this study real effective exchange rate (REER) is used as a proxy for relative prices of exports. An important determinant of capital goods exports is the rate and structure of incentives. Incentive adjusted effective exchange rate is sometimes taken as approximate factor in applied trade literature. But time series information on export incentives to the capital goods sector are scanty and thus, such an index could not be quantified for the entire period under study. The REER used would represent the entire export sector, which distinctly differs from industry specific ones having differential impact on industry specific exports.[6] Domestic demand pressure is expressed as the ratio of the actual to the trend value of capital goods value-added. Here the variable T would take into account domestic R&D expenditure only. Foreign technology payments are represented in the dummy variable, which proxies changes in policy, on the assumption that technology imports depends on the policies pursued. The time series of these explanatory variables is presented in Appendix II. The equational specification of (1) in the double-log form would be:

$$\ln X = \ln A + \alpha_1 \ln W + \alpha_2 \ln R + \alpha_3 \ln U + \alpha_4 \ln T + \alpha_5 D + e \qquad \ldots.(2)$$

where D = 1, for the period from 1980-81
= 0, if otherwise.

where α_i (i=1,...,4) would denote the elasticity of capital goods exports with respect to the respective independent variable.

The regression exercise carried out shows adjusted R^2 to be statistically significant. The d. w. and F-statistics are also found to be significant. The regression result is as follows:

$$\ln X = 130.14 + 0.07 \ln W - 1.86 \ln R - 25.91^{***} \ln U + 0.46 \ln T + 0.15 D \qquad \ldots.(3)$$
$$(0.11) \quad (-1.65) \quad (-1.93) \quad (0.66) \quad (0.48)$$

$R^2 = 0.87$, F-Statistic = 19.09, d.w. Statistic = 2.56.
(*** denotes significance at 10 per cent level)

World demand is found to have a positive impact on capital goods exports, but not statistically significant. Though global engineering exports grew indicating increasing demand for such goods in the world market, export growth of Indian capital goods were not commensurate with the growth in world exports. This might be due to the fact of majority products becoming uncompetitive in the world market [Sinharoy, 1991]. The impact of world demand is also product specific, which might not be captured at the aggregate level [Lucas, 1988]. Moreover, regional bloc formation followed by intra-bloc trade might have constricted Indian export to a significant scale. India, though a member of ESCAP and SAARC, could not market its products to such countries due to the low complementarity of Indian exports with respect to the products of other developing countries.

The real effective exchange rate declined till the late seventies and capital goods exports registered an increase during this period. In the later period while the exchange rate appreciated, exports stagnated. Real effective exchange rate is found to have negative impact, though insignificant. Thus movements of relative prices do not affect capital goods exports to a considerable extent.

In the above regression result, domestic demand pressure is found to have significant negative impact on capital goods exports. The magnitude of the coefficient of this variable exceeds unity, implying that a change in domestic demand leads to a more than proportionate change in exports. It was already noted that these products were mainly produced for the domestic market in the process of import substitution. The exports were, thus, over and above domestic demand.

Technological development has a positive but insignificant effect on export growth. This finding might indicate that R&D activities have not crossed the 'critical minimum' to have a significant effect on exports. It is observed that the coefficient of the dummy variable is also insignificant, implying negligible impact of changing policies on capital goods exports. However, it is worth pointing out that the supply side denoted by domestic market conditions determine capital goods exports.

In an alternative specification only the supply side of exports can be taken into account. The variables W and R are, thus, dropped from the equation. The impact of partial liberalisation of the external sector can be obtained by substituting the dummy variable with the imports of capital goods (K) and payments for technology imports (M).[7] However, these variables do not encompass changes in the entire gamut of external policies nor changes in internal policies and the following specification is, thus, restricted in character than the earlier one. It is found that:

$$\ln X = 128.18 - 27.64^{**} \ln U + 1.24^{*} \ln T - 0.33 \ln M - 0.38 \ln K \quad \ldots (4)$$
$$(-2.58) \quad (6.76) \quad (-0.11) \quad (-1.62)$$

$R^2 = 0.87$, F-Statistic = 26.42, d.w. Statistic = 2.37.
(** and * denote significance at 5 and 1 per cent levels, respectively)

It is interesting to note that, in a restrictive specification, domestic efforts in technology development is found to have significant effect on capital goods exports. Thus, technological adaptation and production of standard equipment determines saleability abroad.[8]

The striving for modernisation in the economy in general, and the capital goods sector in particular, was attempted through liberal imports of capital goods and technology. Contrary to expectations, imports of technology and capital goods had a negative impact on exports, though insignificant. Thus such imports did not help in improving the competitiveness of capital goods exports. But, all these explanatory variables are likely to have lagged impact on capital goods exports, which calls for further analysis. Moreover, the analysis does not take into account the export promotion policies followed during the period.

SUMMARY AND IMPLICATIONS

The study observed some facets of structural change in capital goods production and exports following different phases of growth. The export growth path can be divided into two distinctive phases: the rising trend till the early 1980's and the relative stagnation thereafter. Though exports decelerated in the early eighties, a change in relative contribution was noted among the respective product groups. It is concluded that

prior growth and changes in industrial structure laid the foundation of export growth and commodity diversification. As production was motivated for the domestic market, domestic demand pressure was found to have significant negative influence on exports indicating higher profitability in the domestic market than markets abroad in phases of higher growth.

The markets for Indian products diversified from the limited destination of the USA and the United Kingdom to Africa and the Middle East, with an increase in demand for specific products. However, the developed economies continued to determine the flow of capital goods from India. In spite of opening up of new markets and significant growth in world exports, world demand did not have any perceptible impact on Indian capital goods export performance. Moreover, declining relative prices did not have any appreciable influence on such exports.

Along with domestic demand, indigenous R&D effort is found to have a positive influence on exports, though very restricted. The rise in domestic demand and declining investment in R&D in the eighties explain partly the stagnation of capital goods exports during the period. Increased technology imports did not promote exports. Even policy changes did not have a significant impact on export growth. This tends to show that neither liberal policies nor depreciating rupee, by itself, will promote exports for the sector. These findings imply that specific export promotion policies could be more effective than liberal ones for sustained export growth. These promotion policies are to be non- price in nature as the price mechanism alone will not help the products to penetrate an imperfect world market.

APPENDIX I

DEFINITION, DATA AND METHODOLOGY

By definition, capital goods are commodities whose turnover period is more than one. This study uses 'capital good' as a generic concept consisting of equipments across mechanical, electrical and electronic processes. For detailed product group classification of capital goods, refer Sinharoy [1991], Chapter I.

The data on capital goods exports is collected from the March issues of *Monthly Statistics of Foreign Trade in India*, Volume 1, Directorate General of Commercial Intelligence and Statistics, Government of India. The current price estimates of exports are deflated by unit value index of machinery and transport equipment with base year 1978-79, obtained from Chandok and The Policy Group [1990]. The study uses exponential and logistic functional forms to estimate export growth rates and percentage shares to depict structure of such exports. The determinants of capital goods exports are identified on the basis of OLS estimates of a log-linear model, where coefficients of the independent variables illustrate elasticity of capital goods exports with respect to each independent variable.

APPENDIX II

DETERMINANTS OF CAPITAL GOODS EXPORTS

(Rs Crore)

Year	World Demand (1970 Prices)	REER (1975 = 100)	Domestic Demand Pressure	R&D Expenditure (1970-71 Prices)	Technology Payments (1970-71 Prices)	Capital Goods Imports (1978-79 Prices)
1970-71	6,817,381	112.96	0.9964	139.64	118.33	1,073.20
1971-72	7,478,903	113.24	1.0024	146.65	106.20	1,355.01
1972-73	8,264,656	110.92	1.0094	168.41	117.05	1,251.97
1973-74	8,669,576	105.13	1.0031	170.09	127.11	1,470.59
1974-75	8,549,411	107.83	0.9995	187.89	132.72	959.62
1975-76	9,788,794	100.00	0.9929	224.11	155.27	1,120.59
1976-77	11,180,590	89.93	1.0003	235.03	198.39	1,126.97
1977-78	11,372,191	90.46	0.9998	253.22	232.33	1,413.01
1978-79	11,559,935	82.88	0.9992	295.96	206.51	1,215.16
1979-80	11,099,365	82.66	0.9950	336.61	207.60	1,116.60
1980-81	11,055,874	90.32	0.9953	358.57	291.99	2,166.80
1981-82	12,462,756	94.44	0.9954	396.26	554.96	2,407.99
1982-83	12,907,698	92.34	1.0024	470.55	578.07	3,179.51
1983-84	16,671,694	95.15	1.0020	488.37	608.44	4,092.05
1984-85	20,576,192	93.82	1.0072	582.78	673.80	2,709.30

Source: Data on world demand and real effective exchange rate are collected from United Nations, *Yearbook of International Trade Statistics* (various years), and Joshi [1984, 1986], respectively. Domestic demand pressure is calculated from *Annual Survey of Industries, Factory Sector, Summary Results*, Govt. of India. Data on foreign technology payments are from *Reserve Bank of India Bulletin* (various issues), and Mani [1991]. The data on R&D expenditure are from various issues of *Research and Development Statistics*, Government of India. Various issues of *Monthly Statistics of Foreign Trade of India*, Government of India, provide the data on capital goods imports.

NOTES

1. Banerjee, 1975 observes that engineering exports from India are both physical and human capital intensive, though Little [1982] views capital goods as more skill than capital intensive.

2. Capital goods constitute a significant proportion of engineering goods. Thus, it is not inappropriate to review studies, such as Harinarayana [1983], Banerjee [1975], Goldar [1989], dealing with engineering goods exports.

3. The earlier studies, for instance Ramana [1984], point to high growth of capital goods production prior to mid-sixties and relative slowing down thereafter. However, United Nations [1983] and Subrahmanian [1985] find a cyclical growth path for capital goods production, which was an unique feature in the third world.

4. Bautista [1982] views that the latter mechanism is particularly effective for developing countries.

5. The design capabilities acquired in the Indian capital goods industries are limited [Chudnovsky, Nagao and Jacobsson, 1983; Chudnovsky, 1986].

6. This observation has been made in Brodsky and Sampson [1983].

7. Khan and Knight [1988] found that capital goods imports are crucial to developing country exports.

8. 'Standard capital goods' are those products whose design characteristics are settled and for which the production technology is also standardised. [Chudnovsky, Nagao and Jacobsson, 1983].

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EVOLUTION OF THE CONSUMER PROTECTION LAW IN INDIA

Suneeti Rao

The article surveys the measures for consumer protection in India from the days of Kautilya till the present. It traces, in brief, how the need for such measures arose when the barter system was replaced by market transactions. After the Industrial Revolution, especially, with the emergence of multinational corporations, consumers had to build up a strong worldwide movement to protect their interests. The state and the United Nations intervened on their behalf, to realise their basic needs: adequate supply of essentials (both goods and services) like food, water, or health care, at reasonable prices and of acceptable quality. Since mere legislation is not adequate, positive intervening measures by the state as well as active consumer participation are called for. Sections I to VI outline the historical developments, the Consumer Protection Act, 1986- a judicial mechanism to resolve consumers' disputes- with a few characteristic judgments of the consumer courts, and measures for control of price, quantity and quality. Section VII comprise Illustrations.

The etymology of the word consumer indicates its origin from the verb 'to consume', first mentioned in literature in its old English form *consumyd* by Wyclif in 1382. It was used in the sense of 'destroyed', generally, by fire. Till the sixteenth century it conveyed a kind of negative meaning, consumer being the one who wastes or squanders. Its use in economics dates back to 1745 and has a different meaning - one who buys and uses up a thing or an article produced, to derive satisfaction from such action. He thereby exhausts its exchange value as opposed to a producer who buys goods (capital goods) for producing articles with a view to further exchange. Incidentally, this etymology almost concurs with the history of the market-place.

I
CONSUMER PROTECTION IN ANCIENT PERIOD

Barter System

It is an age-old truism that man must consume in order to live, and that in order to consume, he must produce goods and services by his labour. Since he came to know the advantages of division of labour and of occupational specialisations, he resorted to the system of exchange of goods and services. This was apparent even in nomadic and pastoral societies. When barter, i.e., non-monetised exchange prevailed, every consumer was also a producer of some other good or service. Naturally there was an in-built check and nobody tried to deceive anybody in quality or quantity. For, not only were all simultaneously consumers as well as producers but also each producer-consumer knew every other one and there was no question of trade with strangers. Usually, family was the main occupational unit of production in barter societies. A system known as the system of *bara balutedars*, i.e., the twelve artisans, such as the carpenter, the mason, the tailor, the cobbler, the goldsmith, the blacksmith, the potter, the barber, the washerman, etc., was prevalent in Western India, specifically in Maharashtra. A fixed annual share of the corn and other agricultural produce of each peasant family was permanently assigned for the subsistence of these public servants in the village. Thus, not only goods but services also were paid in kind through barter. Any grievance regarding them was redressed directly by personally getting in touch with the supplier. It was an arrangement for reciprocal obligations. Land revenue too, was collected in the form of a certain share of the agricultural produce in such a status society in which its productive and regulative work was authoritatively allocated to groups, ranks, classes or persons. Both, such allocation of work as well as the reward or remuneration for it, were determined either by custom and consensus of the community, or by law made by the rulers of the land.

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Money Economy and Pricing

The rulers, however, soon realised that it is easier to pay their army of soldiers in cash rather than in kind. Other advantages of money economy over the barter system were too, perceived. However, the advent of money economy curtailed the direct contact between the producer and the consumer. As a result, the consumer's complaints about the goods supplied remained mostly unheard. Also, the status society was replaced by market society. The price charged for a commodity was ordinarily determined by the market forces of demand and supply, i.e., by the competition between buyers and sellers. Consequently, whenever there was a monopolistic or seller's market with demand greater than supply, the consumer was at a disadvantage. Ever since the days of Aristotle great concern was evinced in the price mechanism, its working at the market place, the ethics of pricing and measures to prevent the traders from levying exorbitant prices or manipulation of markets and usury. Perhaps no other social phenomenon has been measured from as early a period as price movements. For instance, there are records of striking price fluctuations in Greece, induced by Alexander's conquests in the fourth century B.C. [Sills, 1968, Vol. 12, Pp. 457-477].

Religion and ethics were the only protection for consumers in the days of traditional feudal capitalism. Aristotle disparages, on moral grounds, creation of monopoly and then charging high price as a device universally applied by traders for amassing wealth. In the thirteenth century, while discussing the concept of a *just price*, St. Thomas Aquinas talks of formulating ethical criteria for the market place operations. The motivation for the present consumer protection law may be traced to such moral values, ethical asceticism, piety and the puritanical contempt for the endless pursuit of money. For, the genesis of any law can generally be tracked down to the accepted norms of social behaviour. Martin Luther, who belonged to the pre-industrial capitalist era, wanted some kind of regulation of prices by the governmental authorities. He advocated the appointment of wise and honest men for appraising the cost of all sorts of goods. They would then fix the outside price which would include the merchant's dues- costs, trouble, labour and risk- and enable him to have an honest living. This was the medieval concept of a *just price* and the social consensus of those days. However, regulating prices in this manner was not always practicable. So the next best thing, Martin Luther championed, was to charge that price for a good which it would bring in the common market or which was customary in the neighbourhood.

Standardisation

Standardisation is yet another shield in the armour of consumer protection, particularly against adulteration of goods. It has its genesis in the stamped, coined money. Originally, stamped coins came into use, in order to save the trouble of weighing the pieces of metals used as coins and to verify their purity. Adam Smith states, 'Before the institution of coined money ..., unless they went through the tedious and difficult operation of weighing and assaying gold or other metals, people were always liable to the grossest frauds and impositions and, instead of a pound weight of pure silver, or pure copper, might have received in exchange for their goods, an adulterated composition of the coarsest and cheapest materials, which had, however, in their outward appearance, been made to resemble those metals' [Smith, 1776, Vol. I, p. 40]. Like mints producing coined money, the *aulanger* too offered great security to the consumer. The *aulanger* sealed cloth which met prescribed standards and thus ensured uniformity of production. The institution of apprenticeship was yet another kind of protection to consumers, particularly consumers of services. It was obligatory for an artisan to complete minimum training with the master craftsman, before he was qualified to work independently. Generally, some law existed to regulate universally the duration of apprenticeship. Hence, goods and services offered by such trained artisans were but naturally expected to be without flaws. Further, most of the ancient civilizations had some sort of laws proscribing short weights and measures.

Consumer Protection in Ancient India

In India, Kautilya's *Arthashastra* charts out the legal basis for consumer protection. Vigilant administrative control and stringent penal sanctions coupled with the liability to compensate for the damage caused, probably, offered the consumer far better protection in those days than even the present legislation enacted for the purpose. A few illustrations, cited below, indicate the administration's regard for the welfare of the consumer. Kautilya was well conversant with the unscrupulous practices of the merchants, artisans, craftsmen, physicians and even entertainers. He wanted to prevent them from harassing the masses. Certain important provisions concerned merchants' malpractices, such as misrepresentation about quality, source of origin, etc., of goods or short weights and measures, in which case even the permitted deviation was mentioned. Not only were the prescribed charges to be paid to artisans and craftsmen for their services reasonable, but completing the work within the stipulated time was also mandatory. It was specified in detail how many days washermen could take for washing clothes or tailors for stitching them or weavers for weaving the cloth, or dyers for bleaching and colouring it, and so on. And if such jobs were not finished within the fixed time, the customers were not required to pay the full service charges. Thus, there was a fine for delay in delivery. Specifically, goldsmiths and silversmiths were accountable for returning to customers the same quantity of precious metal, of identical quality, as was entrusted. Of course, loss in manufacture or in normal wear and tear was allowed. But how much such allowance should be was laid down in detail. Even the amount of gold or silver to be used for colouring (polishing) articles was prescribed. All such detailed legal provisions, especially the stringent penalties for default, were highly relevant as measures oriented towards consumer protection. Unfortunately, they are perceived today as the upper caste Hindus' authoritative instruments for oppression and exploitation of the *Shudras* and the *Atishudras*.

One extraordinary provision in the *Arthashastra* deserves quoting: 'All goods entrusted to repairers of articles, employers of (groups of) artisans, middlemen who undertake to get work done as well as self-employed artisans and craftsmen shall be covered by a guarantee from the appropriate guild. The guild shall be responsible for compensating (the owner) in case of death of the person to whom the article was entrusted' (verses 4.1.2-3). For, 'Every artisan or craftsman shall be responsible (for compensating the owner) if the entrusted article is lost or destroyed, unless it is due to sudden calamity; normal wear and tear is excepted' (verse 4.1.6). These provisions confirm the acceptance of the doctrine of vicarious (indirect) liability in the Kautilyan legal system. According to this doctrine, A is held responsible for B's mistake and for the subsequent damage caused by it to any one because there exists some kind of relationship between A and B, e.g., manufacturer-seller, master-servant, principal-agent, or the like. Furthermore, professional bodies were expected to pay damages for the lapses on the part of their fraternity, maybe, to protect the reputation of their profession. If only the present day professional bodies, such as the medical councils, lawyers' bar associations and bar councils, journalists' associations, etc., were to take a leaf from the *Arthashastra*! Several similar stipulations can be cited from the *Arthashastra*. Some of them pertain to doctors, builders, etc. It was the duty of the doctors to give patients prior information about treatment involving risk to life, like permanent physical deformity or damage to vital organ, or death. Failure to do so incurred penalties, so did a patient's death due to wrong treatment. Thus patients' rights, particularly their right to information, were recognised in the Kautilyan legal system.

II
CONSUMER MOVEMENT

Market Economy and Consumer Sovereignty

In most of the western democracies markets operate silently. Consumers purchase goods and services generating incomes- wages for workers and profits for entrepreneurs and investors. They

are, in turn, re-invested in goods and services and the recurring market activity continues. The concept of consumer's rights evolved along with the emergence of the market society. The market place, states Adam Smith, should be a pillar of strength for consumers, since as purchasers they would interact collectively with sellers in deciding prices of goods and their quality, commensurate with the price. The buyer, as a knowledgeable and reasonable individual, was the best judge of his interests. Also he was expected to be served best by free competition among sellers, whose survival in business depended on pleasing the buyer by attending to his wants. 'What things will be produced is determined by the *dollar votes* of consumers- not every two years at the polls- but every day in their decisions to purchase *this* item and not *that*' [Samuelson, 1970, p. 40]. Finally, economy was conceived as an *ordre naturel*, with no interference by the state in economic matters. The 'visible hand' of the state restraining the liberty of the individuals' 'invisible hand' was distrusted greatly and the doctrine of *laissez faire* was the order of the day. Of course, no monopolistic control was envisioned.

Consequently, two doctrines, viz, the doctrine of *caveat emptor*, i.e., 'let the buyer beware', and the doctrine of the sanctity of contract, ruled the market place till the 1850s. *Caveat emptor* avows that the buyer gets the goods as they come and takes the risk of their suitability for his purpose. Yet it does not mean that he should take a chance. It means he should take care. He must depend on his own skill and intelligence. The duty of care or liability is his; so if a good turns out to be defective or fails to serve his purpose, the fault is his own. The seller cannot be held legally liable for it. Hence he cannot be asked to compensate for the buyer's loss. He is not responsible for the safety, quality or utility of the product he is selling. The doctrine thus burdens the buyer with the unequivocal onus of protecting his/her interests, and not getting deceived in the market transactions, whereas the seller is absolved from the duty of guiding the buyer in making a choice or even providing necessary information about the goods he offers for sale. Similarly, the doctrine of the sanctity of contract was more favourable to the seller than the buyer, since the seller was not required to exchange the goods once sold even when they were defective or unsuitable for the purpose, nor was he bound to refund any part of the price. These doctrines concurred well with the *laissez faire* capitalism.

As is well known, all these assumptions regarding the market place proved too intangible to materialise. Perfect competition never prevailed in the sense it was postulated, because of the advent of large corporations, cartels, and monopolies which set prices and standards of quality for their products, leaving little voice for consumers. Paradoxically, the state had to intervene by means of an anti-trust legislation to ensure competition in the market. Secondly, the buyer's expertise in the market was overrated. Few buyers were well informed about the constituents, quality and other intricate complexities of various products, especially the consumer durables, that flooded the market after the Industrial Revolution. The potential of these and other products and services to injure the user seriously, at times even to cause death, no matter how cautious and careful he is, has also vastly increased. Advertising and aggressive techniques of marketing and sales further robbed consumers of whatever of their remaining sovereignty. Today consumers 'are conditioned to desire what business wants', [Samuelson, 1970, p. 44]. The 'formidable apparatus of method and motivation', is readily at hand with the corporation for managing what the consumer buys at the prices which it controls, thereby 'causing the reversal of the Accepted Sequence- the unidirectional flow of instruction from consumer to market to producer' [Galbraith, 1967, Pp. 216-217]. Sachar Committee reiterates: 'the perfect market is an economist's dream and consumer's sovereignty, a myth. In real life ... bargaining power in the market is generally weighed against the consumer. Thus consumers have felt the need to create organisations to identify their interests and to supply information and advice' [Sachar, 1977]. Even manufacturers and traders acknowledge: 'Today the consumer is no longer sovereign. The assumption of the economic theory of consumers' choice is a reasonable one only when the range of goods is limited to simple commodities. Abuses

in the market-place are common. And it can have unfortunate effects on consumers ranging from misspent money on items that did not live up to the sellers' claims, to hazardous accidents resulting from misrepresentation of faulty goods' [Associated Chambers of Commerce and Industry, 1990].

Emergence of the Consumer Movement

As the formidable corporate sector with its techno-structure flourished, consumers had to unite and fight for protecting their interests. It happened earliest in the West. Naturally, the consumer movement too, emerged there first to protect consumers from adulterated food-stuffs, defective, shoddy products of inferior quality and deficient services. The first Consumers' League was formulated in 1899 in the U.S. However, the consumer protection movement in the real sense was launched there in 1927 with the publication of a book, an instant best-seller *Your Money's Worth*, by Stuart Chase. The alarming conclusion reached in the book was that while the government was definitely getting its money's worth, most consumers hardly paid any heed to the real value of the goods they purchased. Thus lay the foundation of an organisation, 'Consumers' Research', in 1935 run by F.J. Schlink. His close associate, Arthur Kallet, formed a splinter group, the 'Consumers' Union of the U.S.' in 1936. The charter of this Union enunciates its main functions as provision of information and counsel relating to consumer goods and services, assistance in matters relating to expenditure of the family income, initiation and cooperation with individual and group efforts seeking decent living standards, etc. Voluntary consumer organisations in most of the countries, including ours, have accepted this charter, sometimes with modifications.

The role of voluntary organisations has been central to consumer protection in all the countries. In order to restrain the economic power of sellers and producers *vis-a-vis* gullible and vulnerable consumers, they endeavour to build up *consumer power*, what Galbraith calls *countervailing power*, a natural response from those subjected to the corporate power [Galbraith, 1952]. Consumer organisations adopt diverse methods, such as consumer education or consumer literacy and consumer advocacy. The former includes not only obtaining basic information about goods and services but also awareness and knowledge about other consumer concerns, like redressal of consumer grievances. The latter, consumer advocacy, has been defined as 'a problem solving tool', consisting of three '*A*'s - 'the *A*rt of making the *A*dministration *A*ccountable' [Advani, 1991, p. 3]. 'It is the organisation of public arguments and citizen participation with a skill that forces those in power to listen when they would otherwise ignore you' [Saraf, 1990, p. 230]. Consumers champion their interests through media campaigns, demonstrations, bans, boycotts and pickets, representations, lobbying, etc., to get the necessary legislative and administrative support. Also they utilise judicial process in individual cases as well as, at times, resort to public interest litigation. As a result they are able to participate in decision-making constructively.

In 1962, President John F. Kennedy initiated, what came to be known as the 'Consumer Bill of Human Rights'. Another publication in the sixties, *The Poor Pay More*, made consumer organisations realise that low-income consumers need consumer protection equally, perhaps, more than the middle and well-off sections in the society. Poorer consumers tend to buy the essentials of life from small outlets in their own areas where credit facility is available. Here often goods without price tags or the expiry date for which is over, are sold. But the buyers are unaware of both- the risk involved in such purchases, and also of the fact that these questionable marketing practices are prohibited by law- and even when aware, they are less likely to assert their legal rights as consumers. This analysis is based on data from U.S.A. Its conclusion, that the poor tend to pay more for what they purchase, is confirmed through surveys and research undertaken in other countries [Cranston, 1978, Pp. 3-7]. In India, in spite of the public distribution system (PDS) run by the state for a few essential commodities, the plight of the poor consumer, particularly in far-off tribal villages is worse. However, no in-depth survey of the above kind by any consumer organisation is available for study. Yet occasionally,

buying from small vendors in one's own area, typically designated as 'mini super markets' has its own advantages; they allow credit; they are open long hours; goods purchased there can be exchanged, if found defective or unsuitable; and the intimacy developed between them and the customer through frequent encounters may diminish the possibility of deception.

Consumer Movement and the Media

The consumer movement abroad is helped tremendously by the media. They fill in the information gap by providing impartial evaluation of complex consumer goods and even services, and thereby, create critical awareness among consumers. In addition, investigative journalism plays the vital role of a watchdog in fighting various malpractices, detrimental to consumer welfare. If media discharge their social commitment to consumers adequately, they, especially the state-owned audio-visual media, have the potential (a) to ensure that consumers do not get carried away by deceptive, misleading advertisements of hazardous products, (b) to persuade the business community to induct self-regulation in their business through proper codes of conduct, and (c) to build up pressure on administrators and legislators and induce them to act in the interest of consumers. Unfortunately however, media may at times fall a prey to easy manipulation by the vested business interests or even by the state, which has the discretionary control over bestowing its largesse on the media, say contracts for publishing government advertisements, notices, etc. In India, governmental control of the media is still more authoritative, as compared to that in western democracies.

The International Organisation of Consumer Unions (IOCU)

After the Industrial Revolution, uniform techniques of manufacturing, marketing, sale and advertising have been adopted in almost all the countries of the world. Multinational corporations (MNCs) have arrived and flourished in international markets, supplying the same or similar goods. Consequently, consumer organisations in different countries have united to promote consumer protection on a global level. Initially there were regional organisations, like the one for the European Community. In 1960, the International Organisation of Consumer Unions (IOCU) was constituted. Originally it was just a clearing house for testing methods for products but very soon it evolved into a forum for all kinds of consumer problems. Its aim is to secure for consumers in the entire world their eight well known rights enunciated by President Kennedy of U.S.A. - right to safety, information, choice, basic needs, consumer education, representation, redress and healthy environment. Its membership is diverse; in 1990 it had 170 consumer organisations from 58 countries as associate members. The membership rules are strict, e.g., the associate member must deal exclusively with issues of consumer interest, it must be a non-profit organisation, it must not have any political or commercial links, etc. March 15 is being celebrated as the World Consumer Rights Day all over the world since 1982, as on this date in 1962 President Kennedy announced the 'Consumer Bill of Human Rights', mentioned earlier. The IOCU announces a common theme every year on March 15. The consumer organisations all over the world are expected to concentrate their efforts on that theme during the year. For 1994, the IOCU selected public utilities *vis-a-vis* the consumer. In addition, the IOCU hosts a world congress every three years. The latest was held in September 1994 in France, with a highly topical theme- 'Consumers in the Global Market'. The world congress, always widely attended by representatives of consumer organisations all over the world, gives impetus to the world consumer movement.

The IOCU has been officially recognised as the non-governmental organisation (NGO) to represent the consumer interest at various UN and other international bodies, like the Economic and Social Council (ECOSOC), World Health Organisation (WHO), United Nations Educational, Social and Cultural Organisation (UNESCO), Food and Agriculture Organisation (FAO), etc. The IOCU has been organising international workshops and seminars and taking up causes such as crusades against baby foods- Infant Baby

Food Action Network (IBFAN), pesticides-Pesticides Action Network (PAN), smoking, pharmaceutical patents in the Third World and even hazardous industrial plants, likely to cause disasters, like the *Bhopal Gas Leak*.

Consumer as a Citizen

Since the 1980s, the emphasis of the world consumer movement has been on citizens' issues and accessibility to essentials for life, not merely on consumer transactions to obtain goods and services or on standards of their purity, safety and quality. The term 'consumer' is virtually equated with 'citizen' whose interests are to be protected. Naturally the definitions of 'goods' and 'services', which consumers pay for, have been so enlarged as to include housing construction, land transactions, medical services, banking, insurance and other financial services, lawyers' services, library service, educational facilities, etc., and all the public utilities. Even a citizen's dealings with the police force come under the purview of consumer protection. The UN Guidelines for Consumer Protection, adopted on April 9, 1985 (discussed later) and Ralph Nader, the leading consumer activist from the U.S., are essentially instrumental in bringing about this change [UN, 1986, General Assembly resolution 39/248].

At a seminar organized by IOCU in May 1986, a manifesto regarding the consumer policy until the year 2000 was brought out. It stressed the following priority areas for action in all countries: fulfilment of the basic needs of all consumers, especially the poor; implementation of the UN Guidelines for Consumer Protection, 1985; adoption by the General Assembly of the proposed UN Code of Conduct on Transnational Corporations (TNCs); greater consumer involvement in trade policies; the development of a consumer bill of rights on new information technology; the establishment of a watchdog capability (Consumer Interpol) to keep producers, specially, monopolies accountable to consumers; elimination of economic practices that inhibit the equitable distribution of food; and so on. For the first time, the implications of foreign debt for consumers were studied in the 1987 world congress of the IOCU. Naturally, protectionism, deregulation, privatization, competition, administering prices through subsidies, taxes, etc., are issues on the agenda of apex consumer organisations in many countries.

Consumer as a World-Citizen

Additionally, crossing the national boundaries, certain consumer organisations have taken up as their cause the inequitable distribution of the world's wealth as mirrored in the global consumption patterns. [Cook, 1994. p. 114]. In the 1989 world congress of the IOCU, it was resolved that enterprises and their products should be judged not simply on quality, durability, price and after sale service, but also on such criteria as follows: whether the product is ethical, ecologically safe and equitable, i.e., whether the manufacturing enterprise takes advantage of lenient legal regulations in the Third World countries, relating to labour, safety standards in the workplace, or pollution, as compared to the strict regulations in the country of its incorporation; whether it indulges in such malpractices as bribery and corruption for trade-offs; whether it resorts to dumping; whether it discloses pertinent information; whether ecologically safe production processes are employed; whether its dealings with the vulnerable Third World societies are fair; and whether any concern is shown for their cultural diversity, traditions and economies. Thus, consumer organisations all over the world are now expected to have a new perception of consumer protection- public accountability or social responsibility of business enterprises. Also the governmental role in consumer protection is underlined in the UN Guidelines for Consumer Protection, 1985 (discussed later).

Consumer and the Future Citizen

The concept of consumer as a world citizen is also limited, because it implicitly accepts the existing order of things where there is an all-pervading societal domination over people's lives. Non-industrial ways of satisfying consumer needs are not at all thought of. Social engineering within the system can be achieved through still

more dynamic participation by consumers and by changing their perceptions on what they want in life and, particularly, what sort of world would be handed over to the future generations [Cranston, 1978]. Hence, environmental issues affecting consumers, such as disposal of pollutants, like plastic containers, polythene bags and even nuclear waste, sites of nuclear energy plants, deep-sea fishing, use of chemical fertilizers, pesticides and preservatives in food products, in fact, all the causes of the *Green Movement* have been the causes consumers fight for. Also, under the trade watch programme of the IOCU, a network of social action groups and media persons in South Asia- South Asia Watch on Trade, Economics and Environment (SAWTEE)- was formally launched in December 1994, to equip citizens with the tools of advocacy with their government, so that it provides adequate safety nets for protection of consumers and the environment during the economic transition, that this region is presently undergoing.

Concern for environmental problems linked to wasteful consumption has invoked consumers to pay higher prices for the eco-friendly, green products. In May 1993, consumer representatives from more than forty countries met in The Hague to discuss strategies for promoting sustainable consumption. Programmes for green testing, i.e., evaluating the actual environmental impact of products, and eco-labelling, which awards a seal of approval to products meeting stringent environmental criteria have been launched in most of the countries, including India. In 1991, the Union Ministry of Environment and Forests identified 16 product categories for developing criteria for eco-marking. Producers and manufacturers are required to fulfil them for permission to use the 'ECOMARK' on labels of their products. The first 'ECOMARK' scheme was introduced through a notification by the central government, vide GSR 439(E) and GSR 440(E), dated April 27/28, 1992, for soaps of all kinds and detergents. For eco-marking, it is necessary to adhere to the production process standards, prescribed by the Bureau of Indian Standards (BIS), such as that the packaging material used should be biologically recyclable; detailed instructions to users on how to use the product should be printed on labels, so that the efficacy of the product is maximized, and simultaneously, the environmental degradation is the minimum; phosphate is prohibited from being utilized in the production of both toilet soaps and detergents, whereas artificial detergents are prohibited in toilet soaps; 97 per cent of the surfactants used in detergents should be biologically dissolvable; and so on. However, there are so far no soaps or detergents with 'ECOMARK' available in the market.

Role of the UN in Consumer Protection

The UN organ that involved itself first in consumer protection is the ECOSOC. It was generally accepted by the late 1970s that consumer protection played a substantial role in the economic and social well-being of the people by enriching the quality of their life. After surveying the national, institutional and legal arrangements for consumer protection, the need for an international basic policy framework was felt. In consultation with IOCU and Economic and Social Commission for Asia and Pacific (ESCAP), the draft Guidelines for Consumer Protection were prepared. They were adopted unanimously by the General Assembly on April 9, 1985. Their basic, underlying doctrines are: (i) consumer protection is a basic right of all; (ii) it is more vital for the poorest and the most disadvantaged than for the affluent; and (iii) it should be regarded as an integral part of the development process. The objectives of these Guidelines once again focus on the 'imbalances in economic terms, educational levels and bargaining power' of consumers, and on their 'right to promote just, equitable and sustainable economic and social development' (Section I). The contents of the Guidelines, arranged under six headings, may be summarised as follows: to assist countries in achieving and maintaining adequate protection for their people as consumers, particularly in matters of accessibility to essential goods and services and their standards of safety and quality; to encourage high levels of ethical conduct for all those engaged in production and distribution of goods and services and to support governments in curbing abusive business practices of all enterprises, national as well as international; to encourage production and

distribution patterns and market conditions which are responsive to consumers' needs and desires, and offer them greater choice with lower prices; and to facilitate development of independent consumer organisations and consumer movement.

The Guidelines are directed primarily to governments, in the sense that governments should assess their own individual priorities and accordingly provide necessary infrastructure, to formulate, implement and monitor policies and measures for the economic and physical safety of consumers, e.g., laws against offences, like, black-marketing, hoarding, short measure, etc., or for quality control. However, the Guidelines are not binding on governments, as certain other principles of international law are. They are just an international instrument of policy, mere recommendations, providing a framework with informal moral force. It is the responsibility of the governments to build on it and protect their nationals as consumers. By way of exception, the Guidelines also urge all enterprises to abide by applicable international standards as well as by the national laws of the countries, where they carry on their business. Incidentally, they stress equality between home-produced goods and services and imports. Measures recommended by them are consistent with international trade obligations and do not create impediments to international trade.

Implementation of the UN Guidelines

In July 1988, ECOSOC passed a resolution, urging governments to implement these Guidelines and appealed to the Secretary-General and other organs of the UN to assist governments, specifically of the developing countries, in such implementation. In 1990, it was decided to prepare a five-year action plan for their implementation and to review the situation in 1995. They have, no doubt, given great impetus to legislation for consumer protection in many countries of the world. India has implemented almost all the Guidelines which are particularly intended for developing countries. The passing of the Consumer Protection Act (COPRA), 1986 and amendment of six major consumer protection legislations in December 1986 (discussed below) bear testimony to it. The Guidelines and their adoption have underscored international aspects of consumer protection and the need to evolve multi-party binding treaties, dealing with various areas of consumer protection. One such measure already mentioned earlier, the UN Code of Conduct on TNCs, is being negotiated for more than a decade by the IOCU and the UN Commission on TNCs, the organ through which the UN actively monitors the behaviour of TNCs/MNCs. The provisions of the Code pertain to issues like restrictive business practices, transfer of technology, employment and labour, illicit payments, international investment, mechanism for enforcement, disclosure of information to the public and to trade unions, etc. The basic premise of the Code is that TNCs should show sensitivity to the rights of consumers and workers, to the needs of the poor and protection of the environment in the countries of their operation (host countries); should respect their national sovereignty and their domestic law, contribute to their economic and social progress, create minimum product safety standards, and disallow entry into one country of products debarred in others. Governments, on their part, should recognise the implications of interdependence and self-reliance, and provide a fair framework for the operations of TNCs. The Code was to be approved by the General Assembly, scheduled for July 1992. However, it is stalled till today for reasons, such as the following: (i) the climate of trade and business relations in the world have changed after the adoption of the Dunkel proposal, on the way to emerging fast as a global market; (ii) governments, instead of imposing regulations on TNCs, are today wooing TNCs to invest in their countries for developing their economies; and (iii) it is difficult to evolve such fair 'rules of the game' or universally acceptable and viable principles to guide TNCs' operations and transactions in their host countries as would safeguard all varied interests. Besides, the UN Commission on TNCs works on the basis bof consensus rather than majority voting. Moreover, unlike an international treaty which, once adopted and ratified, becomes legally

enforceable, the Code is conceived as 'declarations and resolutions, and therefore, not legally binding'. Its force 'rests on the strength of moral suasion and the fact that a large number of countries have negotiated and accepted its provisions. ...Regardless of whether resolutions adopted by consensus at the United Nations can become customary law, the mere adoption of an agreement that has been negotiated over a number of years undoubtedly has political impact' [Mousouris, 1988, p. 9.7].

GATT and the Consumer

The General Agreement on Tariffs and Trade (GATT), 1947 has been replaced by the Final Text of Uruguay Round, known as the GATT 1994, which includes the Agreement Establishing the Multilateral Trade Organisation (MTO), now called World Trade Organization (WTO). It is the result of the acceptance of the Dunkel Draft at the Marrakesh Meeting on April 15, 1994 by more than 120 countries. These developments have been viewed with apprehension by most of the consumer activists, not only in India but abroad too. 'Nothing is more likely to pull down our present US consumer and environmental protection and derail future advances than the proposed expansion of a global trade agreement on the General Agreement on Tariffs and Trade' [Ralph Nader quoted in Keayla, 1994]. Apprehension is precipitated, firstly because the purview of the GATT and the WTO 1994 is extended. It now encompasses not only trade in goods, as was the case with GATT 1947, but also (i) services like transport, audio-visual services, or telecommunication, (ii) agriculture, (iii) trade-related investment, and (iv) intellectual property rights pertaining to copyright, trademarks, industrial designs, patents, or the like. Secondly, national laws, so far apparently enacted to suit national needs, would be henceforward amended to fulfil obligations under the GATT. Particularly, provisions regarding Trade-Related Aspects of Intellectual Property Rights (TRIPs) are viewed with suspicion because they would (a) introduce product patents along with the present process patents, and (b) extend the term of protection for the patent-holder to a period of twenty years (at present ranging between five and fourteen years in India), and such other restraints on the member nations. TRIPs are most likely to intensify the monopolistic control of the patent-holding producer/ manufacturer, hike the prices of pharmaceuticals, pesticides, hybrid seeds, etc., and also to make their availability uncertain for the consumer. In order to meet the international commitment under the GATT 1994, India promulgated the Patents (Amendment) Ordinance, 1994 on the eve of 1995, but the central government was confronted with bottlenecks from the opposition parties. They wanted to refer it to a standing committee for its clause-by-clause analysis. It was also necessary to introduce it in the Rajya Sabha and get it passed by end of June 1995, to make it a permanent law. Further, the dispute settlement system of the WTO would involve confidential deliberations by the panels and by the appellate bodies. The parties to the dispute would be compelled to unconditionally abide by their report once the Dispute Settlement Body adopts it. The power of the appellate bodies for review during an appeal is extremely restricted- only to issues of law raised in a panel report and their interpretation and not to facts of the case. The IOCU, aware of the susceptibility of national governments and international organisations to acquiesce to MNCs, is agitating for greater transparency in the GATT/WTO through derestricting documents and consultations with NGOs on issues in spotlight.

Consumer Movement in India

Consumer movement has, by the end of 1991, spread far and wide with consumer organisations operating in practically every part of the world. In India, the movement originated when a host of problems cropped up in the wake of industrialization and urbanization. As purchasers, consumers required guidance in matters, such as what to buy, where and when to buy, how much price to pay, what quality and quantity to expect, how to get the best returns for their money, and so forth. The then British rulers being indifferent to such matters, voluntary organisations came forward. Especially, during the Second World War and thereafter, rampant black-marketing

flourished due to acute shortages. Also sub-standard, adulterated goods were sold at exorbitant prices in these illegal markets. Consumer guidance societies were formed, first in big cities but later on in small towns too. They brought out leaflets and handouts to provide consumers adequate information for carrying out simple tests to verify the purity of various food items. That may be termed as the genesis of the consumer movement in India. This history is well documented by Leela Jog, the Founder Secretary of the Consumer Guidance Society of India (CGSI). Even after Independence, exploitation of the consumer has not diminished. To some extent, the state has been directing our economy, professedly with the best intentions of protecting consumer interests. In reality, the bureaucracy and their political masters often pay mere lip sympathy to the cause and are insensitive to consumer problems, except that (i) the state has promoted a few institutions for consumer protection most of which have been defunct from the beginning, and (ii) a plethora of statutes have been passed but hardly ever implemented. Thus, the state has been playing some role in the post-Independence consumer movement in India, both by its action as well as inaction or procrastination. It is discussed further in the next section on 'STATE INTERVENTION'.

Voluntary Consumer Organisations

The first consumer organisation in the country after Independence was founded by C. Rajagopalchari in Madras in 1950. From the middle of the seventies, the number of voluntary consumer organisations has increased [see Saraf, 1990, Table on p. 220]. The Directory of Voluntary Consumer Oraganisations, 1992, published by the Ministry of Civil Supplies, Consumer Affairs and Public Distribution, Government of India, New Delhi, lists 684 organisations, out of which ten are not working exclusively for consumers but for such other causes too, as rural development, environment or welfare of workers and children. A total of 91 per cent of consumer organisations have been set up between 1975 and 1993. The distribution of consumer organisations over metropolitans, large cities and small cities is 10 per cent, 20 per cent and 70 per cent, respectively. The distribution of consumer organisations over the states and union territories is uneven, with Andhra Pradesh having 180, while West Bengal has just 4. Incidentally, another source places the number of consumer organisations to more than 1,000 by the end of 1991, having risen from about 200 in 1987 [Cook, 1992, p. 111]. It is proposed that every consumer organisation should adopt 10 to 20 villages, as there is urgent need of educating farmers about redressal of their grievances. Recently complaints of ineffective hybrid seeds, fertilisers or pesticides having adverse effects, also complaints of inferior fish-seed for fresh water acquaculture, have reached consumer courts.

At present there are two types of consumer organisations- grass-root consumer organisations of the genre of the pre-Independence guidance societies of the urban areas and more powerful organisations with considerable resources. The 'grass-root' groups are primarily set up by the consumers themselves to protect their common interests. They are open-ended organisations, most of them registered under the Societies Registration Act, 1860. They undertake activities, like consumer guidance, publishing pamphlets for spread of information useful to consumers, holding meetings, seminars, symposia, etc., and complaint handling, including lodging individual complaints with consumer courts, i.e., the Consumer Disputes Redressal agencies established under the COPRA, 1986. Some of the grass-root organisations function as consumers' cooperatives, undertaking collective buying and redistribution of essential commodities. The other group of organisations are 'elitist' associations, established by men of vision. Their principal objectives are to promote the establishment of grass-root organisations and to provide leadership for some sort of confederation of grass-root organisations. Their operations include (i) educational programmes for consumer awareness and publishing and sale of consumer literature, periodicals; (ii) research/investigation on the working of public utilities, and periodical checking of malpractices in trading centres and informing the concerned authorities about them; (iii) advocacy, persuasion and lobbying with

governmental and other authorities, and representing consumers on various committees and advisory bodies in India and abroad; (iv) litigation; (v) consumer welfare activities, including setting up consumers' cooperatives; and (vi) providing relief to victims of natural calamities. Also, under its India- Sub-Regional Programme, the IOCU is to set up its Indian Regional Office, which would provide training for the staff of consumer organisations.

Despite philanthropic contributions to some organisations, a majority of both the types of consumer organisations are beleaguered continually with drastic dearth of funds. Their major source of funding is subscription from members, but many organisations charge a fee as low as Rs 10 per annum. Some of the consumer organisations maintain a policy of not accepting funds from any business or foreign funding agencies. The Consumer Education and Research Society, Ahmedabad, collected in 1992-93 data from the consumer organisations in India. Out of the 273 respondents only 177 gave their annual budget. Annual expenditure of 41 per cent of them is less than Rs 10,000. Only one consumer organisation in the country has so far its own full-fledged testing laboratory, although a few others do have certain testing equipment or some arrangement with state-run testing laboratories. Moreover, legal privileges, as enjoyed by trade unions, are not accorded to consumer organisations, although both types of organisations confront the economically powerful. When a consumer organisation arranges a protest demonstration or picket, or boycotts/blacklists a particular business enterprise notorious for its malpractices, the organisers may be prevented from doing so through a court injunction and run the risk of being sued for damages for loss of business, defamation, conspiracy, trespass or private nuisance.

The COPRA, 1986 which came into force in 1987 acted as a catalyst and gave tremendous impetus to the consumer movement in India. Yet, there are scarcely any grass-root consumer organisations of the genre of the pre-Independence guidance societies, particularly in villages, where 70 per cent of our people live. Also, there is certain untoward aftermath of the COPRA- mushroom growth of consumer groups formed under dubious leadership. Such organisations often instigate consumers to register frivolous complaints. The 1993 amendment of the COPRA acts as a deterrent to false complaints since it provides for a fine of Rs 10,000 for frivolous and vexatious complaints.

Consumers' Cooperatives

Consumers' cooperatives are regarded as the catalyst for the development of consumer movement and the mechanism for consumer protection. Effective retail distribution of consumer goods, both in the rural and the urban areas is undertaken by consumers' cooperatives, in order to alleviate the problems of non-availability of essential consumer goods of passable quality and at reasonable prices. They are basically organisations of the consumers. They have made progress in terms of numbers, membership, share capital and business, but nearly half of them are sick [Sharma, 1995]. There is at the apex the National Consumers' Cooperative Federation (NCCF) established in 1965. Then there are state level federations, the wholesale stores at the district level, and four types of primary stores at the grass-root level- rural and urban primary stores, employees' stores, and students' stores. As on March 3, 1992, the NCCF has 108 members; there were 30 state level federations and 605 wholesale stores operating at the district level. There were 26,505 primary stores at the village level and 50,159 retail outlets in the urban areas [India, 1994, p. 471]. In Maharashtra, the number of primary and wholesale consumer cooperative stores increased from 2,919 and 114 to 3127 and 121 respectively from 1990-91 to 1992-93, [Directorate of Finance and Statistics, 1994].

Among the three tiers of consumer stores, that of the primary stores is the weakest, with 5,991 dormant and 4,477 not viable (total 18,930 primary stores of all classes) [NABARD, 1987]. In spite of the state patronage through credit facility, the growth of the consumer cooperatives has been slow due to conflicting policy measures for

implementing the PDS, lack of long-term perspectives and internal inadequacies of the consumers' cooperatives themselves. The last mentioned includes lack of many crucial inputs, like member loyalty, committed leadership, sales promotion programmes, coordination between wholesale and primary stores, appropriate procurement, purchase and price policies, and financial planning and control [Perumal, 1994]. The recent recommendations for making consumer cooperatives viable include restoration of democratic functioning and greater autonomy with the option- not to undertake the work of the PDS which is, at present, thrust on them [Sharma, 1995].

Current Trends

In recent years some encouraging consequences of the activities of consumer organisations are visible. Firstly, at long last the realisation has dawned that the greatest asset of a business is a satisfied consumer, and that the interests of the two are not conflicting. Consequently, the need for self-regulation and self-discipline has been recognised by businessmen and professionals. Those who cared for their good name and reputation, undertook to discipline other members of their groups, through measures, such as (i) forming the Fair Trade Practices Association, now the Council for Fair Business Practices (CFBP), or setting up an expert committee on consumer affairs by the Associated Chamber of Commerce and Industry of India (ASSOCHAM), in order to promote consumer awareness among business houses and also to educate consumers about their rights and duties; (ii) formulating their own codes of conduct or ethical codes, for example, the Confederation of Indian Food Trade and Industry (CIFTI), an apex organisation of food and trade industry, has prepared a Code of Ethics for all those engaged in the production and trade of food. The Code aims at providing adequate, safe and wholesome food to consumers for the price they pay. It supplements the various food laws, like the Prevention of Food Adulteration (PFA) Act, 1954 and the standards like AGMARK prescribed for maintaining quality of food items. Similarly, the Federation of Indian Chambers of Commerce and Industry recently issued a declaration on 'norms of business ethics'; (iii) setting up such institutional mechanisms as vigilance committees with adequate power to monitor business activities and practices, and also grievances cells for conciliation and dispute-settlement; (iv) instituting awards for following the best business practices that will safeguard the well-being of the consumers, for example, the *Jamanalal Bajaj Uchit Vyavahar Puraskar* for actively initiating steps in the interest and satisfaction of the consumer; and so on. The New Delhi Traders' Association makes it obligatory for its members not only to adhere to its rules of conduct but also to take an oath and to display the same at a prominent place in their business premises. The entire ethos of business is gradually shifting for the better, it is transforming itself to be customer-oriented and internationally competitive, particularly with changes in the perceptions about its responsibility, accountability and quality consciousness. Another factor instrumental for the transition is the introduction in 1987 of the ISO 9000, a quality system standard which makes planning, controlling and documenting all the activities affecting quality indispensable. It is intended to apply to virtually any product or service made available for consumers by any process anywhere in the world. The threat of external competition in our opened-up markets and the urge to export have too, contributed in improving the rapport between consumers and the business.

The professionals too spruced up their age-old ethical codes of conduct. For example, the Advertising Standards Council of India (ASCI) was incorporated in October 1985. It adopted a *Code for Self-regulation in Advertising*, under Article 2(ii) of its Articles of Association on November 20, 1985 with the objective of ensuring truthfulness, decency and honesty of representation, and fairness in competition. Such measures are needed particularly when the practice of 'order by mail' with the help of mail-order catalogues is being introduced in India; on the Indian

Airlines one finds catalogues, proudly pronouncing 'buy while you fly'. It is hoped that Indian consumers are not taken for a ride through such mail-order catalogues, as the (Sears) 'catalogue offered unwary consumers a cure for virtually anything that ailed them' in its early years [Martin, 1994, p. 115].

There are also propositions under contemplation to include in the Code of Ethics of the Indian Medical Council as well as of the State Medical Councils provisions for compensation to the patient aggrieved by a medical practitioner's negligence. Moreover, certain localized associations have introduced their own informal Codes of Conduct, e.g., the Poona Promoters' and Builders' Association has formulated a code of conduct to be followed by its members. The real stumbling block is that there is no agency to enforce the ethical codes or to take action against the violators.

III
STATE INTERVENTION ON BEHALF OF THE CONSUMER

Long before the consumer movement started, the state had intervened on behalf of the consumers and passed several laws to that effect in most of the countries. History shows that free markets, working silently for years together, have sometimes failed to work. State intervention, which the traditional theories of market failure justify, is restricted exclusively to reform of markets so that they are once again in a position to deliver the goods. The fact that markets fail does not guarantee that the state will succeed. The state is obliged to regulate the market in order to maintain competitive conditions and to restrain powerful and organised manufacturing or trading corporations. Additionally, certain economic problems confronted by consumers operate at the intersection of markets and state, e.g., control of inflation through stability of prices, health care, environmental policy, and such other issues. Furthermore, the allocation of a country's resources, particularly natural resources, within the economy would not achieve the highest level of social well-being, when markets operate freely. For markets tend to ignore costs that accrue to third parties from the actions of two parties engaged in the exchange. For instance, in the modern era of marketing strategies and cut-throat competition, the package is often considered more important than the product it contains. Marketing departments of rival companies vying for the market share forget many a time in their promotional drives that it is a waste of economic resources and, in addition, an environmental liability. An example can be given of polythene and tetrapack materials which cannot be recycled easily. The buyer and seller do not consider the cost of disposal in the form of garbage collection and disposal schemes. Unregulated disposal would have to be paid still more highly in terms of environmental degradation not only at present but also in the future [Pearce and Warford, 1993]. The West Bengal government has recently prohibited the use of polythene carry-bags.

The earliest legislation, that intervened in the free market economy in order to protect the interests of consumers dealt with ensuring the necessary safety in two vitally crucial spheres of life- foodstuffs and drugs- known as the 'classical' field of consumer protection. In 1848, 1890 and 1906 legislation against adulteration was passed in the U.S. whereas its counterpart in the U.K., the Adulteration of Foods and Drugs Act, came into force in 1872. Gradually, the scope of such legislation was widened to bring under some kind of control other non-food products- both consumer durables and consumer expendables- and services such as banking, insurance, transport, and health. State intervention on behalf of consumers, ordinarily, has the following objectives: (1) to ensure adequate provision of goods and services for consumers, if necessary by taking over the functions of production and/or distribution; (2) to control inflationary and exploitative prices; (3) to ensure competitive conditions in the market, to prevent formation of cartels and monopolies and thereby, to make a variety of goods and services available to consumers at competitive prices; (4) to prevent marketing of goods and services hazardous to life and property and to ensure safety of products; (5) to lay down standards, benchmarks, criteria, guidelines for quality control of goods; (6) to provide standards of weights, lengths, and other measures for sale of goods by quantitative units; (7) to compel manufacturers, producers and

traders, to give consumers adequate information about what they offer for sale, and simultaneously to prohibit false and misleading advertisements; (8) to furnish machinery, administrative, surveillance as well as investigative for the safety, genuinety, quantity and quality of goods, such as food and drug inspectors, standards institutes, or laboratories to test adulteration and weights and measures; (9) to compel professionals to undergo minimum, rudimentary training, before they qualify themselves to offer their services to consumers for the purpose of quality control of services; (10) to prescribe punishments for misdemeanors such as deception, adulteration, substandard or inferior goods, inefficient services, unfair or *restrictive* trade practices, etc. on the part of sellers, manufacturers, traders and professionals; (11) to assure monetary compensation for the damage suffered by a consumer; and (12) to provide adjudicatory fora that would resolve consumer disputes expeditiously.

In order to achieve these objectives, the state intervenes through (a) legislation, (b) fiscal measures, and (c) promotion of certain institutions. The judiciary too, when there was no legislative provision, has tried to help consumers through judicial decisions based on principles of tort, equity, and natural justice. Except the fiscal, all other state measures, the legislative, judicial and promotional, are analysed in the following sections with illustrations.

Institutions Promoted by the State for Consumer Protection

The Indian Association of Consumers was set up in 1956 with the financial backing of the Planning Commission. Its main objective was to organise the formation of Consumer Protection Councils at the national and state levels. However, it 'did not make any headway. ... The fate of the Indian Association of Consumers was not an isolated instance but seemed to be a precursor and forerunner of any interest shown by the government regarding the consumer. The *intent* of the government to protect and help the consumer and see that he is not cheated or harassed has always been there. With every action taken, the first step has always been pro-consumer. But it is in the steps following, in the *implementation and follow-up*, that the government fumbles and flounders', [Rebello, 1991].

In 1975, the state held the first National Convention on the Distribution of Essential Commodities and its delegates were asked to submit suggestions on a proposal to set up a Consumer Protection Council at the national level. This proposal finally materialised in 1984, because of the continuous pressure of the voluntary consumer organisations in India. Now, of course, the state is statutorily obliged to constitute the Central Consumer Protection Council and similar ones for states and union territories under Sections 4 and 7, respectively of the COPRA, 1986. Members of these Councils represent various interests pertaining to consumer affairs. The 1993 amendment of the COPRA also makes it obligatory for the central government to hold at least one meeting of the Central Consumer Protection Council and two meetings of each state consumer protection council. Deplorably, few governments meet their obligation. In Maharashtra, for example, during the period from June 18, 1993 when the 1993 amendment to the COPRA came into force, till June 20, 1994 not a single meeting of the Maharashtra State Consumer Protection Council was held.

Measures for Increasing Consumer Literacy

In order to activate consumers to assert their rights, governmental efforts are being made: the *All India Directory of Redressal Agencies* was published on March 15, 1993; an outlay of Rs 1 crore was sanctioned for publicizing consumer protection programmes through video casettes, television slots, and *Upabhokta Jagarana*, a Hindi periodical, with 6,000 copies distributed free annually [Ministry of Civil Supplies, Consumer Affairs and Public Distribution, 1994]. One of the four working groups of the Central Consumer Protection Council recommends incorporation of consumer education in the national education policy. In addition, by the 1991 amendment of the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, the erring business enterprise is obliged to publicise its *unfair* trade practice when proved before the

MRTP Commission, in the manner specified by the Commission in its order [Section 36D(1)(c) of the MRTP Act, 1969]. Recently, the *Economic Times* was asked to publish a clarification that its supplement *Financial Times* has no affiliation with the London *Financial Times*. Similar authority needs to be bestowed on the consumer courts, too.

Legislation for Consumer Protection

Modern consumer protection legislation in any country usually combines civil, penal and administrative statutes. In India too, quite a few laws have been passed by the centre as well as states to empower consumers and to protect their interests. An alphabetical table of laws in force today in India for consumers is furnished in Appendix 1. They may be classified diversely: (i) Criminal laws and civil laws: The former punish the offenders of the consumer by prescribing fine and imprisonment, while the latter offer the consumer compensation for the loss suffered due to that offence. (ii) Laws dealing with goods and laws applying to services: The Essential Commodities Act, 1955, the Drugs and Cosmetics Act, 1940, the Prevention of Food Adulteration Act, 1954 and the Agriculture Produce (Grading and Marketing) Act, 1975 are some laws meant for controlling the price and maintaining the quality, and standard of various goods. On the other hand, the laws pertaining to building construction, such as requirement of completion certificate from the municipal authorities before handing over the building to the residents, are intended to protect consumers against inferior quality of service from builder-promoters. The Advocates Act, 1961 or the Indian Medical Council Act, 1956 and the state Medical Council Acts or the latest law of this kind passed- the Securities and Exchange Board of India (SEBI) Act, 1992- protect consumers of services, lawyers' clients, patients and investors, respectively. (iii) Laws controlling safety, laws controlling quality and laws ensuring proper quantity at reasonable price: Generally the first group, namely, laws involving safety of goods, products and services are accorded prime importance by the state in consumer protection legislation. The first concern of the consumer, when he/she uses a product or avails a service, is not to incur any injury to health or any damage to property, while using it. The last group is further subdivided into laws for accurate weights and measures and laws for controlling prices. (iv) Laws pertaining to offences against the consumer by a private individual or private organisation and laws pertaining to offences by a public sector undertaking or the state: The Sale of Goods Act, 1930 is an illustration of the former, while the Electricity Act, 1910 is that of the latter. And (v) laws that are legislative statutes and laws that are administrative orders, rules, regulations or notifications, belonging to the subordinate legislation or executive orders. All these classifications are advantageous in one way or the other in consumer protection strategies. For instance, the last classification is of great significance to consumer organisations. The consumer's rights are affected *more* by the various orders and rules issued under any legislative act than by the act itself. The act merely provides the basic framework for protection, and sometimes orders and rules are so framed by the administration entrusted to implement the act, that the very purpose of the act is defeated. Consumer organisations, wanting a particular law to be amended, have to formulate their logistics on whether the impugned law is an act passed by the legislature or it belongs to subordinate legislation; accordingly a campaign against the executive or lobbying with legislators is undertaken, or at times courts are approached to get the law struck down.

However, all these laws are inadequate to protect consumers. The collusion of politicians, bureaucracy, trade and industry make a mockery of whatever meagre legislations we have [Rebello, 1991]. The non-implementation or vacillation and postponement in enforcement of most of the social legislation, including consumer protection laws, is due to several reasons. One of them is that a significant proportion of the goods and almost all the services are being produced, operated and maintained by the government or public sector, at least until the era of privatization and liberalization in the 1990s. Moreover, the government is more keen to please the assertive 'haves' in the industry and the trade, rather than

the 'have-nots' or the masses, like the unorganized consumers. Only before elections the latter's interests are apparently taken into consideration for the sake of votes. Hence, often such laws are passed by Parliament and publicized widely, and once their political purpose is achieved, their real purpose goes into oblivion and implementation is waved, primarily on account of the strong undercurrents of protest from the business community.

The classic illustration is the Hire-Purchase Act, 1972, which had been passed by Parliament, had received the President's assent on June 8, 1972, and was to be brought into force from September 1, 1973, [vide Notification No. GSR 288 (F) dated May 31, 1973], but was withdrawn by another Notification No. GSR 402 (E) dated August 30, 1973, without assigning any reasons. It remained unenforced until 1990. In the meanwhile, a bill was introduced in Parliament on May 5, 1989 to amend it [vide the Hire-Purchase (Amendment) Bill, 1989, Bill No. XII of 1989]. It is also pending still. The Bill ensures that a hirer (a) understands the true nature and implications of his hire-purchase agreement, and (b) obtains from time to time the current state of accounts relating to the agreement. Further, the Bill confers on a hirer the indefeasible rights to purchase at any time with rebate, to terminate the agreement, to assign to the person of his choice his interest in the agreement, etc. The owner is restricted from recovering possession of goods, except through the court, and he is obliged to give relief to the hirer to the extent of any unconscionable gain that he may derive as a result of seizure of goods, whether for non-payment or for breach of express conditions. The hire-purchaser is deprived of all these protective legal provisions, until the Bill is passed and implemented. Today, banks and other financial institutions offer credit to their cardholders to buy consumer durables. For recovery of dues, some of them employ mafia-like tactics-compelling to sign off body organs, use of force, threats, and defamation, etc. If the law exists, the hire-purchaser may be spared such harassment. Similarly, on account of forceful and unrelenting lobbying by the concerned manufacturers, the state held in abeyance its own orders- one, concerning compulsory ISI certification of seven household electrical appliances, from 1981 to 1987 and the second, regarding stamping and marking on textiles, from August 1987 to June 1988. The Household Electrical Appliances (Quality Control) Order, 1981 was not implemented until 1987. When finally it was made applicable, because of the persistent pressure of the consumer groups, it applied only to seven appliances. Similarly, the implementation of the Textile (Consumer Protection) Regulation of June 1987, to be effective from August 15, 1987, was delayed until June 15, 1988.

Moreover, until 1995 there was no 'one window' arrangement, no separate ministry or department of the government, which could exclusively deal with consumer issues. Redressal under the COPRA, 1986 is the responsibility of the Ministry of Civil Supplies, Consumer Affairs and Public Distribution, while prevention of food and drug adulteration is that of the Ministry of Health, and control of monopolistic, unfair and restrictive practices that of the Ministry of Industries [Lizzy, 1993]. Recently, a separate Department of Consumer Affairs has been set up. Another instance of lack of comprehensive, synchronizing, coordinated policy about consumer matters pertains to the amendment of the six major acts in 1986, along with the passing of the COPRA: the Agricultural Produce (Grading and Marking) Act, 1937, the Drugs and Cosmetics Act, 1940, the Prevention of Food Adulteration Act, 1954, the Essential Commodities Act, 1955, the MRTP Act, 1969 and the Standards of Weights and Measures (Enforcement) Act, 1985. The amendments have empowered aggrieved consumers and registered consumer organisations to file complaints in courts under these Acts. Hitherto this authority was vested with government officials only. But there are varying conditions for recognition of consumer organisations under all these seven Acts. For instance, under the BIS (Recognition of Consumers' Associations) Rules, 1991, any consumer organisation, having not less than 50 consumers as members is entitled to apply to the Bureau for recognition as a registered consumers' association. A fee of Rs 1,000 is charged as registration fee. The Bureau, after processing the application,

forwards the papers along with its recommendation to the Ministry of Civil Supplies, Government of India, which issues a certificate of recognition (GSR 619(E) dated October 9, 1991). Under the MRTP (Recognition of Consumers' Association) Rules, 1987 an association with ten consumers as members can also be registered and the registration fee is Rs 500. Applications are processed and the certificates of recognition are issued by the Department of Company Affairs, Government of India (GSR 534(E) dated June 1, 1987). Also, under all the Acts, a copy of the certificate of recognition is to be furnished to the concerned State Consumer Grievances Redressal Commission (State Commission). Hence it would have been worthwhile to have the same provision under all the Acts for the purpose. Such diverse provisions certainly hamper the fledgling consumer movement in the country from gaining momentum.

The consumer in India is at the mercy of exploitative manufacturers, unscrupulous retailers and a weak state not inclined to discipline either of them. The gargantuan population, adds to the shortages and scarcity of goods and services out of which emanate sellers' markets leading to inflation, rampant food adulteration, profiteering and hoarding. The high rate of illiteracy, results in slow progress in consumer awareness. Finally, it is difficult for the consumer to resort to legal remedy for their grievances, because of his financiaily weak position compared to the whopping costs and inordinate delays of legal settlements, and also because his adversary in the dispute is most often dreadfully formidable. Hence, in addition to the substantial provisions of law for protecting the consumer's rights, there must be laws that provide exclusive judicial mechanisms with simple procedures for resolving consumer disputes quickly. Such laws are indispensable and play the most pivotal role in consumer protection. So it is necessary to analyse their provisions first.

IV
CONSUMER COURTS

Apparatus for Enforcement of Legal Measures

In order that legal measures effectively protect consumers' rights, it is necessary that action is taken promptly against infringement of these rights by violators of the consumer protection law. All other legal measures are of little avail, unless separate, special type of adjudicatory fora are provided, which would follow simple, inexpensive, easy and expeditious procedures to settle consumer grievances. The consumer protection laws so far failed to work for the benefit of the individual consumer primarily because, from the days of the French Revolution, the great principle of equality in legal procedure reigns the legal domain. But 'equality before law' and 'equal protection of law', at times, results in equal treatment of unequals and consequent perpetuation of injustice to the weaker, in this case the consumer. Regular courts, according to the traditional concept, are neutral arbiters, mechanically interpreting the statutory provisions and applying them to the facts presented to the courts. Judges are not allowed to take any cognizance of the disparity in the economic and/or social status of the parties involved in the dispute nor take any interest in the outcome of the case and its repercussions in the society. Additionally, the regular courts follow procedures that are relentlessly rigid, technical, time-consuming and prohibitively expensive. It is also presumed that every consumer would know his rights or would afford a lawyer who would help him to know and enforce his rights. Ignorance of law is no excuse. Unfortunately, the reality is far from this ideal situation. As a result consumers were reluctant to use legal measures for asserting their rights.

Only when it was recognised that the normal judicial system functioned actually to the detriment of the interests of the consumer and such other weaker sections that exclusive, ombudsman type of courts following special, simplified legal procedures and dispensing speedy justice to the consumer were devised. Ombudsman or *Lokpal* and *Lokayukt* or *Lokniyukta* is a citizens' champion or defender, who is easily accessible to citizens for registering their grievances against governmental agencies and officials. It is his duty

to probe into instances of injustice, maladministration, etc., and make amends, also to safeguard the interests of citizens by monitoring over the way in which governmental authorities apply the law in their dealings with the public. The first ombudsman was appointed in Sweden as early as in 1809. But, there is still no *Lokpal* in India, in spite of four *Lokpal* Bills having been introduced in Parliament and the fifth is on the anvil at present. *Lokpal* is to hear complaints against the central government authorities, and *Lokayukt* against the state government authorities. *Lokayukts* have been appointed in 12 states. Further, only the first *Lokpal* Bill provided for comprehensive protection to citizens against governmental mistreatment; the later Bills are directed more at setting up a permanent commission of inquiry for corruption by public servants [Sathe, 1991]. Again, this institution is restricted to oversee governmental activities alone. The common man's complaints against traders, businessmen, professionals, etc., are not solved through it. His grievances about the day-to-day market transactions need to be redressed also. The earliest such judicial mechanisms were established in the Scandinavian countries in the 1970s. The COPRA, 1986 is its Indian equivalent. Its forerunners were state Bills- the Delhi Consumer (Purchase) Disputes Council Bill, 1984 and the Madhya Pradesh Consumer Protection Bill, 1984.

The Directive Principles of State Policy in the Constitution and the twenty point programme (the 17th point) of the government indirectly provide for the internationally recognised rights of the consumer. But the COPRA is the first legislation passed in India to enumerate them adequately in its Section 6, clauses (a) to (f). They are (a) the right to be protected against the marketing of goods and services hazardous to life and property; (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods and services, so as to protect consumers against *unfair* trade practices; (c) the right to access to a variety of goods and services at competitive prices; (d) the right to be heard and to be assured of receiving due consideration to consumer interests at appropriate forums; (e) the right to seek redressal; and (f) the right to consumer education. Sections 4 and 7 of the COPRA provide for the establishment of the central and state consumer protection councils, with the object of promoting and protecting the rights.

The Statement of Objects and Reasons appended to the Consumer Protection Bill, 1986 includes the following: 'to provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, state and central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided'. Sections 9 to 27 provide the judicial apparatus, i.e., the exclusive consumer courts, for enforcement of the consumer's rights, particularly those incorporated in clauses (d) and (e), as mentioned earlier. It is a three tier quasi-judicial machinery which came into existence, when the COPRA became fully operative from July 1, 1987. The state governments and the union territories have the responsibility to provide for each district at least one District Consumer Grievances Redressal Forum (District Forum), and for each state and each union territory, a State Consumer Grievances Redressal Commission (State Commission). The National Consumer Grievances Redressal Commission (National Commission or NC) at New Delhi is the apex body in this system. The term, *consumer courts*, has been used generally and also in this article to refer to this three-tier adjudicatory apparatus. The COPRA, 1986 extends to the whole of India, except Jammu and Kashmir, where the Jammu and Kashmir Consumer Protection Act, 1987 is applicable. Before the 1993 amendment, the state had to take the prior approval of the central government for setting up a Forum or a Commission. It used to unnecessarily procrastinate the implementation of the COPRA. The amendment came in the wake of a directive of the Supreme Court in a writ petition entreating the Court to accelerate the lackadaisical implementation of the COPRA. The petition was filed by *Common Cause*, a watchful voluntary organisation. The

Court's directive, dated June 17, 1990, to the state governments and the union territories was to establish consumer forums in every district. Accordingly, most of the states directed the District and Sessions Judges of district courts to devote a part of their time, at least three alternate days in a week, to hear consumers' grievances. However, *Common Cause* had to seek the help of the Supreme Court once more, as the number of pending cases in many districts was mounting. Hence in 1993, the Supreme Court mandated that the states should appoint within six months a separate and independent Presiding Officer for District Forums where the number of consumer complaints enlisted in a month exceeded 150. [*Common Cause* v. *Union of India*, (1993) 10 *Corporate Law Adviser*, 205 (Supreme Court)]. Where the number was less than 150 per month, the existing *ad hoc* arrangement could continue for one more year; but within that period state governments and union territories should constitute separate forums. In 1993-94, there were 452 District Forums and 31 State Commissions functioning in the country, [Ministry of Civil Supplies, Consumer Affairs and Public Distribution, 1994, p. 41]. Thus consumers were expected to obtain quick relief for their complaints. However, consumers face many difficulties and delays. Some of them are: appointments of the personnel including the Presiding Officer, to man these forums are not made expeditiously by the state governments. Secondly, the appointed members often remain absent at hearing and the rules in this regard are too liberal allowing them to do so. In September 1994, the President of the Maharashtra State Commission suspended hearing due to the absence of non-judicial members. As a result 3,000 complaints piled up with the Maharashtra State Commission. One of the four working groups of the Central Consumer Protection Council recommends that where a non-judicial member fails to attend three consecutive hearings in a consumer court, it should be presumed that he is unable to continue as a member and should be replaced. Thirdly, adequate facilities, such as office space, furniture, secretarial assistance, a minimum library of relevant law books and reports, etc., are not provided. On this account too, the President of the Maharashtra State Commission had to resort to strike in May-June 1994, after repeated pleas to the concerned authorities of the government failed. This highlights the pitiable plight of the judicial officers in the state as well as the scant respect the government has for the welfare of the consumer. The Planning Commission recently agreed, in principle, to provide one-time financial assistance of Rs 61 crore to state governments, over and above their annual plan budget, for strengthening the infrastructure of consumer courts [ET, 1995, p. 3, cols. 5-8]. The number of pending cases is mounting also because of inadequate number of consumer courts, particularly at the district and the state level, lack of monitoring by state governments, and frequent adjournment. Finally, the execution of the consumer court's order, even after getting a positive decision, poses great hurdles for the consumer because the two Sections provided in the COPRA for this purpose are inadequate. Section 25 enables the consumer to get his order executed through the civil court, which means inordinate delay due to frivolous objections by the opposite party. 'It is axiomatic that in India the real trouble of a litigant starts after he obtains a decree' [Singh, 1994, p. 1167]. Section 27 provides for an appeal to the concerned consumer court again for penalising the opposite party who has not honoured its earlier order. The penalties are imprisonment for minimum one month to maximum three years or fine of Rs 2,000 to Rs 10,000 or both. But they do not compensate the loss suffered by the consumer. The first President of the Pune District Forum observes that majority of the defaulters prefer imprisonment [Behere, 1994].

Composition of the Consumer Courts

Of the three-tier judicial mechanism, the District Forums, as well as the State Commissions have one president and two other members. A person qualified to be a district judge is appointed as the president of the Forum and one qualified to be a judge of the High Court as the president of the State Commission. It is a quasi-judicial

machinery because non-judicial persons of ability, integrity and standing, experienced in economic, commercial, legal, administrative, and such other fields are selected as members, on the recommendations of a selection committee. The National Commission comprise of one president and four members; again the president must be a person qualified to be a judge of the Supreme Court and the other four may be non-judicial persons. One member on all the three consumer courts must be a woman. However, the COPRA does not provide for nominating members with experience and expertise in certain crucial areas-engineering, technology, medicine, etc. Today, majority of the goods and services are provided by these sectors and consumer courts have to settle complaints regarding them. Hence their participation would be of immense value. Still the induction and predominance of the non-judicial persons in the task of dispensing justice has its own advantages, such as strengthening the consumer's belief, that consumer courts would not be as legalistic and technical as the regular courts. It encourages them to approach these courts without hesitation for their grievances. Again, there are adequate safeguards to ensure that no injustice is done to anyone by these lay persons. For, according to the 1991 amendment of the COPRA, 1986, a new sub-section- Section 14(2)- has been inserted, which requires every complaint to be heard by the president (a legally qualified person) and one of the two non-legal members. Thus the president must be present for every proceeding and every order must be passed by him, along with one of the members, to be legally valid. Any order passed exclusively by the two non-judicial members or even by the president alone, singly is illegal and devoid of authority [*Baroda Municipal Corporation* v. *Akhil Bharatiya Grahak Panchayat*, [1993] 1 *Consumer Protection and Trade Practices Journal* 20 (National Commission)].

Procedures Followed in the Consumer Courts

It is said that consumer courts bring *justice* to the doorstep of the common man because of the informal methods and procedures followed by them in complaint-resolution. Yet it is necessary to observe some procedure. The salient features of this procedure are as follows:

(i) A complainant can file his complaint directly, without engaging a lawyer or without paying any court fee, in the appropriate consumer court. Lawyers may represent complainants, with the permission of the consumer court.

(ii) A complaint can be filed in the District Forum, if the relief claimed, i.e., the value of the goods or services and compensation, does not exceed Rs five lakh; it has to be filed with the State Commission, if the value of the relief is more than Rs five lakh but less than Rs twenty lakh, and with the National Commission, if it exceeds Rs twenty lakh. These are the current pecuniary jurisdictions, as revised by the 1993 amendment to the COPRA, 1986.

(iii) A complaint has to be made in writing and should contain the following particulars, (a) the complainant's name, address and description, (whether individual or other legal entity such as a consumer organisation), (b) the name, address and description of the opposite party against whom the complaint is filed, (c) the facts about the complaint and when and where it arose, (d) documents supporting the allegations made in the complaint, and (e) the relief claimed by the complainant (Rule 14(1) of the Central Consumer Protection Rules, 1987 , GSR 398(E) dated April 15, 1987).

(iv) As per Section 24 A (1), inserted by the 1993 amendment to the COPRA, 1986 a complaint has to be filed within two years from the date on which the cause of that complaint has arisen.

(v) According to Section 13 (1) (a) of the COPRA, when a consumer court refers the complaint to the opposite party, it must submit its version or explanation of the complaint within 30 days, extendable to 45 days with the permission of the court and only in special circumstances. If the opposite party fails to reply, a consumer court may decide a complaint *ex parte* on the basis of evidence placed before it, as per Section 13 (1) (b).

(vi) A complaint has to be disposed of by a consumer court, ordinarily, within 90 days from the date of notice received by the opposite party, and within 150 days, if analysis or testing of the goods involved in the complaint is required. Not more than one adjournment is to be permitted as

a rule. Also, if the opposite party or even the complainant fails to appear before it on the appointed day, the consumer court can dismiss the complaint for default or deliver the order on merit (Rules 4(8) and 4(9) of the Maharashtra Consumer Protection Rules, 1987 CPC 3987/705/X (239) dated November 20, 1987 as amended up to January 16, 1989; other states too have similar rules). More than five lakh complaints have been filed in consumer courts all over India out of which, so far, only 64 per cent have been disposed of. Approximately 49 per cent of the decided complaints were in favour of consumers and about 43 per cent were decided in the stipulated period- within 90 to 150 days [ET, 1995, p. 3, cols. 5-8].

(vii) When several consumers have the same complaint and even if only one of them may have filed it, the order passed by the consumer court shall be applicable to all. It will be treated as a representative, class action (Section 13(6) inserted by the 1993 amendment). Similarly, any recognised consumer association may file a complaint and it is not necessary for the complainant consumer to be a member of that association.

(viii) One appeal can be filed against any order of a consumer court to the next consumer court in the hierarchical order, i. e., from the District Forum to the State Commission, from the State Commission to the National Commission, or from the National Commission to the Supreme Court. But there is no provision in the COPRA for a second appeal, i.e., an appeal against the order in the first appeal. If the order in the first appeal contains any illegality or material irregularity, the National Commission, having revisional jurisdiction, may decide such second appeals, theoretically or in principle, on its own. But, in practice, it is just impossible for the National Commission to keep track of the thousands of decisions of the State Commissions in the country. Therefore, the aggrieved party has to file a revision petition before the National Commission. Any appeal or revision petition has to be made normally within 30 days from the date of the order; the period required for making available to parties a copy of that order is excluded. The memorandum or petition of appeal must be accompanied by a certified copy of the order appealed against. Four copies of the memorandum with all the accompanying papers in the case of State Commissions, and six copies in the case of the National Commission, are required to be submitted. In the case of an appeal to the Supreme Court, as per Order XX (F) of the Supreme Court Rules, 1966 inserted by the Supreme Court (First Amendment) Rules, 1990, seven sets of the petition must be submitted. Also a fixed court fee of Rs 250 has to be paid in appeals to the Supreme Court. After the appeal is registered, it is put up for hearing *ex parte* before the Supreme Court. Depending on the merits of the case, the Court may dismiss it summarily or issue notice to all the necessary parties for further hearing. There is no provision for appeal to the High Courts, but there is also no provision in the COPRA which ousts their jurisdiction, although the Central Consumer Protection Council recommends it. So an aggrieved party may file a writ under article 226 of the Constitution. 'But the High Court has a discretion to entertain the writ petition and, in particular, to decide ... any questions of jurisdiction.... It is not as if the High Court is bound to entertain every writ petition which raises a question of jurisdiction of a Tribunal' [*Tulasi Enterprises* v. *A.P. State Consumer Commission*, All India Reporter (AIR) 1991 Andhra Pradesh 326, p. 330].

Natural Justice and the Procedure in the Consumer Courts

As pointed out earlier, clause 4 of the Statement of Objects and Reasons appended to the Bill for the COPRA specifically mentions that consumer courts will observe the principles of natural justice. However, Section 13(3) of the COPRA states that no proceeding in a consumer court, so long as it complies with the procedure laid down in Sections 13(1) and 13(2), can be challenged in any court on the ground that principles of natural justice have not been observed. Apparently, it may sound contradictory. In reality, Sections 13(1) and 13(2), while laying down the procedure for the hearing of a complaint, give recognition to one of the twin principles of natural justice, namely, *audi alteram partem*, i.e., nobody should

be punished unheard, and rules 3(4), 3(5)(d) and 3(9) of the Maharashtra Consumer Protection Rules, 1987 embody the second principle, namely, *nemo judex in re sua*, i.e., nobody should judge his own case, (the Maharashtra Consumer Protection Rules, 1987 CPC 3987/705/X (239) dated November 20, 1987 as amended up to January 16, 1989; other states too have similar rules). The first principle prevents a judge from deciding a case summarily, arbitrarily, without giving all concerned an opportunity to explain their own side. For, arbitrariness leads to discrimination and miscarriage of justice. Unless a person is impleaded as an opposite party, and a copy of the complaint is served on him, he has no opportunity of representing his side. In one complaint, *Manager, Milk Chilling Centre, Mehboobnagar* v. *Mehboobnagar Citizen Council*, the State Commission had passed an order against the AP Dairy Development Cooperative Federation Ltd., which was not impleaded as an opposite party. The National Commission, therefore, set aside the order [(1991) 1 *Company Law Journal*, 309]. However, this provision is often abused in civil courts, when lawyers adopt dillydallying tactics, request for several adjournments and delay the decision, all under the pretext of *adequate* opportunity for representation. In certain urgent matters, e.g., sale of adulterated food-stuffs and drugs, the facts and circumstances are such that public interest and ends of justice are better served in denying the opportunity for representation. Here the decision is given on merits and the aggrieved party may challenge it on merits, but not for lack of opportunity to present his defense. Other facets of this principle are: a judge should record the reasons for the decision taken, and the judge, who hears both the sides, that same judge should decide the matter. The second principle of natural justice ensures that the decision is taken without any sort of partiality, prejudice or bias, even official bias, for 'bias from strong and sincere conviction as to public policy may operate as a more serious disqualification than pecuniary interest' [Donoughmore, 1929, p. 78]. Since lay persons are members of consumer courts and are often appointed because of their political connections, it is all the more necessary that anyone having an interest in the matter should not decide the complaint.

The principles of natural justice aim at eliminating miscarriage of justice. They are not the end in themselves, but means to an end. Following these principles implies upholding the concept of the rule of law. Since they are rules of processual propriety, fairness is their essence and their application is conditioned by the facts and circumstances of each case and the peculiar needs of a given situation. When a question of violation of the Fundamental Rights is involved, not only judicial decisions but even administrative orders or actions have to be consistent with these principles. The Supreme Court holds that in such cases they form a critical requirement of the 'procedure established by law' as provided in Article 21 of the Constitution' [*Maneka Gandhi* v *Union of India*, AIR 1978 Supreme Court 597]. Presumably, consumer complaints rarely involve violation of the Fundamental Rights. At any rate, non-observance of these principles in any consumer complaint enables the aggrieved party to go in for appeal.

Prerequisites for Filing Complaints in Consumer Courts

(i) Goods- The COPRA, 1986 is applicable to complaints about all goods and services, except those exempted by the central government by notification (Section 1(4)). Clauses (i) and (o) of Section 2(1) define 'goods' and 'service'. The definition of 'goods' is taken from the Sale of Goods Act, 1930, with certain additions. The Sale of Goods Act defines 'goods' as every kind of moveable property other than actionable claims and money. It includes growing crops, grass and things attached to or forming part of land, which can be severed but does not include land or other immovable property. It covers products manufactured, processed or mined in India as well as goods imported into India, when they are supplied, distributed or controlled in India. It also includes shares and stocks. But the May 20, 1994, judgment of the Supreme Court barred consumer courts to decide matters involving public issues of shares by companies, on the ground that till the

allotment of shares to specific persons takes place, shares do not exist and therefore, the Supreme Court observes, 'at the stage of application, it will not be goods. After allotment, different considerations may prevail' [*Morgan Stanley Mutual Fund* v. *Kartick Das* [1994(3) *Judgment Today* 654. For details, see Section VII- *Shares, Stocks and Deposits*].

(ii) Services- Clause (o) of Section.2(1) defines 'service'. This definition is also very wide, it 'means service of any description which is made available to potential users and includes ... banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information ...'. However, a service which is free of charge or is under a contract of personal service is outside the scope of the definition. This part of the definitions has been the bone of contention between the professionals and the consumer courts. The courts rule that service rendered by doctors, lawyers, chartered accountants, cost accountants or architects cannot be called personal service since the professionals' actions, advice or treatment are not controlled by their clients, whereas in a contract of personal service, like that between a servant and his master, the servant acts on the advice of his master, who controls whatever the servant does. Consequently, the professionals' service is governed by the COPRA. Consumer courts assert that the services mentioned in the second part of the definition are just a few illustrations and the first part provides the real application, i.e., 'service of any description'. Hence all services, including medical service come under the purview of the COPRA, 1986. They rely on the concept of service as defined in the field of management, 'a service is any activity or benefit that one party can offer to another that is essentially intangible and does not result in ownership of anything', [Kotler, 1989]. Additionally, unlike the MRTP Act, the COPRA does not exclude state-run undertakings from its jurisdiction. Hence consumers can lodge complaints with consumer courts about any deficiency in public utilities provided by the state, as long as it is not free of charge. Thus, one can complain about inadequacies in the state-run transport facilities, say railways, state transport (S.T.) buses, Indian Airlines, etc., but one cannot complain about the shortcomings in the state-administered hospitals, health centres, etc., because they offer the medical service either free of charge or at nominal cost, which is not really the price or consideration for the service rendered, but merely incidental charges. As against this, private hospitals, private medical practitioners are not outside the purview of the COPRA. (For details, and also for other newly defined services, see Section VII).

(iii) Consumers- Complaints can be filed in consumer courts by consumers, those users who are approved by consumers, potential consumers who intend to use and, on their behalf, registered consumer organisations. Clause (d) of Section 2(1) of the COPRA, 1986 defines a 'consumer'. The *sine qua non* of this definition is buying any good or hiring or availing of any service for consideration with the purpose of consumption or use either by the buyer himself, or by others approved by him. After the crucial 1993 amendment of the COPRA, however, certain changes have come into effect. Replacement of sub-clause (i) and inclusion of sub-clause (v) in Section 2(1)(c) enable a consumer to register a complaint against an *unfair trade practice* without requiring to prove that he/she has purchased and, as a result, suffered loss or damage. If goods which are hazardous to life and property are offered for sale, without displaying information about their contents, manner of use or effects after use, as required by law, any one may complain to the consumer court. He need not buy or hire such goods. Similarly, inclusion of clauses (f), (g) and (h) in Section 14(1) empowers consumer courts to order traders to discontinue the *unfair* or *restrictive* trade practice, not to offer hazardous goods for sale and to withdraw from market such goods already offered, even when no transaction has taken place.

(iv) Purchase of Goods for Commercial Purpose- Consumer courts do not entertain complaints about *goods*, if they are purchased for commercial purpose or resale. Such complainants are asked to file a suit in a civil court. But if *services* are utilized for commercial purpose, and

they are found over-priced or deficient, complaints regarding them are decided by the consumer courts. Thus, if an oil mill uses electric power from a State Electricity Board, it can complain to a consumer court for deficiency in power supply, but if it buys and installs a generating set for uninterrupted power supply in the mill, and it does not work, it cannot complain about it to the consumer court. For, the set is used for generating power for manufacturing edible oils for the purpose of trade [*Synco Textiles Pvt. Ltd.* v. *Greaves Cotton & Co. Ltd.* [1991] 1 *Consumer Protection Judgments (CPJ)* 499 (National Commission)]. Similarly, if a vehicle is purchased for running a public taxi service, and if it is defective, the purchaser cannot go to a consumer court [*Western India State Motors* v. *Sobhag Mal Meena* [1991] 1 *CPJ* 44 (National Commission)]. But if a commercial establishment hires a taxi service and the service is deficient, the hirer can file a complaint in a consumer court. However, after the 1993 amendment of the COPRA, consumer courts have authority to decide complaints regarding goods bought and used exclusively for the purpose of earning one's livelihood by means of self employment (*Explanation* to clause (d) of Section 2(1)). This amendment came in the wake of a number of judgements of the consumer courts in cases where goods purchased by persons, belonging to the weaker sections of the society were found defective, say a sewing machine or a Xerox machine, purchased by a widow out of her deceased husband's provident fund and other terminal benefits, or an auto-rickshaw, purchased by a rickshaw driver out of a bank loan, and so on. Yet, the amendment leaves certain loopholes. For instance, a self-employed person appoints a servant. Is he entitled to complain then? Again, complaints of farmers about ineffective hybrid seeds, fertilisers or pesticides having adverse effects, also complaints of fisher-folk regarding infertile fish-seed for fresh water acquaculture have been decided by consumer courts, although their use is for increasing production for sale, for commercial purpose. The law appears to be still unsettled on this point.

(v) Consideration- Complaints cannot be registered in consumer courts, if goods and services supplied are free of charge. Goods and services must be priced. Consideration is essential and it includes any kind of deferred payment, too. This prevents frivolous complaints being filed. The 1993 amendment empowers the consumer courts to dismiss frivolous or vexatious complaints and order the complainant to pay to the opposite party costs up to Rs 10,000. The reasons for such an order, of course, are to be given in writing.

(vi) Grounds of Complaints- Complaints about goods and services are filed on the following grounds: (a) excess price is charged, (b) goods purchased or agreed to be purchased are defective, (c) services hired or availed of or agreed to be hired or availed of are deficient, (d) *unfair* or *restrictive* trade practices are adopted by traders. Clause (c) (iv) of Section 2(1) of the COPRA enables a consumer to complain about charging excess price, only when (a) it is in excess of that fixed by or under any law in force, e.g., under the Standards of Weights and Measures Rules, 1977, traders and shopkeepers are obliged to display conspicuously on the board in their shops, a list of statutory prices; or (b) it is in excess of the price displayed on goods or on the packages. The Standards of Weights and Measures (Packaged Commodities) Rules, 1977 compel the manufacturers, producers and the like to indicate on the product or its packet the maximum price inclusive of all local taxes, like octroi. Consumer courts have confirmed these principles in their judgements on price fixation. The National Commission, held in a number of cases that the COPRA allows complaints of charging excess price only in case of the above two situations, and that there is no provision under it to investigate into the reasonableness of any price fixation by the producer/manufacturer [*Manager, Milk Chilling Centre, Mehboobnagar* v. *Mehboobnagar Citizen Council*, [1991] 1 *Company Law Journal*, 309; *Maruti Udyoga Ltd.* v. *Kodaikanal Township*, [1992 (II) *CPR* 728]; and *Ravi Kant Garg* v. *Branch Manager, Classic Motors* [1993 (I) *CPR* 187]. Also, the National Commission abstains from hearing complaints about pricing or fixing instalments of a flat by a housing board,

housing society or builder, as they are not consumer disputes, and hence consumer courts have no jurisdiction to hear such complaints [*Gujarat Housing Board* v. *Datania Amrutlal Fulchand and others* 1993 (III) *CPR* 650]. The consumer courts' policy in matters of excess pricing of services, is the same. Only when service charges over and above the call charges metered were collected by owners of private STD/ISD/PCO, the State Commission directed the Telephone Department to publish in newspapers and inform the general public that service charges are illegal and should not be paid [*Manager, STD/PCO* v. *Jayendra Manoharlal Upadhyay* [1992] 3 *CPJ* 17 (Gujarat State Commission)]. Similarly, when the National Dairy Development Board (NDDB) purchased huge stocks of groundnut oil at lower price in April-July 1989, for creating a buffer stock of five lakh tonnes of edible oil, the price of groundnut oil shot up in August-October 1989, the National Commission declined to issue directions to the NDDB to release the stock, in order to bring down the price [*The Consumer Protection Council, Ahmedabad* v. *National Dairy Development Board* 1992 (I) *CPR* 553].

(vii) Defect and Deficiency- The definitions of 'defect' and 'deficiency' given in clauses (f) and (g) of Section 2(1), respectively, consist of two parts, (i) mandatory standards as laid down by law, e.g., the Standards of Weights and Measures Act, 1976, the Prevention of Food Adulteration Act, 1955, or the Drugs and Cosmetics Act, 1950, and (ii) warranties, guarantees, promises, undertakings, contracts, etc., either expressed or implied, given by manufacturers, traders or other suppliers of goods and services. If goods and services do not adhere to any of the above two requirements, if there is any fault, imperfection, shortcoming or inadequacy in them, a complaint can be filed. Any other type of shortcoming, such as, the latest 'state of the art' technology not having been incorporated in the product, cannot be a ground for complaint.

The COPRA differentiates between 'defect' in goods and 'deficiency' in service very distinctly. Clauses (f) and (g) of Section 2(1) define these two terms, respectively, and the National Commission too, has held that when any order is placed for supply of goods, the delay in their delivery cannot be considered as 'deficiency' in service or as an *unfair* trade practice, because it is a contract principally for sale of goods and does not involve rendering of any service as such. A complaint in such transactions can be filed only if the goods supplied suffer from one of the defects mentioned in the definition given in clause (f) [*Maruti Udyoga Ltd.* v. *Bhuvana Vishwvanathan*, [1993] 1 *Consumer Protection and Trade Practice Journal* 186] and *General Co-operative Group Housing Society, Ltd.* v. *J.K. Cement Works* [1992] 2 *Company Law Journal* 249]. However, if any advance or deposit is paid at the time of placing an order for a good, and, for any reason, the order is not fulfilled nor the deposit refunded in time, the default/delay in refund amounts to 'deficiency' in service [*Mumbai Grahak Panchayat* v. *Lohia Machines Ltd.* [1991] 1 *CPJ* 26 (NC) and *Consumer Protection Council, Rourkela* v. *Andhra Pradesh Scooters Ltd.* Original Petition No 29 of 1990].

(viii) Reliefs- A complainant can ask for only those reliefs from consumer courts as they have power and authority to give. They do not have any inherent powers as such; so whatever orders they can pass are enumerated in Section 14(1). They are as follows: (a) to remove defects in the goods supplied; (b) to replace the defective goods with new faultless goods; (c) to refund the price of goods or charges for services paid; (d) to compensate for the loss or injury suffered due to negligence of the opposite party; (e) to remove deficiencies in the services in question; (f) to discontinue and not to repeat any *unfair* or *restrictive* trade practice; (g) not to offer any hazardous goods for sale; (h) to withdraw the hazardous goods offered for sale; and (i) to provide for adequate costs (of proceedings involved in the complaint) to parties. Any of these reliefs can be granted by consumer courts even *sue moto*, when a lay complainant, ignorant of the legal procedures, fails to ask for it.

(ix) Compensation- Compensation, i.e., equivalent in money for loss or injury sustained, is awarded by a consumer court, only if the complainant is able to prove any negligence on the part of the opposite party, with substantial evidence. This principle of negligence is strictly applied by the National Commission in a number

of cases of deficiency in service. For example, compensation was rejected by the National Commission to complainants, who were account-holders in the Bank, who had suffered financial and other loss due to suspension of bank operations forced by its employees resorting to an illegal strike. The claim was rejected on the ground that the failure of the Bank was not attributable to any negligence on the part of the Bank, but the suspension of business was due to reasons beyond its control [*Consumer Unity & Trust Society, Calcutta* v. *Bank of Baroda* [1992] 1 *CPJ* 18 (National Commission) and *Federal Bank, Bistupur* v. *Bijon Mishra*, [1991] 1 *CPJ* 44 (National Commission)]. In fact, the State Commission had awarded in the latter case compensation to Mishra, the account-holder, by directing the Bank to treat his locked amount as a long-term deposit and to pay him interest on it. But the National Commission set this order aside. As a result, the Bank unjustly enriched itself, because it collected interest for the strike period on its advances made out of the account-holders' money, while they did not have access to their money, nor received any compensation.

In order to obtain compensation, it is necessary to prove before the consumer court that the complainant has suffered loss because the opposite party was negligent. Loss can be proved but it is difficult to prove negligence. Negligence is defined as a breach of duty to take reasonable care and precaution in the given circumstances, so that there is no loss, injury or harm to anyone. Negligence thus comprises both, omission, i.e., not doing something which ought to be done, as well as commission, i.e., doing something which ought not to be done. Again negligence is a relative term, what amounts to negligence in one set of circumstances may not be so in another setting. Hence, all the surrounding considerations, like opportunity for deliberation or degree of danger, must be evaluated in each individual case. In the developed countries of the West, when the product purchased is faulty or defective, and because of that defect the consumer suffers injury or loss, he receives compensation. This principle of product liability has two advantages: (i) It is not necessary for the consumer to prove that the defect is because of the negligence of the producer/supplier. It may *not* be due to negligence; it could be the result of many other elements, say, a genuine error of judgement, in spite of taking due care. Yet, the consumer receives compensation for his loss. (ii) The liability of paying compensation is on the last person in the chain of production, the actual supplier who may later recover it from the distributor/producer/manufacturer. So the consumer gets quick relief. This same principle of product liability should have been accepted in our country. For, as a rule, manufacturers take insurance policies and add the cost of the premiums to the price of their products. Thereby, any amount of compensation which courts might ask to pay is already distributed evenly among buyers and the manufacturers' liability is covered beforehand. Still consumer courts do not award compensation unless negligence is proved. Naturally, consumer courts do not award compensation, if circumstances of *force majeure*, such as wars and natural disasters, exist. Such circumstances relieve the opposite party of the charge of negligence, and thereby, of the liability to pay compensation. For instance, the complainant received no compensation from Air India for the loss of her baggage in a flight from Kuwait to Goa during evacuation at the time of Iraq-Kuwait war [*Air India* v. *Sugandha Ravi Mashelkar*, [1993] 1 *Consumer Protection & Trade Practices Journal* 189 (NC)].

Other well accepted legal principles for awarding, assessing and quantifying compensation are as follows: (a) compensation or damages may be pecuniary and/or non-pecuniary, that is, the amount of money awarded is either for the actual, direct loss or expenses suffered or for the indirect loss, like deprivation of enjoyment, pain, suffering or mental agony; (b) the amount of compensation should not be awarded arbitrarily, but there has to be a rational nexus between the amount and the loss suffered by the complainant; the amount should be quantifiable and the status of the parties involved is certainly irrelevant; (c) allegations of loss should not be vague, and a claim for compensation should be substantiated with acceptable evidence; and so on. The National Commission has held in many complaints that claims for compensation cannot be

refused without giving adequate reasons [*Krishan Das Aggarwal* v. *Union of India*, [1992] 3 *Company Law Journal* 295 (NC)]. Generally, consumer courts are liberal in awarding damages for the actual loss or injury by directing the opposite party (sellers/ manufacturers) to either replace the defective product or remove the defect, once the defect is established, or refund the price of the product. In the case of refund, often interest is awarded; it is usually for the period from the day the complaint is filed to the day on which the money is refunded. The incidental inconvenience and the indirect, consequent loss- their nature and extent- are, however, difficult to assess. As a result, they are hardly ever compensated.

Paying compensation or damages will work as a deterrent, only if it is costlier for a business to do so than to improve the quality of its product or service. Hence, if punitive or exemplary damages are awarded, it might be helpful. But civil courts including consumer courts are normally disinclined to do so, primarily because it punishes the opposite party without following the more meticulous procedure of the criminal law, where the evidence has to be beyond the slightest doubt. Only in rare complaints when the evidence provided is of a very high and certain degree, consumer courts may award such damages. The Supreme Court has recently enunciated its views on the consumer courts' authority to award compensation of all kinds to the aggrieved complainant in a judgment, *Lucknow Development Authority* v. *M.K. Gupta* [1993] *CPJ* 7 (Supreme Court)]. They can be summarized as follows: the word 'compensation' is of very wide connotations. It has not been defined in the COPRA. Its dictionary meaning is 'compensating or being compensated; things given as recompense'. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury. Therefore, when consumer courts have been vested with the authority to award value of goods or services and also compensation under Section 14 of the COPRA, the word has to be construed widely. It should encompass not only the value of the good or service in dispute but also reparation for the injustice suffered by the consumer. In addition, when compensation arises due to arbitrary and capricious exercise of power, in fact, abuse of power by public authorities, then it loses its individual character and assumes social significance. Misfeasance in public office, i. e., *mala fide*, unconstitutional, oppressive acts, malicious abuse of power, deliberate maladministration, and other unlawful acts resorted to by government servants causing harassment and injury to the common man, is socially abhorring and legally impermissible. It harms the common man personally but the injury to society is far more grievous. Therefore, the award of exemplary or aggravated compensation is justified.

(x) Miscellaneous- Consumer courts decline to entertain complaints where complex questions of fact and law are involved and examination and cross-examination of several witnesses as well as recording and scrutiny of elaborate and voluminous documentary evidence are necessary [*M/s. Special Machines, Karnal* v. *Punjab National Bank and others*, [1991] 1 *CPJ* 78 (National Commission)]. However, this applies to only a few exceptional, rare complaints. In addition, there is no power under the COPRA to grant any interim relief or even an ad-interim relief. Only a final relief could be granted.

V
ADEQUATE SUPPLY AT REASONABLE PRICE

Consumers pay for goods and services which satisfy their wants. This want-satisfying capacity of goods and services depends on their availability at fair price, their standard, quantity and quality. It is necessary to protect the consumer from (a) hoarding, which results in uncertain availability, high prices, black-marketing and profiteering, especially in times of shortages and scarcity, exorbitant pricing of services, such as medical or legal services, as well as from (b) sub-standard, spurious, adulterated, defective, sometimes even hazardous goods, or goods sold in short measure, or their delayed delivery and disgusting after-sale service, also, insufficient, inferior, deficient services (discussed in section VI).

As far as the first malady of soaring prices (a) is concerned, the political complexion of the government plays a crucial role in determining the price policy of a country. Governments can

influence the level of prices in two ways, budgetary control and direct statutory control. The former comprise *administered prices* through tariff, taxes, control of interest rates and money supply in the country and other fiscal measures, and also varying the rates of supply of infrastructural resources- goods and services- like minerals, electricity, etc., through use of subsidies. They exercise informal influence on prices. The latter include (i) wage-regulation, wage-price freeze, (ii) controlling the profit margins by prescribing a rigid *price code* as exists in our country for certain drugs and pharmaceuticals, or procurement/ levy/ support/ issue prices, dual pricing, (iii) restricting free flow of products throughout the country, (iv) requiring prior approval (licensing) to ensure that a business satisfies certain prerequisites before undertaking any activity, (v) anti-trust legislation, (vi) moral suasion, and so on. Both these types of anti-inflationary measures have vital bearing on the welfare of consumers. In our country, the state has taken over the functions of production/ procurement and distribution of certain essential goods and/or regulated their prices. A formal, rigid control is applied through the Essential Commodities Act, 1955 and the Industries (Development and Regulation) Act, 1951. Moreover, the state itself provides essential services (public utilities) generally at subsidised rates through legislation, e.g., the Electricity Act, 1910, the Post Office Act, 1898 or the Telegraph Act, 1885. Currently, the government is implementing the economic liberalisation and structural reform programmes. They aim at bringing market prices closer to efficiency prices in the long run interest of consumers. But one of the short-term negative implications of these programmes is sharp rise in prices of food articles, fuel, power, and other essentials. Any rise in price curtails the living standards of all consumers, especially the vulnerable groups of the population. Since the basic premise underlying such adjustment programmes is not only about *getting prices right* but also about *getting state intervention right*, the state should intervene timely and constructively and provide safety nets for the afflicted, to bring about the adjustments with a human face [Ravallion and Subbarao, 1992; Nayyar, 1993]. Although there is regular monitoring of agricultural prices by government at both retail and wholesale levels in selected markets, consumer organisations demand all-out transparency in prices not simply of agricutlural products but also of manufactured goods, i.e., the breakup of the retail sale price- the actual, absolute cost of production, transport costs, taxes or state subsidies (as the case may be) and profit margins. It is the consumer's right to be informed. Hence, in April 1995 the Union Ministry of Civil Supplies, Consumer Affairs and Public Distribution accepted the recommendation of the Central Consumer Protection Council, to set up a commission for monitoring all prices in this manner.

Pricing of Services

Controlling any aspect of a service, say price or quality and standard, as compared to that of a good is more difficult for the simple reason that it is not a product but a human activity, incorporeal by nature. It is not the outcome of work but the work itself which is to be controlled. Yet, control may be exercised at two points: (i) at the stage of training of those who render a service, and (ii) at the stage of admission into the trade or profession ('permission to practise' stipulations). For instance, in the case of transport service, distance being the main criterion to determine the price, vehicles with flag-meters are only licensed to carry passengers. Practices such as unit pricing of services, or providing estimates about the price of services are most desirable in the interest of consumers, for they can then compare typical services offered by different purveyors. Secondly, contract clauses are used in agreements for services, to provide for a unilateral right to raise the agreed price in future on the ground of inflation, without changing the contents or other terms and conditions of the agreement and without giving the consumer any latitude to oppose such an increase. It is unrealistic to prevent such clauses, but the consumer should be well-informed about his obligation in future and also about the basis on which the price of a certain service may be increased. Unilateral, sudden

price hikes are ubiquitous in the case of service rendered by builders-promoters in towns and cities. They are discussed in Section VII.

Adequate Supply at Fair Price

With the outbreak of the Second World War, the normal mechanism of the free market for foodgrains was not able to cope with the demand, the total supply of foodgrains being short of the minimum needs of the people. Hence various alternative systems of distribution were engineered. They may be classified into two- (i) statutory rationing with a total restriction on entry into the market, and (ii) fair price distribution alongside a free market (PDS). The latter may be of different varieties, like non-statutory rationing, informal rationing, controlled distribution, relief quota shops, etc. Under statutory rationing, it is the statutory obligation of the state to provide each citizen an adequate quantum of foodgrains at a given price. It is the state intervention of the highest kind, to ensure that even the most vulnerable sections of the society are in a position to satisfy their most basic human requirement, namely, food. Additionally, it maintains the prices of foodgrains low.

In India, price control and public distribution by the state were undertaken in the pre-Independence period under Rule 81D added on August 22, 1942 to the Defence of India Rules, framed under the Defence of India Act, 1939. In May 1942, statutory rationing was introduced in Bombay for the first time. Gradually, it was extended to other parts of the country, primarily urban areas. Also non-statutory rationing was adopted to suit the conditions of rural and semi-urban areas. The extension of these measures progressively increased the state's commitment to consumers. However, the Foodgrains Policy Committee, 1947 noticed that 'the system of food controls is unable to fulfil the purposes for which it was intended; what is more, it looks as if the system will fail increasingly' [Dandekar, 1966, p. 22]. Hence, alternated the phases of decontrol in 1947-48, again re-control from 1949, then gradual relaxation since 1952, state trading in foodgrains from November 1958, its suspension in 1960, and so on. Today on an average, a population of about 2,000 is catered by one fair price shop. The essential commodities distributed through them are rice, wheat, sugar, edible oils, and kerosene. From June 1992, a revamped PDS (RPDS) was introduced. It is operative in 1,775 blocks in backward and remote drought prone, arid, desert, hill and tribal areas at present and 409 more blocks have been identified. Additional commodities, like tea, soap, pulses and iodized salt are distributed in the RPDS areas. Foodgrains meant for RPDS areas are issued at Rs 50 per quintal lower than the central issue prices (CIP) for the normal PDS areas. The state governments are to ensure that their retail prices in RPDS shops are not higher than CIP by more than 25 paise per kg [Ministry of Finance, 1995, p. 78].

The flaws and irregularities in the working of the fair price shops, popularly known as ration shops, and the PDS are highlighted in various reports. Some of them are dealt with in Section VII. But the PDS, certainly, does not benefit the poorest consumers, for whose betterment it is being implemented for the simple reason that to draw grains from the fair price shops, one must have a ration card with a permanent address; so the shelterless poor or the migrant labourers are outside the purview of the system. Again, daily wage earners find it hard to have adequate cash on hand to buy even weekly supplies, leave alone fortnightly or monthly quotas. Further, the staple meal of the poorest consumers consists mainly of coarse cereals, rather than superior ones, like rice, wheat, sugar and refined oil supplied through the PDS. Out of the macro-economic necessity to restrict food subsidy, at present, a debate is raging over the PDS reform. Alternatives such as excluding from the PDS the better-offs so as to better target the vulnerable poor and prevent misuse of non-used cards, reorienting the PDS commodity composition to include progressively coarse grains, entrusting distribution to local authorities and NGOs are under review.

The Essential Commodities Act, 1955 was enacted to safeguard the interests of consumers. It was amended in 1976 and again in 1981, when special provisions were incorporated into it 'for dealing effectively with persons indulging in anti-social activities like hoarding and black-marketing and the evil of vicious inflationary

prices', (Statement of Objects and Reasons, The Essential Commodities (Special Provisions) Act, 1981). Also the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 was enacted to control and to fight the menace of unabated rise in prices. The professed benefits of such anti-blackmarketing legislation are not without blots like adulteration, corrupt practices of enforcement officers and the resultant demoralising of honest entrepreneurs. Under the Essential Commodities Act, 1955 the central government is authorized to declare any commodity as an essential commodity. The price, production, supply or distribution of such a commodity are then regulated through licences and permits by governmental orders and notifications issued to that effect. The power to issue such orders and notifications can be delegated to state governments. Various commodities like cotton, cloth, paper, steel, cement, sugar, bulk drugs, fertilizers, power, aluminium, commercial vehicles, motor cars, tyres and tubes, copper, kerosene and other petroleum products, fruit products, household electrical appliances, etc., have been thus subjected to control under the Act. The Act also states the procedures for price fixation; they are not the same for all commodities. Again procedure for price fixation is different in an emergency from that in normal times. Certain factors assume higher weightage in fixing the price of a particular commodity. Moreover, in a number of cases, which challenged the government orders, the Supreme Court has provided certain guidelines for price-fixation. It holds that the aim of price-fixation under this Act should not be giving a fair price to the producer, but holding the price line and, simultaneously ensuring the availability of the essential commodity at fair price [*Shree Meenakshi Mills* v. *Union of India*, AIR 1974 Supreme Court 366]. Much criticism is levelled against this judgement for overlooking the two central elements in the determination of prices- cost of production and reasonable margin of profit.

Anti-trust Legislation: The MRTP Act, 1969

The statute which attempts to control prices by proxy is the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, the first anti-trust legislation in India. Its objective is to fulfil one of the Directive Principles of State Policy of the Constitution: to ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment (article 39 (c) of the Constitution of India). The right to freedom of trade and profession guaranteed in free, democratic societies is often abused through agreements and arrangements among the traders and businessmen, with a view to maximising profits. Free competition is displaced by monopolies, where the consumer's rights as well as the common public interests are disregarded. Anti-trust legislations prohibits formation of such monopolistic combinations. The MRTP Act was passed on the recommendations of the Monopolies Inquiry Commission, chaired by K.C. Das Gupta [1964], and also because of the findings of the Committee on Distribution of Income and Levels of Living, under the chairmanship of P. C. Mahalanobis [1960]. The Act has been amended in 1980, 1982, 1984, 1986, 1988 and 1991. The 1984 amendment is based on the recommendations of the High-Powered Expert Committee on Companies and MRTP Acts [Sachar, 1977]. The 1984 and the 1991 amendments are significant from the point of consumer protection, because of the inclusion of *unfair* trade practices and of certain services like those pertaining to 'real estate', respectively.

This Act provides for the setting of a MRTP Commission which is situated permanently at Delhi like a regular court, but which may hold sittings elsewhere, and has the following powers and functions: to inquire into any *monopolistic*, *restrictive* or *unfair* trade practice; to call for evidence by summoning and examining witnesses on oath or by asking proof by affidavits, documents, records, etc., or by requisitioning public records; to grant a temporary injunction during an inquiry, if necessary, even without giving notice to the opposite party ('Explanations I and II' for sub-section (2) of section 12A, inserted by the 1991 amendment); to pass a 'cease and desist' order in respect of any practice inquired into and found violative of the Act; to award compensation for loss and damage, direct

or indirect, pecuniary or otherwise, in the form of physical or mental suffering, which has been already caused by the prohibited practice; and to punish offending parties for disregarding its orders, as per the provisions of the Contempt of Courts Act, 1971 (Section 13B inserted by the 1991 amendment).

The Act also provides for the appointment of Director General, who is assigned the duty of making preliminary investigations. It is concerned with the prevention of trade practices injurious to consumers, such as *monopolistic, restrictive and unfair*, as against the COPRA, 1986 which provides relief to individual consumers. Thus, though both the statutes aim at the same mission of protecting consumer interest, yet the emphasis in their objectives varies, and, consequently, the scope of the various terms used and defined in them also differs.

Monopolistic Trade Practices

The MRTP Act, 1969 is meant to restrict monopolistic concentration of economic power, i.e., not concentration of economic power *per se*, but 'only when it becomes a menace to the best production (in quality and quantity) or to fair distribution ...' [Das Gupta, 1964]. Whatever operates to the common detriment and is prejudicial to public interest is disallowed under the provisions of the Act as a *monopolistic* trade practice. A firm resorting to such a practice by action, or understanding or agreement- formal or informal- acquires power, which is exercised to reap undue profits. Section 2(i) defines a *monopolistic* trade practice as any practice which is likely (i) to maintain or to increase the prices of goods and services unreasonably high by limiting or controlling their supply, (ii) to increase unreasonably their cost of production or to increase unreasonably the profits, (iii) to allow their quality to deteriorate, (iv) to prevent technical development or capital investment, etc. Generally, an undertaking is in a position to indulge in one of the above practices, only when it has a substantial share in the market, i.e., it is a monopolistic or oligopolistic dominant undertaking. But even a non-monopolistic undertaking may indulge in *monopolistic* trade practices [Sachar, 1977]. If competition is lessened or prevented through *unfair*, deceptive means, it may be interpreted as *monopolistic* practice, according to clause (vi) of Section 2(i) of the MRTP Act.

Restrictive Trade Practices

Similarly, the Act prohibits any *restrictive* trade practice. The conflict between two principles- the principle of freedom of contract and that of freedom of trade- led to the evolution of the law of *restrictive* trade practices [Saraf, 1990, Pp. 101-112]. At times, contractual freedom of a few restricts the trading activities of the remaining. Hence, freedom of contract has to be maintained within reasonable limits. It could be curtailed if the claims of larger public interests are more formidable than those of the contracting parties. Any trade practice adopted by a trader or a manufacturer ultimately affects consumers, hence if such practice is likely to affect competitive conditions in the market, it could be challenged either before the MRTP Commission or in a consumer court. Section 2 (o) of the MRTP Act defines a *restrictive* trade practice as a trade practice, which prevents, distorts or restricts competition, and which particularly tends (i) to obstruct the flow of capital or resources into the stream of production, (ii) to manipulate prices or conditions of delivery, or (iii) to affect the supply of goods and services, thereby imposing unjustified costs or restrictions on consumers.

Manufacturers, suppliers, dealers, distributors or wholesalers and retailers act in concert to manipulate prices or other terms and conditions of purchase or sale of goods and services. For instance, an agreement or arrangement is made or an understanding is reached, horizontally, i.e., at times among the manufacturers exclusively or only among the wholesalers, or exclusively among the retailers, or at other times vertically, i.e., among all three or two of them. Such an agreement/arrangement/understanding could be written or oral, tacit or explicit and the parties entering into it may or may not have the intention of enforcing it through legal proceedings in case of default. But when such concerted actions curtail options for consumers, they are held as

restrictive trade practices. For example, a truck union not only fixed higher freight rates but also prohibited non-members to operate trucks. It was held as *restrictive* trade practice by the MRTP Commission [*Director General (Investigation and Registration)* v. *Truck Union and Others* (1988) 63 *Company Cases* 340 (MRTPC)].

Section 33(1) requires registration of agreements comprising collusive price fixation, price parallelism, price leadership, resale price maintenance (RPM), i.e., stipulating resale price, predatory pricing, discrimination in trade dealings, exclusive dealing, refusal to deal, limiting output or area for sale, collective agreements, tying arrangements, restricting flow of resources or exclusion from trade associations. All these trade practices are enumerated in clauses (a) to (l) of sub-section (1) of Section 33 of the MRTP Act, 1969. Every such agreement should be registered with the Director General and the MRTP Commission should hold an inquiry into the agreement to decide whether it is detrimental to public interest. Until the Commission gives its decision, the parties to the agreement may implement it, unless the Commission grants temporary injunction against it, as per the provisions of Section 12A. A *restrictive* trade practice may be with regard to goods or services. Hence, the registration is not confined to agreements concerning goods only but also cover agreements pertaining to services. Hence, rules and regulations of professional associations also require registration, in case they fall under any of the categories specified in clauses (a) to (l) of Section 33(1).

Further, initially these clauses were regarded by the MRTP Commission as an extension or elaboration of the definition of *restrictive* trade practice given in Section 2(o). Once a transaction was shown to fall under any of the clauses of Section 33(1), it was *ipso facto* considered a *restrictive* trade practice, as defined in Section 2 (o). But, in the *Telco case* the Supreme Court rejected this so-called *per se* doctrine that any restriction as to area or price was *per se* a *restrictive* trade practice. It wanted the rule of reason to be applied to decide whether a particular transaction, although registered under Section 33, was actually a *restrictive* trade practice [*TELCO* v. *RRTA*, (1977), 47 *Company Cases* 520 (Supreme Court)]. The 1984 amendment has statutorily restored the earlier view held by the MRTP Commission, thereby negating the Supreme Court judgement. The amendment also added two more clauses (ja) and (jb) which require registration of agreements involving (i) restriction on the class/number of wholesalers, producers or suppliers from whom goods have to be purchased, and (ii) restriction on bids at an auction for sale of goods. Ironically, one of the recommendations of the Sachar Committee, which provided the backdrop of the 1984 amendment, was to annul the requirement of compulsory registration of agreements relating to *restrictive* trade practices with the Registrar of Restrictive Trade Agreements (RRTA). For, the Committee observed that 'since the coming into force of the Act till the end of 1977, some twenty-one thousand and odd agreements were registered with the RRTA in compliance with the provisions of Section 33 of the Act. Of these agreements, the proceedings have been brought by the RRTA before the MRTP Commission in regard to one hundred and six agreements only' [Sachar, 1977, Para 21.30].

Under the MRTP Act, price is one of the criteria for determining a *restrictive* trade practice. Section 2(l) of the Act defines price to include all what a person would *get* for selling his goods or for rendering his service. Price means the entire consideration paid, including the camouflaged part of it ostensibly under different name or for different transaction. That is why the tie-up or tying arrangements and the 'full-line-forcing', i.e., a supplier coercing a buyer of one product to purchase the complete range of his products or clubbing of products have been declared as *restrictive* trade practices by the MRTP Commission. Various illustrations of such practices are as follows: (i) Requiring buyers of consumer durables, like TV sets, refrigerators, or vehicles to enter into post-warranty after-sale-service/maintenance contracts. (ii) Compelling buyers to purchase stabilizers along with refrigerators; or tyre-lock, petrol tank-lock, helmet and other accessories along with two-wheelers; or bathing soap along with washing detergent. (iii) Insistence by a gas distributor to buy from him gas stove, lighter, scrubber, etc., as a pre-condition to

give gas connection. (iv) Banks demanding fixed deposits for allocating lockers. (v) A fair price shop not allowing a card-holder to draw other items of ration unless Palmolin oil is also purchased. (vi) Requiring buyers to buy products of specific minimum amount or quantity; and so on (clause (b) of Section 33(1) of the MRTP Act).

Besides, if a price list issued by manufacturers fails to indicate that rates prescribed are maximum rates recommended and are subject to negotiation, it is a *restrictive* trade practice [*Raymond Woollen Mills Ltd.* v. *MRTP Commission and Another*, 1993 (I) *Consumer Protection Reporter* (*CPR*) 482 Supreme Court].

Unfair Trade Practices

The amendment of the MRTP Act in 1984 is the most momentous for consumers as it introduced, by inclusion of Sections 36A to 36D, the concept of an *unfair* trade practice which is equally detrimental to the consumer interest. The following trade practices have been declared as *unfair*: (i) misleading advertisements and false representation or deceptive claims about quantity, quality, standard, grade, style, model, usefulness, sponsorship, affiliation, warranty, guarantee, etc., (ii) fictitious bargain sales, bait, switch selling, tie-up, etc., (iii) announcing gifts/prizes without any intention of actually providing them, or offering them when their cost is verifiably covered in the already hiked price, and conducting contests, lottery, games of chance, etc., as sales promotion drives, (iv) non-compliance with standards prescribed for product safety, and (v) hoarding, refusing to sell and destroying goods with a view to raising their price.

Fictitious bargain sales, bait advertising, switch selling, tie-up, or the like, are prohibited trade practices under clause (2) of Section 36A of the MRTP Act. The Explanation to clause (2) of Section 36A of the MRTP Act defines a 'bargain price' as the *price* which is stated in an advertisement to be a bargain price, as compared to the normal price, as well as the *price* which a person would reasonably understand to be a bargain price when he/she reads, sees or hears the advertisement, even if it is not specifically stated so. The MRTP Commission has investigated a number of cases involving bargain sales. As a result certain principles laid down by the Commission in its judgements have provided significant guidelines for advertisers and formed an integral part of the *Code for Self-regulation in Advertising*, discussed earlier. For example, an advertisement announcing a sale at throwaway prices without mentioning the quality of the goods offered for sale and the duration of the sale period is prejudicial to the public interest and is, therefore, an *unfair* trade practice (UTP) [*Smt Bharti Devi, In re.*, UTP Enquiry No. 80/1985, Order dated 18-11-1986, [1987] 61 *Company Cases* 734]. Similarly, an advertisement must provide requisite information about the distinguishing features that facilitate a bargain price, such as the purpose of sale, it could be that it is organised for clearing off old, accumulated stocks or defective, damaged, shop-soiled goods, or goods with out-dated, outmoded designs or off-season goods, etc. This information enables buyers to compare verifiable regular market prices and weigh the advantages and disadvantages of the bargain sale [*In re Inter-Shoppe*, UTP Enquiry No. 14/1984, Order dated 21-1-1987; *In re Heera Silk House*, UTP Enquiry No. 32/1985, Order dated 26-2-1986; and *In re Dayal Novelties and Others*, UTP Enquiry No. 33/1985, dated 24-2-1986]. The claim that customers are well aware that discount cannot be offered on fresh and quality goods is rejected by the Commission in *In re Skipper*, [UTP Enquiry No. 80/1986, Order dated 3-3-1989]. Further, in a later case, *In re Panama Traders*, [UTP Enquiry No. 35/1986, Order dated 17-9-1986], the Commission directed that the names of the organisers of sales must be clearly stated in advertisements. Apart from details in advertisement, the Commission gave decisions relating to duration of sales, rate of discount, etc. In *Secretary, Consumer Unity & Trust Society, In re* [(1985) 3 *Company Law Journal* 257] and in *Vasudeo Bros.* [UTP Enquiry No. 3/1984, Order dated 28-4-1986], the Commission held that too short a period of sale is an *unfair* trade practice. In the latter case it was held that the period of discount sale should not be less than 15 days. However, in a later case the Commission relaxed the condition of 15 days' duration of discount sale to 7 days in metropolitan towns [*In re Panama*

Traders, UTP Enquiry No. 35/1986, Order dated 17-9-1986], and in other places to 10 days as the initial period of discount sale [*In re Unique Department* Stores, UTP Enquiry No. 96/1986, Order dated 9-2-1987]. But, in respect of garment sales, it should not be less than 10 days [*In re Snow White Clothiers*, UTP Enquiry No. 13/1984, Order dated 2-5-1986]. Mere non-mention of the period of sale in the advertisement is not an *unfair* trade practice, when actually the period of sale is reasonable [*In re City Look*, UTP Enquiry No. 128/1986, Order dated 16-3-1989]. Regarding the discount offered, the Commission ruled that it should not be too trivial [*In re Panama Traders*, UTP Enquiry No. 35/1986, Order dated 17-9-1986]. Secondly, in *In re Polar Industries Ltd. and Others* [UTP Enquiry No. 210/ 1986, Order dated 22-1-1987, [1987] 61 *Company Cases*], the Commission observed that the discount offered should be measured on the basis of current prices and not in comparison with future prices, which are expected to rise. Here the off-season discount of Rs 45 was offered on 'Polar' ceiling fans in the winter of 1986. It was discount, only if compared to prices that were expected to rule in the market in April 1987. This was mentioned in very small letters in a corner of the advertisement. Such twisting of the concept of discount was regarded as an *unfair* trade practice. Thirdly, as regards variation in discount, the Commission laid down that where a uniform rate of discount is not offered, there should be a fair categorisation of the goods corresponding to a range of differential not more than 5 digits; also if the discount variation is due to defects like quality, age, etc., they must be clearly indicated in the advertisement in relation to discount differential [*In re Skipper*, UTP Enquiry No. 80/1986, Order dated 3-3-1989]. Fourthly, if varying rates of discount are offered on different categories of goods, their original, ordinary, normal price ranges should be given along with the discounted bargain prices [*In re Roop Milan* UTP Enquiry No. 134/1986, Order dated 6-3-1987 and *In re Unique Department Stores*, UTP Enquiry No. 96/1986, Order dated 9-2-1987]. Fifthly, the Commission also ruled in the latter case above, that the quality of the goods at which the maximum and the minimum discount is available should also be indicated. Sixthly when the term 'up to' is used in advertisement, say, up to 50 per cent discount, the quantities offered in sale at that maximum discount should be appreciable enough, to prove the genuineness of the discounted bargain price [*In re Shellka Sales Corporation* UTP Enquiry No. 38/1984, Order dated 21-1-1985 and *In re Skipper*, UTP Enquiry No. 80/1986, Order dated 3-3-1989].

Comparison between the MRTP Act and the COPRA

Restrictive and *unfair* trade practices have been prohibited under the COPRA, 1986 also. Further, price or consideration for a transaction is essential for registering any complaint about any transaction under the MRTP Act as well as the COPRA. Complaint for any free good or service cannot be heard under these Acts. But the definition of *restrictive* trade practice under the COPRA, being narrower than that under the MRTP Act, is concerned with only one of all the trade practices regarded as *restrictive* under the MRTP Act- the tie-up or tying arrangements, which are *restrictive* under Section 2 (nn) of the COPRA, as introduced by the 1993 amendment. Furthermore, the MRTP Commission cannot pass a 'cease and desist' order in respect of an *unfair* trade practice, if it is expressly authorised by any other existing law (Section 36D (3) of the MRTP Act. The power of the consumer courts is not fettered in this manner, although Clause (r) of Section 2(1) of the COPRA had provided that the definition of *unfair* trade practice would be the same as the one given in Section 36A of the MRTP Act. After the 1993 amendment of the COPRA, that clause has been reconstituted to define *unfair* trade practice. But, this definition is also a verbatim reproduction of Section 36A of the MRTP Act.

Finally a *restrictive* or an *unfair* trade practice may be with regard to goods or services. Like the COPRA, 1986 the MRTP Act too takes the definition of 'goods' from the Sale of Goods Act, 1930 with certain additions (given earlier). With the 1991 amendment even 'issue of shares before allotment' is regarded as 'goods'. Any *restrictive* or *unfair* practice employed with regard to it is prohibited under Section 2(e)(ii) of the MRTP

Act, 1969 as amended by the 1991 Amendment. However, the Supreme Court has restricted the power of both consumer courts and the MRTP Commission. Consumer courts are no longer empowered to hear complaints about public issues of shares while the MRTP Commission is not to pass any temporary injunction relating to them [*Altos India Ltd.* v. *Suresh Goyal and Others*, Civil Appeal No. 687/1994 dated March 4, 1994, discussed in Section VII- *Shares, Stocks and Deposits*].

Clause (r) of Section 2 of the MRTP Act defines 'service'. This definition is sufficiently wide to cover all sorts of services and utilities and, with the 1991 amendment of the MRTP Act, includes chit fund and real estate, yet the MRTP Act is not applicable to public sector undertakings, undertakings owned, controlled or managed by central or state governments or by registered cooperative societies, trade unions and financial institutions (Section 3 of the MRTP Act). And in India most of the public utilities are provided by the state. As a result, consumer grievances regarding them cannot be inquired into by the MRTP Commission. The definition of 'service' under the COPRA, 1986 was the same as that existed in the MRTP Act before the 1991 amendment of that Act. But an amendment of the COPRA in 1993 defined 'housing construction' as a service (discussed in Section VII).

The Consumer Welfare Fund Rules, 1992

These Rules are framed under the Central Excises and Customs Laws (Amendment) Act, 1991 for the establishment and operation of a Consumer Welfare Fund. This Fund is set up under 12-C(1) of the Act out of the excess duties charged. It is improper to refund them to manufacturers, since they are already passed on to consumers in the form of hiked prices. It would be unjust enrichment. Hence, such amounts of duties to be refunded and the interest accrued on them are deposited in this Fund. A Standing Committee has been constituted for its operation and utilisation. Grants are sanctioned from the Fund for activities undertaken for promoting consumer welfare and for reimbursing legal expenses of certain consumer disputes. Approximately 800 applications from various consumer organisations were received and Rs 1 crore sanctioned for different projects and schemes for consumer protection until March 1995. At present, consumer courts have no authority to pass orders in complaints of unjust enrichment brought before them, so that the traders involved would deposit into the Fund the money unjustly received by them. There is a demand from consumer organisations to amend the COPRA, 1986 to that effect.

VI
LEGISLATION FOR SAFETY, ADEQUATE QUANTITY AND ACCEPTABLE QUALITY

As mentioned earlier, the second malady afflicting the consumer is that goods are available, they are also available at seemingly reasonable prices, but they are adulterated or their quantity is less than what it should have been for the price paid. Laws regulating the quality and quantity of goods and services are, as stated earlier, penal or criminal laws and civil laws. The Indian Penal Code, 1860, (IPC) is one of the pioneer legislations passed by the British Parliament for the whole of India. It includes provisions against offences relating to adulteration of food, drinks and drugs, also fraudulent use of weights and measures, or of instruments for weighing and measuring, etc. In addition, there are separate, specific legislations separately enacted for various goods to avert such offences. Further, there are quite a few state laws dealing with similar issues and also certain state amendments to central laws. In Section VII, all these provisions- penal and civil, general as well as specific and central as well as state- are reviewed along with other positive measures taken by the state for the benefit of consumers.

Monetary Compensation for the Damage Suffered

The penal or criminal laws do offer protection to the consumer, since all criminal laws deter people from adopting devious behaviour. They aim at preventing offences, maintaining public order and safeguarding public health and safety. However, their protection is of an indirect kind,

in the sense that offences against the consumer are not committed out of fear of punishment- both fine and imprisonment. Yet when these laws are violated, the consumer suffers loss, damage. It is necessary to reimburse the loss and compensate him. But there is no remedy in the criminal law for this purpose. Hardly ever the fine goes to the aggrieved consumer and, if at all the judge so orders, it is always a miniscule part of the total fine. The civil law, on the other hand, offers such compensation in the form of damages, to the aggrieved consumer, since the purpose of civil law is to regulate social and commercial relationships between individuals and to see that every one performs his duty towards others in such transactions and is answerable for any damage, loss or injury caused by his action. Usually, the civil law of compensation is part of the common law, established by courts' decisions, which are being followed for years, even centuries. The law of tort (civil wrong) is in India still mostly uncodified. Tort is the violation of an obligation or duty laid down by law, be it statutory law, judge-made (precedent) law or customary law. The consumer, aggrieved by such kind of violation, can sue the merchant, seller, manufacturer, doctor, etc., who has caused the damage and ask him to make good the loss he has caused. Thus the consumer gets compensation. The British precedents (court decisions which are binding, i.e., they must be followed in future in all other similar cases) in tort law are being followed in India from pre-Independence days, protecting consumers to a small extent. Article 372 of the Constitution of India renders the British judgments still valid so that they can be followed even now in our courts.

Some of the age-old maxims of tort law, that regulate the relation between loss and compensation are as follows: The mere fact that a person has suffered loss or injury, does not entitle him to get compensation (*damnum sine injuria*). If it is the legal duty of the injurer to take due care so as not to cause loss or injury, and he neglects his duty, only then the sufferer gets compensation. The second maxim, *ubi jus ibi remedium*, states that where a person has a right there is a remedy, i.e., when a person's legal right is violated, it means that somebody has failed in his duty by committing some wrong. As a result the person has suffered injury or loss which must be compensated. In law, no right is without a remedy but in practice it is not always feasible to get one's rights validated and to obtain just compensation. It is all the more difficult to obtain justice in the case of violation of consumers' rights. Thirdly, when a person's legal right is interfered with, he has a right to compensation, even when he has *not* suffered any loss (*injuria sine damno*). On the basis of these principles, courts in British India awarded compensation only if the actual purchaser of defective goods used them and suffered loss during use. Since the celebrated judgment in *Donoghue* v. *Stevenson* in 1932, they changed the principle. Now manufacturers' duty to take care extends to all prospective users and is not limited to actual buyers exclusively.

Also providers of services are liable to pay compensation, if they fail to reasonably foresee the risk of loss/injury to users. A widow, Bezlum Bibi, got compensation from the transport company, because her husband was seriously injured, when he was travelling on the roof of an overloaded bus. He was struck by the branch of a tree, when the bus was overtaking a cart. Later he died due to those injuries [*Rural Transport Service* v. *Bezlum Bibi*, AIR 1980 Calcutta 165]. Another development in the law of tort, beneficial to consumers, has taken place in India in 1974. In cases of accidents and industrial products involving safety, it was no longer necessary to prove in the court the precise cause of accident. [*Shyam Sunder* v. *State of Rajasthan*, AIR 1974 Supreme Court 890]. Courts began to apply the legal maxim, *res ipsa loquitur*, meaning 'the thing speaks for itself', in cases of gas leak disasters, electrocution by a live electric wire, overloading of buses and boats, and the like.

In addition to such judge-made laws, there are certain statutes passed by legislatures for the regulation of transactions, so that fair and honest deals are struck, and trade is carried on equitably. The first such legislation from the British period is the Indian Contract Act, 1872. It provides several safeguards which govern agreements or promises of a general nature. They protect the consumer in his dealings, since buying of goods and services is also a kind of agreement, a

contract. All the principles of a legally valid contract apply to any sale of goods and services. It means that such an agreement of sale has to be between two legally competent persons. To illustrate, a contract with a minor, an insane or an intoxicated person is not valid and binding and courts would not order to perform it. Such persons do not have the requisite legal capacity to make any contract. Further, the contracting persons must willingly enter into agreement, of their own free choice, not under any duress. Again, a contract for sale must be for a consideration, i.e., an amount of money. In other words, there has to be certain quid pro quo. Similarly, contracts in violation of law or against public policy cannot be enforced. For instance, a contract for sale and supply of cocaine or of human beings as prostitutes or as bonded labourers (slaves), is unlawful and cannot be enforced. Then unfair, unconscionable contracts are not enforceable as there is total inequality of bargaining power. Here freedom of contract is degenerated into freedom to exploit through dominance of monopolistic alliances and cartels. Fine-print standard form contracts, in which a consumer just signs on a dotted line, or contracts with monopolies like the Life Insurance Corporation (LIC), where a consumer has no meaningful option, except to accept it or to do without it, are of this kind.

In 1930, an exclusive legislation, the Sale of Goods Act came into force, in order to govern certain special kinds of contracts. Its objective was to provide a remedy for the buyer's woes by regulating mercantile transactions, increased enormously in the wake of rapid industrialisation. Its general provisions are as follows: (a) The Act applies only to movable goods and not to land or other immovable property, nor to services. (b) There is certain distinction between an agreement to sell and sale. A sale effects a transfer of goods in the eyes of the law. The buyer is, therefore, for all practical purposes, the owner of the goods concerned, *though they may never have come into his actual possession.* Possession is distinct from sale, which brings about instantly transfer of ownership- from the seller to the buyer- not possession. If the seller commits a breach after sale and does not hand over possession, the buyer, being the rightful legal owner, has the right to sue not only the seller but also the third person who might have come into possession of those goods. But if there is only a contract or agreement to sell, the seller is still the owner of these goods. In case the seller sells the same goods to someone else, the buyer can sue only the seller and that too, merely for compensation for the loss suffered due to breach of contract. On the other hand, if the buyer fails to pay for the goods after sale, the seller is entitled to sue him for the price of the goods. After sale, the buyer cannot repudiate the deal, whereas when there is only an agreement to sell and the buyer declines to execute the sale and pay for the goods, the seller cannot compel him to do so. The seller may sue him for damages for non-performance of sale, i.e., just breach of agreement. Similarly, if the goods are destroyed after sale, the buyer bears the loss, whether they are in his possession or the seller's. But if the goods are destroyed when there is merely an agreement to sell, the burden of loss falls on the seller's shoulders, even when they are with the (prospective) buyer. (c) In an agreement or contract to sell, certain statements about the goods to be sold are negotiated by the parties to the contract. Such stipulations or terms of contract can be divided into two- (i) conditions and (ii) warranties. *Conditions* are mandatory terms, absolutely essential for and an integral part of the contract; they go to the heart or root of the matter. They are inseparable from the contract, whether inserted because of custom or usage, or because the parties to the contract intend that a particular stipulation should have a binding effect. Unless it is observed, any agreement is not enforceable by law. Section 12 of the Sale of Goods Act, 1930, provides for the right to repudiate a contract for sale, if any of its conditions are violated. *Warranties* are subsidiary stipulations, less important than conditions, in the sense that default with regard to such a stipulation (warranty) does not set aside the agreement to sell. Thus a contract cannot be repudiated because of breach of a warranty but the loss suffered due to it has to be compensated (Section 12(3)). That is why when consumer durables, such as a refrigerator or a washing machine, are sold there is invariably a warranty period, during which any complaints regarding the sold item are attended to by the

seller/manufacturer free of cost, but the sale is not rescinded. Again the terms- warranty and guarantee- are used interchangeably. But there is subtle distinction between the two. A guarantee is given under the Contract Act. It is a contract to perform a promise or to discharge a duty or liability of a third person, in case he fails to do so. A guarantor enables his friend or relative to get a loan or a good on credit. Warranty arises under the Sale of Goods Act, 1930. It is a collateral stipulation. (d) Conditions and warranties may be expressed or implied. When a seller is selling goods, it is implied that he sells goods that belong to him and not stolen ones. When a seller sells a good without having the right to do so, the buyer is entitled to recover the money from him (Section 14 of the Sale of Goods Act, 1930). Similarly, when goods are sold by description, the implied condition is that they must correspond to the description. When the sale is by sample, it is implied that goods supplied match with the sample, specimen shown to the buyer. (e) Implied stipulations also pertain to trade and merchandise marks (Section 96 of the Trade and Merchandise Marks Act, 1958 holds a seller responsible for the genuineness of the mark), as well as to the quality and fitness of purpose of the goods offered for sale, that is, their merchantability. A good is unmerchantable, if any of its defects renders it unfit for the purpose for which it is purchased. Sometimes a buyer makes known to the seller the specific purpose and use, for which he wants to buy a good and relies on the seller's skill and judgement for the satisfaction of his need. It is, of course, not always necessary to tell the seller the purpose of purchase. The nature of the good reveals the purpose, e.g., food-stuffs are meant for consumption or an oven for baking food-stuffs. When the seller fails in his implied duty of maintaining the requisite quality, fitness of purpose, merchantability and wholesomeness, he has to make up for the loss, by refunding the money or by replacing the defective good. The Bombay High Court ordered one seller to refund the buyer's money paid for a radio set which gave only a crackling sound and no other sound when switched on [AIR 1971 Bombay 97]. Any electric appliance that gives shocks when switched on or canned food items, when contaminated or the expiry date for which is over, are all obvious illustrations of goods neither being of the implied quality nor fit for the purpose. The seller ought to replace such defective goods. In the case of unwholesome, contaminated food-stuffs or even in the case of goods of a dangerous nature, the manufacturer/ seller is not only prohibited from further sale of such defective products but he must also recall the products from the market by inserting public warnings in the media. (f) Similarly, a defective good, of the kind described above, is regarded as a breach of the terms of contract to sell. In that case, whether the seller is also the manufacturer or only a retailer is immaterial from the buyer's point of view. The retailer has to make good the buyer's loss, if the good fails to comply with the implied conditions. The retailer would be free to recover from the distributor and he, in turn, from the manufacturer the damages paid to the buyer. Moreover, with the COPRA, 1986 coming into force, the meaning of 'trader' has become very extensive. It defines 'trader' as 'a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof' (Section 2(1)(q)). (g) Finally, the member/s of a buyer's family or persons other than the buyer, third-party consumer/s, may suffer as a result of defective goods. Unfortunately, in such a situation, the Sale of Goods Act, 1930 does not help the buyer to claim damages because there is no privity of contract, i.e., the relation recognised by law, between the person injured and the maker/manufacturer/distributor/retailer. The buyer can, however, recover damages, as mentioned earlier, under the law of tort or under the COPRA, 1986 because under the COPRA, meaning of 'buyer', incorporated in the definition of 'consumer' is widened to include any potential user approved by the buyer (Section 2(1)(d)(i)).

Standardisation

The Sale of Goods Act, 1930 regulates transactions between buyers and sellers, and the COPRA, 1986 provides for compensation in case the consumer suffers loss. In addition to them, law today offers preventive protection to consumers

of goods as well as of services, against defective goods and deficient services. One of the preventive control measures adopted globally for quality of goods is standardisation. Technical standards and specifications are formulated and updated regularly by various standards institutions for most of the products. Manufacturers and producers obtain certification marks for their products, by observing such standards and specifications prescribed by the standards institutions. Certification marks assure consumers of the safety and reasonably good quality of various products, as well as accord producers significant competitive edge over those who do not obtain such certification. Standardisation is essentially a voluntary phenomenon yet, for certain products, it is imperative to obtain certification.

In India, the Indian Standards Institution (ISI), registered under the Societies Registration Act, 1860 operated till 1987. It regulated the use of the ISI certification mark, which ensured the quality of a product. From April 1, 1987 the ISI was renamed as the BIS. It is, unlike ISI, a statutory body operating under the Bureau of Indian Standards Act, enacted by Parliament in 1986. The ISI was mainly under the control of producers but the BIS represents a large number of interests-producers, consumers of all kinds, including bulk consumers such as railways and defence, small scale producers, consumer organisations, academic institutes, etc. The BIS also develops standards and procedures for testing and testing equipment. As on January 31, 1993, 16,025 standards have been formulated by the BIS, with at least 8,000 of them for products. The BIS laboratories test around 40,000 samples per year. Yet licenses to use the certification mark have been issued only for over 1,400 items, and the number of licences in operation in the country till January 1993 is just 11,582 [India, 1994, p. 475-476]. Further, one cannot infer that each and every producer of all those 1,400 products has adopted the prescribed standards and obtained certification mark. It is likely that there are producers of these items, who do not bother about the ISI certification. The high rate of illiteracy and the low level of consumer awareness facilitate many producers not to adhere to the prescribed standards of quality and yet sell their products. For instance, in August 1994, Indian synthetics were banned in the USA for their highly inflammable propensity. In the domestic markets none protested so far, in spite of the high rate of deaths, especially of women, due to burns. The Export (Quality Control and Inspection) Act, 1963 was passed in the 1960s, but the fate of the Consumer Goods (Testing of Quality) Bill, drafted sometime in the 1980s, is still doubtful. However, as mentioned earlier, in the case of goods of mass consumption and products involving public safety and hazards to public health, e.g., drugs and cosmetics or milk products, standardisation is no longer voluntary. For such products, liability is placed legally on manufactures for maintaining the prescribed standards of quality and quantity, and certification is mandatory. Likewise, the Household Electrical Appliances (Quality) Order, 1981, demands definite standards of quality. The BIS Act, 1986 has penalty provisions too, for improper use of a certification mark. Yet government policies occasionally encourage such fraudulent use of ISI mark, e.g., certain products are 'reserved' for manufacture only by small scale industries (SSI) units for promoting the SSI sector, also for maintaining their cost of production and the resultant price to the consumer low and reasonable. However, the bulk of their production is sold to brand name companies, which hold the ISI certification for these products, but which neither manufacture them nor sell them at reasonable prices. Thus, the benefit does not accrue to the consumer nor, to that extent, to the SSI units, and standardisation results in hoax.

In 1988, the BIS adopted the ISO 9000 as IS 14000 series and registered so far about 100 organisations for its use, after satisfying itself that their quality system conforms to the IS 14000 (ISO 9000) standard. India has also joined the international certification for quality assessment systems for electronic components and electrical equipment. Such certification is sought not for home market but because once certified under these systems in India, products could be sold in world markets without any need for further testing and inspection [India, 1994, p. 475].

Weights and Measures

In addition to inferior quality, cheating in quantity either through use of false weights and measures or through false representation regarding quantity adds to the woes of the consumer. In fact, such offences against the consumer are rampant. More than the state, it is the task of consumer organisations to create awareness among consumers regarding this menace, so that they get their money's full worth. Yet it is the state's responsibility to safeguard their interests by providing a uniform, accurate and reliable system of weights and measures as well as by enacting proper law to compel the culprits to pay physically (in kind) or financially (in cash) for cheating in quantity. The MRTP Act, 1969 was amended in 1984, and the definition of *unfair* trade practice was included in it, to prevent *unfair* trade practices, along with *monopolistic* and *restrictive* trade practices. But 'quantity' was not mentioned in it then. After about seven years, the 1991 amendment declared that along with quality, false representation of quantity is also an *unfair* trade practice.

The earliest statutes in India for regulation of weights and measures were the Measures of Length Act, 1889 and the Standards of Weight Act, 1939. They were repealed when India adopted the metric system of weights and measures with the passing of the Standards of Weights and Measures Act, 1956. This law has been replaced by the Standards of Weights and Measures Act, 1976. It provides base units or standards of mass (weight), volume (liquid measure), linear length, etc., to be used in trade, commerce and other transactions, including scientific communications. They conform to the International System of Units (SI) as recommended by the 11th General Conference on Weights and Measures, at Sevres near Paris in France, birthplace of the metric system, in October 1960. The Act provides also for acceptance of such additional units as may be recommended by the International Organisation of Legal Metrology (OIML). India is a signatory to both the international conventions, Metro Convention, which recommends adoption of SI and the Convention establishing the OIML. The Weights and Measures Unit in the Ministry of Civil Supplies, Consumer Affairs and Public Distribution is the nodal agency for all activities relating to the subject. For the physical representation of standard units, the central government through this agency prepared national prototypes of the kilogram and of the metre, got their accuracy certified by the International Bureau of Weights and Measures, and deposited the same in safe custody. For other units of measurement as well as weighing and measuring objects and equipment, national standards are prepared, verified and authenticated for accuracy, and kept in safe custody. Reference standards, secondary standards and working standards, all conforming with the national prototypes of the international standards as well as the national standards, are manufactured by the Government of India Mint at Bombay and supplied to the states and union territories. Control over weights, measures, and weighing and measuring equipment is exercised by ensuring that they are all verified against official standards and stamped for authentication before use. Sections 15 to 19 of the Act empower the central government to prescribe their physical characteristics, configuration, constructional details, material equipment, performance tolerance, methods of testing and such other stipulations, which have to be in accordance with the recommendations of the OIML. The three regional reference standards laboratories, set up by the central government provide calibration service to the state governments and industries in their respective regions.

After most of the provisions of this Act came into force in September 1977, it is an offence to use non-standard weights and measures not only in trade transactions and industrial measurements but even in advertisement, agreements, contracts, display on packages or quotations. Similarly, manufacture, sale or repair of non-standard weights and measures too are prohibited. The Act provides for its enforcement administrative machinery with a number of functionaries, such as a Director of Metrology and other staff at the centre and Controllers of Legal Metrology and Inspectors of Weights and Measures in the states. Wide powers of inspection, search, seizure, forfeiture, etc., are conferred on inspectors under

this Act and also under the Standards of Weights and Measures (Enforcement) Act, 1985. For conducting such operations, the procedure laid down in Sections 100 to 102 of the Criminal Procedure Code is to be followed. All the enforcement authorities and officials are imparted training in legal metrology and allied subjects in the Indian Institute of Legal Metrology, Ranchi.

With the advent of various types of packaging and wrapping materials, a number of commodities are sold in the market in pre-packed condition. Hence it is not possible for a consumer to physically examine the contents of the package and to verify their quality or quantity. Section 39 of the 1976 Act, therefore, provides for regulation of the pre-packed commodities. This Section and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, in force since September 1977, impose the following legal duties on a dealer or a manufacturer, who wants to pre-pack his wares: to register himself with the Director for Registration, by making an application giving the necessary information; to pack certain commodities only in specified quantities, to be sold in standard packages; to label conspicuously every pre-packed commodity offered for sale; and to ensure that the label has all the required details such as the name and generic name of the pre-packed commodity (e.g., sodium chloride for common salt), net quantity, if the pre-packed commodity is a mixture, its ingredients, the name and address of the manufacturer or packer, the month and year of manufacture or of packing, and, in case of perishable commodities, the date before which it must be used and whether required to be preserved in cold storage, retail sale price, inclusive of all taxes and octroi. In the case of certain commodities that are likely to undergo variations in weight or measure due to climatic conditions, the net quantity declared on the label may be qualified by the words 'when packed'. Such quantity marking is not that helpful to the consumer as the quantity declared on the label is not guaranteed at the retail level. Further, certain details are not required to be included in the label for specific commodities, e.g., bottles or pouches of milk or liquid beverages and uncanned ice cream, fish, meat, bread, or the like, are exempted from declaring the date of manufacture/packing in the label, though sold as pre-packed commodities. It does sound strange, but the reasoning offered for such exemption is that these items are visible, and that consumers can easily notice any deterioration in their condition due to longer storage. These exemptions are related not to quantity but to quality, and that too of eatables; hence they are more likely to harm the interests of the consumer.

However, certain other rules help the consumer, facilitating inter-product comparison by him/her, e.g., the weight of the packing material must be excluded in the net quantity marked on the label; again additional information must be communicated to the consumer by marking on the label of packages containing, say (i) *gulabjamun* mix- the number of *gulabjamuns* that may be prepared from the mix and the weight of each *gulabjamun*, (ii) dehydrated commodities- their reconstitution ratio, (iii) still films- the number of exposures which may be made and the length and width of individual exposure to be stated in millimetres, e.g., 36mm by 24mm, (iv) screws- the total weight of the screws as well as their number and size, i.e., length, diameter and type thread, and so on. Limits for the maximum permissible deviation from a defined quantity have been fixed. For example, for washing soap up to 150 gm the limits are 4.5 per cent, between 150 and 300 gm, 4 per cent and above 300 gm, 3 per cent (Schedules I and II of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977). Further, the use of such words on the package, as 'not less than', 'average', 'approximately', or 'King Size', 'Extra-Large', 'Giant Size', 'Jumbo Size', 'Economy Size' is prohibited (Rule 12 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977). Certain advertising gimmicks need to be specifically defined, e. g., 'low calorie'.

VII
CONSUMER GRIEVANCES: SOME ILLUSTRATIONS

Essential Commodities: Food Articles and Kerosene

The earliest pre-Independence legislation for maintenance of standards and quality pertains to agricultural products. It is the Agricultural Produce (Grading and Marking) Act, 1937. It provides the mark of quality and purity, known as *AGMARK*, and lays down stipulations for grading, marking and packing of agricultural products, such as eggs, edible oil, spices, wheat flour, butter, cotton, rice, pulses, honey, ghee, etc. Punishments are prescribed for mis-grading, counterfeiting grade designations, and unauthorised or improper marking. The Act also makes grading compulsory for certain commodities in the interest of consumers. Sections 487 and 488 of the Indian Penal Code (IPC) also prescribe punishments for making a false mark on any case, container, package or other receptacle with a view to misleading people. Thus, any one committing such an offence is liable to be punished under either of the statutes [Gurbax Singh, 1993, p. 82].

Adulteration is one of the major malpractices of shopkeepers in our country. The Prevention of Food Adulteration (PFA) Act, 1954, provides stringent punishments for sale and supply of adulterated articles of food, which are likely to be injurious to the health of people. The PFA Act defines 'adulteration' as follows: an article of food is deemed to be adulterated, (i) if its nature, substance or quality are not what the purchaser has demanded at the time of sale, or are not what they are represented; (ii) if other substances, usually inferior or cheaper, are added to it or some of its constituents have been extracted from it, adversely affecting its nature, substance or quality; (iii) if it is unfit for human consumption, because it consists, wholly or in part, of filthy, putrid, decomposed, rotten animal or vegetable substances; (iv) if it has been prepared, packed or stored under insanitary conditions; (v) if it contains poisonous ingredients; (vi) if it contains prohibited colouring/ flavouring matter or preservatives, or contains them in excess of prescribed limits; and (vii) if its quality or purity falls below the prescribed standard. The standards for quality and purity for various food items, such as milk and milk products, edible fat, vanaspati, spices and condiments, sweetening agents, food colours, coffee, beverages, sweets and confectionery, and the like, are laid down in Appendix B of the Rules framed in 1955 under the Act. It is absolutely imperative that standards of quality and purity are prescribed for all the food items, for in one case, *Brooke Bond of India* v. *State of Rajasthan*, the court declares that where no standard is prescribed for an article of food, the food item cannot be considered as adulterated [Saraf, 1990, Pp. 178-179]. Yet all the food items are not included in Appendix B.

The standards for food are determined by the Union Government on the recommendations of the Central Committee for Food Standards, comprising Directors of Health Services and of the Central Food Laboratory, also representatives from several sections, such as agricultural, commercial and industrial sections, hotel industry, consumer organisations, medical profession, union ministries, state governments, union territories, the BIS, Indian Council of Agricultural Research, etc. Moreover, India is a member of the Codex Alimentarius Commission, established under a joint international food standards programme of the Food and Agriculture Organisation and World Health Organisation. The Commission formulates standards for all major food items. When a particular standard is accepted by adequate number of nations, it is incorporated in the Codex. Provisions for food hygiene, food additives, pesticide residues, contaminants and other matters are also studied by the Commission. A National Codex Committee has been set up in India under the Ministry of Health and Family Welfare to formulate the Indian viewpoint about the different concerns of the international food standards programme. However, the Codex Alimentarius Commission is being dominated by industry representatives from the northern developed countries and India and other less developed countries as well as consumer organisations have, in comparison, much weaker voice in decision-making. The recent consumer

policy paper on food quality, adopted by the European and North American members of the IOCU, comprises about a hundred recommendations, which include reforms in the Codex Alimentarius Commission [Cook, 1992, p. 112].

Section 2 (ix) of the PFA Act spells out misbranding of an article of food as false claims made about it on its label, e.g., false statements regarding its place of production, name of the producer or manufacturer, ingredients and their proportions. Also, if an article imitates, substitutes or resembles another article sold in the market, or is not labelled conspicuously enough to indicate its true character, it amounts to misbranding. When buffalo's milk was offered for sale as cow's milk, it was a clear case of misbranding [*Kishan Trimbak Kothula* v. *State of Maharashtra*, AIR 1977 Supreme Court 435]. Further, misbranding is an offence *per se*, that is, it is not necessary to prove that there was intention to mislead.

State governments and union territories are assigned the task of administration of the PFA Act. Taking of samples is the basis for prosecution. The PFA Act and the Rules lay down procedure for taking of sample, its quantity, sealing, dispatching it for analysis and other related matters. Food inspectors are empowered to take samples either from a seller or from any consignee after delivery. There are 76 state food laboratories in the country, in addition to the four appellate Central Food Laboratories at Mysore, Ghaziabad, Pune and Calcutta. The samples confiscated by the food inspectors are examined by state laboratories, whereas courts send samples to central laboratories. Statements of facts regarding such samples made in the reports submitted by these laboratories are accepted by courts as the final and conclusive evidence. The minimum and maximum sentences prescribed are imprisonment of six months with a fine of Rs 1,000, and life imprisonment with a fine of Rs 5,000, respectively. Additionally, there are provisions for imprisonment in the IPC under sections 272, and 273 for adulteration of food or drink and sale of noxious food or drink. Certain states have amended these sections locally to provide for more rigorous punishments like life imprisonment. Section 284 of the IPC provides for punishment for negligently handling poisonous substances and thereby endangering human life.

The PFA Act came into force from June 1, 1955. It has been amended in 1964, 1971, 1976 and 1986. The Rules have been amended several times, yet it has quite a few inherent drawbacks. For example, it does not distinguish between wilful adulteration, inevitable contamination and substandard food articles. Also there is no reference to bacterial contamination and use of some chemicals as additives is permitted unscientifically with little understanding of relative toxicities and without assessment of the degree of risk [Sinha and Mehrotra, 1987, Pp. 76-77]. Other lacunae in the PFA Act are: (i) The time limits stipulated for various procedures of sample-taking, testing, instituting prosecution, etc., are too long or non-existent so that samples are spoilt or decomposed and it becomes difficult to prove adulteration in a court of law. (ii) There is plethora of rules and orders along with the multifold agencies in charge of quality control of food products; also there are specific statutes for certain individual food items. Yet there is no provision for common laboratory facilities accessible to small scale units for performing tests. (iii) Giving publicity to the legal measures and to the action taken against adulterers is not mandatory by law, as it is in the case of adulteration of drugs and cosmetics. So at times people continue to buy adulterated food items. It just shows total disregard for the consumer's welfare as well as his right to information. And (iv) the PFA Act is a highly technical and complicated piece of legislation and the Rules framed under it are still more elaborate. Given the system of administration of justice in our country, the implementation of this Act is totally inadequate. From the statistics on the prosecutions under the Act, published in various *Annual Reports on The PFA Act, 1954*, it is seen that the number of samples examined for the years 1982 to 1986 had lessened, as also the number of prosecutions launched. The only gratifying figure is the number of convictions, which increased from about 2.4 per cent in 1982 to 3.9 per cent in 1986, perhaps as a result of the Supreme Court guidelines to the trial courts that offences involving health and well-being of a large number of people

should not be dismissed on narrow technical grounds [*MCD* v. *Girdharilal Sapru* AIR 1981 Supreme Court 1169]. The number of pending cases is, however, staggering - 44,389 in 1986 [Saraf, 1990]. Almost every month there is an item in the news about a large number of people suffering from food poisoning. Many a time several lose their lives, particularly in cases of illicit, country liquor. In July 1981 in Bangalore, 300 people died after consuming illicit liquor. While this was one of the worst disasters of its kind, such incidents occur with sickening regularity throughout Indian cities. The nexus between the *Hooch* barons and the Excise Department, and other governmental agencies responsible for overseeing alcoholic beverages, prevents any systematic effort to root out the evil. On most of the occasions, food poisoning or liquor poisoning is the result of adulteration. Poverty, illiteracy and low consumer awareness make Indian consumers an easy prey to adulteration.

A large number of the poor who are illiterate too, have to draw their daily necessities from the PDS, i.e., the fair price shops, about which there are complaints galore, e.g., uncertain availability primarily due to erratic supply from the government and the consequent low frequency of sales to consumers resulting in endless queues, overcrowding, inordinately long waiting hours, consumers obliged to pay more visits to the shops, and so forth. Too small margins of profit are allowed for traders to cover the expenses of handling, transport, loading-unloading, etc., making them a prey to the temptation of making illegal gains on sale of government grains. Naturally, records and accounts are maintained poorly. Lack of adequate inspection and supervision leads to more malpractices. Some of these, recorded in 1966, are still perennial. They include: short measure- in one instance it was to the tune of 250 gm for every 5 kg weighed; mixing pebbles, dried clay, saw dust or inferior quality foodgrains with the government foodgrains- in the godown of one fair price shop, bags of grains were stocked with those of pebbles at the ratio of 1:4, and the shopkeeper had no satisfactory justification for the piles of pebbles; high-handed curtailing of the quotas sanctioned by the government; maintaining bogus cards and drawing supplies against them for sale in black market; making false entries of sale for cardholders who have actually not purchased foodgrains; and so on. [Dandekar, 1966, Pp. 69-72.] The NSSO survey on 'Utilisation of public distribution system' during the 42nd round mentions that the reasons for no purchase/ part purchase from the PDS include non-availability as well as unsatisfactory quality of the items sold through the PDS [NSSO, 1990a, Pp. 13-14]. Rude answers and corrupt practices are routine. 'In a fair price shop, only the price is fair. Almost everything else is unfair' [Dandekar, 1994, p. 389].

It is difficult to obtain compensation for such shortcomings even from consumer courts, since there too, it is necessary to provide satisfactory evidence that a particular type of wrongdoing is the result of negligence. Further, the PDS does not fall under the definition of 'service' as given in the COPRA, 1986. It is considered as one of the sovereign functions of the state. Hence, complaints regarding fair price shops are not entertained by consumer courts. This opinion of some of the consumer courts is, in fact, debatable, for the Supreme Court has opined in many cases that all state functions are not sovereign, that they are to be divided into sovereign, administrative functions and non-sovereign, welfare functions. In the latter category, there ought not to be any distinction made between the government and the governed. So the immunity of the state should be removed and the state be made liable to make good the loss suffered by the PDS (ration) card holders. Such loss could be recovered from the salaries of those state employees who are responsible for causing it. In two instances, the State Commissions of Orissa and West Bengal have decided complaints against fair price shops. The Orissa State Commission ordered the owner of the fair price shop to intimate the complainant, other villagers and the Civil Supplies Inspector a fixed date when essential commodities would be available in his shop on ration cards, and also to pay the complainant costs of filing the complaint. The complainant was also advised to take his complaint to the grievances cell of the Sub-collector each month in which he was unable to

get stocks [*Gopinath Indrajit* v. *Divyasingh Baral and Three Others*, 1992 (II) *CPR* 184]. In the other complaint, adulterated rape seed oil was supplied on ration cards, resulting in lifelong physical incapacities and mental agony for a large number of people. Out of them a vegetable seller, a factory worker and an advocate filed complaints and were awarded by the State Commission compensation of Rs 75,000, Rs 1,00,000 and Rs 2,75,000, respectively [*Barsad Ali and Others* v. *The Managing Director, West Bengal Essential Commodities Supplies Ltd.*, 1993 (I) *CPR* 217]. The other legal remedy is that consumers can prosecute such dealers in criminal courts, but in those courts they get no compensation for their loss. What may be really effective, is agitations of activist consumer groups against corrupt dealers and their equally corrupt protectors-government officials in charge of inspection and supervision of fair price shops. Frequently, instead of protecting the hapless consumer, inspectors choose to protect the misdeeds of shopkeepers and dealers.

Another hazard that all consumers have to accept is excessive or indiscriminate use of chemical fertilisers, pesticides, herbicides or fungicides. It brought in its wake bumper crops, overflowing granaries and buffer stocks for the PDS but certain grave hazards, like residues of chemicals beyond the permitted limits in agricultural products and deterioration in the quality of soil. Among the products, vegetables, which grow within a short cycle, are the most affected by such indiscriminate use, whereas the worst-hit group of consumers is that of the poor, tribal consumers. Their natural sources of nourishment disappear when the ecological balance is destroyed by excessive use of chemicals. And they are too impoverished to buy in full measure even the cheaper food made available through the RPDS. The NSSO cites lack of any credit facility as one of the secondary reasons for non-purchase/ part purchase from the PDS [NSSO, 1990a, p. 14]. The Fertiliser (Control) Order, 1985, issued under the Essential Commodities Act, 1955, prescribes specifications of fertilisers sold in the country, methods of sampling analysis and provision for appointment of enforcement agencies for regulating the trade and distribution of fertilisers. There are 43 fertiliser quality control laboratories in various states, in addition to one central and three regional [India, 1993, p. 379]. Also the Insecticides Act, 1968 has provisions to regulate their manufacture, import, sale, etc. Yet, these measures are ineffective because of lack of training to the farmer in the proper use of fertilisers, pesticides, etc. Responsibility for such training may be placed, through appropriate statute, on manufacturers of these products.

The dubious safety of irradiation as a method for food preservation is yet another risk for consumers. The International Consultative Group of Food Irradiation (ICGFI) is of the opinion that irradiation of food would reduce its nutrient value by chemical change, but replace alternative methods of preservation, which involve environmental threats (methyl bromide), as well as occupational and health hazards (ethylene oxide). Hence the ICGFI recommends food irradiation, but expects governments to regulate it according to the internationally recognised standards of safety [Patel, 1993]. It is likewise necessary that consumers should have some simple, reliable testing device to check whether a particular food-item is irradiated, and also to verify the dose of ionizing radiation. It is difficult to preserve for long food stuffs at room temperature in India due to her climate, and food irradiation has several advantages. Demand for legalising 'dutching' of food are, therefore, hard to resist. India's first commercial food irradiation complex, with Cobalt-60 as the isotope to irradiate, is jointly set up by the Bhabha Atomic Research Centre and the Spices Board [Saraf, 1990]. The Government of India permitted the irradiation of spices, onions and potatoes. It, however, sounds strange that spices, the traditional preservatives with a long shelf-life, have to be irradiated. Thus, with the advent of food surpluses and the resulting food processing industry, consumers are exposed to chemical residues, bacterial contamination, irradiation risks, all leading to higher incidence of food poisoning and of food-borne diseases. The new consumer policy of the IOCU on food quality, referred to earlier, recommends specific controls and prohibition on some unsafe pesticides, food additives, growth hormones, veterinary drugs and biotechnology, and also

food-irradiation processes. Similarly, some consumer groups along with environmental and religious groups oppose genetic manipulation of plants, particularly implantation of animal genes into plants to enhance various properties, as well as use of genetically engineered hormones to raise productivity [Woollen, 1994, p. 92]. India is just on the thresholds of food processing technology. It is necessary that the government takes firm steps from the beginning to regulate the inherently hazardous processes.

The NDDB imports from the European Community countries milk products under the European Community (EC) Grant-in-Aid for Operation Flood Programme. After the Chernobyl nuclear power plant disaster in Ukraine in 1986, a scientist filed a writ petition for direction from the court to restrain NDDB from releasing the imports of 200 MT of Irish butter for the Greater Bombay Milk Scheme, on the ground that the butter was contaminated by the Chernobyl nuclear fall-out. The Bombay High Court cleared the butter as safe for human consumption on the basis of the finding of the Bhabha Atomic Research Centre, that it contained radionuclides within permissible levels, as set by the Atomic Energy Regulatory Board (AERB). The petitioner's appeal to the Supreme Court too failed, since the Committee of Experts upheld the levels fixed by the AERB [*Dr. Shivarao Shantaram Wagle and Others (II)* v. *Union of India and Others*, (1988) 2 Supreme Court Cases 115]. Nevertheless, the case underscores the need for vigilance on the part of consumers in the case of potentially harmful imported products, particularly in view of increased international trade resulting from deregulation, privatisation and liberalisation measures in the third world and the Soviet block countries, and also from the GATT, 1994.

At times, mostly abroad but after the recent communal riots even in India, consumers have been victims of such horrifying terrorist activities as tampering of water, milk and food, deliberately lacing it with poison, or mixing pieces of razor blade, glass, pins, caustic soda, or the like, with food items. Products of a particular company or country are targets for such calculated contamination. Adulterated kerosene, distributed in Rajasthan by the outlets of the Indian Oil Corporation in March 1993, exploded when used in kitchen stoves and claimed several lives. Close monitoring of markets by consumer organisations, rather than statutory regulation may be more helpful in ensuring safety and quality in food.

Finally, special foods for a very exclusive group of consumers, babies, require rigorous governmental control. In 1981, the WHO and the United Nations Children's Fund (UNICEF) prepared the International Code of Marketing of Breastmilk Substitutes, which was adopted by several countries, including India, and the IBFAN was formulated. In response, the National Code for Protection and Promotion of Breast-feeding was adopted by the Health Ministry in 1983. Accordingly, advertising on the All India Radio and the Doordarshan was prohibited. A Bill- the Infant Milk Foods and Feeding Bottles (Regulation of Production, Supply and Distribution) Bill, 1986- was introduced and passed in the Rajya Sabha but could not sail through in the Lok Sabha on account of the pressures of the industry. On April 29, 1990, even the ban on advertising infant milk foods or feeding bottles was lifted. Twelve years after the adoption of the WHO/UNICEF International Code, the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Bill, 1992, was again introduced and passed on December 29, 1992, to prohibit advertising and promotional marketing drives for infant foods, feeding bottles, etc., and to control their quality, labelling, etc. Its date of commencement, as notified in the gazette, was Aug. 1, 1993. In the meanwhile, the infant milk manufacturing MNCs, threatened by the declining birth-rates in the developed countries, have begun to look to the developing and the less developed countries as markets for their breast-milk substitutes. Their skillful sales promotion, many a time involving health care agencies who ill-advised mothers to give up breast-feeding, might have resulted in 'commerciogenic malnutrition' [Bader, 1980]. The alarmingly high level of child malnutrition in India (around 63 per cent

of under-fives are malnourished) makes it difficult to achieve the target of 20 per cent reduction in it by 1995 [UNICEF, 1994].

Water: Access

The UN Guidelines for Consumer Protection, 1985 are very clear regarding access to water, particularly potable drinking water from a perennial source. The state should be the provider of this elementary necessity of life. Also the UN General Assembly launched the International Drinking Water Supply and Sanitation Decade 1981-90, with the target, 'Clean Water and Adequate Sanitation for All by 1990'. In India, the public water supply was first provided in major cities like Bombay, Calcutta and Madras in the 1870s [Nageshwar Rao, 1993, p. 17]. After Independence, access to potable water as a human entitlement is emerging in India as a component of the right to life and personal liberty assured under article 21 of the Constitution [Baxi, 1991, p. iii and p. 127]. Provision of water supply is the responsibility of the state governments. Entry 17 of the List II- State List- of the Constitution of India holds them responsible for water supplies, irrigation and canals, drainage and embankments, water storage and water power. In addition, the Constitution (Seventy-third and Seventy-fourth Amendment) Acts of 1992 replaced the original Part IX of the Constitution and also introduced Part IXA for constituting Panchayats for villages and municipalities (Nagar Palika, Municipal Council or Municipal Corporation) for urban conglomerations. As a result, the new Articles 243G and 243W now place the responsibility of supply of water for drinking and domestic use on them- on Panchayats in rural areas (Entry 11, Eleventh Schedule) and on municipalities in urban areas (Entry 5, Twelfth Schedule).

The Ministry of Water Resources of the Union Government plays the nodal role for development, conservation and management of water as a national resource. In view of the magnitude of the problem in rural areas, a programme- Accelerated Rural Water Supply Programme- was introduced in 1972-73. Since 1974-75, supply of drinking water constitutes an important part of the Minimum Needs Programme of the state plans. The centre makes funds available for this purpose under the various Five Year Plans, although they are inadequate. Also some states receive financial aid for their waterworks schemes and projects from international sources like the World Bank as well as foreign countries. In 1986, a national technology mission on drinking water was launched to tackle the problem of public water supply in rural areas, especially in the *Dalit* habitats and localities. The National Water Policy was adopted in September 1987. It lays down, *inter alia*, scarcity areas for planning and operation of water supply systems, where drinking water has been assigned the highest priority [Ministry of Water Resources, 1987]. The Policy recommends monitoring of the quality of surface and ground water. Subsequently, water supply facilities are also to be extended according to the liberalised norms- a source of drinking water within a distance of 0.5 km; consumption of water to be enhanced from 40 litres to 70 litres per capita per day; and one source (tubewell with handpump or stand-post) for every 150 persons as against the existing norm of one source for 250-300 persons [India, 1989, p. 409]. At the beginning of the Seventh Five Year Plan, there were about 1.62 lakh problem villages, where there was no source of safe drinking water within a distance of 1.6 km or the water level was more than 15 m deep or the source dried up in the summer or the water supply was less than 40 litres per capita per day. Fortunately, the number of problem villages with no source has gone down, yet sites which are self-sufficient today become scarcity-hit areas in the following year. Again, only about half of the rural population and 71 per cent of the urban population avail of water from governmental sources. The remaining depend on other agencies, like sources constructed by the community, charitable institutions, etc. [NSSO, 1990b, p. 8].

In the past centuries, failure of timely monsoon rains led to high food prices, hoarding, hunger, starvation deaths, and occasionally, fodder scarcity, yet hardly ever to drinking water scarcity [Bhatia, 1992]. The Commission of Inquiry on Indian Famines [1878] refers to water only in respect of its utilisation for agricultural purposes [Strachey, 1880, Part I, para 80 and Part II, section

V]. The Famine Relief Codes of the erstwhile provinces did not mention provision of drinking water for afflicted people. In the post-Independence period such large-scale starvation and mortality have never occurred. On the other hand, during the drought of 1987-88 transportation of water had to be organised through bullock carts, tankers and tank wagon rakes of the railways, even water specials [Ministry of Agriculture, 1990, Vol. 1, Pp. 56-58]. The crisis of drinking water supply in summer is constant and acute, during drought as well as non-drought years, and even in areas not drought prone. It is caused due to several factors, not merely on account of failure of monsoon rains. They include rise in population, use of hybrid seeds and fertilisers resulting in over-exploitation of groundwater through energized pumpsets and recession of water tables, felling of trees, ecological imbalance or diversion of surface water to towns and cities and for industrial use. 'The use of surface water has been largely confined to irrigation. It is being supplied for drinking and other uses but only in cities and large towns. The drinking water needs, of humans and animals, of the rural population are met very inadequately from small undependable streams or private wells.... It is imperative therefore that the supply of drinking water to the human and animal population in the command area is made an integral part of an irrigation project' [Dandekar, 1986]. Further, the scarcity of drinking water is aggravated because 'access to drinking water is highly unequal partly from the uneven ownership of private water extraction mechanisms, and partly from the fact that the more powerful sections of the population also gain a privileged access to 'public' sources of drinking water' [Bhatia, 1992]. On Feb 26, 1983, an Ordinance was promulgated in Maharashtra for requisitioning of water from any private well, tank or other source of water for the purpose of drinking during scarcity. Now it has been perpetuated as the Maharashtra Drinking Water Supply Requisition Act, 1983 which empowers the requisitioning authority (usually the District Collector) to order requisition.

In complaints of access to water, consumer courts regard water supply as an essential service or facility, which must be provided to consumers. In one complaint, a municipality was asked to change the existing pipeline, remove water shortage, and also pay compensation for the loss suffered by the water rate-payer [*Wangdi Tshering* v. *Chairman, Kurseong Municipality*, 1993 (II) *CPR* 476]. In another complaint, the National Commission awarded compensation to cultivators for the loss suffered due to delay in rectifying the power failure and the resultant breakdown in water supply [*Orissa Lift Irrigation Corporation* v. *Birakishore Rout*, 1991 (II) *CPR* 125]. However, when no separate water charges are collected under a municipal law, either *pro-rata* to the water utilised or on the basis of tap-connection, and water charges form a part of a general property tax levied on the basis of the value of property, water supply is considered by the National Commission as an obligatory statutory function of the municipal bodies and not a service rendered for consideration. Hence, complaints regarding inadequate supply cannot be considered by consumer courts [*The Mayor, Calcutta Municipal Corporation* v. *Tarapada Chatterjee*, 1994 (I) *CPR* 87]. Thus, it depends on the facts and circumstances of complaints, whether to order the water supplying authorities to provide water expeditiously. The Central Planning and Development Authority was ordered to pay compensation for delivering to an allottee a developed plot without water connection and also for the delay in later providing it [1992 (II) *CPR* 708]. In complaints of wrongful disconnection of water supply, they are asked to restore it at once by consumer courts.

Purity and Quality of Water

Minuscule percentage of Indian population is provided today with protected water supply, i.e., transmission of filtered water from the filtration beds in big pipelines. Water is no longer a free good provided *gratis* by nature, with citizens having an inborn, natural right to it. Because of the cost of construction and maintenance of water systems- procurement, purification and distribution of water- it has become an economic good. When comprehensive service standards are defined and enforced, quality of that service is

high and its beneficiaries (consumers) willingly pay more. Today, water rates for domestic use are low as compared to the production and distribution cost of water, yet recovery of water charges is difficult because the standards and quality of service are deplorable. As a result, even the operation and maintenance costs of the water distribution systems are not met from the water earnings. It is only because of the covenant in the loan agreement of the funding agencies, like the World Bank, that rates are raised to meet the operational costs and servicing of the loan. The consequences of such populist policies are disastrous: 'A major feature of our urban scene is the misery and serious health hazards caused by lack of water supply and sanitation. Almost all our urban centres, even those which at one time had reasonably adequate water supply, are now suffering from crippling shortages. ... On the one hand there is no long-term planning for urban water needs; on the other, there is a constant paucity of funds. ... urban water supply is looked upon as a totally residual item' [Ministry of Housing and Urban Development, 1988]. 'The Indian Health Ministry has advocated a health component for all water resource projects but there is little or no 'health maintenance' in reservoirs and canal systems. Cleaning and weeding of canals, their periodic flushing during the off-season when stagnant waters facilitate vector breeding, provision of culverts to prevent breaches and spills at channel crossings, plugging of leaks and seepage points, and lining of certain canal reaches to eliminate grassy margins where mosquitoes breed would make for better health. ...As lethal and debilitating and more widespread (in certain parts of our country) than vector borne diseases are water-borne parasitic ailments such as diarrhoea, dysentery, cholera, hepatitis and typhoid' [Verghese, 1990, p. 245].

Furthermore, the over-exploitation of ground water, i.e., withdrawal of ground water more than the annual replenishment from rains and surface water, leads to salinity ingress. The resultant concentration of salts in water, particularly of fluoride, is likely to cause fluorosis, an irreversible and incurable disease, which causes stiffening of the limbs in human and cattle population and also has deleterious effects on the teeth, kidney, heart and the nervous system, and even foetus. Gujarat, Rajasthan and Maharashtra are the states most seriously afflicted by excess fluoride content in water [Bhatia, 1992, p. 15]. During the period between 1961-62 and 1973-74, net area irrigated by tubewells alone increased by 5.56 million hectares, while that by different surface water sources increased by 1.84 million hectares [Sengupta, 1985].

Various means of state intervention, both direct and indirect, for preventing over-exploitation of watersheds, regulation of extraction and use of private water as well as of water markets (sale of water) are on the anvil but not yet effectively implemented. The Government of India prepared a bill- the Ground water (Control and Regulation) Bill- as early as in 1970 and circulated it to all states with a recommendation to enact a law accordingly. The Bill has provisions for introduction of a system of licences for digging bores and wells, prohibition of extraction of ground water for non-essential purposes, establishment of the Ground water Authority with powers to notify areas to control number of wells, depth of wells, use of energised pumpsets, etc. So far only a few states, have made half-hearted efforts to formulate a few provisions of this Bill into an act. For instance, Maharashtra State passed in July 1993, the Maharashtra Ground water (Regulation for Drinking Water Purposes) Act, 1993. It prohibits sinking of any well for any purpose within 500 metres of a public drinking water source, if both are in the area of the same watershed. On April 8, 1995 such order under the Act was taken out, prohibiting sinking of any well within 500 m from a public drinking water source in Pune district, owing to scarcity of water in the rural areas of the district and even in suburbs of Pune city. However, the prescript has, as usual, exceptions; an application can be made to the appropriate authority for permission to sink a well for irrigation or drinking water purposes in the prohibited area. Worse, if the appropriate authority fails to inform the applicant of its decision in the matter within 120 days from the date of receipt of the application, it would be deemed as grant of permission. Similarly, the State of Gujarat amended the Bombay Irrigation

(Gujarat Amendment) Act, 1976, by promulgating an ordinance, on three occasions, 1977, 1988 and 1989, to incorporate the provisions of the central Ground water (Control and Regulation) Bill, 1970. But every time the state postponed the next action- of introducing a bill to that effect and passing it into an act, and allowed the ordinance to lapse [Bhatia, 1992, Pp. 55-59]. The state policies regarding the indirect checks for regulating development and use of ground water, such as credit-related measures, i.e., certain conditions laid down for obtaining institutional finance from agencies like NABARD, appropriate determination of support prices, so as to discourage cultivation of water-intensive crops, and *pro-rata* pricing of water and electricity, depend more on electoral considerations rather than on sound development.

Compensation for the loss suffered due to illness arising from impure water supply is awarded by consumer courts, when such loss is proved. Water is deemed here as a good, which must not be defective (impure), as per the meaning of section 2(1)(f) of the COPRA. The Delhi District consumer court ordered the Delhi Municipal Corporation to pay to one complainant compensation to the tune of Rs 1,000 when he submitted before the Forum a sample of the murky, dirty, polluted and contaminated water supplied by the Corporation. He had complained to the Corporation about it on several occasions but in vain. So he got the water tested in a laboratory and brought before the court the test reports, along with his neighbours' affidavits that such impure water was regularly supplied through their municipal taps. He also presented his doctor's certificates regarding the illness suffered by him and his family due to that water, and the expenses incurred on treatment. When the Municipal Corporation went in appeal against the judgement of the court, the State Commission not only upheld the District consumer court's order but also awarded him Rs 500 as the cost of the suit. [*Delhi Municipal Corporation* v. *Narendra Kumar Rohtagi*, 1993 (I) *CPR* 654].

Hazardous products and hazardous processes of manufacture contaminate not only water but air too, and cause colossal loss to citizens (consumers). The legislative measures taken after the *Bhopal Gas Leak Tragedy*, include the Factories (Amendment) Act of 1987 and the Public Liability Insurance Act, 1991. The former lists the inherently dangerous processes. The latter statute makes insurance obligatory for certain enterprises. These measures help safeguard the consumer against any potential threat to his health and life from effluents. In the Ganga water pollution (tanneries) case as well as in the Oleum gas leak case the Supreme Court proclaimed that any enterprise, engaging in such process, 'owes an absolute and non-delegable duty to community, to ensure that no harm results to anyone' on account of the hazardous nature of its activity [*M.C. Mehta* v. *Union of India*, AIR 1987 SC 1086].

Health Care Services, and Drugs and Pharmaceuticals: Pricing and Quality Control

Next to food products, perhaps, medical care, medicinal drugs and pharmaceuticals play a very vital role in the well-being of the consumer, through satisfaction of certain urgent and critical human wants. In fact, their applicability and suitability as well as quality, standard and purity have to be more exact; sometimes the slightest deviation may prove disastrous, even fatal, costing some innocent consumer's precious life. Moreover, availability at affordable prices is also equally consequential. Hence, the mandate of article 47 of the Directive Principles of State Policy of the Constitution is: 'the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties'. A parallel provision is found in article 25(1) of the Universal Declaration of Human Rights, 1948. Health is thus reckoned as one of the basic human rights, and is defined, in the Alma-Ata Declaration of the WHO in September 1978, as 'a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity'. The Declaration also sets a target -'Health for all by the Year 2000 AD' (HFA), to be achieved by the countries of the world. India is a signatory to the Declaration.

Public Health Service

Both, the union and the state governments have been assigned responsibility for health care - items like population control and family planning, medical education and profession, adulteration of food stuffs and other products, drugs and poisons, lunacy and mental retardation, etc., are in the Concurrent List, while public health and sanitation, hospitals and dispensaries, etc., fall in the State List of the Constitution. As a result, policies and programmes in the field of health are formulated by the centre, while the states are assigned with the responsibility of implementation. Naturally, many schemes suffer, e.g., the scheme for the community health workers was not being implemented in Tamil Nadu and Kashmir [Gill, 1988, p. 198]. Again, they operate in an administrative vacuum, as compared to the Chinese barefoot doctors who are well fitted into the local organisational structures of rural China [Lincoln, 1988]. Health services in our country have been planned under the imperial impact, and as such, developed on the western model, as recommended by the Bhore Committee, 1943-46 [for its recommendations see Chopra, 1978, Pp. 584-88]. To identify and deal with our peculiar health problems by utilising the general stock of knowledge generated in developed as well as other developing countries, the local, site-specific, adaptative research, 'essential national health research' is lacking in the health field in our country. For example, 'Where in India ... is there serious capacity to address the question of ... what is the trade-off between the positive contribution of pesticides to food supply and the negative impact on health? ... What do you do in irrigation planning to effect the possibilities of controlling malaria? ... Why BCG does not protect against pulmonary tuberculosis in southern India [Bell, 1994]. 'Even an important figure like the number of doctors functioning in Metropolitan Bombay is not readily available.... planning of health services would be defective without such a data-base' [CRD, 1994, p. 69]. Health technologies, policies, organisations, and processes need to be adapted to the varied social, economic, cultural and historical settings in our country [Bell and Ruttan, 1994]. At present, there exists a mismatch between the requirement and availability of health man-power of different categories. The number of para medical staff, as well as pharmacists, laboratory technicians, radiologists, dental surgeons is meagre, in comparison with the density at the senior level of medical professionals. The states have generally concentrated on new medical colleges and paid no heed to development of other training institutions for the above mentioned categories. 'Ideally, the doctor- nurse ratio should be 1:3 but currently there are 3,00,000 registered nurses against 4,00,000 registered medical graduates' [Planning Commission, 1992, p. 324]. In the statistics for health manpower working in rural areas the number of vacant posts is very high and their percentage to sanctioned posts varies between 29.6 to 6.4 [Planning Commission, 1992, p. 340, Annexure 12.3]. Yet other factors contributing to deficiency in basic health service are (i) geographical and sectoral disparities in allocation of public health resources, such as between rural-urban, among various states, also between allopathy and non-allopathic systems of medicine, or between public expenditures on drugs, materials and supplies and on salaries of the manpower in the health field, (ii) very little mobilisation of the people and community participation for preventive health efforts, (iii) negligible role of health insurance, (iv) drug-price control policies.

Primary health care centres and sub-centres are the agency chosen to achieve the ambitious target of the HFA. In the Approach Paper to the Eighth Five Year Plan, fear is expressed that 'this (HFA) will be impossible to achieve at the current rate of expansion of health services' [Planning Commission, 1990, p. 35]. And still the investment in health has gone down from 3.3 per cent of the total plan investment in the First Plan to 1.7 per cent in the Seventh Plan [Ministry of Health and Family Welfare, 1992, p. 310] and still further to 1.60 per cent in the Annual Plans for 1990-91 and 1991-92 [*India*, 1993, p. 198]. Although the number of primary health care centres and sub-centres established was on the rise during the Sixth and the Seventh Plans, it has come down to just 708 in 1990-91 and further fallen to 471 in 1991-92. Health delivery systems in rural areas

are inadequate and defective. 'Besides, a substantial chunk of whatever health services and medical education are available are appropriated by the upper classes' [Planning Commission, 1990, p. 35]. '... there is a distinct risk of the paradigm of primary health care as a tool for 'Health for All' being overrun by the mechanism of 'All for a few' [Planning Commission, 1992, p. 324]. Further, '(t)he burden on health programmes has become more onerous with environmental degradation and its impact on the physical life of the people' [Planning Commission, 1990, p. 35]. While ill-health resulting from communicable diseases and undernutrition still remains, development has generated new health problems related not only to environmental pollution, but also to ageing of population, dietary excesses and life styles resulting from affluence [Gopalan, 1994, p 1204]. The state launched some innovative insurance schemes for enhancing the resources available for health care services. They should be supplemented through involvement of the private sector industries, particularly those that contribute to illness, such as tobacco.

Some of the day-to-day deficiencies endured by patients in state-run hospitals, which include municipal, charitable and Employees State Insurance Scheme (ESIS) hospitals, are callous, indifferent treatment, rude behaviour, inaccessibility of senior doctors, poor hygienic and sanitary conditions, inadequate provision of life-saving, essential drugs and medicines coupled with unnecessary stocking of certain drugs hardly required in that particular area obviously purchased for extraneous reasons, deep-rooted and rampant corruption not only among the non-medical staff and employees but also among the medical staff and honorary practitioners, and so on. Yet the patients have no remedy against such governmental lawlessness under the COPRA, 1986 as there is against negligent private medical practitioners. The reason is that the treatment is *free of* charge, without any consideration; the service is rendered without any price. In *Consumer Unity & Trust Society, Jaipur* v. *State of Rajasthan*, it is accepted, that 'persons who avail themselves of the facility of medical treatment in Government hospitals are not 'consumers' and the said facility offered in Government hospitals cannot be regarded as 'hired' for 'consideration'...' [1991(I) *CPR* 241]. The National Commission rejects both the following arguments: (i) The tax-payer does pay tax in lieu of doctor's fees and hospital charges, so the tax may be regarded as 'consideration' which entitles him to avail of the common benefits, such as medical services, offered by the state. At least contributions to Central Government Health Scheme (CGHS) or ESIS can be treated as consideration or price for health care. And (ii) the staff of the state-run hospitals is paid their salaries by the state, hence they are bound to render service to the state and its beneficiaries, the patients who are supposed to be the children of the guardian welfare state- *parens patriae*. In view of these arguments, a patient in state-run hospitals can be considered as a 'consumer', under section 2(1)(d) and his treatment, 'service' under section 2(1)(o) of the COPRA, 1986. Such interpretation would invest him with necessary legal standing to sue for compensation for negligent treatment. On the contrary the National Commission has apprehension that 'in attempting to be fair to a few, we may thereby create a situation in which the attention of the hospital authorities would be diverted by spate of possibly spurious and avoidable litigation'. It further observes: 'in the light of the two possible interpretations of the scope of the Act ... we feel that while we continue to be governed by the interpretation we have accepted, this is a matter where the Parliament, if it so wishes, can review the matter and amend the Act suitably so that there is no ambiguity between the intent of the law and its interpretation ...'. Even patients from private charitable hospitals do not have access to consumer courts. They pay room rent or other relevant charges based on their income, but these are not held as consideration [*Dr. Ravinder* Gupta and others v. *Ganga Devi and others*, 1993 (II) *CPR* 255]. The Parliament amended the Act in 1993 but, in spite of the pressure from consumer organisations to that effect, it did not incorporate this particular point. Consequently, the hapless patient in state-funded hospitals is left in the same lurch as before.

Private Health Service

The Forty-Second Round of the National Sample Survey ascertained that in rural India about 53 per cent and in urban India about 52 per cent of treatment was availed from private doctors during July 1986-June 1987, whereas the remaining was availed from other providers of health care, like primary health centres, public dispensaries, Employees State Insurance (ESI) doctors, public and private hospitals or charitable institutions [NSSO, 1992, Pp. 67-68]. Workers approach ESIS doctors only to get their sick-leave applications signed, not for treatment. Whether it indicates patients' faith in private practitioners or a Hobson's choice in the existing circumstances is uncertain. A case study, 'Hospital Costs and Financing in Maharashtra', sampling 28 hospitals of all kinds- public, private, charitable, run by enterprises- *'found a disquieting lack of concern for the overall effectiveness of services.* The efficacy of treatment was left largely to the judgment of individual practitioners. There were no formal systems of medical audit, peer-review of the quality of care or continuing training to maintain and upgrade the technical competence of practitioners. Hospitals were also weak in epidemiological analysis. Consequently, they ... neglected preventive, promotive and early detection care...' (emphasis original) [Satija and Deodhar, 1993, Pp. 253-254]. One more factor affecting the private health care services is the interaction between private physicians and pharmaceutical companies. The aggressive marketing of pharmaceutical companies influences the prescribing behaviour of physicians and pharmacists, as well as the self-medication patterns. 'Doctors practising in the private sector prescribe excessive, expensive and more risky medicines. ...the quality of care in this sector is a serious problem' [Bhat, 1993]. Especially when funding for health care services comes through the health insurance schemes, the providers of these services provide more than what is required. The regulation of private practitioners is absolutely essential, particularly when they have penetrated deeply into remote areas [Purohit, 1994, p. 1587].

Consumer courts are not hesitant to award compensation for deficiencies due to negligence in medical care provided by doctors and others in private hospitals [*Cosmopolitan Hospitals* v. *Vasantha P. Nair* and *Cosmopolitan Hospitals* v. *V.P. Sant*, (1992) 1 *CPJ* 302 (NC)]. In this landmark judgment of the National Commission, the following important legal points were determined: (i) Complaints about medical treatment rendered to patients by medical professionals and hospitals for fees come under the purview of the consumer courts. It is wrong to define medical service as 'personal service', which is exempted from the jurisdiction of the consumer courts [see explanation of the term 'personal service' given in Section IV on Pp. 456]. (ii) Legal heirs and legal representatives of the deceased patient may be awarded compensation, if the patient's death is caused due to negligent medical care, although they are not included specifically in expressed words in the scope of the definition of 'consumer' under the COPRA, 1986. It is, however, necessary to note that compensation can be obtained only when the death is due to culpable negligence, i.e., failure to act with reasonable care and skill, and not merely an error of judgement *[Dr. Sr. Louie and Another* v. *Kannolil Pathhumma and Another*, 1993 (I) *CPR* 422].

However, the National Commission is reluctant to pass any order in cases of charging exorbitant fees (price) by specialists and super-specialists. In one case, the National Commission admitted that the fee of Rs. 40,000 charged for post-operative care by the heart specialist was excessive, 'unconscionably high' and 'unreasonable'. Yet it ruled: 'However improper it may be, ... , it is not for the consumer forums to adjudicate on the question whether the consideration (fee) charged was reasonable' [*B.S. Hegde* v. *Dr. Sudhansu Bhattacharya*, III (1993) *Consumer Protection Judgments (CPJ)* 388 (NC)]

Who should devise and monitor appropriate checks on the quality of care provided by medical practitioners- the government, the professional bodies, like the medical councils or the patients themselves through consumer courts? Most of the doctors object to consumer courts deciding cases of medical negligence. They would prefer the state medical councils to take action against erring

doctors, with a provision of appeal to the Indian Medical Council established under the Indian Medical Council Act, 1956. However, with total lack of self-regulation, the Indian Medical Council is ineffective in curbing unethical practices, even malpractices in the profession. It is the only disciplinarian for the medical profession, yet it being an elected body, 'never or rarely in the history of the Indian Medical Council Act, 1956, has punitive action been taken against peers' [Krishna Iyer, in Joseph, 1994]. Besides, there is no provision in that Act to award compensation and penal sentence to the guilty. Recently, the Indian Society of Critical Care Medicine (ISCCM) was formed to lay down guidelines on the requirements for the intensive care units (ICUs), and to be a watch-dog in this respect. Yet, ISCCM would also have no authority to take action, punitive or compensatory, for irregularities. Consumer courts are basically for short-circuiting of the tedious legal procedures under the civil law of compensation (tort). It does not mean that they are not as competent as the civil or criminal courts in the country. They follow the same principles and standards, and as such, are equally capable to judge whether a doctor has taken reasonable care and applied minimum skill. In addition, they can always get the evidence corroborated from other medical experts. Even if the medical skills are unique and exclusive, yet they are not inassessable.

Still, the Madras High Court in its February 1994 judgment rules that the definition of service under the COPRA, 1986 does not include diagnosis and medicinal and surgical treatment by doctors. Its argument is that the definition must be confined to services 'capable of yielding definite, positive and intended results, unlike the professional services of a medical practitioner'; that medicine has not yet reached and may never reach a stage where a particular treatment would categorically produce expected results, for 'success or failure (of treatment) depends on factors beyond the professional's control, ... even where the critical factors are within the professional's control... [*Dr. C.S. Subramanian* v. *Kumarsamy and Another*, (1994) 1 *CPJ* 509 (Madras High Court)]. The crucial issue involved is of negligence in rendering service, and not outcome of the service. Fortunately the National Commission still awards compensation for negligence in rendering medical service and in cases of latrogenesis (drug or doctor induced death) [*M. Jeeva* v. *R. Lalitha*, (1994) 2 *CPJ* 73 (NC)]. The system of accreditation of health care organisations, particularly blood banks, may help.

Patients' Rights

A Patient's Bill of Rights, approved by the American Hospital Association as far back as in 1973, includes along with other important rights, the patient's right to obtain from the physician complete, *current* information concerning the diagnosis, treatment and prognosis, in *terms* the patient can be reasonably expected to understand. Such information should also include the medically significant risks involved, the probable duration of incapacitation, the medical consequences of refusing the treatment and details of alternatives available. Occasionally, doctors have to try an unexplored treatment or a novel medicine with some patient or another. But it must be with the patient's or some near relative's informed consent. Patients should not be treated as guinea pigs for experimentation. They are in a position to give consent to a treatment, only when they have adequate information of their illness, treatment to be administered to them as well as of the risk involved. When it is not medically advisable to give such information to the patient, it should be made available to an appropriate person on his behalf. In addition, patients have a right to privacy, so that all communications and records of illness, tests, examinations or treatment are to be kept confidential [Advani, 1992, Pp. 40-42]. Several countries have in similar manner crystallized patients' rights. The IOCU is, at present, working on a Charter for Patients' Rights. In India, there were similar provisions in Kautilya's *Arthashastra*. Yet today they are just indirectly safeguarded by the Indian Medical Council Act, 1956 and the State Medical Council Acts, as well as the International Code of Medical Ethics, which enumerates in general doctors' duties- to the sick and to each other. At the time of registration, medical practitioners are administered the Hippocratic Oath and they agree

to abide by the Declaration from the Code of Medical Ethics prepared by the Medical Council of India. Certain penal sanctions, like sections 87-90, 304-A, 319-322 and 325 of the Indian Penal Code, 1860, are provided against any criminal negligence, i.e., gross culpable rash negligence and *not* absence of proper treatment due to error of judgment on the part of doctors. The recent legal measures enacted for the regulation of medical profession in India in the interest of patients pertain to medical termination of pregnancy, sex-determination tests and use of human organs, kidneys, corneas or hearts for therapeutic purposes (see Appendix). Further, as a result of a Supreme Court judgment, all doctors and hospitals are now legally bound to give medical aid to injured patients immediately, without waiting for completion of any formalities, even in medico-legal cases like accidents. If they insist on waiting, they may be held guilty of negligently causing a patient's death, in case he/she dies [*Parmanand Katara* v. *Union of India*, AIR 1989 Supreme Court 2039].

Drugs and Pharmaceuticals: Price Control

In the provision of health care service, drugs and pharmaceuticals play an equally vital role as hospitals and medical personnel. Production of allopathic drugs in the early years after Independence was restricted to producing formulations from imported bulk drugs, mainly under foreign auspices, i.e., these formulations were manufactured mostly by branches and fully-owned subsidiaries of trans- or multinational pharmaceutical companies (foreign companies). Now, not only has the production of formulations increased but also bulk drugs are being produced and even exported by India. In the entire Third World, the Indian pharmaceutical industry is the most diversified and vertically integrated. UNIDO places India in group 5 in its classification of pharmaceutical industries, which as per the UNIDO definition, means, near self-sufficiency in basic raw materials needed for drug-production and in the production of a wide variety of therapeutic groups of drugs. In 1993-1994, India produced bulk drugs and formulations worth Rs 1,320 crore and Rs 6,900 crore, respectively. The export performance of the drug industry too was positive, with the trade balance of Rs 560 crore during 1992-1993 [Ministry of Chemicals and Fertilisers, 1994].

Yet until the eighties, the foreign companies controlled about 78 per cent of the total sales turnover of drugs in India, whereas the shares of the Indian private and public sectors amounted to just 16 per cent and 6 per cent, respectively. The share of Indian pharmaceutical industry in world production is just 1.6 per cent [Arokiasamy, 1994, Pp. 5-13 to 5-14]. Although 95 per cent of the drugs considered essential by the WHO are produced in the country, their volume is not adequate. The per capita consumption of modern drugs in India is amongst the lowest in the world, Rs. 42.00 in 1992 [Arokiasamy, 1992, Pp. 5-17 to 5-21]. One of the reasons for it is also the level of pharmaceutical prices, which is high in India. Its perverse relationship to levels of per capita income was commented even by the US Kefauver Committee [Kefauver, 1965, Chapter 1]. India was considered a high drug-price country [Lall, 1974]. The various orders controlling prices of drugs- the Drugs (Control and Prices) Order (DPCO), 1962, the DPCOs of 1970, 1979 and of 1987, the Drugs (Price Control) Amendment Order, 1990, and the DPCO of 1995- are issued in exercise of the powers conferred by Parliament on the Government of India under section 3 of the Essential Commodities Act, 1955. There is dual pricing control - both product-wise and on overall profitability. The first Order controlling prices of certain life-saving drugs and pharmaceuticals was issued in 1962. The DPCO, 1995 is in force from January 6, 1995, It controls prices of 76 drugs. Almost 50 per cent of the retail pharmaceutical market would come under the ambit of the DPCO, 1995. Yet it is feared that prices of decontrolled drugs would increase by 15 to 20 per cent. Hence, the pharmaceutical industry has accepted a voluntary freezing of prices of decontrolled drugs for at least six months [CMIE, 1995, p. 24]. The impact of product-wise decontrol is also adverse, in the sense that there is shift in production from life-saving and essential drugs to marginally useful, inessential, irrational branded products which are not controlled, and hence profit margins are high [Sengupta, 1994]. Already there is

proliferation of drug formulations, estimated at 60,000, whereas the WHO recommends that only 285 drugs with 358 single ingredient formulations involving Rs 750.00 crore would satisfy the needs of the country. The Hathi Committee, which the Ministry of Petroleum and Chemicals of the Government of India constituted in 1974, too identified just 117 formulations as essential. Also the Committee recommended the establishment of a National Drug Authority and of a Drug Information Service, a data collection system, to identify social needs, rather than existing market needs, so that the national production targets could be based in terms of the former, [Hathi, 1975]. The Drug Policy, 1986 as well as the earlier policies include most of these recommendations [Ministry of Chemicals and Fertilisers, 1994]. Yet, hardly any concrete steps have so far been taken to implement them. The rich and powerful MNCs adopt subtle devices and dubious techniques to get round any regulation regarding import, manufacture and pricing of drugs, and remit profits abroad. Also, at times they flout the law with impunity, e.g., the ratio parameter between the ex-factory value of bulk drugs to that of formulations prescribed by the Government of India must not be lower than 1:4 [Ministry of Industry, 1994, p. 8]. Actually, in 1982-83 for MNCs, it was 1:12, while for Indian private companies it was 1:3.44 and for the public sector it was 1:1.12. Consequently, the proportion of bulk drugs produced by foreign manufacturers declined from 36.17 per cent in 1974-75 to 21.8 per cent in 1980-81. The profitability of the foreign companies for the years 1975-79 was 103 per cent their equity base [Ghosh, 1987, p. AN-8]. The profitability of the entire pharmaceutical industry is usually high, because it is not a capital-intensive industry, capital per labourer invested in it being just Rs 94,000, in comparison with other industries, such as fertilisers, petrochemicals and synthetic fibres, where it is Rs 61.00 lakh, Rs 38.90 lakh and Rs 24.10 lakh, respectively [Sengupta, 1994, p. 2529].

In Geneva in 1994, the 47th World Health Assembly adopted a resolution on the rational use and ethical promotion of drugs. It urged the governments of all countries to ensure through appropriate regulation the safety, quality, and efficacy of drugs, and also the accuracy of information. It was adopted in spite of stiff opposition from the pharmaceutical industry, particularly the MNCs. The Indian pharmaceutical industry, a multi-crore business, too pleads freedom from the present dual control which, in their view, does not and cannot serve any national interest [Arokiasamy, 1992]. Further, ratification of the GATT 1994, particularly the Agreement on Trade-related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, necessitated consequent changes in the Indian Patents Act, 1970 to harmonise it with the GATT obligations. They were brought out by the Patents ((Amendment) Ordinance, 1995 promulgated on January 1, 1995. Accordingly, now product patents are obtainable, and that too for twenty years, instead of the present process patents obtainable for only five years from the date of grant, or seven years from the date of application. Under the regime of process patent, Indian drug companies could develop technology through reverse engineering to make, literally, any product on or off patent. It will not be allowed now, if the product is patented. Moreover, there is provision for grant of exclusive marketing rights for a patent-holding company. Consequently, drug prices are bound to rise, although total patents in drugs and pharmaceuticals amounted to just 9.31 per cent of total patents sealed in 1986-87. For example, two drugs- Zantac and Voveran- manufactured by Glaxo and Ciba Geigy, respectively, and marketed in various countries, are more than nine times costlier in Pakistan, where there is product patent, than in India, where there is process patent at present [Keayla, 1994].

Drugs and Pharmaceuticals: Quality Control

The state has brought out a number of laws to regulate, besides price, also the other aspects of drugs and medicines, such as their quality and standard, purity, packaging and advertising. The earliest among them are the Poisons Act, 1919 and the Dangerous Drugs Act, 1930. Then there are the Drugs and Cosmetics Act, 1940, the Pharmacy Act, 1948, the Drugs (Control) Act, 1950, the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, the Medicinal

and Toilet Preparations Act, 1955, and so on.

The Drugs and Cosmetics Act, 1940, is intended to regulate import, manufacture, distribution and sale of drugs and cosmetics. It is another pre-Independence legislation, then christened the Drugs Act, 1940, since it originally applied only to drugs; cosmetics came under its purview in 1944. The definition of 'drugs' in the Act is wider than its ordinary meaning- not just a substance used as a medicine for curing any disease, but it includes also substances used for diagnosis, prevention, etc., in addition to those used for treatment or mitigation; thus it is an illustrative definition. The amendment of the Act in 1960 empowered the Central Government to control the manufacture of drugs, to appoint inspectors for taking samples and inspecting manufacturing units and to appoint public analysts. Also its amendment in 1964, through insertion of Chapter IV-A, made it applicable to Ayurvedic, Siddha and Unani drugs. The object of the Act is to shield the consumer from sub-standard, adulterated, spurious or misbranded drugs and cosmetics. Manufacturers must comply with the standards stipulated in the Second Schedule of the Act. Chapter II of the Act provides for the constitution of a Central Drugs Technical Advisory Board, a State Board for each state and a Drugs Consultative Committee to advise the respective governments on technical matters pertaining to the administration of the Act and to ensure uniformity in its operation. Consumers are to be given adequate representation on all these statutory bodies.

Since inspectors play the key role in the administration of the Act, they are given ample authority, such as powers of inspection, taking samples, search and seizure, examination of records, reports or documents, passing order to stop distribution of any stock for 20 days and launching prosecution. It is also one of their chores to inform people about such seizure and prohibition through the press, giving such details as the name of the drug, its manufacturer/ dealer, licence number, batch number and other particulars. Detailed procedures for taking samples and for instituting prosecution are laid down. Stringent punishments are prescribed for offences under the Act. They are more stringent for contraventions of allopathic drugs [sections 27 and 28] than for Ayurvedic drugs [section 33I and 33J] or cosmetics [section 27A]. Non-disclosure of the name of the manufacturer attracts penalty under section 28. If the drug involved is likely to cause death or grievous hurt the imprisonment is for a minimum period of five years, whereas in other cases it is for three years. Some states have amended the Act, to provide for more severe punishments, like life imprisonment. Moreover, consumers may also bring to the notice of the Food and Drug Administration any drugs injurious to health. But if that gives the manufacturers/ traders responsible for such drugs any chance or interval of time to destroy them and wipe out all evidence, consumers may approach the nearest police station to register urgent complaints. As in the case of food adulteration, there are provisions for punishment in the IPC too, under sections 274, 275 and 276 for adulteration of drugs, sale of such adulterated drugs and for selling a drug as a different drug (mis-branding), respectively. In case the police fail to do anything, consumers may make a complaint straightaway to Magistrates. Section 133 of the Criminal Procedure Code, 1973, empowers them to order the concerned manufacturers/ traders to cease and desist from further sale of such drugs and to remove them from the market promptly. This may be the quickest remedy available to consumers. If a number of people are affected by the sale of an adulterated or spurious drug, often a commission is appointed under the Commissions of Inquiry Act, 1952. In 1986, in J.J. Hospital, Bombay 14 patients died due to use of contaminated glycerine. No follow-up action was taken although a commission of inquiry was set up under Justice Lentin [Lentin, 1988].

Yet another peril the Indian patient-consumers live through is that there are several drugs sold in India which have been banned in the advanced countries. The yardsticks for immunity are claimed to be different in India from those abroad. However, the Health Action International, a worldwide network of health, consumer and development organisation working for rational drug use, advocates that if a drug is withdrawn for being risky in one country, it must be

withdrawn in every country, particularly in countries like ours, where there is no system of monitoring adverse drug reaction [Rane, 1994]. In 1980, the Drugs Consultative Committee recommended embargo on 20 fixed dose combinations of drugs with about 400 to 500 formulations. Accordingly, these medicines were banned, but only on paper, for the enforcement machinery with the state authorities is almost non-existent. At present a public interest litigation about the ban on 46 such other items is in progress in the Supreme Court. Earlier, the Supreme Court had declined to adjudicate in a similar public interest litigation on the ground of the magnitude, complexity, technical nature and the far-reaching implications of totally banning certain drugs, on just the recommendation of the Drugs Consultative Committee [*Vincent Panikurlangara* v. *Union of India*, AIR 1987 Supreme Court 990]. In the case of estrogen progesterone (EP) drugs, a public inquiry was held in 1988 by the Drug Controller of India, to comply with another Supreme Court directive to that effect in 1987. But it turned out to be a charade [Prakash, 1988, 244].

Public Utilities

In most of the countries public utilities, such as water supply, electricity, telephone, postal service, etc., are owned and maintained by the state or its instrumentalities- local governments, statutory corporations and public sector enterprises. State ownership is favoured for the sole purpose that these services would be provided efficiently and at reasonable costs by the state rather than profit-maximising private enterprises which might exploit consumers, since they have to be large enterprises with considerable economic power and monopolistic control. Yet these assumptions do not come true in reality. The consumer bears the burden of the hidden costs, which include costs of mismanagement, overrecruitment, corruption, favouritism, nepotism, political interference and so on. Consumers in India have to pay for stabilizers for all their electrical gadgets, to protect them from high fluctuations in voltage, or on water filters or for boiling water to purify it and make it potable, or in their absence, for the resulting illness on medical treatment.

In India, the welfare of the consumer depends on the state far more than in most democracies. The central and state governments, including local self-governing bodies, their instrumentalities, statutory authorities and public sector utilities provide very vital services on a very large scale. The reliance on public sector is much less in the case of consumers belonging to the higher income brackets than those in the lower ones, and that too, primarily for satisfaction of the basic necessities of life. For example, the relatively better off hardly ever buy supplies through the PDS, or patients availing medical services at state-run hospitals and dispensaries mostly belong to the poorer strata of society.

Moreover, public utilities enjoy distinct privileges and immunities, many a time endorsed by law, such as section 6 of the Indian Post Offices Act, which absolves the postal staff of the entire liability for delay in delivery, damage or loss of post material. Quite a few of these privileges are detrimental to the interests of the consumer. Although the state provides services of a commercial nature, it is still shielded with immunities meant for a sovereign. Hence individually, consumers are unevenly placed in any dispute regarding these services, equally defenceless, perhaps more, than when pitched against the non-state MNCs. Getting any kind of fair hearing or justice from such monolithic state institutions is an arduous task for an individual. It is all the more difficult for the not so well-off to resort to legal remedy, even consumer courts, for their grievances, firstly because of their financially weak position which hardly gives them any respite to think of anything else other than getting their daily bread, and secondly because of their ignorance. Strong and active grass root consumer organisations may be the remedy.

Further, consumer courts often do not give relief to complainants even for their genuine grievances because it is assumed that the state does not render any service for consideration, but performs a function in the exercise of its sovereign power. For instance, judicial courts, when adjudicating disputes, perform so in the exercise of sovereign

judicial power of the state and do not enter into any contract of service with the litigants. Litigants do not hire or avail of any service for consideration. Dispensation of justice cannot be considered as a quid pro quo for the court fees they pay, since the entire sum of court fees goes to the consolidated fund of the state [*Akhil Bharatiya Grahak Panchayat* v. *State of Gujarat*, 1994 (I) *CPR* 84]. Again, the question of fair, reasonable rates or charges for the services rendered is, generally, not adjudicated by courts, even by the Supreme Court. In a number of cases it stresses that rates are matters of legislative judgement and administrative prescription and not for judicial determination. Price fixation being a legislative activity, the question of observing principles of natural justice does not arise [Gurbax Singh, 1993].

If at all consumer courts entertain any complaints, a dilemma arises as to who should pay to the complainant the amount of compensation awarded by the consumer court for his harassment and suffering- the public authority or those public servants responsible for it by their malicious abuse of power. So far, the burden of paying compensation to the aggrieved complainant invariably fell on the tax-paying citizens as it was paid from the state exchequer. Making the erring individual employee pay the compensation was rare and fining and/or sentencing him with imprisonment unheard of. But the Supreme Court's 1993 ruling states that the payment from the public funds incurs ultimately impost on the common tax-payer's money; so the concerned department should pay the amount to the complainant from the public fund immediately, but recover the same from those who are found responsible for such unpardonable behaviour [*Lucknow Development Authority* v. *M.K. Gupta* III (1993) *CPJ* 7 (Supreme Court) at p. 22]. Yet when loss is suffered due to some genuine mistake by a public functionary in due discharge of his duties, the compensation awarded being just equal to the exact loss suffered by the complainant, is to be paid by the authority itself [para 16 on p. 20 of the above judgement].

Some of the public utilities have in recent years responded positively to consumer grievances, in two ways- (i) by introducing Work Improvement Teams (WITs) based on the Japanese Quality Control Circle for bettering the quality of their service to customers, and (ii) by setting up internal cells or having open house meetings on a regular basis for customer-contact or holding *Shikayat Adalats* for redressal of grievances, e.g., Post *Adalats* or complaint cells of the nationalised banks. The office of the Commissioner for Public Grievances was established in March 1966. In the course of time it underwent many transformations and in 1985 a separate Department of Administrative Reforms and Public Grievances (DARPG) was set up. DARPG was further separated into three wings: internal, external and independent. The internal wing comprises grievance redressal units with a Director of Grievances, They function in all ministries/departments and in subordinate offices and public sector undertakings having large public interface to resolve the complaints of the people against the officials. One day, Wednesday, for the central government, is observed as a day without any meetings and on that day three hours are set apart for grievance redressal, when all officers of the level of Deputy Secretary and above keep themselves available at their office to attend to public grievances and their expeditious disposal. The external wing is the apex of these three mechanisms of the DARPG. It monitors the working of the internal mechanism and liaises with national and international agencies. The figures of complaints received and disposed of by DARPG during the years April 1988 to June 1990, are available- disposed of (2,223), accepted (1612) and rejected (611). This shows that 72.5 per cent of the grievances were accepted, i.e., they were not frivolous or baseless. A majority of the complaints came from big industrial houses and trading firms, when, in reality, this dispute settling mechanism has been set up for the common man who is not in a position to initiate expensive, lengthy litigation in ordinary courts [Advani, 1991, Pp. 11-17]. Almost all the public sector undertakings have set up internal machinery to handle public grievances. From April 1, 1988, the independent wing for grievance redressal, the Directorate of Public Grievances

(DPG), has been functioning to settle grievances pertaining to Railways, Posts, Telecommunications, National Savings Schemes, Banking, Insurance, Civil Aviation, Surface Transport and Urban Development [India 1994, Pp. 46-47]. This independent authority is expected to be a counterpart of the Ombudsman in the Scandinavian countries. It has power to call for relevant files and check whether complaints have been resolved fairly, objectively and within a reasonable period of time. Thus, it functions as an appellate authority over the internal grievance redressal units.

Railways

Indian Railways have completed more than 140 years of operation and have grown into a vast network of 62,458 km route length with 7,116 stations. They provide the main mode of transport for passengers and freight- 40,486 lakh and 3,380 lakh tonnes, respectively, in 1991-92. Centre for Railway Information Systems (CRIS) implements various railway computerisation projects. Yet the amenities provided in trains and at stations lack in everything- safety, adequate quantity and quality. The number of rail accidents (1,312 with 828 people killed between 1992-93 and 1993-94, as per the Railway Minister's statement in the Rajya Sabha on Dec. 21, 1994) indicates the standard of safety offered in rail journeys. Recently, the Indrayani Express shuttled down the mountainous trail between Pune and Bombay at break-neck speed without any engine driver, assistant engine-driver or guard on board, with the added hazard of the ladies compartment already on fire. Occasionally, passengers are looted, beaten up or thrown out of compartments on night trains.

Regarding the adequacy of service, many complaints are regularly filed in consumer courts by passengers who have no accommodation, in spite of reservation. They rarely get any help from ticket collectors in such situations. Issuing tickets more than seating capacity are judged by consumer courts as instances of deficiency in service. Also, complaints of charges in excess of those fixed by rules are decided by them. For example, from December 1, 1993, the Central Railway reduced the fare for Bombay-Pune Air-conditioned Chairs (AC Class) because of the decision of the Maharashtra State Commission. The Central Railway was directed to charge the fare fixed under section 30(1) of the Railways Act, 1890 for AC chair bogies and not the unjustifiable first class fare recovered on the alleged grounds that the AC chair bogies in question were an improved version fitted with additional facilities [*D.S. Shipehandler* v. *The Manager, Central Railway, Bombay* 1991 (I) *CPR* 121, First Appeal No. 3/88 (NC) followed].

Regarding the quality of service, it is noticed that rail compartments, waiting rooms, platforms, toilets, are minimally cleaned, taps are usually devoid of water, fans out of order, window shutters faulty, leakage of rain water in compartments, seats in first class compartments not cushioned as per the specifications laid down by the Railway Board, air-conditioning not provided passably, and so on. Trains hardly ever run on time, and no accurate information about their delayed departures and arrivals is generally available. The argument in defence of the poor maintenance and deficient service by the Indian Railways is that railway fares are too low to cover costs. Consumer courts, usually, award compensation for any of the above deficiencies. The Ministry of Railways issued in December 1994 an order, perhaps the first of its kind, that compensation awarded by various courts against the Railways be recovered from the officials responsible.

Contrary to the interest of railway users, section 15 of the Railway Claims Tribunal Act, 1987 eliminated the authority of the consumer courts for settling certain claims from passengers, such as refund of railway fares and freights or claims for loss, destruction, damage, deterioration or non-delivery of luggage or animals entrusted to railway authorities for transport. Under this Act, the Railway Claims Tribunal and its benches have been given the exclusive jurisdiction for these complaints. Though the Tribunal settles claims expeditiously, it is distance-wise not so accessible

as the district consumer courts (forums), because benches of the Railway Claims Tribunal are not set up in every district.

Telephones

Complaints of inordinate delay in getting a telephone connection, dead telephone machines and excess billing are widespread. The Telecom Mission, launched in April 1986, aimed at enhancing subscribers' satisfaction level, both by improving quality of service and by increasing accessibility, particularly in rural, hilly and tribal areas. Since developmental strategies and plans were drawn and implemented as per clear-cut objectives and specific targets under this Mission, there has been definite improvement in the telecommunication facilities provided in India. The service indicators showed a marked improvement as given in the table below:

Performance Parameters	Status During	
	March 1986	March 1993
Local call success rate (per cent)	90	97.08
STD call success rate (per cent)	20	88.15
Telephone fault rate per 100 stations/month	35	16.31
Telex fault rate per 100 stations/month	62	15.18
Percentage of effective manual trunk calls	73	80.04
Delivery of telegrams within 12 day-light hours (per cent)	29	92.95

Source: *India 1993: A Reference Manual*, p. 625.

Regarding the complaints about billing, non-payment of a bill, even a faulty bill, within the stipulated period of fifteen days results in disconnecting the telephone line and, if the bill remains unpaid for six months, the connection is permanently forfeited. The telephone authorities, on the contrary, hold for thirty years the right to send additional bill under the Limitation Act, 1963, if a subscriber is under-billed [*Starfax Associates* v. *Mahanagar Telephone Nigam, Ltd.*, [1991] 1 *CPJ* 523]. Additionally, they claim that under Rule 443 of the Rules framed under the Indian Telegraph Act, 1855 no written notice is required before disconnecting, mere telephonic notice would suffice. Prior to the COPRA, 1986, telephone subscribers had only one remedy, section 7-B of the Telegraph Act, 1885 which provides for arbitration in their disputes with the Department of Telecommunications. Even the ordinary courts gave rulings favourable to the Department. In 1970 the Allahabad High Court mandated that no notice was required before disconnecting the telephone facility for non-payment of charges [AIR 1970 Allahabad 145]. The Estimates Committee, 1981-82 found that during 1977-80, as many as 4,783 telephone lines were wrongly disconnected, even when the relevant bills had been paid. The Committee, therefore, strongly reiterated that 'when the final stage to disconnect a telephone on the ground of alleged non-payment of bills is reached, the disconnection should not be ordered unless a written notice is sent to the subscriber at the latter's (subscriber's) cost, by registered post, acknowledgement due' [Ministry of Finance, 1987]. Now, even the High Courts insist on applying Rule 421 of the Indian Telegraph Rules, instead of Rule 443 in matters of disconnection. Under Rule 421, notice is essential for disconnecting a phone, emergencies excepted. In yet another judgement, favourable to subscribers, the Calcutta High Court absolved the subscriber from the liability to pay rent, when the telephone was out of order [*Naresh Chandra* v. *Union of India*, AIR 1987 Calcutta 147].

However, it is not always feasible for telephone subscribers to rush to High Courts. The COPRA, 1986, has indeed proved a boon to the distressed telephone subscribers. In the case of *Union of India* v. *Nilesh Agarwal*, the National Commission establishes that the facility of telephone is a 'service' as defined in section 2(1) (o) of the COPRA and the telephone subscriber is a 'consumer' as defined in its section 2(1)(d) of the COPRA [1991 (I) *CPR* 348]. As a result, consumer courts have jurisdiction to decide complaints about telephones. The Madras State Commission has, like the Calcutta High Court, granted rental rebate, when the telephone was out of order [*Officer-in-charge, Kanjarampettai Telephone Exchange, Madurai, and Another* v. *Consumer Rights Protection, Madurai and*

Another, 1994 (I) *CPR* 425]. Further, at times, excessively inflated bills for thousands of rupees are handed down to subscribers, especially after the availability of the STD facility. It is just impossible for any telephone subscriber to pay such huge amounts within a short period and that too, for no fault of his. He is supposed to complain about the inflated bill only after first paying the bill, and then wait for the outcome of the inquiry and for the rebate. On an application filed by the Consumer Education and Research Centre, Ahmedabad, before the Gujarat High Court, the Court directed the telephone authorities to devise a procedure to redress the grievance regarding the insistence on first paying the full amount of the disputed excess bill and then inquiring about its validity. As a result, the High Court recommended an arrangement for bills, whereby when the number of calls charged exceeds by more than double the maximum number of calls recorded in the preceding three quarters, the subscriber may get issued an *ad hoc* bill for lesser amount, which he is required to pay till the dispute is settled (order of the Gujarat High Court in the Special Leave Application No. 1515 of 1979, also published in the *Ahmedabad Telephone Directory of 1988*). Subsequently, in view of the possibility of false metering under certain conditions, the Department of Telecommunication made a provision in the Post and Telegraph Manual under para 434 to split the disputed bill into two parts- one based on the average of past three bills plus 10 per cent more and the second for the remaining disputed amount- and the subscriber is obliged to pay the former provisionally, till the investigation is completed. However, the National Commission is of the opinion that there cannot be any 'rule of thumb' that can be applied to resolve disputes of excess bills, and that consumer courts should ask for adequate evidence to legally justify computing a bill on the basis of average number of calls made during the two years immediately preceding the period for which the inflated bill is received [*Telecom District Manager* v. *Kalyanpur Cement Ltd.*, [1991] 2 *CPJ* 286 (NC) and *District Manager, Telephones* v. *Niti Saran* [1991] 1 *CPJ* 48 (NC)]. There can be several reasons for excess billing, a few of them attributable to the subscriber himself, such as unauthorised access to telephone apparatus and sudden spurts in the calling pattern on various conceivable occasions, e.g., marriage, illness, etc. But in most of the complaints, the telephone authorities are found responsible, owing to their defective metering equipment, delay in disconnecting a line after a STD call, mistakes in metre reading or in billing, malpractices resorted to by telephone employees- diverting the telephone line illegally and thus recording someone else's calls on the subscriber's metre, etc. Consequently, consumer courts often ask the concerned authorities to keep under surveillance the telephone apparatus for which excess bill is issued. The system of locking the telephone apparatus with one's own secret code number is one of the consumer-friendly measures introduced by the telephone authorities to avoid excess billing. Not only subscribers, but STD/ISD booth users too at times pay more because of the illegal tampering by booth operators. The new, full-proof system of 'factory frozen' loggers, in which tampering with parameters is impossible at the booth, is also being introduced.

In all cases of excess billing, consumer courts never inquire into the reasonableness or justifiability of the tariff rates or charges fixed by the Department of Telecommunications under the Telegraph Act, 1885. In fact, in one complaint a subscriber sought such type of reliefs as follows: (i) a reasonable rate of interest should be paid to subscribers who pay deposits for the Own Your Telephone (OYT) scheme; (ii) the existing stipulation for deducting Rs 400 per annum from the deposit as long as the telephone under the OYT scheme is used, should be refixed on a fair basis; and (iii) the ceiling fixed at Rs 6,000 should be struck down as arbitrary. The National Commission decided that these grievances do not amount to deficiency in service, according to the COPRA [*Madras Provincial Consumer Association* v. *Department of Telecommunications*, [1991] 1 *CPJ* 479 (NC)]. Concerning the interest demanded by consumers on their security deposits for various facilities, like telephone or electricity the Supreme Court asserts that these facilities are provided on credit. For, the bills are

received a long time after the facilities are used. So the security deposits are really adjustable payment of consumption charges. Further, no law- neither the Interest Act, 1978 nor the unwritten common law nor equity- casts any obligation on such public sector utilities to pay interest on security deposits [*Ferro Alloys Corporation Ltd.* v. *A.P. State Electricity Board* AIR 1993 Supreme Court 2005]. In addition, the National Commission affirms that under Rule 445 of the Indian Telegraph Rules, the Telecom Department has power to demand additional security even from old subscribers, upto the extent of one year's advanced rental [*Accounts Officer (PRO) TDM (Telecom District Manager)* v. *Shamsher Singh*, 1994 (I) *CPR* 463].

Electricity

Under the COPRA, 1986, supply of electricity or other energy is regarded as a service and its users, consumers. Certain consumer courts have erroneously decided that they have no authority to hear complaints, when the electric power is used for commercial purposes [*M/s Sri Ananda Ice Factory* v. *The Assistant Divisional Engineer, Electricity and Another*, [1993] 3 *CPJ* 1812]. This mistakenly implies that electricity is a good and not a service, since consumer courts are precluded from hearing complaints about 'commercial' sale of goods (section 2(1)(d)(i)). But, they are empowered to hear complaints about sale of service to all including commercial and industrial establishments (section 2(1)(d)(ii)). The National Commission maintains that supply of electric power is a service, as it is on a continuing basis, and even when no unit is consumed, minimum charges for maintaining it have to be paid. [*Manju Singh Chauhan* v. *M.P. Electricity Board*, [1992] 1 *CPJ* 73 (NC)].

The Delhi Electricity Supply Undertaking (DESU) had to compensate for the following seven drawbacks in supply, which amounted to deficiency in service: failure to prepare and serve bills for the consumption of electricity at the appointed time in accordance with the billing cycle; issuing bills without actual meter-reading; issuing a bill for heavy arrears; claiming arrears without details of the period to which they pertained; serving a bill on a Sunday and asking the consumer to pay over a lakh of rupees within four days under threat of disconnection thereafter; and actually disconnecting the electric power supply even before the last date specified for payment of the bill [*Y.N. Gupta* v. DESU [1993] 1 *CPJ* 27 (NC)]. It was an *ex-parte* order, since none appeared on behalf of the DESU. But the DESU again applied to the National Commission for setting aside the order on the ground that they had not received the notice of the hearing. The National Commission reflected that it was an incorrect ground, and that it had caused further harassment and avoidable expense to the complainant. DESU was, therefore, ordered to pay an additional amount of Rs. 2,000 as cost of the second hearing [*Delhi Electricity Supply Undertaking* v. *Y.N. Gupta*, [1993] 3 *CPJ* 370 (NC)].

Delay in supplying electricity to residential areas as well as disconnecting power supply for no valid reasons or without notice are all instances of deficiency in service. Similarly, loss due to fire caused by sparks in power supply lines, or loss due to failure to maintain power supply at minimum voltage required, is compensated by consumer courts. But voltage fluctuations, unless they are due to negligence, do not amount to deficiency, even if they cause vital damage to electrical equipments and gadgets.

Consumers of electricity, in addition, have to put up with statutory power cuts and load rostering. Consumer courts do not entertain complaints pertaining to loss due to frequent power cuts resulting from shortage of electricity [*Chairman, U.P. Rajya Vidyut Parishad and Others* v. *Gayatri Poly Pack Industries, Bhojipura and Others*, [1994] 1 *CPJ* 126 (NC)]. If the courts award compensation for such loss, maybe, the State Electricity Boards (SEBs) would improve and avoid power cuts. For, the SEBs which generate and distribute power, set tariffs and collect revenues are held responsible for the shortages to a great extent, because of their inept operational and financial performance. The Plant Load Factor (PLF), i.e., actual energy generated by a power plant during a given period as percentage of the maximum energy that could have

been produced with the plant working at full capacity, is an important indicator of operational efficiency of power plants during periods of excess demand. The average PLF is very low in the case of SEBs as compared to that of power plants in the central sector and even in the private sector. '(I)f the SEBs were to reach the same PLF levels as in the Central power generating segment, an additional amount of about 5400 MW of power will become available. This will effectively eliminate the supply shortage' [Ministry of Finance, 1994, p. 134]. The low capacity utilisation of power plants is largely due to deficiencies in the operation and maintenance of plants, although there are other contributory factors including inadequate and poor quality fuel. 'Significant improvement in the PLF of thermal power stations can be effected through medium term measures like proper maintenance planning. In the long term, the availability factor of the older thermal power plants can be improved by appropriate Renovation and Modernization (R&M) programmes' [Ministry of Finance, 1995, p. 138]. Secondly, the transmission and distribution (T&D) losses, as a percentage of total power available in India (22.9 per cent in 1990-91 and 21.8 per cent in 1992-93), are much higher than the international average of less than 10 per cent. The losses are due to factors like substantial pilferage mostly with the connivance of employees of the SEBs, inadequate billing, under-investment in the transmission system, sparsely distributed loads in the rural sector, or the like. It is pointed out by the Advisory Board on Energy that 'a one per cent reduction in overall T&D losses is estimated to be equivalent to an addition of 380 MW of generating capacity' [CMIE, 1994, p. 15]. Although the existing power rates for domestic consumers and for the agricultural sector, determined on the cost-plus accounting principle, have a complex structure of inherent subsidies, yet they do not benefit them because the T&D losses are ultimately passed on to consumers. Additionally, the industrial consumers, i.e., High Tension (H.T.) consumers, forming the largest percentage of power consumers, at present bear the maximum impact of high T&D losses. Yet their share in power consumption is gradually declining, partly due to their greater reliance on captive power plants. The SEBs' conditions of supply include the prerogative of issuing supplementary bills in cases of pilferage. Thus, the consumer is held accountable for pilferage [*M.P. Electricity Board* v. *Smt. Basantibai*, AIR 1988 Supreme Court 71; and *Gujarat Electricity Board* v. *Viral Enterprises*, 1994 (I) *CPR* 793]. Fortunately, section 26(6) of the Electricity Act, 1910, permits enhancing of bills issued earlier only for six months and no more. Now, a pricing structure based on the long-run marginal cost principle and the seasonal use and time of use pricing (higher charges for peak hours) is likely to be introduced. Also, a National Power Tariff Board at the Centre and Regional Power Tariff Boards in Delhi, Bombay, Calcutta and Shillong are to be set up, to evolve principles and guidelines for fixation of tariffs [Ministry of Finance, 1995, Pp. 139-40]. Consumers would not resent the hike, only if there is commensurate increase in efficiency-maintenance of correct voltage without breakdown or power cuts and accurate billing.

Today, there is no proper collection and recovery of the dues by the SEBs. The commercial losses of all the SEBs together stood at Rs 4,117 crore by March 1992, Rs 4,363 crore by March 1993, and were estimated at Rs 4,875 crore by March 1994. Consequently, the outstanding dues payable to the central sector power corporations by the SEBs too, rose to Rs 5,009 crore on February 28, 1994. Besides, the SEBs had to pay Rs 2,696 crore to the Coal India Ltd. as of September 1993. As a result, the central power corporations' operation and maintenance of their existing plants are affected. Their expansion programmes, and capacity to borrow, particularly from multinational institutions also get affected. The World Bank did not make disbursement to the National Thermal Power Corporation (NTPC) after February 28, 1994, as the stipulation that NTPC should contain its arrears from the purchasers of power to two months' billing had not been complied with. The total undisbursed balance of external assistance in the power sector stood at Rs 26,842 crore by March 1993 which constituted about 40 per cent of the total unutilised external assistance. By March 1994 it stood at Rs 18,316 crore. By the end of November 1994, the

cancellations of the World Bank loans to various power projects were estimated to be Rs 165 crore [Ministry of Finance, 1994, p. 135; Ministry of Finance, 1995, p. 140]. In order to reduce NTPC's huge arrears from the SEBs, the NTPC is now permitted to take such measures as (i) to shut off or restrict power supply from its power stations in case a SEB does not comply with agreed financial and commercial terms, and (ii) to charge penal rates for drawal of power exceeding the agreed amount [CMIE, 1994, p. 28]. Such measures ultimately make consumers of power suffer for the financial problems of the SEBs.

Liquid Petroleum Gas

Liquid Petroleum Gas (LPG) or cooking gas is used largely in urban areas. It is supplied in India by three public sector giants, Indian Oil Corporation (IOC), Bharat Petroleum and Hindustan Petroleum. Their agencies distribute LPG to consumers. Consumer courts include LPG in the definition of 'service' not 'goods' under the COPRA, 1986. Since the petroleum corporations themselves do not make a claim that they sell any products, the LPG customers are to be regarded as consumers or hirers of service and not purchasers of any good. They are consumers of both, the oil company and the distributor. The distributor is not paid by LPG hirer yet he does not really give service free, he gets commission on the basis of a contract with the oil company *[Ideal Stores* v. *L.S. Lalitha and Others*, I (1992) *CPJ* 269 (NC)]. An applicant for LPG connection, even when he pays nothing at the time of registration, promises to pay later when the connection is given. Enrolling is considered as a kind of deferred payment by a potential consumer. He is, therefore, entitled to courteous customer service [*Dharam Chand* v. *Mandeep Gas Service*, 1993 (II) *CPR* 192 and *M/s Mohindra Gas Enterprises* v. *Jagdish Poswal*, [I (1993) *CPJ* 90 (NC)]. Besides, in the LPG Regulation and Supply Order of 1988, issued under the Essential Commodities Act, 1955, a consumer is defined as 'a person who is registered with a distributor or oil company for supply of LPG cylinder'. The gas users' grievances too, begin right from enlisting and registering for supply of a gas connection. There are waiting lists of at least a thousand prospective customers with each of the distributing agencies in a city like Pune, because no new connection was sanctioned from 1988 to 1994. The number sanctioned in 1994 was just 20 lakh for the entire country, and they are being distributed from April 1995 to a preferred category of persons, like physically handicapped, retired staff of the armed forces, or government servants who have served abroad, etc., on payment of Rs 5,000 as deposit. Each local distributor is asked to prepare a waiting list, instead of a central list with the principal company. This gives scope to unscrupulous distributors to indulge in many irregularities. Most owners of restaurants and eating places get hold of domestic cooking gas by paying extra to distributors, either because they do not possess a commercial connection or because the commercial cooking gas is a great deal costlier. Now LPG is to be supplied to commercial establishments only through private parallel gas suppliers while the public sector would cater to household users. But lack of facilities for LPG imports is the main constraint for parallel marketeers.

Another major consumer grievance is that, after endless wait when the connection is to be officially registered, the customer is compelled to buy a gas stove and other accessories from the distributor's shop only. This is a restrictive trade practice not only under section 2 (1) (nn) of the COPRA, 1986 but also under the MRTP Act, 1969. Other complaints include overcharging, delay in replacement or short measure. Similarly, distributors are responsible for providing reliable and timely repair service for gas stoves, which is hardly ever provided punctually. Hence most of the customers prefer to call private mechanics. This not only costs the customer money-wise but, in addition unknowingly the distributor is absolved of his liability for any mishap, since he claims unauthorised handling of the gas stove as the cause of mishap. Again, due to delay in replacement of cylinder for longer than the prescribed duration of one week, the cash-and-carry system has come into vogue, for which too, the consumer pays extra for transport, and also runs the risk of accidents on the way home. The National Commission observes that delivery of

cylinder without rechecking at the time of delivery is a deficiency in service, as such rechecking is mandatory under the procedure laid down for supply of cooking gas [*Indian Oil Corporation* v. *V. Venkataraman and Others*, II (1993) *CPJ* 218 (NC)]. The most severe hardship a gas user has to endure at times is when a cylinder is defective and bursts causing fire, personal injuries, or even death. In such accidents, the distributor, the oil company, the manufacturer and the insurer are usually held jointly and severally responsible for pecuniary compensation.

Two committees, one of them appointed by the government, recommended several measures pertaining to such issues as registration of new connections, mode of delivery of refill, underweight cylinders, setting up of complaint cells, inspection of the working of distributors, safety, compensation for loss due to accidents or public liability insurance cover for indemnifying the LPG suppliers [Ministry of Petroleum and Natural Gas, 1987]. Most of the recommendations are yet to be implemented.

Banks and Other Financial Companies

There has been a phenomenal expansion of the financial sector, in terms of geographical coverage as well as financial spread in the last two decades. It has led 'to the increase in our savings rate especially of the household sector' [Narasimham, 1991]. This growth of the banking system has coincided with a deterioration in banking services, also unparalleled in the history of banking anywhere in the world [Pai, 1991]. The Estimates Committee of the Eighth Lok Sabha in its report on *Customer Service and Security System in the Nationalised Banks*, regrets 'to note that more than a decade has passed after the Working Group on customer services submitted its final Report in 1977, and still all the 121 recommendations finally accepted by the Government have been implemented by only 7 out of the 28 public sector banks' [Ministry of Finance, 1988]. The Estimates Committee of the Ninth Lok Sabha in its 11th Report of 1990-91 observes: 'In most of the Public Sector Banks the percentage increase in total establishment expenses in 1986 over 1985 outstepped the increase in business for the same period... The growth in productivity per employee is only marginal in relation to the increase in the wage bill. Productivity ratios ... are continuously below the industry level averages... No concrete measures appear to have been taken to bring the productivity of these banks upto the industry level average... (Measures should be undertaken) to evaluate the different deposits, loans and service needs of customers by classifying them according to age, profession, sector, location, saving propensity and other group characteristics' [Ministry of Finance, 1991]. Similarly, the Central Vigilance Commission [1987] recommended strengthening and activating of the vigilance machinery in banks to prevent malpractices by dishonest elements. Hardly any improvement is so far in sight.

Most of the grievances of the bank customers pertain to (i) delay and discourtesy in counter transactions, (ii) bank passbooks maintained shabbily, not filled in detail, nor updated regularly, (iii) inordinate delay in clearance of cheques, drafts, etc., (iv) absence of decision-making even in simple, trifle matters at branch level, (v) slow processing of loan applications, with too much paper work, (vi) banking service charges, and occasionally (vii) frauds and also thefts from safe deposit lockers.

Banking service charges were introduced in 1986, ironically declared as the Year of Bank Customers. A few charges are reasonable and should have been recovered long back. But while collecting certain other charges, banks indulge in unethical and *restrictive* trade practices, such as the practice of collecting on each and every outstation cheque postage and registration charges, when actually hundreds of cheques from a particular place are sent in one registered envelope; all the banks collectively determining the rates of service charges unilaterally, without compiling any proper data and without any cost accounting. It is true that bank customers in India, used as they are to free or highly subsidised services in public sector banks, resent any charges. Charges are inevitable because performance of public sector banks is also, today measured with the same yardstick of profitability as that for private sector or foreign banks. But these charges should not be unreasonable. For

example, current account holders pay ledger folio charges at the rate of Rs 25 per folio of 40 entries, after a minimum number of free folios based on the average balance held. The State Bank of India, Vapi Industrial Township branch, in order to avoid calculation of the applicable charges, recovered Rs 300 from each account in March 1994, even without advising the account-holders about such debit. The branch had 2,000 current account-holders at that time, hence it collected Rs 6,00,000 whereas, by rule, it could have collected just about Rs 75,000. It is only after agitating for about ten months and through the good offices of a powerful consumer organisations, that this grievance was settled. In fact, the All India Bank Depositors' Association explains to the Indian Banks Association that they would willingly pay charges, provided they are rational, have bearing on the quality of service and are fixed after consultation with customers or their organisations.

Complaints regarding deficiency in service rendered by banks, public sector as well as others, are brought before consumer courts and the MRTP Commission. Banking is included in the definition of 'service' given in the COPRA, 1986 (section 2(1)(o)). Even when no charges are paid for banking service as in the case of savings bank account, consumer courts do not consider it free of charge. The interest which banks earn on the advances lent out of customers' deposits is several times higher than what they pay to depositors. The difference between the two is a charge or consideration which customers pay to banks [*Branch Manager, Canara bank, Bangalore* v. *Shri K.R. Hanumantha Rao*, 1992 (1) *CPR* 401]. Following judgements provide certain bench marks. Passing a forged cheque as well as wrongfully dishonouring a cheque are both deficiencies in banking service [*Prakash R. Shenai* v. *Syndicate Bank*, 1994 (1) *CPR* 582; and *Bipin Chandulal Shah* v. *Branch manager, Dena Bank and Another* 1994 (1) *CPR* 430, respectively]. Delay in honouring an irrevocable bank guarantee, when invoked, is also a deficiency in service. The National Commission rejects the argument, that there is no privity (legally valid relation) of contract between the bank and the guarantee-invoker, so he cannot be a 'consumer' of the bank. It contends that since he is a beneficiary of the contract of service between the bank and the account-holder, who is the customer of the bank, he is entitled to service without deficiency. Also, banks utilise the money during the interim, so they are ordered to pay interest for that period. [*Bank of India* v. *H.C.L. Ltd and Another*, 1993 (3) *CPR* 30; and *Executive Engineer, Upper Ganga Canal Modernization Unit Divn. I. U.P.* v. *Punjab and Sind Bank*, 1994 (1) *CPR* 27]. Similarly, a bank cannot, without specific instructions to that effect, transfer funds from its customer's account to a third party who was to supply certain machinery to the customer. The National Commission had asked the bank concerned to reimburse the customer for the amount so transferred with interest [*Dilip Madhukar Kambli v. Bhandari Cooperative Bank*, I (1992) *CPJ* 68 (NC)]. Likewise, staying the operation of a customer's bank account on instruction even from government is a deficiency [*Dr. Purushottam Nagar* v. *UCO Bank, Jaipur and Another*, I (1994) *CPJ* 107 (NC)]. Loss of ornaments from a bank locker is negligence [*Punjab National Bank* v. *K.B. Shetty*, 1991 (2) *CPR* 633]. So both the concerned banks were liable to compensate the loss. But sale of mortgaged goods for non-repayment of bank-loan is no deficiency [*Janak V. Chandan* v. *Ahmednagar Sahakari Bank, Ltd.* 1993 (1) *CPR* 153]. Similarly, consumer courts do not entertain complaints about non-grant of loans, or of financial accommodation, such as overdrawing facility or non-release of sanctioned loans. They are not considered as any deficiency in service [*M/s Natraj Borewell Services* v, *The Asst. General Manager, Indian Bank and Others*, III (1993) *CPJ* 379 (NC)]. Again, determining such complicated issues calls for detailed, elaborate scrutiny of accounts maintained and assessment of voluminous documentary evidence in relation to various transactions over a long period. Hence civil courts are the proper place for settling such complaints [*B.K. Sethi, M.D., Indu Video Films (P) Ltd.* v. *Chairman, Delhi Financial Corporation and Others*, 1993 (3) *CPR* 188]. Consumer courts cannot sit in judgment on such decisions of banks, who have to follow the guidelines laid down by the Reserve Bank of India [*M/s Bunny's Gift and Novelty Centre* v. *Punjab and Sind Bank*

1993 (3) *CPR* 322]. Again the National Commission maintains that the Reserve Bank's distinct transactions under the Foreign Exchange Regulation Act (FERA), 1973, like conversion or reconversion of foreign currency, cannot be considered as providing any banking service. Hence, consumer courts cannot entertain complaints concerning them.

The establishment of consumer courts and the competition from foreign banks in the present liberalised and privatised regime have worked in the interest of bank customers. The Goiporia Committee [1991] on 'Customer Service' too, acknowledges improvement, but simultaneously emphasises the need for customer service audit, along with its several other recommendations. The Reserve Bank of India asked the banks through its circulars to implement some of the recommendations of the Committee, such as extension of business-hours for non-cash transactions or acceptance of soiled, mutilated or small denomination notes [RBI, 1993, Pp. 763-764]. Most of the banks have instituted internal complaint procedures (ICPs) for resolving customer complaints, e.g., one ICP recognises the customer's right to see senior bank officials for his complaints on the fifteenth day of the month after 3.00 p.m. In order to increase the involvement and motivation of their staff, certain banks have introduced in some of their branches the Quality Circle movement or the Japanese management technique of *Kaizen*. *Kaizen* implies on-going daily improvement involving everyone-top to bottom [Bhatnagar, 1994, p. 368]. Further, the Reserve Bank of India proposes to appoint fifteen ombudsmen in the major states; three of them have been appointed so far. If a customer's complaint against his bank is not solved by the bank within 60 days, or the resolution does not satisfy the customer, he can approach the ombudsman. After hearing both the parties, the ombudsman would try settlement, and if it is not possible, he would make recommendations which may be accepted or rejected by either party [Buch, 1995, p. 7]. The government is in the process of devising a Customer Satisfaction Index (CSI) for banks. The CSI would be a scientific parameter to judge the level of customer satisfaction in banks and rank them on that basis. Ideally, it is branches of banks that need to be rated, but with more than 60,500 branches in the country it is not workable. Besides, satisfaction is a nebulous and subjective entity. Quantifying it will not be easy. Hence, business per employee would perhaps be a better index for rating the quality of customer service in banks, for the quantum of business in public sector banks depends, principally, on the quality of service [Narula and Bhusnurmath, 1994, p. 9, cols. 1-8].

Insurance

A large number of disputes arise in settlement of insurance claims due to delay in settlement, repudiation of claims or insufficient amounts of claims. In many countries insurance companies have voluntarily institutionalised arrangements to resolve such disputes in an independent, efficient, expeditious, inexpensive, fair and user-friendly way. However, authorities appointed for the purpose, such as the Insurance Ombudsmen, do not adjudicate on disputes relating to rate of premium or commercial risks. Consumer courts in India may be compared with them. Additionally, governments regulate insurance business in some form or other in the interest of both the insured and insurers, for maximisation of their yield, and safety of their funds.

The first attempt to regulate insurance business in India, was the Indian Life Assurance Companies Act, 1912. But it was the Insurance Act, 1938 which provided comprehensive arrangements for running the insurance business fairly, protecting the legitimate interests of the insured as well as the insurer from undue losses resulting in their insolvency. This Act provides for a statutory functionary- the Controller of Insurance- whose supervisory and regulatory powers, duties and responsibilities were defined in the Act. After nationalisation of the insurance business in the country, these supervisory and regulatory powers were curtailed in the mistaken belief that a nationalised industry did not require any supervision and that its accountability to government would be adequate. Certain operations, such as customer service, claim settlement, resolution of disputes, reasonableness of tariffs or prevention of restrictive trade practices require

professional regulation. Hence, the Committee on Reforms in the Insurance Sector recommended the restoration of the full statutory powers of the Controller of Insurance on a high priority basis before the private sector is allowed to enter the insurance field. The Committee also recommended setting up of an insurance regulatory authority in due course. Moreover, the significance of computerisation and of the single point of contact for prompt and effective customer service was stressed in its report [Malhotra, 1994, Chapters X-XV].

Denial of insurance claim on valid grounds does not amount to deficiency in service, under the COPRA, 1986. In insurance contract it is considered as an essential condition that the full details are disclosed by the insured; otherwise, consumer courts uphold such repudiation [*Draupadi Devi S. Chaudhary* v. *United India Insurance Co., Ltd.* I (1993) *CPJ* 94 (NC)]. Similarly, transparency is required from an insurer company also. It cannot apply any confidential rules or instructions which have not been disclosed earlier to the policy holders, and have not been incorporated in the insurance policies [*Ramaseshaya Row & Boiled Rice Mill* v. *United India Insurance Co., Ltd.* I (1993) *CPJ* 56 (NC)]. Further, *mala fide* repudiation of claims on frivolous and technical grounds, delay and negligence in settling claims, unjust reduction in the amount of claims, etc. are regarded as deficiency in insurance service. Not only the claim is upheld but interest and compensation for mental agony are awarded to the policy holders in such complaints. Even after the policy lapses for non-payment of premiums, under section 65 of the Contract Act, the LIC is held liable to refund to the policy holder the premiums paid. Consequently, the LIC framed a new rule to give benefit to such lapsed-policy holders.

Shares, Stocks and Deposits

Investors, particularly small investors, meet with many difficulties in their investment transactions, e.g., non-receipt or delay regarding securities, share certificates, their transfer, dividend warrants, allotment/refund advice, etc. The earlier legislations for protection of investors include certain relevant provisions in the Capital Issues (Control) Act, 1947 (now repealed), Companies Act, 1956 and the Securities Contracts (Regulation) Act, 1956. For various reasons these provisions have not been so effective. Hence, the SEBI, was constituted first through a Resolution of the Department of Economic Affairs, Ministry of Finance, Government of India (Notification No. 1/44/ SE/86 of April 12 1988). Later it was accorded statutory status under an Ordinance dated January 30, 1992 and then under the SEBI Act, 1992 on April 4, 1992. Its objectives are to protect the investor's interests, to redress his grievances promptly, and to prevent malpractices in transactions of securities through regulation of stock-brokers, sub-brokers, share transfer agents, bankers and registrars to issues, underwriters, portfolio managers or investment advisers.

Consumer courts have authority to adjudicate in complaints relating to securities. The word 'securities' is defined in the Securities Contracts (Regulation) Act, 1956 to include shares, scrips, stocks, bonds, debenture stock or other marketable securities of a like nature of any incorporated company or other body corporate, government securities or other instruments declared by the central government as securities, and rights and interests in securities. The same definition is borrowed by the SEBI Act, 1992. Consumer courts regard all such securities as goods because the definition of goods under the COPRA, 1986 is also very wide and includes every kind of movable property, except money and actionable claims. In fact, the COPRA adopts it from the Sale of Goods Act, 1930. Likewise, trading in shares, transactions in shares with investment consultants or brokers are regarded as service rendered to investing consumers. Recently, the National Commission has decided that offer of a safe avenue of investment of one's funds with assurance of a reasonable return and prompt repayment is a 'service'. So consumer courts are conferred authority to give relief in such complaints of depositors as non-payment of interest or non-repayment of principal on maturity [*Neela Vasant Raje* v. *Amogh Industries*, III (1993) *CPJ* 261 (NC)]. Thus, almost all the grievances of investors are justifiably resolved by consumer courts.

However, *a fortiori*, an application for allotment of a share cannot constitute a 'good'. Consumer courts have, therefore, no authority to hear complaints about them. The Supreme Court ordains thus in *Morgan Stanley Mutual Fund* v. *Kartick Das* [1994(3) *Judgment Today* 654]. In 1963, it had decided, that a share is not a sum of money, it represents an interest measured by a sum of money and made up of diverse rights contained in the contract evidenced by the Articles of Association of the company. It is after allotment that rights may arise as per those Articles [*Sree Gopal Jalan* v. *Calcutta Stock Exchange Association, Ltd.*, [1963] 33 *Company Cases* 862 (Supreme Court)]. The Court also deemed this case as an instance of speculative and vexatious litigation and adventurism, so the Court thought it appropriate for award of costs of Rs 25,000 in favour of *Morgan Stanley*. There are, however, some points to be considered: (i) The MRTP Act, 1969, was amended in 1991 to include 'issue of shares before allotment' in the definition of goods so that the MRTP Commission is empowered to hold an enquiry regarding *restrictive* and *unfair* practices concerning public issue of shares, whereas consumer courts are prevented from hearing such complaints, because of the Supreme Court's decision. (ii) The MRTP Commission too, is enjoined not to grant provisional injunction in matters relating to public issue of shares through the Supreme Court judgment in *Altos India Ltd.* v. *Suresh Goyal and Others*, [Civil Appeal No. 687/1994]. (iii) Although the SEBI is the regulatory authority for new issues of companies, and as such, looks after the interests of investors, yet the disclaimer clause in the approval given by the SEBI asserts that 'in vetting the draft prospectus/ memorandum ... SEBI does not take responsibility for the financial soundness of any scheme or the correctness of any of the statements made or opinions expressed in the offer document' [*Vinod Rustogi* v. *Core Parenternals*, UTP No. 18 of 1993]. (iv) Even the appraisal made by the Industrial Credit and Investment Corporation of India (ICICI) is based on in-house estimates of the company's management and does not vouchsafe the correctness and propriety of such financial and economic estimates. Hence, if prospective investors have any doubt about the profitability of the company or likely benefits promised to them, they should have accessible remedy in the form of consumer courts to get the representations made by the company verified. But, as the Joint Committee to Enquire into Irregularities in Securities and Banking Transactions observes in its report, 'the small investor is the most neglected entity' [Mirdha, 1993, Vol. I, p. 103].

Further, there are many complaints of delay in refunding share subscription money of applicants, when they do not get allotment. Section 73(2A) of the Companies Act, 1956 provides for repayment of prospective investors' application money for allotment of shares and debentures within eight days from the day the company becomes liable to pay either because permission is not granted by the recognised stock exchange/s (section 73(2)), or because excess application money is collected (section 73(2A)). Either way a company is liable to pay interest in case of default. Rule 4D of the Companies (Central Government's) General Rules and Forms, 1956 prescribes the rates of interest which vary between 4 and 15 per cent according to the duration of delay in repayment. This legal provision does not allow any concession for administrative difficulties or postal delays or defaults, as it is a simple statutory monetary liability and not a penalty [*Raymond Synthetic Ltd.* v. *Union of India* [1992] *Company Law Journal* 209 (Supreme Court)]. Also, if the default is with regard to excess application money, failure to pay interest amounts to criminal liability of the company as well as of all the officers concerned with the default. Prosecution powers are delegated to the SEBI officials. Section 73(2B) of the Companies Act prescribes a fine upto Rs 5,000, and imprisonment upto one year, if such repayment is not made within six months from the expiry of the eighth day. Section 621A(7) of the Companies Act empowers the Company Law Board to make certain offences compoundable- it means condonation from prosecution for an offence in lieu of some consideration. However, the latter part of the offence, i.e., delay for more than six months, is non-compoundable, i.e., not condonable, even with the permission of the court (section 621A(7)(b)). In spite of these stringent

provisions there are several cases of delay and default in returning the application money with interest for several reasons. Fortunately, in March 1992 a scheme of 'Stock-Invest' was introduced by the SEBI to provide for a specific mode of payment whereby the issuer company can encash the instrument only after the allotment has been made. Also, the MRTP Commission asserts in *Sohan Lal Baldwa* v. *NEPC Agro-Foods Ltd.*, that refund of share application money is a 'service' as defined in section 2(r) of the MRTP Act, 1969, and delay in refund is tantamount to an *unfair* trade practice under section 36A of that Act [(1993) 2 *Company Law Journal* 368 (MRTPC)].

The SEBI is, in addition, issuing many guidelines to safeguard the interests of investors in both the markets, primary and secondary. For instance, to prevent thefts and other malpractices, the SEBI requested the companies on May 6, 1994 to get from investors the details of their bank accounts- account number, branch, and certain other particulars- and include the same in dividend warrants or advices for interest. Further, the SEBI laid out norms for the regulation of transactions between investor-clients and brokers and issued a circular on November 18, 1993 to all the stock exchanges asking them to amend their bye-laws and incorporate these norms and enforce them from January 1, 1994. Besides, complaints of investors are attended to- recorded in computers and pursued to the end by periodical follow-ups by the SEBI. During 1991-92 out of 1.1 lakh complaints received, the SEBI was able to resolve 35,974. The SEBI also registers associations of active investors and shareholders to strengthen their interests and brings out publications, such as investor guidelines series and *Investor Grievances- Rights and Remedies.*

Housing Construction

The definition of 'service' in the COPRA as well as the MRTP Act was amended to insert 'housing construction' and 'real estate', in 1993 and 1991, respectively. In the case of the MRTP Act, the 1991 amendment has retrospective effect through an *'Explanation-* For the removal of doubts, it is hereby declared that any dealings in real estate shall be included and shall be deemed always to have been included within the definition of *service'*. Even under COPRA, prior to the 1993 amendment, activities pertaining to housing construction were included in the definition of 'service' as given in section 2(1)(o) of the COPRA. Construction of a house or a flat is related to immovable property, nonetheless it is a service. Services of a builder or contractor may be hired for consideration for the benefit of persons for whom construction is undertaken [*Lucknow Development Authority* v. *M.K. Gupta*, III (1993) *CPJ* 7 (Supreme Court) at p. 22]. Nonetheless, these amendments stress the magnitude of the problem. Severe scarcity of residential and commercial (non-residential) accommodation in urban areas has been aggravated by the existing legislation for rent control and urban land ceiling. Consequently, shelter-seeking consumers in towns and cities have been placed at the mercy of builders and contractors, and have to put up with sky-rocketing prices coupled with inferior quality of building materials and wide-scale malpractices prevalent in dealings of immovable property (real estate).

Ownership flats schemes were introduced in Bombay by resourceful refugees from Sindh after the partition of India in 1947, in order to find a solution to the acute and constant shortage of housing in several urban areas of Maharashtra, especially, Bombay. A flat or an apartment began to be legally recognised as a distinct unit of property which would be both, heritable and transferable. The construction and sale of flats on ownership basis have since then been the main activity of the real estate business and building trade in cities and towns. Gradually certain malpractices have crept into this activity, such as bogus sale of flats, misrepresentation to the prospective flat-buyers regarding title to the site of construction or regarding the plans and specifications sanctioned by local authorities, misuse of flat-buyers' various payments to builders, defects in construction due to use of sub-standard building materials and/or lack of supervision, size of the flat or amenities or both not provided in accordance with plan or with agreement to sell, delays in handing over possession of flats to flat-purchasers, delay in conveying the title of flats and/or land, and also in forming society/

association and transferring the title to the property to it, and a number of other irregularities. A committee was appointed on May 20, 1960 to find out a viable solution under the circumstances [Paymaster, 1961]. Based on the report of this Committee, the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 was passed to regulate the transactions between flat-purchasers and builders-developers-promoters, and to protect the rights and interests of the flat-buyers in matters of payments, quality of construction, legal transfer of title to flat-purchasers, forming either a cooperative society or an association of apartments or condominiums, etc. This Act is a unique, pioneering legislation, and later, different states enacted similar laws. It was initially to remain in force just for two years and in Greater Bombay only, but today it is applicable to almost all the cities, towns, suburbs and cantonments in Maharashtra. Yet, its duration expires on March 31, every five years. The purpose of such arrangement is difficult to comprehend. Section 3 of the Act places the liability on the promoter to furnish the prospective flat-buyer with essential details and relevant documents, while section 4(I) of the Act makes it mandatory for the promoter to enter into a written agreement for sale with the flat-buyer, and get it registered under section 32 of the Registration Act, 1908 before accepting any sum of money. The period given for registration of the agreement is generally four months from the date of signing. Under the Rules framed under the Maharashtra Ownership Flats Act, 1963 a model agreement to be made between the buyer and the promoter has been provided since 1987. Section 7 of the Act imposes on the promoter the liability to construct the building/s and develop the property strictly according to the agreement, as well as the plans and specifications which have been the basis for that agreement. Similarly, if any defects or unauthorised changes in the construction are noticed within three years of delivering the possession of the flat, the promoter is liable to rectify them. Section 12 enumerates the liabilities of flat-purchasers. Payment of money is, as a rule, an essential condition for a contract of sale. If the agreed price of the flat booked is not paid by a purchaser, the promoter, after giving due notice, is at liberty to cancel his booking by terminating the agreement and also sue him, if he has no reasonable excuse for not paying. But on termination of the agreement, the promoter must refund all the money received, although he is not required to pay any interest on it. The flat-purchaser, even after not abiding by the stipulated schedule of payment of instalments in the agreement, is still entitled to get the possession of flat, if he pays the sum defaulted with 9 per cent interest within a reasonable period (clause 6 of the model agreement). Again, the former agreements used to invariably provide for a *unilateral right to raise the agreed price* without changing the contents or other terms and conditions of the agreement and without enabling the buyer to oppose such an increase, on the grounds that the value of the money has depreciated by inflation and costs have increased. The model agreement does not include such a clause but promoters continue with it, because neither the Act nor the Rules expressly prohibit inclusion of such a clause. Further, the worst flaw in the working of the Act is that the Housing Commissioner, the authority provided to settle disputes between promoters and flat-buyers (section 7(2)), is not in existence nor was the power of that authority given to anyone else until as late as in 1987. By the amendment of 1986, Deputy Chief Engineer or any other officer of the rank equivalent to that of Superintendent Engineer has been empowered to take cognizance of such disputes and his decision 'shall be final'. But, as the Bombay High Court observes, 'any decision that is given by this competent authority cannot be enforced by the authority himself' [*Kalpita Enclave Cooperative Housing Society, Ltd* v. *M/s Kiran Builders Pvt. Ltd*, (1985) 88 *Bombay Law Reporter*, 100]. Flat-purchasers have to go to the civil court for its execution. They cannot approach consumer courts for enforcing any provisions of the Maharashtra Ownership Flats Act. Again any agreement relating to sale of immovable property is now chargeable with the *same* duty as is leviable on a conveyance, i.e., transfer of title to the property (Section 3, Schedule I, Clause 5g-a and Explanations I and II of the Bombay Stamp Act, 1958 in force from August 17, 1994). Builders

make agreements to sell flats before they are constructed. Flat-purchasers, while registering these agreements, pay the full stamp duty, leviable on actual transfer of flats. Flats are invariably not ready for years. Thus this amended Section of the Bombay Stamp Act, 1958 places an unfair burden on flat-purchasers.

Flat-purchasers can register with consumer courts their complaints about (i) false or misleading representation about the condition of the flat or house, (ii) defects in construction, (iii) delay in delivering possession, conveyance of title documents, etc., and (iv) violation of any condition in the agreement to sell. All these are either *unfair* trade practices as defined in section 2(1)(r) or deficiency in service rendered as defined under section 2(1)(g). The consumer courts are empowered to compensate the aggrieved complainant not merely to the extent of the value of the monetary loss suffered, but also for redressal of mental and emotional suffering, insult or injustice [*Lucknow Development Authority* v. *M.K. Gupta* III (1993) *CPJ* 7 (Supreme Court)]. Secondly, it is not necessary to point out the defects in construction at the time of receiving possession of the flat, nor within the period provided otherwise in the agreement or under other acts like the Development Authority's statutes. The period thus provided is usually very short. So such limitations prescribed under other laws are not applicable to complaints filed under the COPRA. Formerly, the claim could be made within the time provided under the general law, that is the Limitation Act [*Delhi Development Authority* v. *Govinda Rao and Others*, 1994 (I) *CPR* 93]. Now after the 1993 amendment of the COPRA, the period within which a complaint can be filed is of two years. Thirdly, if there is a delay in handing over possession of a flat/house for two or more years from the date of initial payment by the potential flat-buyer, he is entitled to get 15 per cent interest on all the payments made from the estimated date of completion to the date of actual delivery of the flat [*Harbans Singh* v. *Lucknow Development Authority*, 1994 (I) *CPR* 98]. However, the National Commission is of the opinion that the rate of interest to be charged from flat-buyers on defaulted payments, or pricing of a flat or house are not consumer disputes to be settled in consumer courts [*Delhi Development Authority* v. *Govinda Rao and Others*, 1994 (I) *CPR* 93]. Even a complaint about raising the price of a flat after registration is not entertained [*B.H. Tolani* v. *Rajasthan Housing Board and Another*, 1994 (I) *CPR* 700]. Further, complaints regarding functioning of cooperative housing societies cannot be filed in consumer courts [*Dilip Bapat* v. *Panchvati Cooperative Housing Society*, 1993 (I) *CPR* 174]. The appropriate forum to settle them is cooperative courts.

The number of complaints against builders filed in consumer courts in cities, like Pune, Bombay or Delhi is continuously on the rise (it is estimated to be 60 per cent of all complaints in the consumer court in Pune up to April 1994). Hence, responsible builder-promoters along with consumer organisations urge the government to revise the existing building laws and pass a comprehensive legislation for the construction sector with an exclusive, apex regulatory body. The Consumer Education Research Centre of Ahmedabad drafted a Housing Bill, providing for a Builders Licencing Board with powers to regulate the construction sector [CERC, 1990]. Buying residential premises is a very expensive proposition in urban India. Yet people want to buy and own one because rented accommodation is just not available. No one dares to rent his/her house because of the various state Rent Laws, at present altogether unjust to the owner.

Other Newly Defined Services

There have been several complaints filed with the consumer courts against authorities, institutions and professionals on the ground that the service they render is deficient on various counts such as it is delayed, discourteously given, exorbitantly priced, or that the complainant is ill-advised about its utility, is out and out taken

for a ride, and so on. The definition of service under the COPRA, 1986 is inclusive and illustrative. Consumer courts have, therefore, authority to declare any activity as service under the COPRA, e.g., educational institutions charge prohibitive entrance fees and do not refund most part of it, if a student cancels his admission, well within the stipulated period. Only tuition fees are refunded and admission fees are withheld as charges incurred for processing the application for admission. At times irregularities are committed in giving admission, such as more students than the number sanctioned by the concerned university are admitted. As a result, such excess students have difficulty in obtaining degree certificates from the university, even when they pass their university examinations. Consumer courts view such practices as unfair trade practices under section 2(1)(r) of the COPRA and award compensation to aggrieved students [*Akhil Bhartiya Grahak Panchayat and Another* v. *Secretary, Sharda Bhavan Education Society and Others*, 1994 (II) *CPR* 283]. Often, results of examinations are unpardonably delayed and when declared, there are several errors. Consequently, quite a few students lose good opportunities of employment, or further higher education. Also, they have to apply for verification of marks and/or reassessment of their answer sheets by paying stiff fees once more. These were all judged by consumer courts as cases of deficiency in service under sections 2(1)(g) and 2(1)(o). Unfortunately, however, the National Commission recently pronounced that conducting examinations, declaration of results, evaluation, re-evaluation, etc., are not service rendered for consideration and, hence, complaints regarding them are beyond the jurisdiction of consumer courts [*Registrar, University of Bombay* v. *Mumbai Grahak Panchayat, Bombay*, I (1994) *CPJ* 146 (NC); and *Joint Secretary, Gujarat Secondary Education Board* v. *Bharat Narottam Thakkar* [I (1994) *CPJ* 187 (NC)]. Earlier, a fine distinction was made by consumer courts. When students pay examination fees, and still they suffer loss due to such administrative negligence as delay in results, incorrectly filled mark-sheets, typographic mistakes, wrong-totalling, missing answer-sheets, supplements, etc., they should be entitled to compensation, but complaints regarding the quality of assessment or re-assessment or of instruction (tuition) do not fall within the purview of adjudication by consumer courts. Education in this sense does not constitute a service, as defined under the COPRA. Kerala High Court opines that consumer courts have authority to hear students' complaints regarding examinations [*The Central Board of Secondary Education* v. *Consumer Disputes Redressal* Forum, AIR 1994 Ker 153].

Another instance is that of lawyers' clients who had formerly only one remedy against lawyers-the Advocates Act, 1961. Under this Act, cases of misconduct by lawyers are determined by Disciplinary Committees of state bar councils, with a provision of appeal to the Bar Council of India. But the punishments under section 33(3) of the Act are punitive, such as reprimand, or suspension or removal of the name from the advocates' roll so that further practice is prohibited, but a client's loss is not compensated. Now he is entitled to approach consumer courts. Lawyers' services are regarded as professional services and not personal services.

Finally, with the development of private service sector, complaints about deficiencies in services supplied by airlines, courier or transport and tourist companies are on the increase. In addition, grievances regarding advertising, photo-copying and maintenance of consumer durables flood consumer courts. Similarly, the definitions of 'goods' and 'defects' in goods are also being widened, e.g., one publisher had to compensate for the wrong contents published in his publication [*The Secretary, Sahitya Pravartak Cooperative Society* v. *N.K. Narayan Pillay*, III (1994) *CPJ* 135]. Not all the decisions of the consumer courts are well reasoned, since the consumer protection law in the country is just evolving at present and is at the take-off stage.

ABBREVIATIONS

AERB	Atomic Energy Regulatory Board.
AIR	All India Reporter.
BIS	Bureau of Indian Standards.
CIP	Central Issue Prices.
COPRA	Consumer Protection Act.
CPJ	*Consumer Protection Judgments.*
CPR	*Consumer Protection Reporter.*
CSI	Customer Satisfaction Index.
DARPG	Department of Administrative Reforms and Public Grievances.
DESU	Delhi Electricity Supply Undertaking.
DPCO	Drugs (Control and Prices) Order.
ECOSOC	Economic and Social Council.
EP	Estrogen Progesterone.
ESIS	Employees State Insurance Scheme.
GATT	General Agreement on Tariffs and Trade.
HFA	Health for all by the Year 2000 AD.
IBFAN	Infant Baby Foods Action Network.
ICGFI	International Consultative Group of Food Irradiation.
ICPs	Internal Complaint Procedures.
IPC	Indian Penal Code.
IOCU	International Organisation of Consumer Unions.
ISCCM	Indian Society of Critical Care Medicine.
ISI	Indian Standards Institution.
LIC	Life Insurance Corporation.
LPG	Liquid Petroleum Gas.
MNCs	Multinational Corporations.
MRTP	Monopolies and Restrictive Trade Practices.
MRTPC	Monopolies and Restrictive Trade Practices Commission.
NC	National Commission.
NCCF	National Consumers' Cooperative Federation.
NDDB	National Dairy Development Board.
NGO	Non-governmental Organisation.
NTPC	National Thermal Power Corporation.
OIML	International Organisation of Legal Metrology.
OYT	Own Your Telephone.
PDS	Public Distribution System.
PFA	Prevention of Food Adulteration.
PLF	Plant Load Factor.
RPDS	Revamped Public Distribution System.
RRTA	Registrar of Restrictive Trade Agreements.
SEBI	Securities and Exchange Board of India.
SEBs	State Electricity Boards.
SI	International System of Units.
SSI	Small Scale Industries.
T&D	Transmission and Distribution.
TNCs	Transnational Corporations.
TRIPs	Trade-Related Aspects of Intellectual Property Rights.
UNICEF	United Nations Children's Fund.
UTP	Unfair Trade Practice.
WHO	World Health Organisation.
WTO	World Trade Organization.

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APPENDIX
TABLE OF CENTRAL STATUTES RELATING TO CONSUMER PROTECTION IN INDIA

Central Acts

The Advocates Act, 1961.
The Agricultural and Processed Food Products Export Development Authority Act, 1985.
The Agricultural Produce (Grading and Marking) Act, 1937.
The Air Corporations Act, 1953.
The Aircraft Act, 1934.
The Air (Prevention and Control of Pollution) Act, 1981 and, also indirectly, the Factories Act, 1948 (a few Sections), and the Public Liability Insurance Act, 1991.
The Architects Act, 1972.
The Bankers' Books Evidence Act, 1891.
The Banking Companies ((Legal Practitioners', Clients' Accounts) Act, 1949.
The Banking Regulation Act, 1949.
The Bureau of Indian Standards Act, 1986.
The Cantonments Act, 1924.
The Cardamom Act, 1965.
The Carriage by Air Act, 1972.
The Carriage of Goods by Sea Act, 1925.
The Carriers Act, 1865.
The Central Excises and Customs Laws Amendment Act, 1991.
The Central Excises and Salt Act, 1944.
The Central Sales Tax Act, 1956.
The Chartered Accountants Act, 1949.
The Chit Funds Act, 1982.
The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975.*
The Cinematograph Act, 1918.
The Cinematograph Act, 1952.
The Coffee Act, 1942.
The Companies Act, 1956.
The Constitution of India, 1950 (a few Articles, like Articles 19(1)g, 39, 47, and 48A.
The Consumer Protection Act, 1986.
The Customs Act, 1962.
The Contract Act, 1872.
The Criminal Procedure Code (Cr.P.C.), 1973 (a few Sections, like Sections 133, 144, 154, 190(c), etc.
The Dangerous Machines (Regulation) Act, 1983.
The Dentists Act, 1948.
The Destructive Insects and Pests Act, 1914.
The Drugs (Control) Act, 1950.
The Drugs and Cosmetics Act, 1940.
The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.
The Electricity Act, 1910.
The Electricity (Supply) Act, 1948.
The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (some Sections).
The Environment Protection Act, 1986.
The Essential Commodities Act, 1955.
The Essential Commodities (Special Provision) Act, 1981.
The Essential Commodities (Special Provision) Continuance Act, 1987.
The Essential Services Maintenance Act, 1981.
The Evidence Act, 1872 (e.g. Section 91).
The Explosives Act, 1884.
The Explosive Substances Act, 1908.
The Export (Quality Control and Inspection) Act, 1963.
The Fatal Accidents Act, 1855.
The Fisheries Act, 1897.
The Food Corporations Act, 1964.
The Forest Act, 1927 and, also indirectly, the Forest (Conservation) Act, 1980.
The Forward Contracts (Regulation) Act, 1952.
The General Insurance Business (Nationalisation) Act, 1972.
The Hackney-Carriage Act, 1879.
The Hire-Purchase Act, 1972.
The Homeopathy Central Council Act, 1973.
The Indian Medicine Central Council Act, 1970.
The Indian Penal Code (IPC), 1860 (some Sections)
The Industries (Development and Regulation) Act, 1951.
The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
The Inflammable Substances Act, 1952.

*There is no law for protecting Beedi smokers and tobacco chewers, particularly the addicts of the currently favorite *Pan-Parag*.

The Inland Waterways Authority of India Act, 1985 and the various National Waterways Acts.
The Insecticides Act, 1968.
The Insurance Act, 1938.
The Interest Act, 1978.
The Levy Sugar Price Equalisation Fund Act, 1976.
The Life Insurance Corporation Act, 1956.
The Limitation Act, 1963.
The Live-Stock Importation Act, 1898.
The Marine Insurance Act, 1963.
The Medical Council Act, 1956.
The Medical Degrees Act, 1916.
The Monopolies and Restrictive Trade Practices Act, 1969.
The Motor Vehicles Act, 1988.
The Narcotic Drugs and Psychotropic Substances Act, 1985.
The National Airports Authority Act, 1985.
The National Dairy Development Board Act, 1987.
The National Housing Bank Act, 1987.
The National Oilseeds and Vegetable Oils Development Board Act, 1983.
The National Highways Authority of India Act, 1988.
The Negotiable Instruments Act, 1881.
The Northern India Ferries Act, 1878.
The Nursing Council Act, 1947.
The Newspaper (Price and Page) Act, 1956.
The Petroleum Act, 1934.
The Pharmacy Act, 1948.
The Poisons Act, 1919.
The Post Office Act, 1898.
The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities, Act, 1980.
The Prevention of Food Adulteration Act, 1954.
The Prize Chits and Money Circulation Schemes (Banning) Act, 1978.
The Prize Competitions Act, 1955.
The Railways Act, 1890.
The Railway Claims Tribunal Act, 1987.
The Registration Act, 1908.
The Road Transport Corporations Act, 1950.
The Sale of Goods Act, 1930.
The Sarais Act, 1867.
The Securities Contracts (Regulation) Act, 1956.
The Securities Exchange Board of India, 1992.
The Seeds Act, 1966.
The Spices Board Act, 1986.
The Specific Relief Act, 1963.
The Spirituous Preparations (Inter-State Trade and Commerce) Control Act, 1955.
The Stage-Carriages Act, 1861.
The Standards Institution (Certification Marks) Act, 1952.
The Standards of Weights and Measures Act, 1976.
The Standards of Weights and Measures (Enforcement) Act, 1985.
The Sugarcane Act, 1934.
The Sugarcane Control (Additional Powers) Act, 1962.
The Sugar (Regulation of Production) Act, 1961.
The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982.
The Tea Act, 1953.
The Telegraph Act, 1885.
The Tobacco Board Act, 1975.
The Tokyo Convention Act, 1975.
The Trade and Merchandise Marks Act, 1958.
The Tramways Act, 1886.
The Transplantation of Human Organs Act, 1994.
The Urban Land (Ceiling and Regulation) Act, 1976.
The Usurious Loans Act, 1918.
The Water (Prevention and Control of Pollution Act, 1974.
The White Phosphorus Matches Prohibition Act, 1913.

Central Unrepealed Pre-Independence Ordinances

The Essential Services (Maintenance) Ordinance, 1941.
The Public Health (Emergency Provisions) Ordinance, 1944.
Source: AIR Manual 4th and 5th editions (all volumes) and Current Indian Statutes (various years).

DOCUMENTATION

The purpose of this section is to make available to the readers official documents such as reports of committees, commissions, working groups, task forces, etc., appointed by various ministries, departments, and agencies of central and state governments which are not readily accessible either because they are old, or because of the usual problems of acquiring governmental publications, or because they were printed but not published, or because they were not printed and remained in mimeographed form. It will be difficult and probably not worthwhile to publish the documents entirely. We shall publish only such parts of them as we think will interest our readers. The readers are requested to send their suggestions regarding official documents or parts thereof for inclusion in this section.

In the present section we publish:

Report of the Press Commission, 1954, Part I; Chapter XXI - (Chairman, G.S. Rajadhyaksha)

REPORT OF THE PRESS COMMISSION, 1954

CHAPTER XXI

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1166. **Origin** - During the debate in Parliament on the Constitution (First Amendment) Bill, 1951, the Prime Minister suggested the appointment of a Commission, including representatives of the Press, to examine the state of the Press and its content. In his address delivered to Parliament on the 16th May 1952, the President announced that the Government hoped to appoint in the near future a Commission to consider various matters connected with the Press. The appointment of the Press Commission was announced in a communique issued by the Government of India, Ministry of Information and Broadcasting, on the 23rd September 1952.

1167. **Course of Inquiry** - The Commission was directed to inquire into the state of the Press in India, its present and future lines of development and in particular to examine (i) the control, management and ownership and financial structure of newspapers, large and small, the periodical press and news agencies and feature syndicates; (ii) the working of monopolies and chains and their effect on the presentation of accurate news and fair views; (iii) the effect of holding companies, the distribution of advertisements and such other forms of external influence as may have a bearing on the development of healthy journalism; (iv) the method of recruitment, training, scales of remuneration, benefits and other conditions of employment of working journalists, settlement of disputes affecting them and factors which influence the establishment and maintenance of high professional standards; (v) the adequacy of newsprint supplies and their distribution among all classes of newspapers and the possibilities of promoting indigenous manufacture of newsprint, and printing and composing machinery; (vi) machinery for (a) ensuring high standards of journalism and (b) liaison between Government and the Press; the functioning of Press Advisory Committees and organisations of editors and working journalists, etc., (vii) freedom of the Press and repeal or amendment of laws not in consonance with it; and to make recommendations thereon.

1168. **Collection of Factual Data** - The Commission held their first meeting in New Delhi in October 1952 and called for preliminary memoranda on the subjects referred to them from the associations of editors, publishers, journalists, etc. After considering the memoranda, the Commission prepared a General Questionnaire designed to elicit information and opinion on all aspects of the various problems. The Commission also decided that their report should contain a section on the history and development of journalism in India to serve as a background to the inquiry. Sri J. Natarajan, Editor of the 'Tribune', Ambala (who had for some time served as a Member of the Press Commission) was entrusted with the task of preparing it.

1169. In order to obtain factual information from the various sectors concerned with the inquiry, the Commission issued questionnaires to individual units. The response was poor. At their meeting in April 1953 the Commission reviewed the response and expressed regret and disappointment at the failure of the majority of proprietors of newspapers and periodicals to furnish the returns. Notices were issued to the proprietors of those papers which had not replied asking them to show cause why action should not be taken against them for having failed to furnish the information. (Though the Commission had the legal powers to launch prosecutions against the proprietors of newspapers and periodicals for their failure to submit the factual information called for, the Commission decided not to resort to this course but issued summons under Section 4 of the Commissions of Inquiry Act. A considerable amount of information was collected by such persistence but it has to be recorded with regret that some of the proprietors completely ignored requests, reminders, show cause notices, and summonses for personal appearance or production of information. Since, however, the bulk of the information required had been collected and the work of the Commission was coming to an end, further action against the defaulters was dropped.

1170. **Research and Readership Survey** - To assist in their survey of the state of the Press in the country, the Commission set up a Research Section for (1) analysis of the newspaper content to determine the standards of accuracy in the presentation of news and fairness in the presentation of views; (2) examination of the control, management, ownership and financial structure

of newspapers and periodicals; and (3) statistical studies of the factual data available. The Commission also undertook a sample survey of readership. In this they were able to secure the assistance of the Central Statistical Organisation and the National Sample Survey.

1171. **Oral Evidence in Camera** - From the 5th October 1953 the Commission recorded oral evidence from witness summoned for the purpose. After going into the question whether witnesses should be examined in open session or *in camera* the Commission came to the conclusion that the balance of advantage lay in the evidence being kept confidential during the course of the inquiry, and therefore, decided to examine all witnesses *in camera*.

1172. **Duration of Inquiry** - In December 1953 the Government of India asked the Commission to submit an interim report on the question of safeguarding conditions of working journalists and the settlement of disputes between them and their employers. The Government of India were informed that it would not be feasible for the Commission to draw up an interim report on these questions. The time-limit originally fixed by the Government of India for the Commission's report could not be adhered to. The Government of India accepted the Commission's recommendation and extended the time for completion of the inquiry to 31st July, 1954.

1173. **Statistics of Newspapers and Periodicals** - At the outset we found that the statistics of newspapers and periodicals were grossly inaccurate. The representatives of the State Governments who appeared before the Commission admitted that the statistics were defective and that very little attempt had been made to maintain them up to date. We attempted to refer to the copies that should have been filed with the State Governments and found that such files were not being maintained properly. No steps had been taken in cases where copies had not been received to ascertain whether copies had in fact been printed and distributed to the public or whether the paper had discontinued publication.

1174. **Daily Newspapers** - On the basis of statistics collected mainly by our own efforts, we came to the conclusion that there are about 330 daily newspapers currently being published (including editions published from different centres) and their total circulation is just over 25 lakh. The figures have to be approximate in the circumstances, but it may be added that if there are a few more newspapers that have not been included they would be essentially those with small circulations. In some States the number of newspapers published is higher than the average for the whole country (which is roughly one newspaper for about 12 lakh of population); there are many States in which the number is not even half that average. Newspapers, however, circulate quite freely from one State to another.

1175. **Newspapers Predominantly Urban** - The daily newspapers in this country are published largely from the metropolitan cities and the larger capitals. Out of the total circulation of the papers in English and major Indian languages, about 55 per cent (over 13.5 lakh of copies) are sold in the Capitals of the States and the major towns. (These cities and towns together account for only about 2.5 crore or 7 per cent of the total population of the country.) Out of this nearly 4.7 lakh of circulation is made up of English papers. Two-thirds of the circulation of all English papers is concentrated in the larger cities and towns, and the corresponding proportion of Indian language newspapers is two-fifths. While the growth of circulation of daily newspapers has been satisfactory in comparison with what existed a decade or so ago, the development of journalism has not been adequate in terms of the total population. The penetration of daily newspapers into the rural areas, which house the bulk of India's population, has been very slight. The papers are concerned with the town dwellers, are produced by them and are read mainly by them.

1176. **Scope for Expansion of Newspapers** - On the basis of the number of literate households covered by our Sample Survey who have expressed interest in newspapers, there exists an immediate potential for a very large increase in readership, much greater in the rural areas than in the urban areas. The results of the survey indicate that the reasons at present preventing interested households from going in for newspapers are primarily the cost and the lack of distribution facilities.

1177. It may be said that the English newspapers do not have any considerable scope of adding largely to their circulation, but Indian language newspapers have great possibilities and, in the next few years, we might expect that their circulation would increase to double the present figures.

1178. **Number of Papers Should Increase** - Judged even by the standards of fairly compact countries like the United Kingdom and Japan, where distribution of a paper from its publication centre to its readers is both prompt and efficient, the number of newspapers in this country is low and an increase in that number would certainly be desirable. If we take into account such factors as distance and poor communications, we need a large increase in the number of newspapers. Today, quite a large number of papers are being published from the major metropolitan centres, while there are still many towns, for instance in the Uttar Pradesh and Madras, which have a population of over one lakh, but which still do not have a local daily paper. We feel that future effort should be devoted to filling up this gap in development.

1179. One way that can be suggested to minimise the losses in the early stages, particularly where no daily paper exists already, would be to start the paper initially as a weekly, and when circulation has been built up to some extent, to convert it into a daily. We would also suggest that where adequate printing facilities exist, such papers should not instal their own printing equipment, even if they can find the necessary capital for it. It might be preferable to entrust the printing to a press that has already established itself locally.

1180. In the matter of advertisement revenue, a district paper suffers under a further handicap. Local sale of most nationally advertised products is generally small. Further, purchasing power in small towns is directed mainly to commodities and services which are not usually advertised. We feel that local advertising can be built up by educating the people about the advantages of advertising.

1181. **Statutory Collection of Statistics** - We consider it essential that there should be some statutory authority responsible for the collection of reliable statistics regarding the Press in the country and periodical publication. We feel that the regulation of this industry should be brought within the purview of the Central Government in terms of the Industries Development and Regulation Act of 1951. The authority responsible for the collection of statistics would, therefore, be a central authority. There should be Press Registrars for each State who will be responsible for the primary collection and compilation of the statistics. It should be incumbent on each newspaper and periodical to file certain statements with the Press Registrar and obtain a certificate. The Central Registrar should bring out an annual report on the working of the Press on its organisational side, including working conditions in the industry and giving such other details as may be prescribed. All newspapers should be called upon to file periodic returns regarding employees, consumption of raw material, changes in ownership and control, and changes in management so that the public can get, from one source, authentic statistics about the industry. It should also be made incumbent on the newspapers to file periodic statements regarding the circulation of the paper as well as to send one copy of each edition to the National Library of India.

1182. **Periodical Publications** - A very large proportion of the periodical publications, particularly of those appearing monthly or oftener are published on newsprint. This not merely adds to the demand for newsprint but gives a poorer appearance to the periodicals and a number of potential purchases may be put off by the poor production quality. Moreover, the advertisement revenue which these periodicals can earn is probably very greatly reduced because of the use of newsprint and of the low standard of production. If, however, their standards of production can be raised, it is possible that advertisement revenues can be built up to such an extent that they would more than offset the increased cost.

1183. There appears to be also considerable lack of enterprise on the part of publishers both in the matter of bringing out periodicals and marketing them effectively. We consider it essential that publishers should realise the large market that exists for periodicals in this country and the possibilities of large scale expansion of this

profitable field of public service.

1184. An important aspect in which the Indian periodical press is today found deficient is in the publication of technical and specialist periodicals. When science, technology and medicine are advancing rapidly, the interchange of the latest information on research and application is achieved not so much by books as through periodicals. It is clear that an adequate volume of advertising would be available to support such publications since at present, for lack of specialist media, manufacturers and merchants are compelled to advertise goods and services of a technical nature in the so-called 'supplements' to the daily press. Few periodicals today deal adequately with a wide variety of serious subjects. The causes for this decline have been variously attributed to the competition of cheap journalism in the form of magazine supplements of daily newspapers, the shallowness of interest generally in the present day readers, and the dearth of writers and the disinclination on their part to present to the public the results of their research and thought in a manner that would command attention.

1185. We must mention with regret that a great deal of the objectionable writings - scurrilous, obscene, indecent and personal- does exist in the Indian Press, though it is confined to the periodical press, and the daily newspapers have been comparatively free from these evils. (It is true that many of these instances have come from a very small and in some cases obscure section of periodical press.) While it is necessary for the Press to develop so as to meet the needs of the country, it is also essential that effective checks should exist against publications of this character.

1186. **Finances of the Daily Press** - In our examination of the finances of the daily Press we have been handicapped by the lack of any authentic source of statistics. The newspapers were, therefore, approached. Out of 270 concerns publishing about 330 dailies, 110 concerns publishing about 170 dailies and covering over 80 per cent of the total circulation have furnished the information called for (The remaining concerns are small).

1187. The total proprietary capital invested in the business is about Rs 7 crore and the capital in the form of loans is about Rs 5 crore. The greater proportion of the capital is held in private limited companies, and public joint stock companies form the next major category.

1188.The net circulation revenue for the daily Press is estimated at Rs 6 crore and the advertisement revenue at about Rs 5 crore for 1951. The estimated amount of total salaries and wages paid in this industry is over Rs 4 crore of which the estimated salaries paid to the editorial staff for the year are Rs 85 lakh.

1189. On the whole, we did not find evidence of any appreciable degree of over-capitalisation as to affect adversely the employees' share of the profits, although in one or two cases machinery might have been purchased on anticipations which could not have reasonably been expected to be realised. In two other instance, part of resources of the newspaper concerns had been utilised for the personal requirements of the proprietors instead of for the development of the newspaper itself.

1190. **Under-Capitalisation and Indebtedness** - Where the extent of working capital obtained by way of loans is excessive in proportion to the total capital, the fact of indebtedness might take away from the independent character of the paper or render it susceptible to pressure from creditors. Six concerns which were specially mentioned as instances were examined in detail. The loans had been taken from the same source as the original capital or from allied sources. The possibility of external pressure, apart from the control of the proprietors themselves, did not, therefore, arise. We examined the suggestion that the indebtedness of newspapers might have been due, at least in part, to the reluctance of the present proprietors of the newspapers to invest the additional capital required. We found that unsecured loans had been obtained mostly from the same sources as the original capital. Whether the additional funds are brought in as regular capital or as loan would not be very significant so long as the interest on the loans does not cripple the resources of the newspaper and the fact of indebtedness does not lay the paper open to external influences. The industry as a whole is not unduly under-capitalised. The total amount of loans is not

excessive in comparison with the capital investments, and the bulk of it is by way of advances against stocks of newsprint.

1191. **Profits and Losses** - We have examined the profit and loss position of the concerns, classified according to each type of ownership, *e.g.*, individual ownership, joint stock company, etc. In each category some units returned a profit, and others have incurred losses. The industry as a whole made an estimated profit of about 6 lakh of rupees on a capital investment of about Rs 7 crore, or less than 1 per cent per annum. This does not mean that the profit earning capacity of this industry is uniformly poor; among the concerns returning profits a good proportion earned profits of over 10 per cent on the capital invested. But the picture as a whole does not reveal tempting prospects for the future investor looking only for safe and regular returns on his capital.

1192. An examination has been made of the remunerative working of publishing concerns commanding different circulations. It was found that papers in the 'large paper' class (circulation over 15,000) have shown a greater proportion of units earning profits. Many of the smaller papers (circulation below 5,000) have been able to keep within their revenues but only by grossly overworking and underpaying their staff. Papers in the intermediate category are more often losing than making profits.

1193. **Sources of Capital** - Capital has been attracted to this industry not so much as a source of safe investment and regular returns but for other reasons, some altruistic and some selfish. The fact that large investments have flowed into the industry may be attributed partly to the enthusiastic spirit of certain missionary workers who collected the necessary capital for the industry in the early days, and in greater part to the fact that a considerable proportion of the investments has come from the profits earned in the industry itself. There is also the advent of a certain amount of fresh capital from persons anxious to wield influence in public affairs. Under present conditions the flow of additional capital to the present units would continue to depend far too much on such motives rather than on the security and remunerative character of the industry itself. We are, therefore, suggesting some measures for improving the profit-earning capacity and competitive ability of papers which at present are losing. In addition, we consider that provision for regular ploughing back of a substantial part of the profits into the industry is essential in the interest of normal and healthy development of the Press.

1194. **Costs of Production** - In order to examine the economics of newspaper production, we analysed the financial statistics of 30 different daily newspapers. These were selected so as to cover large and small papers, published in English and in Indian languages, and representing both chains and groups and individual units. Within each category the selection was made at random so that the list would be fairly representative of the Press. The cost of production of the Indian language papers is lower than that for English papers in terms of actual expenditure because Indian language papers spend much less on the services of news agencies and correspondents and on editorial staff. United Kingdom papers spend slightly more on services and editing than on newsprint, while Indian papers spend a large portion of total expenditure on newsprint and much less on services and editorial charges. Some managements have followed certain practices that have added to the costs and thus reduced the profit for distribution as bonus. We have examined specific causes which were cited to us and in some of them we have noticed one or more of such practices. The methods adopted were mainly to employ a number of relations on higher salaries, creation of supernumerary posts for them and payment of excessive commission to concerns in which the main shareholders or directors are interested. These work to the detriment of the development of the industry and creation of goodwill among the employees.

1195. **Main Sources of Revenue** - The main sources of revenue of a newspaper are from sale of copies and from advertisements. The circulation revenue alone does not cover the cost of production and a newspaper has to rely on advertisement revenue for making both ends meet. To the extent that a paper can get more advertisement revenue it can afford to reduce its price or improve its news and features.

1196. **Auxiliary Sources of Revenue** - Though

a number of newspapers undertake job-work, this has served as an important source of revenue only in a very few cases. Crosswords and similar competitions did form an important source of revenue in the past, but now they appear to serve the dailies more as a means of promoting circulation than as a source of revenue and are conducted for this purpose even if they are not returning direct profits. In their early stages some important papers received support from the public in the form of donations but now there are only a few instances of papers receiving donations, generally religious or missionary enterprises. The papers of one political party are, however, supported largely by such donations.

1197. **Advertisement Revenue** - Newspapers look to advertisement revenue for paying their way and for making profits and this has tempted them to follow unhealthily practices in order to get more advertisement revenue. Greater dependence on advertisement revenue exposes a newspaper to pressure from advertisers. If newspapers readership expands faster than commercial and industrial activity, as is very likely with the rapid spread of education, we expect a fall in the advertisement revenue per copy. Therefore any step that may help newspapers to be less dependent on advertisement revenue would be welcome. A price-page schedule would be one such measure.

1198. **The Fight for Circulation** - Circulation is the key to the financial success of a newspaper and, therefore, every newspaper strives to increase its circulation. In order to boost their circulation many papers offer a large commission to the agents. We consider that the range of commission that should be paid to newsagents should be narrowed down, say between 25 and 33.5 per cent. Any payment of commission above this rate as well as offer of other inducements to newsagents or allowing them to sell the papers at reduced prices should be considered unfair practices and should be stopped.

1199. A healthy method of competition is to give better, more varied and specialised coverage. Merely offering a large number of pages does not increase the standard of service, but on the other hand gives an unfair advantage in competition to those papers which have higher financial resources. After the withdrawal of price-page control order in 1952, there has been a marked tendency to increase the number of pages. Though a part of the increase appears to be legitimate, most of it appears to be due to the intention of using it as a means of competition. Enforcement of a price-page schedule is necessary to check this tendency.

1200. The publication of entry forms for prize competitions in newspapers and periodicals is an unjournalistic activity and we recommend the insertion of a provision in the Act regulating the printing and publication of newspapers and periodicals, banning the printing of any form of entry to competition or prize schemes. Even in the case of purely intellectual amusements, we would limit awards to a maximum of Rs 500 in any one month.

1201. We have come across instances where the published price and authorised discount are undercut by the distribution of free copies. A paper trying to establish itself would try to convince the public of its merits by distributing free copies for some time. But such free distribution should be reasonable in respect of the number of copies and the period for which it is distributed to any individual. Where copies are distributed free in order to introduce a paper to the public, all such copies should be clearly marked 'free' before being handed over to the newsagent. Other inducements held out to newsagents are the supply of cycles for the messengers employed to distribute copies, or uniforms for such messengers and hawkers. We consider that the cost of these should be deducted from the discounts payable to the agents. Terms in respect of returns of unsold copies should be standardised. Similarly, expenditure incurred on the freight charges on copies should be subject to an upper limit. Where delivery charges exceed 15 per cent of the nett value, the excess should be recovered from the agent or as a surcharge from the subscribers. Any violation of these price restrictions should be considered an unfair practice and should be checked.

1202. **Circulation Statistics** - Figures of circulation are considered to be of the greatest importance in influencing the advertisers in their choice of papers and in their acceptance of the rates quoted. Some years back, publishers, advertising agencies and advertisers got together and established the Audit Bureau of Circulation which was authorised to issue certificates of circulation which all three sectors of the industry agreed to accept as correct. There is the possibility that in at least one or two instances publishers have managed to secure certificates of circulation which their papers would not be entitled to. The A.B.C. has now undertaken a re-check of papers to whom they had issued certificates. We hope that they would be able to spot instances of fraudulent practices which had escaped notice earlier. A very large number of papers are not however members of the A.B.C. and some of their claims of circulation have by no means been modest. While some State Governments go by the A.B.C. certificates where these are available, others trust the unsupported claims of the publishers. We are suggesting the appointment of a Press Registrar with whom publishers of newspapers have to file certain factual statements periodically. State Governments, and the Central Government should be guided by these statements when placing advertisements.

1203. **Restrictive Practices** - There are other practices connected with large scale operation which we consider unfair and undesirable. One is the insistence by the management that any advertiser in the most important paper of a group or chain should book space at the same time in their other papers also. Another is to insist that newsagents handling one of the papers of the group should also take a specified number or proportion of the other papers published by the group, or to insist that newsagents handling one paper of a group, say, in English, shall not handle any Indian language paper from any other publisher. Some provision should be made in the contemplated legislation governing newspapers and periodicals, to put a stop to such restrictive practices.

1204. **Economics of Group and Chains** - Common ownership of more than one daily newspaper takes the form of combines, chains, multiple units and group. Certain economies are possible in group operation but the extent to which these economies are realised varies from one paper to another. The position of multiple editions of a paper published from more than one centre is different. In other countries multiple editions are undertaken to save time and freight in the distribution of printed copies, and each edition is only a reprint of the other. The practice in India is to maintain editorial offices at each centre where the paper is printed. Only part of the material required to make up the paper is received from the main office. There is, in consequence, no saving in interests, depreciation, and other overhead charges. Moreover, the entire composing room, foundry, and printing room staff have to be employed at each centre. The main economic incentive for starting such editions has been the hope of capitalising on the goodwill of the parent edition and acquiring a circulation with the minimum of preliminary losses. It is also the expectation of the publishers that they would be able to secure an immediate advertisement revenue for the new edition. In the case of chains, there are no direct economies consequent on the fact of common ownership. Where the chain is made up of a number of groups, the economic advantages of group operation are added on to whatever little advantage follows from multiple editions. In the case of combines, local advantages that result from group operation do exist, but no further economic gains result from the fact of common ownership.

1205. **Drawbacks of Group and Chain Operation** - Because of such advantages as accrue from combined operation, a number of new papers have come up. In most cases, taxes are assessed only on the resultant profits and not on the individual profits of each paper. This has made it possible to find money to cover the losses of new papers from out of profits, a large portion of which might otherwise have been paid to the exchequer as taxes. But it has also made the managements less cautious in their assessment of prospects before starting new papers or new editions.

1206. There have been other drawbacks too. None of the groups operating in this country maintains separate accounts for each paper and it

has, therefore, been very difficult to ascertain the extent to which a successful paper subsidises another not so profitable. In the case of multiple editions, a Labour Tribunal has held that the profits and losses of all editions must be considered together before arriving at the nett figure on which bonus could be based. Since these multiple editions are widely separated, it is not possible for the employees at one place to have any idea of possible managerial extravagance at another and they only see their bonuses whittled down because of losses at a remote centre. When starting multiple editions, the publishers sometimes have not made as careful an assessment of the soundness of the venture as they might have made if they had to bear the resulting loss instead of being able to set it off against profits before taxes. In the majority of cases of multiple editions, the parent unit has continuously had to absorb losses incurred at the subsidiary centres. Such editions have not resulted in an overall increase in the return to the owners nor have they added to the bonus earned by the employees.

1207. **Separation of Accounts** - We would like, if it were possible that every paper should be constituted as a separate unit so that its profits and losses are definitely ascertainable and both the proprietor and the employees know where they stand. In the case of multiple editions, each unit should be separated from the others in the matter of accounts. Where a chain consists of a number of groups, each group should be separated from the other. Inside the group itself, it may be difficult to make a division of capital investment and of certain categories of expenditure. The revenue accounts should be maintained separately and cost accounts should be kept in respect of production of each of the papers. This system of book-keeping should invariably be adopted wherever the management finds it inconvenient to divide the group into its component units.

1208. We envisage the expansion of some of our metropolitan papers to provide a national or continental coverage, or the establishment of papers by national or political parties to cover the whole country, but in all these cases, the principles we have enunciated above should always be kept in mind. If, however, the parent papers have made adequate provisions for replacement costs and other necessary reserves and are paying their staff reasonable salaries and wages, then there could be no objection to their using the funds obtained from the profits of the parent papers for starting multiple editions in other parts of the country.

1209. **Competition Should be More Even** - As matters stand at present, a paper with a large circulation has, because of its lower cost of production per copy, certain advantages over other papers with smaller circulation. Similarly, a paper with large capital resources behind it is free from certain handicaps which affect another paper with limited capital. Papers of long standing which have been able to build up a large and stable volume of advertisement revenue are in a very advantageous position as compared to others who have just entered the field. Such economic advantages and handicaps exist in a number of industries but their presence in the newspaper industry is not conducive to healthy development. Newspapers serve as media for the free exchange of information and of ideas. The proper functioning of democracy requires that every individual should have equal opportunity, in so far as this can be achieved, to put forward his opinions. Measures should therefore be adopted to reduce the differences due to economic advantages or other causes and to enable new-comers to start with a fair chance of achieving success. To fix a minimum price at which papers of a particular size can be sold would be the most effective measure to bring about this end.

1210. **Price-Page Schedule** - Though ultimately it is the readers who pay the net cost of the paper, partly as its price and partly through the advertised goods that they purchase, a reasonable revenue from advertisements has the effect of distributing the burden more equitably between those who have money to spend and those who have not, while a high price would place the burden uniformly on all. The price fixed should therefore take advertisement revenue into consideration. If the price is fixed too high, it would have a doubly unwelcome effect on the fortunes of the Press. Circulation would fall directly and, as a consequence of such fall, advertisement revenues would also shrink. This would force papers to reduce the quality of their services and

the cumulative effect may well be disastrous.

1211. The price-page schedule should prescribe not only the maximum number of pages that could be sold at a particular price, but also the minimum number that must be offered. The quantum of advertisement in a week's issue of a newspaper should not exceed 40 per cent of the total area, and we feel that this should be made part of the schedule which will thus prescribe (a) the maximum number of pages that could be sold for the price, (b) the minimum number of pages that must be offered for the price, (c) the minimum of news and editorial matter that each issue must contain. On the present costs of production a schedule based on a price of 3 pies per page of standard size may prove adequate to meet all costs of production in the case of the average Indian language and English papers after allowing for the normal expectation of advertisement revenue in each case. One of us, Sri A.R. Bhat, has worked out a tentative schedule which, though not to be taken as our specific recommendation, may form the basis on which a suitable schedule could be worked out. Sri Bhat feels that no departure from this schedule should be permitted unless newsprint prices fall by more than 20 per cent.

1212. **Volume and Sources of Advertisements** - Our estimate of the advertisement revenue for the daily Press is Rs 5 crore per annum and for the weeklies and periodicals it is not expected to exceed Rs 2 crore. We analysed the business placed in 1951 by 34 advertising agencies according to the different sources of advertisements and found that quite a large proportion of the total volume of consumer advertising is of items which would appeal only to those who are comparatively well-to-do. This is, in our opinion, an unsatisfactory position as it would divert the bulk of advertisements to the higher-priced papers in the English language. The products advertised are also such as are consumed mainly in urban areas, and this tends to favour papers published in metropolitan and provincial centres as against district papers.

1213. We feel that potentialities exist for expansion of advertisement volume, which may be expected to increase with a general rise in the standard of living as a result of the Five-Year Plan. The expansion of trade and industry would also increase the amount of specialised advertising. We also expect an expansion in the range of products advertised with the growing pace of industrialisation and a switch-over from a seller's to a buyer's market. Further, a number of products which at present have no appreciable market in rural areas would find scope in such areas with the improvement in the standard of living. The district Press should be able, even at present, to increase the volume of classified advertisements as well as the advertisements of local traders and manufacturers.

1214. **Present Tariffs** - The advertisement tariffs depend on a large number of factors such as the class of readership and its purchasing power. The degree of competition among the papers published at a centre also affects the tariff. The rate per mille generally decreases with the increase of circulation. A minimum rate of advertisement always exists to cover the composing charges, printing and overheads. Our examination of the advertisement tariff has shown that the rates per mille of Indian language papers are lower than those of English language papers.

1215. There are certain factors which should be considered when examining the tariffs. The readership survey carried out by us indicated a high degree of multiple readership specially in rural areas. The weeklies and monthlies are expected to have more multiple readership. Further the contact and consequently the impact made by the advertisement on the readers in the case of weeklies and monthlies is of longer duration than in the case of dailies. For these reasons weeklies and monthlies should command higher rates than the dailies. In the case of the dailies and periodicals which conduct crossword and allied types of competitions the full benefit of their circulation is not obtained by the advertisers because a good number of readers are interested only in the competitions.

1216. Advertisers consider the circulation, standing, class of readership, area of coverage, etc., in the selection of media for advertisements. In respect of circulation, reliance is placed on the Audit Bureau of Circulation certificates and where this is not available on the claims made by the individual papers. The utility of A.B.C. certificates would be enhanced if the areawise

breakdown of circulation is given in all cases. We are satisfied that the existence of a combined rate in respect of a multiple unit publication is an exploitation of the advertisers and should be discarded in favour of separate rates for each different centre.

1217. **Need for Market Research** - Very little authentic information is available about the other factors such as class of readership or purchasing power. We recommend that market research should be undertaken by the Associations of Advertising agencies. This will not only put the advertisement tariffs on a more rational basis but would increase the effectiveness of the advertisements. It is alleged that the cost of advertising in India is higher than in other countries and has, therefore, restricted the development of advertisement volume in this country. This question of costs could be reviewed by the advertisers and newspapers after the market surveys are carried out.

1218. **Government Advertisements** - We estimate the total advertisements from Government sources at about Rs 45 lakh per annum. Though this is less than 7 per cent of the total advertisements through newspapers and periodicals, the importance attached to it by the Press is great. We found that there are some papers in which the Government advertisements form an important source of revenue and the influence of Government on such papers would, therefore, be greater. Certain papers have either been favoured by the Government or have obtained substantial advertisements by making false claims of circulation. On the other hand, a large majority of district and mofussil papers appear to have been ignored by Government as well as by local authorities when placing advertisements.

1219. Governments have not subjected to proper scrutiny the various claims of circulations made by some of the papers. Reliance placed on police reports regarding circulation of newspapers appears to us to be misplaced. The Governments would be justified in demanding proof in support of the circulation claim. The Governments should also check periodically the circulation of the papers to whom they entrust advertisements. We feel that more attention in the matter of class of readership should be exercised than at present in those cases where it is a relevant factor, but ignored where it would not be material. Multiple readership assumes special importance in connection with the Government advertisements which are not concerned with the purchasing power of each reader. Introduction of the principle of rotation specially in display advertisements would benefit some of the district and mofussil papers which do not receive advertisements when allotments are limited.

1220. **Telescopic Tariff with an Upper Limit** - Government would be justified in claiming special consideration in respect of the rates charged, and can insist that the rates should follow a particular pattern without reference to language or location of the paper. We have suggested a telescopic maximum rate subject to an overall ceiling. This suggestion is not made with any intention of reducing on the whole the advertisement budget of Government but to facilitate the distribution of advertisements over a number of newspapers and periodicals by not allowing a few top papers to absorb the entire advertisement budget of Governments. We feel that Government should take the lead in breaking up the practice of charging combined rates for multiple unit publications. We have also noticed that the papers published outside the State often claim a substantial share in the advertisement budgets of the smaller States. It is necessary for the States to examine the utility of advertising in such papers.

1221. **Advertising Agencies** - There has been a tendency for advertisements to be placed more and more through advertising agencies. This helps in increasing the total volume of advertisements as well as in reducing the influence of advertisers on the Press. The advertising agencies are mainly situated in metropolitan towns. Half of the total turnover of advertisements placed by agencies with the newspapers and periodicals is accounted for by five big agencies. The rate of commission obtained by the agencies from newspapers varies, but the newspapers which are members of the Indian and Eastern Newspapers Society and the agencies which have been accredited by the Society follow certain standard rules in this regard.

1222. The practice of making secret payments or offering other inducements to the media men employed in the advertising agencies in order to make them increase the allotment for a particular paper is highly objectionable and we trust that combined action would be taken by the Associations of newspaper proprietors, advertising agencies and advertisers to put a stop to this practice.

1223. **Accreditation of Agencies** - The rules prescribed by the Indian and Eastern Newspapers Society for accreditation of advertising agencies meet the requirements as far as national advertising is concerned, but have not provided for agents specialising in local business. We feel that at present there is considerable scope for expansion of local advertisements among the district and mofussil papers and this scope is likely to expand in the future. It is, therefore, in the interests of the Press as well as the advertisers to encourage agencies specialising in local advertising. We, therefore, suggest that the Indian and Eastern Newspapers Society should consider accrediting two types of agencies- National and Regional- and for accreditation in the case of regional agencies the conditions in respect of capital, turnover and other requirements may be relaxed.

1224. **Disparities in Advertising Revenue** - The existing difference between the advertisement revenue of the English language and Indian language papers appears to be based on a general assumption regarding the difference in the pulling power of the two sets of papers and this assumption is not limited only to advertising agencies but appears to prevail among the advertisers and the public. This particular assumption has not, however, been substantiated by any readership surveys or other authentic information. The Indian language papers have not received adequate attention from the advertising agencies and their value as media appears to be under-estimated. Advertisers should be guided by certain definite and uniform principles when making their choice of newspapers and periodicals. As far as possible no discrimination on the ground of language should be made. Sufficient attention to the claims of district papers in respect of distribution of advertisements should be paid. The effect of multiple readership should be taken into account. The Indian language papers should devote more attention to the layout of advertisements and district papers should furnish sufficient particulars to the advertisers so that their usefulness as media can be examined.

1225. **Other Aspects of Advertising** - There is no evidence to show that any industry or group of industries contribute such a high proportion of advertising revenue to the Press as a whole as to be able to hold it to ransom. Cinema advertisements account for a very large proportion of the advertisements received by the smaller and district papers. In view of the financial importance of these advertisements for the smaller newspapers, we do not feel that any restrictions need be imposed on such advertisements. The possibility was mentioned that advertisements may be used as a means of subsidising newly started ventures, and two important groups of newspapers were named in this connection, but our examination did not indicate any such practice prevailing at present. We do not think that the foreign business interests exert any undue influence by the mere fact of being a large source of advertisements. But, as in other cases, we would like that Indian capital and Indian personnel are associated with the big agencies which at present are either owned or managed by foreigners.

1226. **Space Devoted to Advertisements** - At present in most of the papers advertising space is less than 40 per cent of the total space. We expect that when a price-page schedule is introduced, there would be a strong temptation to increase the ratio of advertisement space to reading matter, but we are of the opinion that they should keep advertisements within the prescribed limit of 40 per cent.

1227. **Supplements** - The tendency to issue commercial supplements is on the increase. We agree with the view of advertising agencies that the publicity they offer is incommensurate with the expenditure involved, and has benefited only the publishers. The reading matter too is often not of interest to the readers, and we therefore feel that the supplements of the commercial type should be discouraged. The adoption of a price-page schedule should serve to stop the indiscriminate issue of supplements.

1228. **Objectionable Advertisements** - Judged by their contents a number of advertisements must be regarded as objectionable. There are instances where the product or service which is advertised is in itself harmful or dangerous to the public. Certain other advertisements are fraudulent or likely to mislead, while there are also those advertisements which offend in respect of their illustrations or the text, even though what they offer to the public may not be objectionable in themselves such as some cinema advertisements.

1229. We recommend to the Indian and Eastern Newspapers Society and the Indian Language Newspapers Association the adoption of a strict code of advertising which all members would be compelled to follow and which would be binding also on the Associations of Advertising Agencies and Advertisers. This would, however, leave out a large number of small newspapers and periodicals which do not belong to either of these corporate bodies and which contain the greatest number of offenders against decency and morality. To abate this particular nuisance, legal measures will be necessary.

1230. **Advertisements of Drugs and Medicines** - The largest field of such objectionable advertising which we feel should be put down by law is of certain drugs and proprietary medicines. The Indian Medical Association have suggested to us the banning of all advertisements of medicines which claim to cure or alleviate particular diseases. The harm that arises from such advertising is that the patients might be deluded into dosing themselves with these medicines and delay medical examination or advice till the disease reaches an incurable stage. Advertisements which hold out promises of lasting cure of diseases for which a cure cannot be promised, advertisements of so-called medical practitioners offering to diagnose diseases by correspondence and to prescribe remedies therefor, and the advertisements of talismans or magical cures are also of the objectionable type. We consider that many of the recommendations made by the British Medical Association in the report of their Committee on proprietary medicines deserve to be embodied either in legislation or in the codes approved by the Associations of newspaper proprietors. In the field of dangerous drugs, we noticed that certain drugs, the advertisement and sale of which have been banned in the United States of America (the country of their manufacture) are extensively advertised in the Indian Press.

1231. **Present Legislation** - We have studied the West Bengal Undesirable Advertisement Control Act of 1948 and the Bihar Drug Advertisement Control Act of 1946 as well as the Drugs and Magic Remedies (Objectionable Advertisements) Act of 1954. Though these Acts serve a very useful purpose, they fall short in some respects of what the country needs.

1232. **Advertisements Offending Against Decency and Morality** - We feel that in the case of cinema advertisements the United States practice of prior approval by a Board might prove very useful. Advertisements of pornographic publications must be stopped. The Act for the regulation of the Press as an industry should include a section which makes it an offence, punishable with fine or with imprisonment, the issue of fraudulent advertisements for publication. Whenever a member of the public complains of having been defrauded by means of such an advertisement, the matter should be investigated and if it is found that there was intention to defraud, the advertiser should be prosecuted. Government should in the same way investigate advertisements of books offered to 'adults only' or 'birth-control clinics' which 'treat' cases of advanced pregnancy, and the numerous other rackets of this nature. We also urge upon the publishers and editors the wisdom of passing on for investigation any advertisements which they receive and which in their judgment are of this nature.

1233. **Newsprint Supplies**- Newsprint is an essential raw material for the production of daily and weekly newspapers. India is entirely dependent for her supplies of newsprint on foreign countries. Before the war, India imported on an average 37,000 tons a year. The present demand is estimated at 60,000 tons a year. Though our consumption of newsprint is not high in the world context, and is less than the annual quota of a large American daily newspaper, we are dependent on other countries for the supply and often find it difficult to procure even the relatively small

quantity of newsprint we require. At present there is no control on the import, consumption or distribution of newsprint in the country. Both wood pulp and newsprint are on the OGL up to 30th September 1954.

1234. **Manufacture of Newsprint in India-** The possibility of manufacturing newsprint in India has been the subject of study by a number of experts. Since it is a low-priced commodity, the successful manufacture of newsprint requires that raw material, water in large quantities, and power must be available at the factory at very low cost. A number of trees that grow in India are quite suitable for the manufacture of mechanical wood pulp. The difficulty however has been the extraction of the timber from inaccessible heights where they grow and the transportation to a mill. Until the method of harvesting the timber has been satisfactorily worked out, there does not appear to be any possibility of a factory being established in the sub-Himalayan areas.

1235. Investigation has been made of the suitability of pulp from other plants not generally used in other countries for making mechanical pulp. Paper mulberry and wattle can be grown in other areas of the country and are suitable but they have to be planted hereafter on a very large scale before supplies could be available in the quantities required. Certain processes have however been worked out by which bagasse can be converted directly into newsprint. With the quantity of bagasse available in this country it is possible to manufacture all the newsprint that can be currently consumed. Before bagasse - which is at present utilised as fuel - can be released for use as a fibrous material, it will be necessary to convert boilers in Indian sugar mills to burn coal instead. While India has adequate supplies of fuel at low price, it is very short of fibrous material generally and is at present importing cellulose fibre in various forms such as pulp for rayon manufacture, as ready made newsprint, and as superior grades of paper. Release of bagasse to serve as a raw material for one or more of these products by replacing it with coal as fuel would therefore be in the overall national interest.

1236. **Newsprint Mill in Madhya Pradesh -** In 1947 a company was floated in Bombay for the manufacture of paper from raw materials available in Madhya Pradesh. Later the promoters decided to go in for the manufacture of newsprint. The factory is located near Chandni in Madhya Pradesh and the Government of Madhya Pradesh are deeply interested in the scheme. Mechanical wood pulp is expected to be in production in the course of this year, and with the completion of the mill for the production of chemical pulp, for admixture, early in 1955, the company expects to start the paper mill for the manufacture of newsprint during the course of that year. This has been the only attempt so far to manufacture newsprint in this country and so much capital and effort has been spent on the venture that it would be in the national interest to make it a success. The production of the Mill is expected to be 100 tons a day though it might be some time before this figure of output is reached.

1237. **Sales of Newsprint-** At present the Indian Press depends for its newsprint solely on imports and as we have mentioned above, this dependence on imports is likely to continue for some years or longer. Many representations have been made to the Commission that at present under free import conditions larger newspapers find no difficulty in procuring their requirements from abroad but smaller newspapers whose requirements are not large enough to interest overseas mills are obliged to buy their newsprint locally in the market through importers and dealers.

1238. The prospects of sale of the newsprint produced in this country would be problematical in view of the factors that tend to increase its cost of production. It might therefore be of advantage if a State Trading Corporation took over the entire output of the mills on a fair basis, and sold it, along with imported newsprint, at equated prices. It would be necessary for the Press to bear to some extent the cost of developing the Indian mill and putting it on a sound basis and this can best be done by ensuring that the products are sold through an organisation which also controls all imports from abroad.

1239. **Composing Machinery-** In a large number of newspaper presses the matter to be printed is set up in type by machines instead of

by hand. Three different typesetting machines, which have been evolved and perfected over a long period, are in use. They are complicated mechanisms which call for a high degree of skill and specialised knowledge for their manufacture. India's consumption of mechanical typesetting machines is estimated at 80 units per year, which is said to represent only about 1 per cent of the total output of the three companies. The manufacturers would, therefore, not be interested in setting up a plant in India for such a limited demand. The major difficulty in undertaking manufacture is the very small number of machines that would be needed. This applies with equal force to the manufacture of spare parts though at present it is possible to undertake the manufacture of small parts and the simpler accessories.

1240. Machines for use in the Indian scripts are practically identical with machines for other scripts. In the case of all machines, whether casting in line or in single characters, the major difference is in the matrices which cast the type. Even though such matrices for Indian scripts have no sale outside this country, the makers have not found it practicable to undertake their manufacture in India straightaway owing to the lack of precision machinery required. This however is a matter for further investigation. If it is possible for committees to be set up for these scripts to consider dispassionately the methods by which they could be simplified and the number of characters reduced to a reasonable figure, the possibility would exist of Government being able to insist that the copyright of the scripts should be made available to the manufacturers of typesetting machines only on condition that the matrices are manufactured in this country.

1241. **Manufacture of Printing Machines**- Manufacture in this country is confined mainly to the platen machines. Though Indian production was fairly large at the end of the war and there was a considerable amount of pent-up war time demand to be filled, production appears to have fallen off recently. We have heard some complaints also from witnesses, who appeared before us, of the poor quality of these machines. We consider it very necessary that the department of Government responsible for developing the production of industrial machinery in this country should make arrangements for evaluation of their quality. Production of flat bed or cylinder machines appears to be confined to two manufacturers in Calcutta. Here too it is necessary that the quality of work that they turn out should be comparable with that produced on imported machines. We are anxious that Indian production should be encouraged so as to make the country independent of imports. This encouragement should, however, be backed up by a service of testing, and manufacturers should also be induced to accept methods of quality control so that their products can be purchased with confidence.

1242. Rotary presses are generally heavy machines which represent a considerable amount of capital investment but which in turn can produce a very large number of copies in a short space of time and also produce continuously uniform work. It is estimated that there are about 100 rotary presses in use in this country of different sizes and we do not anticipate that annual demand for replacement, and for new installations would exceed half a dozen machines a year. It would obviously not be economical for an Indian manufacturer to start on the design of such a machine solely in order to meet the Indian demand. We consider it useful if the work of bringing together Indian manufacturers and foreign firms is undertaken by Government after a study of the requirements and the evolution of a standard design.

1243. **Postal Services** - The postal services are being used largely for transmission of reports from district correspondents, and of periodical newsletters from special representatives. While introduction of air transmission of letters has greatly speeded up the handling of such material, the postage concession which is granted for surface transport of manuscripts and reports for publication has not been extended to air transmission. We feel that it should be possible for the post office to grant the concession in respect of material addressed to registered newspapers. The charges for transport of a newspaper by post are very low in this country. According to the calculations of the Post and Telegraph Department the loss to the Post Office

in 1952-53 on account of this concession was Rs 112 lakh. The concession given to the Press is thus really substantial, and there appears to be no case for lowering the rate.

1244. **Telephones-** It has been represented to us that difficulties are still being experienced in obtaining installation of telephones for the offices and residences of employees of newspapers. We understand that such connections are at present being given a fairly high degree of priority, and that because of the general shortage of exchange equipment and instruments, some delay is bound to exist till production and installation catch up with the demand.

1245. **Press Telegrams-** We have heard many complaints that the handling of telegraph traffic is not sufficiently quick. While this is a matter of importance to newspapers, we are confident that the authorities who are conscious of the present delays would be taking necessary steps in order to ensure speedier handling of telegrams and that improvements may be expected in this direction. In the matter of tariffs for Press telegrams, the present rates in this country are not merely quite low but compare favourably with similar rates in many other countries.

1246. In the matter of Press telegrams addressed to multiple addresses, certain concessions are allowed. For additional copies delivered from the same office as the original, only a copying fee is charged, but in the case of deliveries from other telegraph offices, charges are levied, though not at the full rates. Formerly the concession in respect of additional copies on payment of only copying charges was available for telegrams delivered from any number of post offices anywhere in the country. A plea has been made for the restoration of this concession. The Telegraph authorities have pointed out that the claim for this concession is unreasonable since a considerable amount of additional labour is involved. We agree with this view.

1247. **Teleprinter Circuits-** The Telegraph Department rents out telegraph circuits to individual users between one point and another in the same city or between different centres. The rates, which were fixed before the war and have not been raised since, compare quite favourably with rates in other countries. We understand that further reduction in the rates prevailing in India would be uneconomical. Instances have been brought to our notice where the lines rented out to news agencies and newspapers have been misused and private and business messages have been transmitted on these circuits. We consider that the Telegraph Department would be justified in taking strong action against the offenders.

1248. **Teleprinters-** For use on these telegraph circuits the Telegraph Department rent out teleprinter machines on an annual rental of Rs 1,000 per instrument. We understand that, at present costs, there is not much scope for reduction of these charges. We hope that newspapers and news agencies would make greater use of this facility, particularly for handling press telegrams also, and that with the growing use of teleprinter instruments in major cities and towns, the overhead charges on maintenance and services of equipment would be reduced making it possible for the Telegraph Department to reduce their charges for the renting of teleprinters. We understand that the Telegraph Department is contemplating the setting up of a factory for the manufacture of teleprinters in this country. We note that according to the present proposals it is the intention that teleprinters manufactured in this country will be available for sale to the public as well as to Government offices. This should substantially reduce the cost of teleprinter operation both for news agencies and for newspapers.

1249. At present, teleprinters are available only in the Roman script, but with growing importance of Indian languages, the question has been raised of teleprinters for Indian scripts, principally *nagari*. The Telegraph Department are engaged on the design of suitable teleprinters for the *nagari* script. In view of the considerable similarity that exists between the alphabets of Indian languages, we expect that a solution for *nagari* would automatically lead to suitable solutions for the other Indian scripts also.

1250. **Cable and Wireless Charges-** A substantial portion of the contents of newspapers comes from abroad in the form of news agency messages. News agencies in India pay the Posts and Telegraphs Department a charge based on the monthly wordage handled. We feel that the present charges are very high. If there are any

fundamental difficulties in the way of permitting private reception of multiple address news services, we recommend that they should be examined again and means found to get over them. If this is not possible, it is essential that the tariff should be revised and the charges substantially reduced so as to cover only the cost of operation.

1251. In the case of despatches from correspondents abroad, transmission is by radio or cable at press rates. Between countries of the Commonwealth the rate is 1d. a word or its approximate equivalent. The charges for transmission from and to other countries are, however, considerably higher. As a result, a considerable volume of messages even through coming from countries adjacent to India and with which India has considerable contacts, is now being routed *via* London. We are informed that the question of negotiating bilateral agreements with different countries whereby rates for transmission either way are substantially reduced has already been taken up by the Government of India. An early solution which brings about a substantial reduction in international telegraph charges is essential for the development of the Press and of news agencies in this country.

1252. **Air Transport-** The charges for air transport of newspapers often exceed the limit of 15 per cent, on the nett cost of newspapers which we have suggested as the maximum to be borne by the publishers, and the excess should really be passed on to the consumer as a surcharge. We understand that the majority of metropolitan papers have agreed on a surcharge on each copy delivered by air beyond a certain distance and that complaints made to us applied only to one or two papers which, in order to gain a footing in new territories, had waved the surcharge. We consider that such a practice constitutes unfair competition and should be stopped. The distance up to which no surcharge is levied should be fixed and should not, at current freight charges, exceed 500 air miles.

1253. **Road Transport-** We feel that greater use should be made of road transport services wherever they exist in order to make newspapers available in rural areas. Co-operative arrangements among publishers for the use of road transport would facilitate distribution.

1254. **Functions of a News Agency-** The basic function of a news agency is to provide news reports of current events to the newspapers and others who subscribe for its service. We consider it essential that the service provided by the news agency should be objective, comprehensive and accurate. Since it is obviously impossible for a news agency to report every happening, it is inevitable that there should be a measure of selection. In the selection of political news, the Indian news agencies have been generally fair to various points of view, and, in the course of the evidence, we came across very few complaints on this score. But while the opposition had been treated fairly, there prevails an impression that it had not been treated equitably in the matter of length of coverage. Where big business interests are involved in criminal prosecutions, there has been no noticeable alertness on the part of these news agencies to cover such cases as promptly as the public has a right to expect. As purveyors of news, the news agencies should not merely keep themselves free from bias and follow strictly the principles of integrity, objectivity and comprehensiveness in the coverage of news, but it should also appear clear to the newspapers, and to the public, that the news agencies are maintaining such a course.

1255. **Identifying Source of News-** News agencies should eschew any comment in their services. The privilege of commenting should be left to newspapers. Newspapers often fail to identify the source by a credit-line, but where a published report contains comment, explicit or implied, it is only fair to the reader to point out that the comment is from the correspondent of this news agency or that.

1256. **Sources of International News-** The six world news agencies operating today have set up organisations which cover more or less the entire globe and have been aided in such expansion by the fact that the countries in which they have their headquarters are very highly developed technically and have also a strong Press which demands, and can pay for, a world wide news service. It is possible for any newspaper anywhere in the world to obtain reports of world events except as seen through the eyes of their employees. We are

convinced that it is essential for an Indian agency to develop its coverage of foreign news by installing its own correspondents at the major foreign capitals and using their despatches to supplement and correct, wherever necessary, the services of the world agencies. But there should be no restriction on the flow of foreign news from whatever source it comes. It should be left entirely to the discretion of the editors of Indian newspapers to accept or reject material supplied by foreign news agencies or even by the Indian agency.

1257. **Indian News Agencies-** There are at present in this country two major news agencies, the PTI and the UPI, and a third, Hindustan Samachar which is not really comparable to the other two and which at present can provide only a meagre service, though it has some features of its own. However objective a news agency sets out to be, there are certain drawbacks arising from a monopoly which could be obviated only by a competitive service available freely to all users. We are of the opinion that it is therefore necessary to have more than one news agency functioning efficiently in the country.

1258. **State Control Should Be Avoided-** Another fundamental point that we would emphasise is that the news agencies should not be state-owned or state-controlled. This does not necessarily rule out the possibility of news agencies obtaining assistance from the State. But it is essential, if Indian agencies are to function satisfactorily, that any assistance from the State should have no strings attached and the State should not have any voice in the control of the agency either editorially or administratively.

1259. **Present Services of Indian Agencies-** We have carried out an analysis of the full services provided by the PTI and UPI on 14 days selected at random in the first quarter of 1953. The daily output of international news was very high in both cases. With the total service of a national news agency made up of nearly 45 per cent of international news and only the balance left for national and regional news, the editor who depends on the agency is severely handicapped in balancing the contents of his news pages. The remedy for the present state of affairs is for the Indian agencies to screen more rigorously the wordage that comes from Reuters or Agence France Press so as to include, in their local distribution, only those items which are of sufficient importance, and also to condense the wordage so that it is brought down to approximately 60 per cent of the present wordage. The total quantum of Indian news will have to be increased very greatly and part of this increase can be achieved even with the existing staff by a more liberal selection of day-to-day events for reporting to the press. A substantial increase in the output would, however, have to be achieved by more extensive collection from additional centres not at present covered and by more detailed reporting of each event. Regional news occupies less space than national news, and if account is taken also of the fact that there are at least half a dozen distinct and different regions in the country with their own local interests not merely in political and financial affairs, but also in social, cultural and scientific matters, the paucity of regional news becomes even more noticeable. Effective coverage of these social aspects as well as of local politics can, in our opinion, be provided only if the total lineage of regional news is expanded. News agencies should extend their efforts in the way of the growth of small newspapers. The UPI has developed a useful regional service only so far as Bengal is concerned.

1260. **Classification of Services-** The PTI provides three categories of services, A, B and C, which are intended to meet the specific requirements of newspapers of different classes. When asked about anomalies in classification, the Chairman of the Board of PTI admitted in his evidence before us that he had himself come across many such instances and that they were trying to eliminate them. Such instances are so numerous that we are forced to the conclusion that there is lack of any proper system in the classification of news items. Employees of the PTI have complained to us about the trouble involved in the classification of news for the different classes of service, but any trouble that they take is wasted if the principles of classification have not been properly laid down or if they are not clearly understood and followed. We feel that classification of the service into two categories would be

quite sufficient and would result in a prompter service to those now receiving 'B' service as well as reduce editorial work for the PTI.

1261. It has been suggested that in order to meet the needs of district newspapers for a condensed service of international, national and regional news, PTI should provide a summary service. We understand that under the present contract between AIR and PTI, the right of publication in printed form of the AIR bulletins is vested back in the PTI who thereby control the rights both in the news items and in the form and shape that AIR give to it. In the circumstances, there should be nothing in the way of PTI providing a summary service based primarily on the bulletins that AIR prepared several times a day, re-edited where necessary and supplemented by items that the agency considers should have been included. This may be distributed by PTI to all its offices for issue to small newspapers who would be interested in it. Where PTI do not have their own teleprinter office, the bulletins could be delivered by telegram for the present.

1262. The PTI can thus provide three categories of service to newspapers, the full service (equivalent to the 'A' service at present), a brief service (equivalent to the 'C' service at present) and a summary service (similar to the former I.N.A. service but based on AIR summaries). We have suggested what we consider to be suitable tariffs for these three services for papers published in the language in which the service is distributed and for papers published in other languages. Our aim has been that the tariffs should be so devised as to allocate the cost of news collection and distribution to the subscribers in an equitable manner and according to the use made of the service. They consist of a fixed charge in respect of cost to the organisation for distribution of services, and a royalty dependent upon the circulation of the subscribing newspapers.

1263. **Commercial Services-** In addition to the services provided to newspapers, both PTI and UPI provide a commercial service to individual subscribers. The nature of the service is modified to suit the needs of the customer; one may be interested in cotton market rates another in the stock exchange, some may receive only bullion prices and so on. There have however, been cases of improper use of these facilities by the subscribers which must be prevented. The news agencies should not place too much reliance on income arising from these services.

1264. **Government Subscriptions-** Next to newspapers and the commercial subscribers, Governments, State and Central, form an important group of clients for the news agencies. The Central Government also purchases news services for the purpose of distribution. The Ministry of External Affairs obtains the PTI services for distribution to Indian missions abroad. The Ministry of Information and Broadcasting, through its broadcasting organisation, All India Radio, purchases news from a number of agencies for distribution through the radio both in India and abroad. We have suggested new rates of subscriptions for these services.

1265. The tariff we have recommended for the radio and for the newspapers takes into account the fact that all newspapers accept paid advertisements, while the radio does not, and that the advertisement revenues vary between English papers and Indian language papers. Our recommendations should cover the normal course of development of both radio and newspapers.

1266. **Improvement of Foreign Coverage-** We have referred earlier to the drawbacks of depending upon foreign news agencies for the supply of international news for Indian newspapers. For the present the PTI may have to continue their arrangements with Reuters for the supply of international news, though they could with advantage add to it some other sources of supply. A more important direction in which they should devote some effort, and one perhaps more likely to yield the results we look for, would be to supplement the service from Reuters by despatches from special representatives stationed abroad.

1267. **Reorganisation of PTI-** The PTI have no well-formulated plan for meeting the growing demands which are made on the service and if the present state of affairs is allowed to continue, the PTI would continue to drift in uncertainty. We are convinced that it is essential, especially in the present international and national circumstances, that the news agency should work at the maximum efficiency and integrity and for this purpose we

recommend the setting up of a public corporation to take over the running of the PTI. A public corporation formed otherwise than on the basis of a co-operative effort by the newspapers may be open to the danger of newspapers not taking a service from them. The corporation has, therefore, to be built up on the present foundations, whatever may be the changes in its control and operation.

1268. We expect that when our recommendations for the revision of newspaper tariffs and AIR subscriptions are implemented the revenues of the PTI would be on a sounder basis, and would permit, even after absorbing a certain amount of loss of commercial revenues, of a much needed increase in the expenditure on staff. We have also recommended certain other measures of assistance from Government which would be conditional on the shareholders of PTI approving certain changes in the constitution and management of the PTI. We feel confident that the spirit of public service which induced a number of newspapers to subscribe the capital required for taking over the Associated Press of India when Reuters were no longer interested in running it, would persuade them today, when PTI is in difficulties, to agree to the transfer of the organisation as it stands to the new public corporation. Ultimately the purpose of the agency is only to serve the newspapers, and its success depends solely on the disinterested manner in which they further their common interests by helping the agency to grow.

1269. **Reorganisation of UPI-** Considering the present needs of newspapers, we suggest that UPI should have only one class of service. This would cover the international, national and regional news. The increase in revenue on the basis of the tariff we have recommended would suffice to wipe out the present deficit and provide sufficient surplus for improving the output of the agency and organise regional news services.

1270. We would suggest a trust form of management for the UPI wherein the management is entrusted to a Board of Trustees in which there should be representation for subscribing newspapers and the staff of the UPI.

1271. We are recommending certain measures that the Government could take to help in putting the economy of UPI on sound lines. These measures are recommended in the expectation that the UPI brings about a change in the form of control and organisational set-up as recommended by us.

1272. **Indian News for Foreign Newspapers-** We consider it one of the functions of Indian news agencies to provide a service of Indian news for the use of newspapers in other countries. With the conclusion of the new arrangements with Reuters, it is not merely impossible to exert any influence for securing a fair hearing for India, but it is also impossible for India to ascertain whether any use is being made at all of the material sent and, if so, in what manner. Similarly, in the case of the Agence France Press, the news file of UPI is at their disposal, but there never has been, nor is there at present any means of ensuring the use of vital despatches from India or even of verifying what has been said in the Agence France Presse's service to other countries. We consider that it is a very unsatisfactory state of affairs when we cannot ensure that our own reading of current events in this vast country secures entry into the editorial offices of newspapers in other countries. Some effort is being made by the PTI to extend its own service in Afghanistan, Nepal and Japan.

1273. **Feature Syndicates-** The term 'Feature Syndicate' is applied to organisations which supply newspapers and periodicals with articles, photographs, comic strips, cartoons or other editorial matter and which derive their principal source of income from these activities. There exist today only 9 Indian Feature Syndicates and 2 Foreign Feature Syndicates supplying Indian newspapers and periodicals. The Indian feature syndicates are of recent origin; two of them were established during the World War II and seven others came into existence after the end of the War. They employ very little staff and the syndicates are mostly 'one-man shows'. They do not have any organisation for collecting material from a number of free-lance writers and distributing it to a large number of papers. They have no uniform basis for charging the newspapers for the articles, nor any regular method of paying to the outside contributors.

1274. We find that the use of syndicated feature articles is increasing in our Press. The increase is more marked in the use of foreign feature comic strips and cartoons. Though in general, the use of syndicated material has so far not proved harmful, some of the foreign cartoon strips are likely to create a deplorable psychology among children. Some of them glorify crime, and others with a cultural background alien to India, tend to create a confusion of values. We find that the Press has not encouraged and in most cases not attempted to utilise Indian humorous art in comic strips and cartoons. We feel that such an attempt should be made and encouraged by the Press.

1275. **Lines of Possible Development**- The Indian syndicates can, if they exert themselves, obtain good articles from competent writers in India on subjects of current interest and make them available to a large number of newspapers. This will enable the papers to publish really interesting and worthwhile material. The success of the foreign syndicates is due to the more suitable quality of material that they offer and, to some extent, to the lack of enterprise on the part of Indian syndicates. It seems to us a pity that neither of the major Indian news agencies has at present developed a feature service.

1276. We find that lighter material circulated by foreign syndicates finds more ready acceptance from the public than the serious subjects which most often form the sole fare available from Indian syndicates. Indian syndicates should also increase the range of their subjects. It is necessary to keep in mind that the bulk of this material is intended for publication in daily newspapers and should be adapted for that type of readership.

1277. Indian publishers generally insist that any articles supplied to them must be guaranteed to be exclusive to them before they would consider it. This narrows the scope for expanding use of syndicated material. There appears to be considerable scope, however, for syndicated material issued simultaneously in various Indian languages. This would get over the difficulty created by overlapping of circulation and it should be possible for the syndicate to arrive at a regular arrangement with at least one newspaper in each language for publishing its output.

1278. **Government and the Press**- We find that there is appreciation of the proper function of the Press in Government circles. There is, however, an excessive tendency to consider the press as a means of publicity for certain selected activities of the State or for certain individuals, and insufficient importance is attached to the functioning of the Press as reporter and interpreter acting for the people.

1279. **Newspaper Correspondents**- The Central Government has laid down rules in respect of accreditation of correspondents. These rules, while generally satisfactory, require certain modifications in order to meet the difficulties that the Press has experienced. We would recommend the formation of a special Accreditation Committee in consultation with the different organisations of newspapermen to look into these. In the case of State Governments, we found that the rules for accreditation, where they had been formulated, were not sufficiently comprehensive and left too much to the discretion of the officers responsible. We would suggest, in their case also, the formation of local committees to advise the Governments and the adoption of rules, based on the Central Government rules, to govern accreditation and disaccreditation. Complaints have been made that access to official sources of information has been denied in some cases to accredited correspondents. We recommend that Press correspondents should have the right to meet Ministers, Chief Secretaries, Secretaries of Government and Heads of district administration. In the case of official Press conferences, the practice has been to invite only accredited correspondents. Having in view the practical difficulties, we do not recommend any change in the present procedure. The facilities placed at the disposal of the Press at Delhi by the Government of India are inadequate and should be improved. We would suggest that at other centres the local Accreditation Committees should pay special attention to this aspect.

1280. **Despatches of Foreign Correspondents**- We have considered carefully, and rejected the suggestion that despatches sent by cable or wireless by foreign correspondents located in India should be scrutinised in the first

instance by some responsible authority and permitted to go out only if considered unobjectionable. Any scrutiny of this sort would amount to censorship which is not at all desirable. The representatives of the Foreign Correspondents' Association were agreed that they have not encountered any difficulties in carrying out their work and that the Press in India is not less free than in any other country in the world.

1281. **Publicity Directorates-** The Government of India and practically all the Governments of the States have an organisation for the distribution of publicity material to the Press and to the public. Although there is a complaint that these Press releases rob correspondents of their initiative, there is this to be said that they help to ensure accuracy and are of special assistance to small units who cannot afford to have a correspondent at the headquarters of Governments. While from the point of view of the Government these organisations may be considered to have achieved their purpose, the Press has not been equally satisfied. We consider it the essential right of reporters correspondents to have access to the original source of news. Even when a Press note has been issued, it should be the duty of the correspondent to supplement the release by a clarification of such other points as he feels necessary for a proper appreciation of the subject matter. The evidence of special correspondents and reporters has been that in the general run of cases, the information officer is not in a position to interpret policy and that in a large number of cases, he does not even have all the facts which are relevant. We consider it therefore essential that access of correspondents to the source of the news at authoritative level should be unrestricted and that the correspondents should also make the fullest use of such access.

1282. **Service to the Press-** The complaint that the Information Directorates spoon-feed the Press with predigested material has not precluded the accusation that in many instances they have failed to prepare material sufficiently in advance. A more serious complaint was that the summaries prepared for release to the Press were not always fair to the original report. Such complaints have been made mainly in the States and particularly with reference to reports on subjects in which the administration was directly concerned. We feel that the utility of information Directorates would be greatly reduced if such practices are adopted or even if suspicion exists, and we would therefore, commend the procedure of supplying, in advance copies of full reports to editors.

1283. **Press Officers and Advertisements-** A very unsatisfactory feature of the organisation of these Directorates is the practice of entrusting to them the responsibility for distributing Government advertisements. We would recommend that the distribution of advertisements should be taken away from the Information Directorates and entrusted to some other Directorate of the State Governments.

1284. **Publicity for Individuals-** The complaint has been general that a great deal of the material released by these Information Directorates is more in the nature of 'puffs' for individual Ministers rather than straightforward publicity regarding the activities or achievements of Government. We have scrutinised collections of photographs released by the Centre and by some State Governments and found that the tendency to ignore the fundamental achievement and to spotlight the dignitaries who were present is far too prevalent. In the matter of press releases also, we found that too often the emphasis is on the persons and not on what they have done. We feel that Information Directorates should consciously avoid such a stultifying tendency.

1285. **Government Periodicals-** In addition to the issue of material for publication in the Press, the Central and State Governments are engaged also in publishing periodicals of their own. The publication of specialist periodicals which serve as ancillaries to the functioning of technical departments would be a legitimate complement to the working of these departments. The justification is not equally apparent in the case of the Information magazines, but we see no objection to their publication so long as they confine themselves to publicising the activities and achievements of Government and are not utilised for political propaganda. In their case, too, as in the case of press releases we would repeat the advice that the aim should be to provide factual

information regarding achievements and objectives and to eschew personal publicity for individuals.

1286. Foreign agencies operating in this country also bring out periodical publications. Our view is that as long as such publications do not attempt to disturb India's friendly relations with other countries or to interfere with domestic issues, no harm is likely to follow from their being published in this country.

1287. **Press Advisory Committees-** In addition to contact with the Press through the medium of Press correspondents and reporters and through their Information Directorate, Government have additional machinery for liaison with the Press in the Press Advisory Committees and Press Consultative Committees in different States. We consider that in a democratic set-up there is no necessity for machinery like the Press Advisory Committees for advising Government on the administration of Press Laws or for Press Consultative Committees to regulate the relationship between the Press and the Government.

1288. **Journalists in Daily Newspapers-** We have made an examination of the position in respect of employment of journalists in daily newspapers only. The papers covered by our study included all the important papers and represent over 90 per cent of the daily newspaper circulation.

1289. **Disparities in Salaries and Workload-** The total number of persons employed in these daily newspapers is slightly above 2,000. Including those engaged by news agencies and others whose principal means of livelihood is journalism, the total number would be in the region of 3,000. The 189 newspapers in Indian languages employed 1,270 working journalists and the 36 English newspapers employed 751 journalists, the average number of journalists employed per paper being 7 and 21, respectively. Individual employees are also paid much more in English papers than in Indian language papers; minimum and average emoluments are both higher in the English papers. The metropolitan papers are providing employment for roughly half the number of those working for Indian language newspapers and about 80 per cent of those working for English papers, (or 60 per cent of all journalists), though the number of such metropolitan papers is only 20 per cent of the total. The average metropolitan paper thus employs six times as many journalists as the average provincial or district paper. Emoluments are also higher in metropolitan papers, both in respect of minimum and average. The average large circulation papers (over 35,000) employ, in the case of Indian languages, four times as many journalists as the smaller ones, and even in the case of English papers three times as many as the smaller ones. Emoluments are higher in the large papers, both in respect of minimum and average.

1290. **Working Hours-** 207 daily newspapers supplied particulars regarding hours of work of their journalists in day shift. About 43 percent of the reporting newspapers stated that the journalists employed therein worked between 7 and 8 hours a day, 41 per cent stated that the journalists worked between 6 and 7 hours a day, 12 per cent reported the number of working hours to be between 5 and 6 hours a day and 4 per cent reported not more than 5 hours a day.

1291. **Working Days Per Week-** 205 daily newspapers furnished information regarding the number of working days per week for the journalists (viz., the news editors, sub-editors and full-time home correspondents) employed by them. All of them, except four, reported journalists' working week as six working days followed by a paid holiday and a full night's rest.

GENERAL

1292. **Working Journalists-** We consider that only those whose professed avocation and the principal means of livelihood is journalism should be regarded as working journalists. Whether in any particular case a proofreader should be regarded as a working journalist, must depend upon the duties assigned to him and the purpose for which he has been employed. Where both editorial and managerial functions are performed by the same person, he should be entitled to be regarded as a working journalist. A person, who would otherwise be a working journalist in the sense described above, should however, be excluded form that category if his office involves responsibilities which are usually attributable to a proprietor. But where the editorial side is

controlled by the proprietor himself and there is no other employees under him, he should be regarded as a working journalist in spite of his proprietorial interest.

1293. There is a bewildering variety of designations employed in connection with staff doing different kinds of work in a newspaper office. Some kind of standardization of designations based on duties and responsibilities would be very necessary, if scales of pay have to be prescribed for each category. An inquiry for this purpose would require a detailed and, to some extent, local investigation. The proposals that we are making for the application of the Industrial Disputes Act to working journalists would provide them with the necessary machinery for the purpose.

1294. The status and role of working journalists have undergone change in many directions. Formerly, most of the Indian Press had only one objective and that was political emancipation of the country. Most of the journalists of that era were actuated by fervent patriotism and a feeling that they had a mission to perform and a message to convey. Political independence having been achieved, the emphasis has shifted, and the newspapers are no longer run as a mission, but have become mainly commercial ventures. The moral and intellectual leadership which used to be associated with journalists of former days is not being maintained at the same level. The calibre of persons attached to this profession has not been of the same high standard as in the past.

1295. The deterioration in the status and role of journalists may have been partly due to the tendency of large concerns who, instead of ploughing back profits into the existing units in the industry, and utilising them to improve the conditions of journalists, have diverted the profits for the purpose of starting new units at different centres.

1296. The most widespread complaint is in the matter of insecurity of tenure. The services of the employee have been terminated either with no notice or with inadequate notice. All this must inevitably lead to demoralisation and lowering of the professional standards among the working journalists.

1297. The work of a journalist demands a high degree of general education and some kind of specialised training. In view of the importance of their work, the profession must be manned by men of high intellectual and moral qualities. Some of the conditions under which the work is to be performed are peculiar to this profession. Journalists have to work at very high pressure and are often required to work late in the night. Journalism has become a highly specialised profession and to handle it adequately, a person must be well-read, must have ability to size up a situation and to arrive quickly at the correct conclusions and have the capacity to stand the stress and strain of the work involved. The quality of work is an essential element in measuring the capacity of journalists. All these circumstances must be borne in mind in framing any scheme for improvement of the conditions of working journalists.

1298. **Recruitment and Training-** There is no well-defined system of recruitment to the editorial staff of the newspapers. The recruitment is made in a haphazard fashion. Appointments are often made on considerations other than merit. When such appointments are made to the posts on the editorial side, the practice is indefensible as it is bound to lead to a lowering of the standards of journalism.

1299. Improvement therefore is immediately called for in the manner in which recruitment is made. We think that whenever vacancies arise, they should be advertised and selection should be made on the recommendation of the editor, assisted by a small selection committee. A proper register should be kept of all the applicants and of the candidates who have passed the selection test, and all appointments should be made in the order of priority as determined by the Selection Committee. A proper register should be kept of all the applicants and of the candidates who have passed the selection test and all appointments should be made in the order of priority as determined by the Selection Committee. These observations are applicable mainly to large establishments whose annual turnover of the staff is appreciable and not to small district newspapers having only a few members on the staff.

1300. So long as the proprietary form of ownership exists, the appointments will have to be sanctioned by the proprietor. But in practice the

conduct of the newspaper on its editorial side should be left to the editor. The proprietor, having selected his editor, should give him the fullest autonomy to select candidates for appointment on the editorial side. There should be a team spirit and this can be secured only if the editor has working under him persons who enjoy his confidence and who in turn have faith in his leadership and guidance. The proprietor should invariably make appointments and issue letters of appointment only on the recommendation of the editor, assisted, wherever possible by a Committee or a Staff Council. We think it would be most undesirable that the proprietor should make appointments on the editorial side without the concurrence of the editor. The same principle should apply to the appointments made on the managerial side. The senior members of the staff should, as far as possible, be appointed from the existing members of the staff in consultation with the heads of the managerial and the editorial sections as the case may be, although exceptions may be made in the case of persons of outstanding merit.

1301. Although there is plenty of human material available to supply the needs of the journalistic profession, it has to be educated and trained along proper lines. At present the educational standard and intellectual equipment of some of the journalists who have entered the profession has been woefully unsatisfactory.

1302. General improvement can be brought about only if higher educational standards are maintained in schools and colleges. It should be possible for our school and University authorities to have a course in world affairs, essay-writing and precis-writing not merely as a special qualification for those who want to enter journalism, but as an integral part of a sound and liberal education.

1303. **Qualification for a Journalistic Career-** A degree with a good grounding in humanities would be a satisfactory minimum qualification. But the qualification need not be confined to an academic degree, but should take into account also the psychological equipment of the candidate, his general aptitude for practising the profession of journalism, his flair for writing and his nose for news. It is too early at present to insist that the new entrants to journalism should be persons who have obtained a journalistic qualification either by way of a degree or a diploma. But other things being equal, persons having a journalistic qualification should have preferential claim in the matter of employment. The correspondents on the staff of newspapers should not only be proficient in the regional languages, but also in the language of the paper on which they serve and in the language in which the news is transmitted by telegraphy.

1304. **University Courses in Journalism-** On the whole it seems to us that the list of subjects laid down for study in most of the Universities is generally satisfactory but the time allotted for the study of these subjects is quite insufficient. We think that the diploma or the degree course should preferably be a post-graduate course. The experience at the Mysore University where a provision is made for the study of journalism as part of the degree course in Arts is not encouraging. There is no objection to such a course being maintained as part of a liberal University education. But such a course would be altogether inadequate for those who want to take up journalism as a career. If it is a post-graduate course, then it may be of two-years duration. But the modern tendency of University education is to start specialisation after reaching the intermediate standard. If this is extended to a specialised degree or a diploma in journalism then the course should be of three and not two years. Of these three years, the first year should be devoted to the study of general subjects such as History, Sociology, Economics and Politics. The actual instruction in journalism should be given in the second and third years. The curriculum should also include a study of the management of newspapers and the technique of their production including instruction in printing and typography, press photography, radio journalism, etc. It is understood that Universities will shortly be required to prescribe one year's general training as a part of the intermediate course or as a preliminary to admission to the degree course in Arts and Science. Until such a preliminary course is initiated, it may be necessary to have a year's course in general subjects referred to above, followed by a test to ascertain the special aptitude of the students for journalism before

permitting the students to proceed to specialised study of journalism in the second and third years. This theoretical training would be good as far as it goes, but it needs to be supplemented by practical training in journalistic work in the newspaper offices. It would be desirable for the University authorities to have periodical reports of the practical work done by the student in newspaper offices. The Universities should also start a campus paper as is done in the American Universities and to run the paper for such periods of the year as may be found practicable. Alternatively, some satisfactory arrangements should be made with other newspapers in the locality for ensuring that the students derive a real benefit. Organisations of newspapermen should be able to advise the Press Council on the possibility of setting up an Institute of Journalism which can keep a watch on the methods of training in the University and also conduct refresher courses. Such an Institute can also carry out research into the problems of the profession and if necessary conduct courses of its own for training in journalism.

1305. There are reasonable prospects for those who obtain a degree or a diploma in journalism to obtain employment in different walks of life, such as the newspaper industry itself, Information Offices of the Central and State Governments, News Division of All India Radio and Information and Publicity Offices in industry and commerce. The news agencies also afford an avenue of employment for graduates in journalism. We estimate that the output of such trained graduates should not normally exceed about 300 a year during the course of the next ten years, if we are to avoid the risk of unemployment and the consequent hardship to these graduates.

1306. **Apprenticeship and Maintenance of Efficiency-** There is no regular system of recruiting apprentices and of training them. The practice which exists in some papers of entertaining apprentices purely or mainly with a view of effecting savings in wages is wrong in principle. It is on the whole undesirable to recruit apprentices unless there is a reasonable chance of their being absorbed on the staff of the paper at the end of a specified period of satisfactory training. The period of training must depend upon the training and the journalistic background of the apprentice concerned. But in no case should the period of apprenticeship exceed two years, nor should free service be taken from these apprentices as a measure of economy. Apprentices with a diploma or a degree in journalism should be paid two-third of the basic minimum salary of a sub-editor and those who are not so qualified should get half the basic minimum salary of a sub-editor during the period of apprenticeship.

1307. **Refresher Courses-** The Institute of Journalism would be the proper authority for conducting refresher courses for those who are already engaged in the profession.

1308. **Facilities for Travel-** In order to enable journalists to perform their duties efficiently, the newspapers should, by turn, give facilities to the members of their staff to pay visits to different parts of the country and to obtain first-hand knowledge of local conditions. Wherever practicable, the bigger papers should send members of their staff to foreign countries and there should, if possible, be a constant exchange between the members of the staff serving in India and those serving as foreign correspondents in different countries. Such exchange will be beneficial to both categories of employees.

Conditions of Service

1309. **Letter of Appointment or Contract-** As a general rule the employees in the newspapers are not given any contract of employment and in a large majority of cases not even a letter of appointment. We think it is advisable that the employee should receive either a letter of appointment or a contract as the employee may prefer. It should contain a clause stipulating that the appointee should abide by the code of ethics prescribed for the profession. The draft form should specify the period of notice for the termination of services. We suggest the following minimum periods of notice for the termination of services:

Editors		Joint Editors, Asst. Editors, Leader Writers, News Editors & Chief Sub-editors		Other Working Journalists	
Service	Notice	Service	Notice	Service	Notice
Less than 3 years	* 3 months	Less than 3 years	* 2 months	Less than 2 years	* I months
Over 3 years	6 months	3 to 5 years	* 3 months	2 to 5 years	* 2 months
		Over 5 years	* 4 months	5 to 10 years	* 3 months
				Over 10 years	* 4 months

N.B. * Unless his service in any other capacity in the same paper entitles him to longer notice.
The Draft form of contract or the letter of appointment should mention the age of superannuation when the working journalists would be bound to retire.

1310. **Punishments to Be Imposed-** The authority competent to impose punishment should normally be the authority empowered to make appointments, acting on the advice of the editor on the editorial side and of the manager on the managerial side. The employee concerned should be given a charge-sheet and afforded reasonable opportunity to defend himself. The punishment which would be imposed upon the employee of a newspaper for proved inefficiency or gross negligence should be of the following types arranged in the ascending order of gravity:
(1) Warning;
(2) censure:
(3) withholding of increment;
(4) withholding of promotion;
(5) forced leave;
(6) suspension; and
(7) termination of services.

In many cases services have been dispensed with without sufficient cause and sometimes with inadequate or no notice.

1311. To some extent a change in the proprietorship would make it inevitable that there would be changes at least among the holder of the senior posts of the editorial staff. But certain cases have been brought to our notice where a change in the proprietorship and administration has led to a change not only in the editorship but also among the junior members of the editorial staff.

Minimum Wage and Dearness Allowance

1312. **Unsatisfactory Emoluments-** Save in the case of some of the bigger newspapers, the emoluments received by working journalists are, on the whole, unsatisfactory; the starting salary is low; increments have often been given to a chosen few; salaries have not been paid regularly and have sometimes remained in arrears for three or four months. Owing to the insufficient number of working journalists employed by newspapers, their workload has increased. Sometimes some members of the staff have to perform the duties of a higher post, but continue to receive the salary of a lower post. There is ground for believing that there has been an arbitrary exercise of power by the proprietor in this matter.

1313. It has not been possible for the Commission to undertake a detailed investigation for fixing scales of pay for different categories of employees. It was not possible for the Commission to undertake standardisation of designations or to fix scale of pay or other conditions of service. We agree in principle that there should be uniformity, as far as possible, in the conditions of service in respect of working journalists serving in the same area or locality. But this can be achieved only by a settlement or an adjudication to which the employers and the employees are collectively parties.

1314. Dearness allowance has not always been paid, although there has been a considerable rise in the cost of living. As in the case of standardisation of designations and fixation of scales of pay, we must leave the matter of dearness allowance also for mutual negotiations between the employers and the employees and provide for a suitable machinery for settlement of disputes either by mutual agreement or, if that cannot be brought about, by adjudication.

1315. **Minimum Wage-** A journalist occupies a responsible position in life and has powers which he can wield for good or evil. His wages and conditions of service should therefore be such

as to attract talent. He has to keep abreast of the developments in different fields of human activity. This involves constant study, contact with personalities and a general acquaintance with world problems. It is therefore essential that there should be a certain minimum wage paid to a journalist. If a newspaper cannot afford to pay a minimum wage paid to the employee which will enable him to live decently and with dignity, the newspaper has no business to exist. We think that there should not be, as a result of the prescription of a minimum wage, any large-scale unemployment.

1316. The Minimum Wages Act was intended to apply to what are called sweated industries or to industries wherein the labour is not properly organised. Working journalists cannot be regarded as coming within the category of sweated labour, and with the formation of trade unions and associations all over India and with the coming into being of Federations of Journalists, it cannot be said that the working journalists are not properly organised. It would therefore not be desirable to bring them within the purview of the Minimum Wages Act.

1317. **Classification of Areas-** In order to express any view as to what would constitute a reasonable minimum wage for working journalists all over India, it is obvious that we have to take into account the differential cost of living in different parts of India. The latest scientific study in respect of lower middle class with regard to conditions all over India is to be found in the Award given by the All India Industrial Tribunal (Bank Disputes) in March 1953. We think that the classification adopted by the Tribunal is, on the whole, fair. But we would slightly modify that classification in the following manner so far as journalists are concerned:

Class III- Area consisting of all places with a population of less than one lakh according to Census Report of 1951;
Class II- Area consisting of all places with a population of more than one lakh but less than 7 lakh;
Class IB- Area consisting of towns with a population of over 7 lakh other than the towns falling in Class IA area. This would include cities of Ahmedabad, Bangalore, Hyderabad and Kanpur;
Class IA- Area consisting of metropolitan cities of Bombay, Calcutta, Delhi and Madras.

1318. **Concept of Minimum Wage-** A minimum wage must provide not merely for the bare subsistence of living but for the efficiency of the worker. For this purpose, it must also provide for some measure of education, medical requirements and amenities.

1319. The minimum wage that we recommend is as follows:

Area	Basic Wage	Dearness or High Cost of Living Allowance	City Allowance or Metropolitan	Total
	Rs	Rs	Rs	Rs
Class III				
Population less than one lakh	125	25	..	150
Class II				
Population over one lakh but less than 7 lakh	125	50	..	175
Class IB				
City areas having a population of over 7 lakh which would include the towns of Ahmedabad, Bangalore, Hyderabad & Kanpur	125	50	25	200
Class IA				
Metropolitan areas: Bombay, Calcutta, Delhi, Madras.	125	50	50	225

If there is a substantial rise in the cost of living, the dearness allowance should be increased to the appropriate extent. Mr. Jaipal Singh, Mr. T.N. Singh and Mr. Chalapathi Rau would accede to the Federation's demand based on the Federation's classification of areas which keeps a larger number of towns within the minimum range of Rs 150 and brings a larger number of towns with a population of more than two lakh within the minimum range of Rs 200. We have not been able to prepare a similar schedule for the managerial side of the newspaper establishment. But the statistics received by us do show that the emoluments in many cases are unsatisfactory. Perhaps the basic pay suggested by the Bank Award might prove a useful guide for the purpose.

1320. **Qualifications for Being Entitled to Minimum Wage-** These minima should be applicable to all working journalists, whether graduates or holders of equivalent qualification, including University diploma in journalism or to those who have put in five years' service (including the period of apprenticeship) in one or more newspapers. Mr. Chalapathi Rau would, however, make no distinction between graduates and University diploma-holders on the one hand, and journalists not so qualified, on the other, in respect of employees who are already engaged in journalism at present.

1321. **To Whom These Recommendations Should Be Applied-** These recommendations should be applied to the employees of daily, biweekly and triweekly newspapers as also to the employees of news agencies in the first instance. They may be extended by Government to cover other categories of periodical publications run on commercial lines. It is not intended that periodicals for the advancement of cultural, political, social or similar objectives or those conducted by the cooperative effort of a number of individuals should be handicapped or that difficulties should be placed in the way of those endeavouring to start periodicals at district centres. We feel that our other recommendations, if implemented, should enable smaller units of newspapers, especially the language papers, to meet the expenditure involved in paying the minimum wages that we have suggested. There should be no disparity between the employees of English newspapers and those in the Indian language papers.

1322. **Reporters and Correspondents-** We see no reason why the reporters and staff correspondents should be treated in any way differently from the regular members of the staff. These employees should be fully indemnified by the newspapers in respect of their out-of-pocket expenses in the shape of transport, postage, telephone and telegraph charges, etc.

1323. In respect of part-time correspondents, it is not possible to prescribe what the retainer fee should be. It depends upon the capacity and the status of the paper and also upon the nature and the difficulties involved at the stations where mofussil correspondents are posted. Nor is it possible to prescribe what the rate on the lineage basis should be. It is a matter for mutual adjustments. There is some evidence that although the material supplied by the mofussil correspondents has not been paid for, on the ground that it has not been printed, it is in fact used by the paper as background material. Irrespective of the use that may be made of the material, the mofussil correspondents should be paid their out-of-pocket expenses. There have been cases where the material supplied by mofussil correspondents, though not printed in the paper in whose employ they are, is often used by other papers of the same group. In such cases, it is only fair that some remuneration should be paid to the mofussil correspondents. Where information is particularly asked for and supplied, it should be paid for, irrespective of how much of it is actually used by the paper. Where a mofussil correspondent is employed originally for one paper, and then the proprietor starts another paper in the same group, it is only fair that the basis of his remuneration should be refixed.

1324. There are cases where the correspondents devote their full time to journalism, but serve not only one paper, but several papers under different proprietors. It is generally undesirable that the same individual should act as a mofussil correspondent for two or more such newspapers. In any event, the fact that a correspondent is serving two or more newspapers simultaneously should be made known to all the papers concerned. In these

cases the contract of employment should include a provision that provident fund and gratuity benefits would be available to such correspondents from the different newspapers on the basis of monthly remuneration paid to them.

1325. We are not in favour of the practice which prevails in some places of relating the rate of payment to the number of copies sold in the area assigned to a mofussil correspondent. While there is no harm in a mofussil correspondent acting as a sales agent in small places where there is not enough work in either capacity, the two functions should not, as far as possible, be entrusted to the same person.

1326. Although in our opinion it is generally undesirable to employ non-Indians in managerial or editorial posts, there should, we think, be no legal or administrative bar against their employment. In any case, for appointment of posts of technical character or for recruitment to posts for which no suitable Indian candidates are available, there is no objection to the appointment of non-nationals. As a general rule, it is desirable to appoint only Indians as foreign correspondents of Indian newspapers. There are non-nationals of high qualifications and special experience both of India and of the countries in which they reside whose continued association will be of great assistance to Indian newspapers.

1327. **Remuneration and Other Facilities to Foreign Correspondents-** Full time foreign correspondents of Indian newspapers should receive a definite remuneration regularly paid and they should be given facilities to visit India at least once in three years. They should have the same provident fund and gratuity benefits as are applicable to those serving in India. Unless a newspaper is in a position to make adequate payments to its foreign correspondents so as to enable them to maintain themselves properly, it is not desirable to make any such appointments. As a general rule, it is desirable that foreign correspondents should not perform the duties of a business representative of the paper, although this may be inevitable in a few cases.

1328. **Indians in Foreign Information Services-** Government should have full information regarding Indians employed in Foreign Information Services. They should get the same amenities and privileges which employees get in other newspaper offices. This question is, however, academic, for the Indian employees of Foreign Information Services on the whole get comparatively higher wages and more amenities.

1329. **Free-lance Journalists-** Many free-lance journalists find that the material supplied by them is used by the newspapers in the same or in a modified form without any payment being made to them. This is undesirable. We consider that free-lance journalists should, when sending their contributions, indicate whether they want to be paid if the material is printed and if so, at what rate. That should be the basis of the agreement if the material is in fact printed.

1330. **Bonus-** The practice with regard to the payment of bonus has not been uniform. Bonus cannot be regarded as an *ex-gratia* payment. Where the industry has capacity to pay and has been so stabilised that its capacity to pay may be counted upon continuously, payment of a living wage is desirable. But where the industry has not that capacity or its capacity varies or is expected to vary from year to year so that the industry cannot afford to pay living wages, bonus must be looked upon as a temporary satisfaction, wholly or in part, of the needs of the employees. Our suggestion is that the gross profits of a unit should be ascertained in a normal way by deducting the expenditure from the income. A provision should then be made for payment of taxes, for depreciation at the rate allowable under the Income Tax Act and for a return at the rate of $^1/_2$ per cent more than the bank rate or 4 per cent., whichever is higher, on the invested capital. The balance should be regarded as clear profit. This should be divided into three parts. One-third should be available for payment of bonus, either immediately or if the amount is not large enough for making such payment, contingently, thus narrowing the gap between the existing unsatisfactory wage and the living wage; one-third should be reserved for ploughing back into the industry and for making a provision for meeting future losses; the remaining one-third should be available to the unit for distribution to the shareholders. This scheme is not altogether novel. Some variation of it appears in the Electricity (Supply) Act of 1948. Following the scheme of

that Act, we reserve one-third of the net profits for ploughing back into the industry. We reserve another one-third for the benefit of the undertaking which in practice means distribution to shareholders, and the remaining one-third is not reserved for readers of the newspapers as the Electricity (Supply) Act does for future rebate to the consumers of electricity. We earmark it for the benefit of the employees.

1331. **Hours of Work-** We think that for day shifts the hours of work should be 42 in a six-day week, *i.e.*, seven hours a day, including the recess period of one hour. This means six hours of effective work. For night shifts there should be 36 hours in a six-day week, *i.e.*, six hours per day with a recess of half an hour, which means $5^1/_2$ hours of effective work. There need be no special night shift allowance. Where any of the hours of work of the shift fall between the hours of 10 P.M. and 5 A.M., the shift should be regarded as night shift. No person should be employed on the night shift continuously for more than one week at a time or for more than one week in any period of 14 days.

1332. The main body of reporters should work between 2 P.M. and 10 P.M. although some reporters will have to be engaged for news that may break at other times of the day.

1333. **Weekly Rest and Holidays-** It is the normal practice in newspapers to give a weekly period of rest to the editorial staff, consisting usually of a complete day and night.

1334. With regard to 7-day newspapers, two objections have been raised. Firstly, all the staff cannot have a common day of rest along with employees in other walks of life. Secondly, it is urged that Sunday newspapers provide a magazine section which robs the weeklies of their legitimate readership. The two objections do not permit of a common solution. We recommend that professional bodies should be consulted and if they are of the opinion, after balancing the advantages and drawbacks of six-day newspapers, that Sunday should be declared as a compulsory day of rest for them, a provision should be included in the enactment for the industry that we are recommending elsewhere.

1335. **Holidays-** The total number of holidays for newspapers should not exceed 10 in number. How they should be distributed will depend upon the region in which the newspaper is published, the character of the newspaper and the composition of the journalists employed in that paper. Where a member of the staff is required to attend on a holiday, he should be given a compensatory holiday on some other day chosen by him.

1336. **Leave-** There have been no serious cases brought to our notice of hardship caused by the non-observance of the existing rules. All newspapers should draw up a set of leave rules applicable to their staff both on the editorial and managerial sides and give a copy thereof to each employee at the time of his first appointment.

1337. There has been little uniformity among newspapers with regard to the quantum of leave permissible to the employees. We are of the view that journalists should have casual leave for 15 days in a year and earned leave for one month for every 11 months of service. In addition, they should be given sick leave at the rate of 20 days per every year of completed service on half salary with option to the employee to convert it into half the period on full salary. Sick leave should be admissible only on medical certificate, and the employee should return to duty only on production of a certificate of fitness. Special leave rules for lingering illness should be on the lines of those applicable to Government servants. Both the earned leave and the sick leave may be permitted to be accumulated to a maximum period of three months. Leave should be granted to the employees by rotation determined by ballot. When an employee voluntarily relinquishes his post, he should be compensated in respect of the leave earned, but not availed of. At the time of retirement the employee should get cash compensation for leave not availed of to the full extent of accumulation. The leave rules should be uniform for employees both on the editorial and managerial sides of a newspaper.

1338. **Amenities and Facilities-** In some of the bigger newspapers in the four metropolitan cities adequate provision is made for some amenities and aids to efficiency. We consider that the following amenities are essential:

(1) Libraries with Research and Reference Sections;

(2) Provision for supply of drinking water and, if possible, cooling arrangements in hot weather;
(3) Day and night rest-rooms;
(4) Transport during unusual hours and in emergencies at least by the bigger newspapers;
(5) Insurance to cover hazardous assignments.

If canteens and tiffin-rooms are provided, they should be run on a co-operative basis wherever possible.

1339. **Promotions-** There are no regular rules for making promotions to senior posts. There have been cases where direct appointments of outsiders have been made, overlooking the claims of the holders of junior posts. Sometimes the promotions have not gone by merit and other considerations have often weighed with the authorities concerned. We think that promotions should be made by the appointing authority on the advice of the editor or the manager as the case may be. The principle which we have suggested for adoption in the case of recruitment should apply to promotions. We prefer the system of the payment of a special merit bonus to the giving of special increments as a recognition of exceptional merit.

1340. **Retirement Benefits-** We agree with the view that Provident Fund-cum-Gratuity is the best way for providing for retirement benefit and is preferable to a provision for pension. The employee should contribute 8 $^{1}/_{3}$rd per cent of his emoluments in the shape of compulsory contribution and the employer's contribution should be of an equivalent amount. The Employees' Provident Funds Act (XIX of 1952) should be made applicable to such a provident fund. We also recommend that the employee's contribution should be utilised for the purpose of effecting an insurance on the life of the employee. The contribution of the employer and the employee should be accumulated for a period of three years. At the end of three years, the accumulation to his credit would amount to six months' wages. This amount should be utilised for purchasing a single premium policy which would ensure some provision for his family in the case of a sudden death of the employee. If the death occurs within a period of three years, then such amount as may stand to the credit of the employee should be payable to his family.

1341. **Gratuity-** We think that on the termination of the service by retirement or for other reasons, gratuity should be paid on the basis of 15 days' pay for every year of service or part thereof in excess of six months calculated on the average emoluments during the last year of service. Gratuity should be payable in all cases, except where the termination of service is due to misconduct. In case of death or premature retirement for reasons other than misconduct, whatever the employee is entitled to should be paid to him or his legal representatives.

1342. A provision should be made annually in every balance-sheet for gratuity and other purposes and it should form part of the legitimate expenses of the concern.

1343. **Trade Unions-** The Federation of Working Journalists are strong protagonists of the view that working journalists should organise themselves as a trade union. The Southern India Journalists Federation strongly feel that journalism is a high and noble calling and would degrade itself if it descended to the level of other industries in which the labour is usually organised on trade union lines. They think that journalism is a creative art and journalists should organise themselves as other learned professions like law and medicine by setting up autonomous professional bodies charged with the duty of maintaining high standards of the profession. We appreciate this point of view but we see no valid ground in it for opposing trade unionism. The whole outlook of journalists towards the profession has altered since the attainment of Independence. Newspapers are now run as commercial ventures and proprietors are not slow to exploit the situation in order to increase their circulation, quite oblivious of journalistic ethics. It cannot, therefore, be said that journalism has retained its pristine glory. Unlike other learned professions journalism is essentially a calling in which people have to work for employers and earn wages. In order to bring about a betterment in the existing conditions of working journalists it may be necessary that they should organise themselves

as trade unions under the Indian Trade Union Act of 1926 and we see no reason why such organisations should interfere with journalistic efficiency. Though the working journalists organise themselves on trade union lines they should keep themselves aloof from any political bodies or movements in the country. In view of the number of people who sincerely believe in keeping out of trade unionism on the score of the special characteristics of their profession, any attempt at a 'closed shop' should be opposed. Although we ourselves look with favour on journalists organising themselves as a trade union, we do not see why the two kinds of organisations should not exist side by side.

1344. **Settlement of Disputes**- There have been disputes which have come up for settlement under the Industrial Disputes Act in which working journalists have been involved. The question whether the working journalists are governed by the Factories Act, the Payment of Wages Act and the Industrial Disputes Act has given rise to various decisions of Courts and Tribunals. Until the matter is finally settled by the highest authority, it cannot be said with certainty that journalists working on the editorial side of the paper could be regarded as being governed by the Factories Act or by the Payment of Wages Act for the reason: (1) that the places where they worked were 'within the precincts' where manufacturing processes were carried on, (which is a question of fact in each case), (2) that the working of the teleprinter machines constituted a manufacturing process, and (3) that the manner in which the editorial side dealt with raw material, namely, crude news on the teleprinter machines and the reports of the correspondents, itself constituted a manufacturing process.

1345. The question whether the Industrial Disputes Act of 1947 applied to working journalists or not has given rise to some controversy. The latest decisions indicate that working journalists do not come within the definition of 'workman' as it stands at present in the Industrial Disputes Act. Nor can a question with regard to them be raised by some others who are admittedly governed by the Act.

1346. The Ministry of Labour have supplied the Commission with a note which gives an outline of the new Industrial Relations Bill which they intend to bring before the Parliament very shortly. It follows the general lines of the Labour Relations Bill which was introduced in the budget session of Parliament in 1950 and was also reported on by the Select Committee towards the end of 1950. That Bill, however, lapsed on the dissolution of the Provisional Parliament. We have carefully considered the provisions of the proposed Bill and we are of view that the scheme embodied in the proposed legislation is an admirable one and should provide a suitable machinery for resolving of disputes between the employers and the employees in the newspaper industry. We, therefore, recommend that the definition of the word 'employee' in the proposed legislation should be wide enough to include within its purview the working journalists as well as employees on the managerial side, or a provision may be inserted in the proposed Newspapers and Periodicals Act making the new industrial relations legislation applicable to newspapers employees.

1347. We have, however, one or two suggestions to make particularly in the applicability of the legislation to working journalists. Although the Ministry of Labour is unwilling to extend the sphere of Central Government responsibility, we think that the newspaper industry is one which should come within the administrative control of the Central Government. We also suggest that some of the Conciliation Officers should be persons having journalistic experience.

1348. Under the scheme envisaged by us, the Press Council will be the body which will determine the lapse, if any, on the part of journalists from professional standards. That body would also administer the code of ethics. Having entrusted the professional side of the newspaper industry to the care of the Press Council, we think that the economic side of the newspaper in so far as it affects the conditions of working journalists, should be regulated by the procedure envisaged, under the proposed legislation. It is conceivable that in some cases an industrial dispute may also have involved pronouncement by the Press Council on the propriety or otherwise of professional conduct. Any expression of opinion by the Press Council is not likely to embarrass the

Industrial Court which will consist of persons with high judicial experience. On the contrary, an expression of opinion by a body of the type of the Press Council presided over by a High Court Judge on a point of professional ethics is bound to be treated with respect by the Tribunal and we do not see that normally any case will arise where the Industrial Court may find itself embarrassed by the expression of opinion by the Press Council.

1349. We suggest that the proposed legislation for the regulation of newspapers industry should embody our recommendations with regard to: (1) notice period; (2) bonus; (3) minimum wages; (4) Sunday rest, if agreed upon; (5) leave; and (6) provident fund and gratuity. Matters regarding classification of employees, hours of work, shift working, suspension or dismissal for misconduct, etc., would be dealt with under Standing Orders when the new legislation comes into force.

1350. Our recommendations with regard to working journalists employed in newspapers should apply *mutatis mutandis* to the employees of news agencies also.

1351. **Associations of Newspapermen-** The All-India Newspaper Editors' Conference, Indian & Eastern Newspapers Society and Indian Languages Newspapers' Association are the organisations of the newspapers. The AINEC is primarily concerned with the editorial side of the newspapers while the other two are concerned with the business aspects of the newspaper industry. In all three organisations, the members are the newspapers themselves and not individuals. Many of the members are common to the two organisations, AINEC and IENS. The Indian Federation of Working Journalists and the Southern India Journalists' Federation are the organisation of the employees. There is no separate organisation of the editors of newspapers as such. The AINEC is essentially an organisation of the newspapers though they are generally represented by their editors. Editors are also members of the two associations of employees-IFWJ and SIJF.

1352. **Variations in Content of Newspapers-** Daily newspapers in this country display considerable variety in size, but the majority of them are printed in what has come to be the standard size in India, *i.e.*, demy size. We have examined the contents of issues selected at random from a number of papers, in English and Indian languages, large and small, in order to bring out a general picture of the contents. The number of pages in each issue showed considerable variance. Further, differences in the quantum of material placed before the readers are caused by the size of type used and by the amount of spacing allowed between lines. In the case of English papers of standard size, the pages are divided into 8 columns and the average number of lines per column ranges from 130 to 200. In respect of total editorial space, the variation from one paper to another ranges from 450 column-inches in the case of some Indian language papers to 1,500 column-inches in the case of the largest English papers. While in the amount of total editorial space the maximum range did not exceed 3 $^1/_2$ to 1 between the smallest paper and the largest paper, the variation in the case of advertisements was about 25 to 1.

1353. **Balance of News Coverage-** Not all the papers we examined exhibit a proper balance in news coverage. Among those published in English, only two papers provided a coverage of State news comparable to their coverage of national and international news. In the case of three other papers of large circulation which are published as multiple editions, we should ascribe the poor coverage of State news to the fact of such multiple publication. The Indian language papers show some well-defined characteristics. The first of these is the reduction in space allotted to international news as compared to English papers. The second is the increased importance generally given to State news as compared to national news. We are of the opinion that this correct balance has to be preserved in all newspapers. At present the selection of news items is not done with any imagination nor is sufficient effort devoted to collecting news of the type which would really interest the reader. Moreover, the news agencies and the newspapers have not shown ability to present items of local interest in an attractive fashion. The contents of the news columns appear to have been dictated to a considerable extent by the nature of the services provided by news agencies; it has also determined the proportion in each case, of news about different subjects, such

as politics, economics, science, art or industry.

1354. **Place of International News-** In deciding whether coverage of international news is excessive, we have to keep in mind two modern developments. Firstly, the political and economic policies of each country have a deep effect on the daily life of citizens of other countries, in a manner not dreamt of two or three decades ago. Secondly, foreign policies are no longer the close preserve of career diplomats conducting their negotiations behind doors, but have to be explained, discussed and criticised where necessary in public. To enable every citizen to understand current world affairs and to form intelligent conclusions, it is necessary that he should be kept continuously informed of all significant events wherever they may occur. Judging however by the quantum of space allotted, it seems to us that there is some need for more careful editing of foreign news in order to ensure that while no news of significance is left out, the torrent of words that flows from the news agency teleprinter is not permitted to sweep away news of happenings in this country.

1355. **Editorial Comment-** In editorial comment most of the English papers have allotted a substantial proportion of their leading articles to comment on international events; items of national interest take the next place, while in the majority of papers examined, affairs of the State or region take only the third place. In the case of Indian language papers, which circulate generally over a more restricted area, the proportion of space devoted to local affairs was higher (25 per cent of the total) than in the case of English papers (15 per cent of the total). It was however noticeable that taking all the papers as a whole, the space devoted to international affairs was very high. Whatever the reasons, we would prefer Indian language newspapers to observe a fairer balance in the selection of subjects for comment instead of following too closely the pattern of the English papers.

1356. **Need for Continued Study-** The value of a study of this nature would be greatly enhanced if it could be extended to a large proportion of the newspapers in this country and could also be extended over longer periods. Owing to certain limitations, we had to confine our study to a few selected papers though an attempt has been made to include papers of various categories. We would suggest that it should be one of the functions of the Press Institute to conduct a continuing study of the contents of the daily newspapers.

1557. **Newspaper Ownership, Control and Motivation-** The newspaper is essentially a public utility and whatever may be the precise form of ownership, the exercise of ownership rights may have to be subject to some measure of restraint and regulation.

1358. In recent years, there has been a growing tendency for the conversion, into Joint Stock companies, of what had earlier been individually owned or family concerns. There has been also a tendency towards increase of the number of papers under the control of each individual concern. Further there has been considerable increase in the capital and resources commanded by the industry. In the matter of control, it would appear that in the earlier days, a considerable measure of managerial control was left to the editor, while today the tendency is towards transfer of even editorial control to the management.

1359. We have come to the conclusion, on the basis of the evidence of people who have been in the profession for decades, that there was formerly a widespread prevalence of the idealistic and missionary spirit while today there is a greater emphasis on the profit motive. There are, however, some papers which have managed to retain their traditions irrespective of changes in the form of ownership. Unfortunately these are not numerous enough to provide a solid core for the future expansion of the Press in this country.

1360. **Effect of Control by Owner-** The effects of ownership and the control of the proprietor are apparent not merely in such general aspects as tradition or journalistic standards but in the matter of policy which the paper sets out to serve. We were concerned mainly with the form in which bias on the part of the owners is communicated to the editorial staff, to be reflected in views content of a newspaper.

1361. Instances have been reported to us of the news policy of a paper having been dictated by the proprietors to suit their personal interests. The safeguard in such matters would be for the paper to publish periodically a complete statement of the names of the proprietors and responsible executives on the newspaper so that the public could judge for themselves the extent to which the views expressed in the paper may have to be rejected as being possibly biassed.

1362. An obvious form in which the influence of the proprietor is visible in the news columns of a paper is the blatant boost of the activities of the proprietor or of the concerns in which he is interested. Publicity is given in the offending papers not merely to movements and doings but to speeches made and statements issued by the proprietors on subjects on which their personal views could not be of the slightest interest to the public.

1363. While boosting in the news columns may be merely offensive without being harmful to the public, this cannot be said of special write-ups which cover activities connected with the business and industrial interests of the proprietors. Interference with professional standards is most objectionable when it arises from financial and economic interests of the proprietor. We cannot sufficiently condemn such practices wherever they may exist.

1364. **The Profit Motive-** The anxiety to earn greater profits can also have a very deleterious effect on the contents of a newspaper. Revenues go up with increasing circulation while the cost per copy goes down. There is the danger that a paper, in order to increase its circulation and thereby secure greater profits, may adopt sensational, indecent, or scurrilous writing and indulging in unethical practices.

1365. **Danger of News Being Twisted-** The right of the owner to lay down in advance the editorial policy of a paper cannot be taken away but this does not give him the right to dictate what news should be printed or what news should not be; or even the manner of presentation of the news. A definite danger exists of news being twisted to serve the personal interests of the owners. It has come to our notice that some of the persons at present owning or controlling papers have had no previous connection with or training in journalism. There are others who while conducting newspapers are primarily interested in other activities. There are some who are generally reputed to have indulged in anti-social activities. The shortcomings we have noticed are not peculiar to any particular type of ownership. In the final analysis, character and conduct of those responsible, will determine the performance of the Press. Nevertheless, there is no doubt that exercise, by the individual owner, of the right of control does carry with it the very real danger of misuse of the Press for personal or purely commercial purposes.

1366. **Diffusion of Ownership and Control-** It would be ideal if the proprietor of a new paper has no other interests, but since it would not be a practical possibility to insist that anybody who starts a newspaper should divest himself in advance of all other business or property interests and should subsequently also refrain from investing in any business or property, we feel that the remedy lies in diffusion of effective control, or in order to bring this about, diffusion of ownership among a large number of persons so that the chances of any dominant interests among the group of owners could be eliminated or cancelled mutually.

1367. **Trust Newspapers-** One method of providing diffusion of control without making any change in the ownership of the paper would be to transfer the management to a public Trust. We would welcome in India this trend which the Royal Commission on the Press in the United Kingdom has described as one of the most interesting developments of the last 25 years: the voluntary agreements of owners to limit their own sovereignty in the public interest.

1368. **Diffused Ownership and Effective Control-** Turning now to diffusion of ownership, we find that one of the usual consequences of such diffusion in other fields has been the lack of effective control by those who share the ownership. We are, therefore, of the opinion that effective diffusion of ownership of newspaper, with aim of diffusion of control, can be secured best if shares are gradually distributed among the employees who function in the undertaking itself and are in constant touch with all its activities.

Diffused ownership in the form of a co-operative society presents difficulties in securing capital and is therefore not likely to provide a way out of the difficulty.

1369. **Employees as Owners-** We recommend that diffusion be brought about by the gradual distribution of shares to the employees, and to a small extent to the public, both in existing undertakings and in those to be started in future. Such transfer will guard against control of the undertaking passing to strangers, and the employees, sharing in the success which they help to create, would have an interest in securing the continuance of the undertaking which provides them with employment.

1370. An employee should hold a share in the concern only as long as he is in its service. In order to ensure that such holdings are not turned into property that can be accumulated and passed on it is essential to provide machinery by which the shares could be re-acquired whenever an employee leaves the service of the newspaper either on retirement or for any other reasons and could be transferred to other employees as and when they become entitled to it. We lay great stress on the provisions for controlling transfer of shares since without such a provision the scheme would not succeed.

1371. The form of ownership, that we suggest has not been tried in India and, as a measure of caution, it should be understood that this suggested form of ownership will succeed only where there is a general agreement among the employees of a paper about the policy which the newspaper should pursue. It is necessary for the employees of each paper to realise that the success of any such scheme depends entirely on their unity on matters of policy.

1372. Where the present owners of a newspaper feel that the tradition of the paper and its policy may not be maintained after such devolution of ownership, in spite of the safeguards suggested, it would be open to them to choose one of the forms of Trust ownership and control that we have mentioned earlier. While we have suggested certain forms of trusts for the devolution of control and in the alternative machinery for devolution of ownership the requirements of each paper will have to be judged separately.

1373. **Limitation of Profits-** The danger of a paper indulging in sensationalism or exaggeration or of adopting an indecent or scurrilous style of writing in order to promote its circulation or of adopting unethical practices for the dominant purpose of securing profits would not be shut out completely even by the type of diffusion that we have recommended above. We, therefore, recommend that the first return on capital might be limited in the case of every newspaper to a figure of $^1/_2$ per cent above the bank rate or 4 per cent, whichever is higher, irrespective of whether that paper has adopted a system of gradual diffusion of ownership among its employees or not. This would ensure that the management, whether appointed by the proprietor or elected by the body of employee-shareholders, would not be motivated primarily by the search for profit.

1374. **Review of How Ownership Functions-** We have suggested earlier that each newspaper should publish periodically a statement showing the names of the persons who own it, and of those responsible for its management. This would enable the public to judge the extent to which the opinions of the newspaper can be taken as unbiased. The Press Council in its annual review of the performance of the Press would pay special attention to the existence of any bias, and spotlight any instance where such bias has arisen from financial interests of the proprietor. In the case of corporate ownership by the employees, the Press Council would draw attention to deviations from the standard of ethics, and censure the journalists who are partly responsible for the ownership and control.

1375. It shall be the responsibility of the Press Council to review at the end of five years all the consequences of newspaper ownership in the light of circumstances then existing, including an examination of the effectiveness of the association of employees with the ownership. The inquiry will also cover the manner in which the Trust form of management or employee-ownership should be extended to other units of the Press. It will be open to the Press Council, at the conclusion of this inquiry, to make appropriate recommendations, including the setting up of a fact finding inquiry, if they consider it necessary.

1376. **Competition among Daily** Newspapers- We carried out an examination of the circulation of daily newspapers in the country in order to ascertain the nature and extent of competition among them and to find out if monopolies exist. We found that there is freedom of choice for the reader.

1377. Every metropolis is served by at least two or three big papers in each of the major languages of the area. The effect of a number of chains, combines and groups operating from different metropolitan centres has been to provide a considerable choice to the readers. These metropolitan papers compete with one another throughout the area they serve. As a result, even in the towns where no papers are published locally, a wide choice is provided.

1378. Generally, in any town where a provincial or district paper of some standing is published, it is able to secure the largest share in the local readership notwithstanding competition from the metropolitan or provincial papers and regardless of disparities in size, production standards and news services. The effect of circulation of the metropolitan papers has, however, been to obviate the local monopoly that such provincial or district papers might otherwise have enjoyed. Outside the towns of publication, both provincial and metropolitan papers compete with one another. Even in the towns where no paper is published, the readers have a wide range of papers to choose from. There are no large scale monopolies in any town or city. In some States like Assam, where only a couple of dailies are published, the present degree of monopoly may be expected to be reduced with the further growth of the Press.

1379. Generally, language papers have stronger hold on local readership than English papers and, as a consequence, in provincial and district centres competition from metropolitan papers is less pronounced in the case of language papers than in the case of English papers.

1380. The development of journalism in each language has been different resulting in wide variations between one language and another, and in some languages such as English, Hindi, and Urdu, newspaper readership is spread out over a very large area while in certain other languages they are concentrated within the confines of the particular linguistic area, which may not be very extensive. In the former case, because of the time factor or of geographical reasons affecting the distribution of newspapers, a much larger number of them would be needed in each language and these would have to be widely distributed over the territory if regional monopolies are to be avoided. In a compact area, even a few papers, each covering the entire territory, would suffice to obviate such regional monopolies.

1381. It was seen that the individual share of the bigger papers was markedly greater where a language is spoken in a compact area, *e.g.*, Bengali and Tamil, than where it is distributed over a large area, *e.g.*, English or Hindi.

1382. **Concentration of Ownership-** Considering the country as a whole, no single paper has a circulation exceeding 4 per cent of the total. Taking into account the effect brought about by common ownership of newspapers in different languages we found that-

(a) one organisation controls more than 8 per cent but less than 10 per cent of the total circulation;
(b) four other organisations individually control more than 4 per cent each of the circulation;
(c) all the five mentioned above publish more than one newspaper and operate from more than one centre and in more than one language;
(d) other multiple newspaper publishers do not command a total circulation larger than individual papers belonging to one or the other of these five, and there are many single unit papers which command a bigger circulation than the total of most multiple newspaper publishers.

1383. **Danger of Further Concentration-** We found that out of a total of three hundred and thirty dailies, five owners control twenty-nine papers and 31.2 per cent of the circulation, while fifteen owners control fifty-four newspapers and 50.1 per cent of the circulation. There can, therefore, be no denying the fact that there already exists in the Indian newspaper industry a considerable degree of concentration. We feel that there is a danger

that this tendency might further develop in the future. We are of the opinion that it would not be desirable in the interest of freedom of choice, that this tendency should be accentuated. It appears to us that a high degree of concentration exists in the case of two newspapers in Bengali, one in Tamil and one in Telugu according to the figures for 1951. In Bengali, and Tamil new papers have recently come up and would reduce the degree of concentration. The fact that the shrinkage in the number of newspaper owners is not the product of evil design but is largely attributable to economic and technological influences does not lessen the implications of the trend.

1384. We realise that notwithstanding the measures we have recommended for equalising the conditions under which newspapers compete with one another for the support of the public, circumstances may bring about a situation where one newspaper comes to hold a position of virtual monopoly in a particular area or a given language. The success of the paper may have been well deserved and it might have achieved its position solely on the merit of service it offers to its readers. It has been urged before us that though a monopoly in such a case may not be objectionable, it would still be undesirable and that the essence of the process of formation of opinion is that the public must have an opportunity of studying various points of view and that the exclusive and continuous advocacy of one point of view through the medium of a newspaper which holds a monopolistic position is not conducive to the formation of healthy opinion. We are of the view that diversity of opinion should be promoted in the interest of free discussion of public affairs. We have indicated what, in our view, might be regarded as constituting monopoly.

1385. We recommend that the Press Registrar should keep a close watch on the circulation of newspapers and if he comes to the conclusion that in a particular area or in a language a monopoly has developed, he should bring it to the attention of the Press Council, who should conduct an investigation into the existence of the monopoly, whether it has acted against public interest, whether undesirable practices have been resorted to, to eliminate competition, and what measures, if any, are necessary to deal with the situation. In our view, an investigation of this character, besides helping the Council to come to definite conclusions on the subject will serve to educate public opinion on the monopoly. If a monopoly is to be discouraged, the public must realise the implications of a monopoly.

1386. The publication of the findings of the Press Council would have the direct effect of breaking the monopoly by drawing public attention to it. Members of the public who realise the danger may change to another paper, and the starting of rival papers would also be stimulated.

1387. **External Pressures-** We have been concerned about the extent to which external influences result in preventing the adequate and accurate presentation of news or the fair and adequate presentation of views which would serve to focus public opinion in the direction of social and general betterment. Various reasons have been attributed to account for this susceptibility of newspapers and periodicals to such external influences. One of these is, of course, the financial weakness of individual newspapers. Another predisposing factor is the organisational weakness of the Press. By this we mean not merely the structural weakness inside each newspaper organisation, but the lack of a coherent body of opinion in the industry backed up by a powerful organisation of the industry itself, which would resist any attempts at influence and would disclose and denounce them. Lack of a reasonably high standard of integrity, whether in the editorial staff or in the news reporting staff, would also lay the newspapers open to a great deal of influence.

1388. **Pressure from Advertisers-** Public suspicion of external influences is the greatest where advertisers are concerned. We are of the opinion that newspapers have not been and it is not likely that they would be forced into changing their editorial policy in the hope of getting advertisements or for fear of losing advertisements. Any attempts at the exercise of such pressure should be reported to the Press Council which we are suggesting, who, after an inquiry, should publish the results of the investigation and, if necessary, recommend the disaccreditation of the advertising agent found guilty.

1389. **'News' Items from Advertisers-** It is the practice of advertisers to issue to newspapers items of 'news' having the specific purpose of bringing before the eye of the reader either the name of the advertiser or of his products. The discretion in the matter of publishing these items should rest with the editor and we consider it objectionable in the extreme where such items are sent to the Advertising Manager direct, and he, in turn, arranges for their publication. In our view, it is essential that all advertisers and advertising agencies rigidly adhere to the convention that any such material should be sent only to the editor.

1390. **Financial Notes-** In the case of financial columns, criticism of the notes that appear regularly has been more serious. The practice of reviewing as a matter of routine, in the financial notes, the balance-sheets and annual reports of the companies which advertise regularly in the paper or do so at least on the occasion of their general meeting, should be extended as a matter of principle even to the firms that do not advertise regularly or even occasionally, and the business public should learn to appreciate and accept the financial notes as an objective presentation of business events and trends just as the other news columns are of current events.

1391. **Notes in 'Supplements'-** The worst instances of the printing of publicity material in the reading-matter columns occur in the case of 'supplements' which are brought out from time to time to celebrate anniversaries, occasions, or events, and, in some cases, without even that justification. The utility of these special columns and of the supplements is vitiated by the large amount of space devoted to puffs, and if there was no other choice we would recommend to the newspapers to drop these features than to run them in an unsatisfactory manner.

1392. **Influence of Advertisers on News Columns-** Many instances have been reported of news items having been suppressed in order not to offend advertisers, or of advertisers having complained about the publication of particular items. As a step towards strengthening the editors' hands, we recommend that all such instances should be reported promptly to the Press Council and a sufficient body of public opinion built up against such practices. It has been stated that newspapers may, of their own accord, follow a certain policy about news and views in order not to offend advertising interests. Here too, we consider that the exercise of supervision by the Press Council and prompt investigation of instances brought to their notice would assist the newspapers in setting right the position into which some of them have slipped, perhaps unconsciously. Another point for consideration was the possibility of news of labour unrest being played down or even shut out where such unrest occurs in concerns which are big advertisers. The growing use made of the legal machinery tends, however, to bring to the public view the details of industrial disputes and we hope the proceedings of such tribunals will manage to secure some of the space at present occupied by reports from the police courts.

1393. **Pressure from Government as Advertisers-** The manner in which Government advertisements are placed or withheld may influence newspapers and periodicals. The selection of advertising media is made by the Governments themselves and no advice is sought or taken from advertising agencies or professional publicity experts. Further, Governments do not look for, nor are they guided by the plain issue of returns per rupee spent. Moreover, the effect of an unwise or mistaken policy cannot be assessed by those responsible for the selection as they can in the case of commercial advertisements.

1394. **Criteria for Selection-** Representatives of the Central and State Governments who appeared before us have claimed the right to object to the tone of a paper as well as to two broad aspects of policy: communism and communalism. In the matter of 'tone', witnesses have not always been consistent, and many instances quoted by them have left us with the impression that they are perhaps over-sensitive. In the matter of withholding advertisements from papers which have been avowedly Communist in their policies, or rankly communal in their outlook, it has apparently been the view of the State Governments that tending as they do, to encourage violence or disturb public order, respectively, proper grounds exist for disqualifying such papers from receiving Government advertisements. While there could be no objection to

advertisements being withheld from papers advocating persistently a policy of violence or inciting animosity between different racial or other groups within the country, we are of the definite opinion that there ought to be no discrimination between papers merely on the ground of their belonging to a communist or communal party. In any case, withdrawal of advertisements cannot be and should not be made a substitute for or alternative to legal action.

1395. **Freedom in Choice of Media-** Advertisements cannot be claimed as a matter of right and Government may withhold advertisement from papers which are obscene, scurrilous or which incite violence or endanger security of State. Absolute freedom to choose their media cannot be conceded to Government, which is a trustee of public funds and therefore bound to utilise them without discrimination, to the best advantage of the public. Governments should place advertisements having due regard to the following consideration: (1) circulation of the paper and the rates charged by that paper; and (2) readership designed to be reached for the purpose of the particular advertisements. Advertisements should not be confined to a single paper but should be distributed to as many suitable papers as satisfy the above criteria either individually or collectively, keeping in mind the language and district papers and the periodicals.

1396. Any other method of placing advertisements would be an unfair use of public funds and would also render the Government open to the charge that the power of placing advertisements is being exercised against papers whose editorial policy is against the Government for the time being or as a patronage to those papers which support it. Even if, in respect of Government's responsibility for the use of public funds, the legislature, which is its ultimate custodian, takes no objection to such expenditure, the danger involved in the latter is so overwhelming that from the point of view of maintaining independent journalism, we consider that advertisements should be issued by Government only in conformity with the principles enunciated above. We look forward to the adoption of the same principles by private advertisers also.

1397. Employment advertisements should be given to the papers which circulate among the classes expected to be reached, i.e., the people from whom recruitment is sought. We consider that in many cases the rates for employment advertisements are excessive and should be reduced.

1398. Governments and public bodies should not issue as advertisements any material which is sure to be published even if issued as a Press Note.

1399. **Government Advertisements in Chain Papers-** In the case of papers which form part of groups, multiple units and chains, Government should make separate arrangements in respect of each separate unit or language to avoid wasteful expenditure. Governments should assess the rates not with reference to the total circulation of the paper but with reference to the circulation in the area which they intend to reach.

1400. **Influence of Foreign Information Services-** With reference to the possible influence of Foreign Information Services operating in this country on the Indian Press, two channels have been mentioned. The first is the practice of distributing a great deal of informative material to the newspapers and to individual members of their staff, and may also take the form of the sale of 'source material' and books at very low prices. The other is the 'indirect method', and in this connection, accusations have been made ranging all the way from references to parties where alcohol is freely served, to contracts for printing and invitations to trips abroad.

1401. We have gone through a great deal of the material released by Foreign Information Services and find that it is mainly intended to promote goodwill and does achieve, to some extent, the purpose in view. There has also been some attempt to influence public opinion in India with respect to foreign countries. In a few stray instances, the foreign Information Services have overstepped their functions by touching on controversial subjects. In such cases, it would obviously be the responsibility of the Government of India to take up the matter with them. We understand that suitable action is taken by Government where necessary.

1402. There is considerable difference in practice between newspapers in acknowledging the source of such material. Even the Information

Services do not pursue a uniform policy in the matter. For practical reasons we have decided against the suggestion that it should be made compulsory for all newspapers to indicate the source of such material when printing it. But we consider it only fair to the public that the source should be indicated.

1403. It would not be proper to make any assessment of the extent of influence exercised by these services from the tons of ink and paper they expend. As long as our Press is run by persons who are ready to utilise every source of information about topics of public interest but refuse to be misled by one-sided statements or special pleading, we see no reason to suggest any interference with the free flow of information.

1404. **Contracts for Printing-** It has been brought to our notice that the considerable sums spent on the printing of such material in India might serve as a source of pressure on the editorial policy of the papers. We understand that the production of such news periodicals has been greatly curtailed in recent months, but we would suggest to the Information Services that if large scale production is undertaken again, the work should be entrusted to presses in which no newspaper is printed.

1405. **Hospitality at Parties-** Several journalists have urged for our serious notice the fact that Embassies and Information Services throw lavish parties at which alcoholic drinks are freely served and which are attended by Indian journalists in large numbers, the implication being that the integrity or objectivity of the journalists would be sapped in consequence. On the other hand, the view has also been expressed that the lack of such lavish hospitality on the part of the Indian Government, both in India and abroad, has resulted in inadequate presentation of the Indian point of view. We shall confine ourselves to expressing the hope that journalists of any nationality, even if willing to accept hospitality when it is offered to them, would not let themselves be tempted thereby to be disloyal to the ideals of their profession.

1406. **Journalists Invited to Tour-** Criticism of invitations issued by foreign Governments to journalists in this country to visit their countries is based on the assumption that such hospitality, even if it is not directly a source of pecuniary advantage to the invitee, might still leave him under a sense of obligation, and his objectivity would be affected. Emphasis has also been laid on what we may describe as an unhappy choice in one or two instances. If in all these cases the invitations had been extended through the various organisations of newspapermen in this country, the practice would not have been open to much objection. Where use has not been made of the services of existing organisations we would prefer that Government should be consulted before invitations are issued. It follows that whenever the Government of India invites journalists from other countries to visit India as their guests, the visit should be arranged through the organisations of newspapermen in those countries, or where this is not feasible, in consultation with the Governments concerned.

1407. **Bias among Newspapermen-** An important factor which affects the presentation of news and views in a fair manner in the newspapers is the existence of bias in one or more of the persons associated with its production. An instance that has been stressed in evidence is that the bulk of the persons who own and publish newspapers are persons who believe strongly in the institution of private property and who, in consequence, encourage the publication of views and news which favour the continuance of the present order, while discouraging contrary views and blacking out news from the other side. This is an aspect which has been considered in other countries also, and it is bound up with the fact that the production of a modern newspaper requires a large investment of capital. No satisfactory solution has so far been found to get over this very real difficulty. In the matter of political bias it is probably true that in India, as in other countries, the number of newspapers or their combined circulation, if classified according to political views, would present a different picture from that shown by electoral returns. The system of parties with well defined and comprehensive programmes is still to develop in this country. We are confident that with such development the alignments of the policies of newspapers would be such as to ensure that each side gets a fair bearing.

1408. Bias in the matter of views presented is, to a certain extent, inevitable, and even to be considered as natural since the newspaper is, to a large extent, the vehicle for the expression of opinion, but such bias should not be permitted to affect prejudicially the presentation of news. Such bias may arise from numerous causes. There is, first of all, the nationality of the reporter. (Our view is that if such bias cannot be avoided, it should not in any case be anti-Indian.) It may arise from the cultural background of the reporters or the editorial staff. A cause that most directly influences reporting is, of course, the environment in which the correspondent or reporter works. In a number of cases there is lack of consistency due to the divergence of bias between the people at the top and those engaged in the other activities of production. The only effective remedy against biassed write-ups is adequate and competent editorial control. We hold that the contract of employment should secure to the editor absolute freedom in the fair and objective presentation of news. We are prepared to accept the contention that junior journalists should not be penalised for the political views that they hold, but we also expect the editor to exercise adequate vigilance to ensure that news is not 'slanted', either in reporting or in editing. We have come across a few instances where some sentences had been interposed or unpalatable references omitted in editing. We must say, however, that such instances were rare.

1409. **Bias in Agency Reports-** Indian newspapers depend almost exclusively on the news agencies for the coverage of national and international news, and so there is little evidence of bias in the reporting beyond whatever is brought in by the news agency itself. We expect that because of the economic difficulties of the Press in this country, dependence on news agencies would continue to exist for quite some time to come, and that the shortage of editorial staff on the newspapers themselves would limit the extent of slanting practised there. This makes it all the more necessary that the news agencies which serve the Press should be as free from bias as could be practically ensured.

1410. **Decline in Status of Editor-** There has been a general decline in the status and independence of the editor, and this decline is noticeable particularly in the case of daily newspapers. The gradual extinction of the individuality of the editor can be correlated to the growth in the size of the newspaper and the volume and variety of its contents. While it may not be physically practicable to ask that any editor of a large newspaper should personally supervise all the pages of every edition, we are also not in favour of that scattering of responsibility that we have noticed in certain large papers whereby the editor has no control over more than four columns on the leader page. We consider it essential that if a newspaper is to fulfil its function in society, it should have a certain unity of purpose which could be ensured only by the concentration of ultimate responsibility in one particular person. It is essential that the editor should be able to inspire all members of his team with his journalistic ability as well as his absolute integrity.

1411. **The Editor in a Chain or Group-** It has been mentioned that this decline of the status of the editor has nowhere been greater than in the case of certain chain papers. While this statement may be factually correct, we are not convinced that the reduction in status flows inevitably from one fact that the owner controls more than one paper. We have found that in almost every instance we have come across, the editors of individual papers of a group or chain have been allowed considerable latitude in respect of their individual policies, and only when the personal or group interests of the management are directly affected, they are all instructed to conform to a particular opinion. Such cases would come under the category of interference by the proprietor and there is not much to differentiate the editor in a group from the editor of a single unit.

1412. **Undivided Responsibility of Editor-** In our view an editor is one who is charged with, and exercises, the responsibility for editing and supervising the contents of the paper and devotes his attention primarily to the discharge of such responsibility. The status of the editor is inseparable from a high standard of journalistic capacity as well as moral authority. Many Managing Editors do not conform to these standards, and

their attention is often devoted to the managerial side of the paper. In the case of larger newspapers, we would recommend the separation of the functions of the manager from those of the editor and the employment of separate individuals. When we refer to the separation of executive responsibility between the editor and the manager, we should also emphasise the necessity for a team spirit to exist between these two sections. Unless the contents of the newspaper are directed primarily by the person who is solely responsible for such contents and for little else, it would be impossible to bring about an improvement in the standard of newspapers. We feel that the editor should devote his time exclusively to his paper though he should not be precluded from taking part in public activities not inconsistent with the avowed policy of his paper. Where the public activity absorbs a major part of the time of the editor and he is not able to devote enough time to his editorial duties, it would be desirable that he should hand over his editorial functions to someone else.

1413. **Enunciation of Policy-** We do not deny to the owner or proprietor his basic right to have his point of view expressed through the paper. But when a proprietor chooses his editor, he should also delegate to him a measure of individual authority which would enable him to carry out his policy and to resist any attempt to divert the policy in anti-social directions. We consider it therefore, natural that before he takes up his duties, the editor should be enjoined to follow the general policy of the paper. With a view to stabilise and define the editor's ultimate responsibility in the conduct of a newspaper, we recommend that the appointment of an editor should inevitably be attended with the execution of a contract of employment or letter of appointment laying down the general policy of the paper in as precise terms as possible. The contract should also make provision for the determination of editorial policy on such matters as have not been covered specifically by the contract and for the settlement of any differences arising therefrom. In any event, the editor in discharging his responsibility, shall be bound by the generally accepted code of journalistic ethics and practice. If a difference of opinion arises on a question of policy within the general statement of policy embodied in the contract of appointment and such difference is considered by either party to be so vital as to necessitate severance of employment, the liability for damages and the extent thereof, up to the limit specified in the contract, should be determined by some outside authority. We recommend that the Press Council, whose establishment we are suggesting, would be the proper authority to whom the matter should be referred for arbitration on this point.

1414. **Security of Tenure as Editor-** Instances in which changes of policy had been suggested by the proprietors in order that they may benefit by a turn of events have been mentioned to us in several cases. Many instances have also been mentioned to us to illustrate the insecurity of the services of the editor arising from causes other than political differences. We recommend that the period of notice in the case of editors should not be less than three months during the first three years of services and not less than six months thereafter. In addition, he should be entitled to compensation for involuntary unemployment, the measure of such compensation, if any, being determined by an independent authority.

1415. **Independence in News Presentation-** In the matter of presentation of news, there can be no question of favouring a particular policy or trimming the news to suit that policy. It should be the responsibility of the editor, as a professional man, to decide finally what items of news should go into the paper, and the owner should not be in a position, to order a blacking-out of any item of news unless, of course, its publication would offend against the law.

1416. We have made these recommendations as we believe that the future of the Press depends on the independence of the editor. We confidently expect that newspaper editors would, in the new role which we have suggested for them, set an inspiring example of disinterested public service.

1417. **Responsibility of the Press-** The Press is a responsible part of a democratic society. It should provide the public with an intelligent narration of the day's events, set in a context which gives them meaning. It must also clarify the values of society and present a clear picture of its goal. The ultimate goal of Indian society, as

clearly defined in the directive principles embodied in the Constitution, is to secure and protect a social order in which justice, social, economic and political, shall inform all the institutions of national life.

1418. Democratic society lives and grows by accepting ideas, by experimenting with them, and where necessary, rejecting them. It is necessary, therefore, that as many as possible of these ideas which its members hold are freely put before the public. We would, however, emphasise that the right of free expression is derived from the responsibility for the common good. Acceptance of that responsibility is the only basis for this right which has been accepted as fundamental. Freedom of the Press does not mean freedom from responsibility for its exercise. Democratic freedom in India, and the freedom of the Press, can have meaning only if this background is properly understood.

1419. **Accuracy and Fairness-** The need for truthful, objective and comprehensive presentation of news from all corners of the world was never more urgent. In order to ascertain how far the daily press in this country has been accurate in the presentation of news and fair in the expression of views, we had an examination carried out of the manner in which a number of newspapers had reported certain items and commented thereupon.

1420. In the very large number of newspapers studied and the variety of topics in respect of which the study was carried out, there have been very few instances where a report has been ...isted. Even in the few instances where there had been omissions of significant facts in the published reports, there are reasons for extending to the editors the benefit of doubt,

1421. In their comments also on the particular items selected, the newspapers have been quite fair. Though we were surprised at the number of instances where newspapers had failed to comment on one or the other of the subjects that we had selected, we do not feel that we should attribute this to any desire on their part to 'sit on the fence' till they knew which way the wind was blowing. On the whole, we might say that we were satisfied generally with the position disclosed by the study.

1422. Our examination of accuracy and fairness had only a limited scope and a restricted objective. It showed that, by and large, the Press of this country is generally fair and accurate, but a survey of this nature cannot indicate whether the Press is doing anything to provide that intelligent picture of current events that we consider very essential. We recommend that the continual review of the content of Indian newspapers and the publication of an annual report on the manner in which they have discharged their responsibilities should be one of the duties of the Press Institute which we are recommending to be set up.

1423. **Chain Papers-** In the matter of accurate presentation of news and fair comment thereon, the chain papers have behaved as well as the best individual units and they have been free from defamatory or obscene writings and in most cases, of writings liable to create tension between one section of the population and another. At the same time, instances of misleading headlines have been frequent both in individual units and chain papers and we are afraid that this is also one of those characteristics which the smaller papers are trying to copy in order to compete with their bigger rivals. More serious is the absence of a pervading sense of social purpose which is one of the essentials of good journalism. It would be seen as if, in their anxiety to please as large a section as possible of the population, these papers prefer to run behind the crowd instead of giving it a lead. Moreover, it was difficult to judge, even from a perusal of leading articles for six months or more, what was the policy of the paper.

1424. **Selection of News-** We consider it essential that in making a selection of the day's news the journalist should be alive not only to the news value of an item but also to its significance. When a journalist says that a certain event is 'news', he means only that something that has happened will attract the interest of his readers. The criteria are therefore recency in time, proximity, novelty, human interest and also an element of conflict. Sensational news attracts more attention than significant news. As a result, many activities of the utmost social consequence lie hidden from the public eye. We consider it essential that the citizen should be supplied with the information and discussion which he needs

for the discharge of his responsibilities to society.

1425. **Comment, Popular and Unpopular-** In the matter of comment also, sometimes a paper behaves as if convinced that people seldom want to read or hear what does not please them, and that they seldom want others to read or hear what disagrees with their own convictions or what presents an unfavourable picture of groups to which they belong. We consider it essential that the newspaper should publish facts and comment even though unpopular. From what we have seen and heard, some editors today do not so much consider whether they are in the right or in the wrong but whether they are with the crowd. Crowds have been right but they have also been wrong. We are convinced that there is no significance in the Press being free if it is not at the same time independent. A newspaper should, as far as possible, reflect the opinions of as large a sector of the community as it can, but it should also seek to educate and influence the public.

1426. **Criticism of Government-** The opinion has been expressed by quite a number of journalists as well as by others that in order to succeed, a paper must be extremely critical of what the Government does. This, they say, is a legacy of the past, when every good nationalist paper would criticise the Government all the time. Whether the public want it or not, the newspapers themselves have apparently come to believe that blind criticism of those in authority will sell their paper much better than a rational policy or critical judgment. The result of this widespread conviction is that even papers which are generally in support of the parties in power feel called upon, when they criticise its actions, to use more violent expressions than the situation calls for. If the newspapers have brought up the public to expect such an attitude on their part, it is now their responsibility, after India has become independent, to re-orient the public and educate them to look for balanced criticism and to value it.

1427. **Yellow Journalism-** There is no doubt that some of the journals in this country are of the type commonly termed 'yellow journalism'. We would classify under this category any malicious and wilful publication of reports which are known to be false or are not believed to be true, as well as the building up of a body of falsehood around a core of fact. It would include also the lurid exposure, unrelated to public interest, of the personal lives of the individuals or even unwarranted intrusion into their private lives. Such publications are made, with or without intention to levy blackmail directly or indirectly, and sometimes only to cause pain or humiliation. We would also include therein indulgence in the obscene or in language suggestive of the obscene, with deliberate intent to debase public taste. There is also the use of abusive language, and writings offending against public decency.

1428. Yellow journalism of one type or another is increasing in this country. It is not confined to any particular area or language but is perhaps more discernible in some than in others. It was a matter of grave concern to us to find that while instances of such yellow journalism are to be found everywhere, the majority of the journalists, who appeared before us, had little to say about it except, of course, to condemn it in general terms. Such condemnation too was restricted to a paragraph or two in the memoranda and had not appeared in any of their writings in the Press.

1429. **Undesirable Tendencies-** In order to promote the sales of newspapers and periodicals, publishers and editors adopt many practices, some of which we consider undesirable even if they do not fall within the definition of 'yellow' journalism. The commonest among such measures is the use of sensational headlines. In our survey of newspaper readership we found that a very large proportion of readers appreciate the convenience that headlines afforded. A number of readers have however complained about the fact that in some cases the headlines did not have any relevance to the reports that followed, and served only to mislead. We have also come across instances where news items strongly suspected to be false, if not known to be false, have been published only in order to increase circulation.

1430. **Astrological Predictions-** We would refer in this context to the tendency in certain sections of the Press to publish astrological predictions. We wish to say nothing against astrology as such. We feel, however, that spread of the habit of consultation of and reliance upon astrological prediction particularly of the nature and in the manner they are published at present is certain to

produce an unsettling effect on the minds of readers. We would describe the practice of publishing such predictions as undesirable. Sometimes, the predictions extend to political events of grave significance to the future of the country and even to the likelihood of wars or other calamities. They give room for unfounded fears, apprehensions or hopes of the most dangerous character which can have serious consequences on public order and public welfare. In such cases we feel that Government should step in and take action against such publications.

1431. **Cartoon Strips-** Some witnesses have suggested that the practice of publishing cartoon strips can also be harmful and should be stopped. Not all cartoon strips are objectionable and if any complaint can be made, it is against those serialised stories, generally originating from abroad, but now being prepared in this country also, which are wholly out of tune with our culture and which exploit horror, crime and sex, and which cannot but have a deleterious effect on the minds of young persons. We would condemn the cartoon strips on its contents and not because it is a cartoon strip.

1432. **Attacks on Individuals and Institutions-** Another favourite device to promote circulation is to exploit the desire of the public to read something which is likely to bring down in estimation the reputation of well known persons whether they are statesmen, politicians, men in public life or film stars. Instances have come to our notice when financial concerns and other institutions have been subjected to false and malicious attack. Some papers, not dailies, appear to devote their pages exclusively to the publication of such matter. Many of the stories thus published are vaguely worded and while they throw a lot of mud, the statements made are not always actionable. Occasionally the aggrieved person demands that the paper should apologise, or he might even take it to court. The paper then offers a personal apology or even publishes a retraction. This serves to stop the aggrieved party from getting the paper punished by law but it does not really undo the harm that has already been done. It is only rarely that some one prosecutes such persons for defamation and has the persistence to follow it through until the culprit is punished. Far too often the paper escapes punishment and is permitted to profit by its crime. But to our regret we found that very few of the reputable papers in this country have come out openly to condemn such scurrilous writing. We do not think that by ignoring it the evil would cure itself.

1433. **Duties of the Responsible Press-** It has been argued that if daily newspapers of standing would come forward to denounce evil and corruption wherever they exist, they would cut away the ground from under the feet of such scurrilous papers. The majority of the newspapers in the country are generally reluctant to publish anything which may be taken for sensationalism, and perhaps they tend to the other extreme of keeping out of their pages any report, however, authenticated, if its likely to show up in a bad light any one of standing in political, official, or business circles. This tendency has, it is said, placed a premium on those papers which do not hesitate to make scandalous allegations. We have made certain suggestions for a reform of the law regarding defamation which we hope would give a greater measure of protection to those newspapers which endeavour to act in the public interest and expect that as they grow more outspoken, public support to scandal sheets would be withdrawn altogether.

1434. **Attacks on Communities and Groups-** A great deal of the scurrilous writing that is noticeable in the Press is often directed against communities or groups. In this field too, we have not been able to find many instances where the sober and responsible Press have come forward to condemn such writings intended to vilify communities.

1435. **Indecency and Vulgarity-** Quite a number of the more offensive publications indulge in suggestive, indecent or vulgar writings. A number of publications which deal with the film industry appear to consider such writing an indispensable means of making their journals popular. One common defence of such writings is that the editor wants to reform the industry. We do not believe that if the editor considered reform necessary he should himself offend against morals and decency in order to attack the evils. The law might be in a position to punish

obscenity, but it does not follow that what has not been published is not obscene. Moreover, not all the writings would come within the purview of the law of obscenity even though they might well be considered objectionable. Here too, the associations of editors and journalists have done little to condemn their colleagues either within their organisations or in their writings in the Press.

1436. **Personal Attacks on Public Men-** There have been many instances where public men have been attacked on grounds of their personal character. Some of these attacks have had nothing to do with the public responsibilities of the persons but solely with their private conduct. In the majority of cases, these attacks have been made with the sole purpose of bringing down the person in public estimation and have been generally characterised by indecency. Unfortunately, few persons have come forward to chastise the editors by taking them to Court. In many cases this is due to a general reluctance to be a party to legal proceedings, but very often it has been caused by the fear that proceedings in Court might merely provide an opportunity to the writer or the publisher to sling more mud. We discuss later the limits to which we feel that cross-examination in such cases should be permitted by the Court and we hope that once these limits are realised both by the judges and by the public, there will no longer be the same reluctance to prosecute. But in the case of scurrilous attacks, as in the case of indecent writing, it would seem necessary to provide other remedies to supplement prosecution under the Penal Code.

1437. **Established Papers Have Behaved Well-** The well-established papers have, on the whole, maintained a high standard of journalism. They have avoided cheap sensationalism and unwarranted intrusion into private lives. They represent a decisive majority of the total circulation in India. Despite their short-comings, we are of the opinion that the country possesses a number of newspapers of which any country may be proud.

1438. **Need for a Press Council-** We have discussed earlier, the need for maintaining editorial independence, objectivity of news presentation, and fairness of comment. These aspects should be looked after by a Press Council which will also have the responsibility of fostering the development of the Press protecting it from external pressure. We consider that the regulation of the conduct of the Press in the matter of such objectionable writing as is not legally punishable should also be the responsibility of the Press Council.

1439. **Journalists Should Be Made Responsible-** We have referred to the fact that journalists have not come out to condemn, in their writings, the existence of yellow journalism of the different types we have mentioned. We have been assured by many that if the responsibility of regulating the profession is left to the journalists themselves, they would not hesitate in enforcing a code of conduct which would enhance the prestige of the profession and ensure that Indian journalism progresses along healthy lines. We have arrived at the conclusion that the best way of maintaining professional standards in journalism would be to bring into existence a body of people principally connected with the industry whose responsibility it would be to arbitrate on doubtful points and to censure any one guilty of infraction of the code.

1440. **Council Should Have Statutory Powers-** The Royal Commission on the Press in the U.K. recommended the establishment of a Press Council which would include laymen; several members felt that the Commission should be statutory. The Press Council that has come into being is on a voluntary basis. In spite of the consequent weakening of its authority, it has not hesitated to condemn irresponsible behaviour or unjournalistic conduct on the part of newspapers or newspapermen. But the fact that the Press Council in the U.K. is a purely voluntary body has undoubtedly handicapped it in the exercise of its authority over the Press. Its decisions in certain cases have been the subject of violent controversy particularly by those affected. We feel that a voluntary body of this nature might not have the necessary sanction behind its decision nor legal authority to make inquiries.

1441. In order to be effective, a Council of this character should be given statutory protection in respect of its action. Without such protection, each member, as well as the Council as a whole, would be subject to the threat of legal action from

those whom it seeks to punish by exposure, and such a threat would effectively prevent the Council from speaking its mind freely. We are definite, therefore, that the Press Council to be established in this country should be brought into existence by statute.

1442. **Recommendations**- We recommend that an All-India Press Council should be set up by statute with the following objects:

1. To safeguard the freedom of the Press.

2. To help the Press to maintain its independence.

3. To ensure on the part of the Press the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship.

4. To encourage the growth of the sense of responsibility and public service among all those engaged in the profession of journalism.

5. To keep under review any developments likely to restrict the supply and dissemination of views of public interest and importance, and to keep a watch on the arrangements made by Indian newspapers and news agencies with foreign newspapers and news agencies or other bodies for the reproduction in India of material obtained from those sources.

6. To improve the methods of recruitment, education, and training for the profession, if necessary by the creation of suitable agencies for the purpose, such as a Press Institute.

7. To conduct through the Press Institute a continuous study of the contents and performance of the Press.

8. To promote a proper functional relationship amongst all sections of the profession.

9. By censuring objectionable types of journalistic conduct, and by all other possible means, to build up a code in accordance with the highest professional standards. (In this connection the Council will have the right to consider *bona fide* complaints which it may receive about the conduct of the Press or of any person towards the Press, to deal with these complaints in whatever manner may seem to it practicable and appropriate, and to include in its annual report a record of any action taken under this level and its findings thereon).

10. To promote the establishment of such common services as may from time to time appear desirable.

11. To promote technical and other research.

12. To study developments in the Press, which may tend towards concentration or monopoly and, if necessary, to suggest remedies therefor.

13. To publish reports, at least once a year, recording its work and reviewing the performance of the Press, its development and the factors affecting them, including the number and circulation of newspapers, the condition of working journalists, and the financial condition of the industry.

14. To review the ownership structure and its impact on the performance of the Press.

1443. The Press Council should consist of men who will command the general confidence and respect of the profession and should have 25 members excluding the Chairman who should be a person who is or has been a Judge of a High Court and should be nominated by the Chief Justice of India. Out of these, 13 or more should be working journalists including working editors, and the others should be drawn from newspaper proprietors, Universities, literary bodies, etc. The professional members will be of at least 10 years standing in the profession. In the constitution of the Council the periodical Press should be duly represented.

1444. The Press Council will act through Committees to be constituted by the Chairman. The various functions of these Committees will, *inter alia* relate to:

(i) matters relating to ethical standards and professional etiquette;

(ii) charges of objectionable publications, (news, comment or advertisement), infractions of journalistic ethics or professional codes;

(iii) regulation of the inter-relation of the various branches of the journalistic profession.

1445. If a person whose action has been questioned is himself a member of the Council, then the Committee chosen by the Chairman to consider the question will not include him as one of its members. If a member is judged by the Council to be guilty of objectionable journalistic conduct, he shall forthwith cease to be a member of the Press Council.

1446. It shall be open to the Press Council to go into any instance of infraction of the code of ethics or professional conduct. Where, however, proceedings in respect of such publication have been started in court, the Council shall not express any opinion until such proceedings have terminated. In other words, it shall not be for the Press Council to usurp the functions of a court of law. Nor is it intended that the Press Council, in pronouncing on matters coming before them for consideration should follow the strict procedure of the courts. It is expected, however, that in recording its findings on any case of unjournalistic conduct, the Council will set out its reasons.

1447. Normally, anonymity is to be respected, but where questions are considered by the Press Council involving fixing of responsibility, journalistic privilege may be waived.

1448. There should be only one central Council until uniform standards have been set up; thereafter, if it is found necessary, regional or State branches may be constituted.

1449. The Council will regulate its own procedure as well as the procedure of its Committees.

1450. It is recommended that a cess of Rs 10 per ton should be levied on the consumption of newsprint and expenditure on the Council and its ancillaries be charged to the fund thus collected.

1451. We consider it essential that all journalists should feel themselves bound by a certain code of ethics which would ensure that in their writings they would continually aim to discharge their high responsibility to society.

1452. We would consider the formulation of a code bearing all these principles in mind to be one of the prime duties and responsibilities of the Press Council when it is established. We would like them to keep in mind the following principles which we consider should find a place in a code of journalistic ethics:

(1) As the Press is a primary instrument in the creation of public opinion, journalists should regard their calling as a trust and be ready and willing to serve and guard the public interest.

(2) In the discharge of their duties, journalists shall attach due value to fundamental human and social rights and shall hold good faith and fair play in news reports and comments as essential professional obligations.

(3) Freedom in the honest collection and publication of news and facts and the rights of fair comment and criticism are principles which every journalist should always defend.

(4) Journalists shall observe due restraint in reports and comments which are likely to aggravate tensions likely to lead to violence.

(5) Journalists shall endeavour to ensure that information disseminated is factually accurate. No fact shall be distorted and no essential fact shall be suppressed. No information known to be false or not believed to be true shall be published.

(6) Responsibility shall be assumed for all information and comments published. If responsibility is disclaimed, this shall be explicitly stated beforehand.

(7) Unconfirmed news shall be identified and treated as such.

(8) Confidence shall always be respected and professional secrecy preserved, but it shall not be regarded as a breach of the code if the source of information is disclosed in matters coming up before the Press Council, or courts of law.

(9) Journalists shall not allow personal interests to influence professional conduct.

(10) Any report found to be inaccurate and any comment based on inaccurate reports shall be voluntarily rectified. It shall be obligatory to give fair publicity to a correction or contradiction when a report published is false or inaccurate in material particulars.

(11) All persons engaged in the gathering, transmission and dissemination of news and in commenting thereon shall seek to maintain full public confidence in the integrity and dignity of their profession. They shall assign and accept only such tasks as compatible with this integrity and dignity; and they shall guard against exploitation of their status.

(12) There is nothing so unworthy as the acceptance or demand of a bribe or inducement for the exercise by a journalist of his power to give or deny publicity to news or comment.

(13) The carrying on of personal controversies in the Press, where no public issue is involved, is

unjournalistic and derogatory to the dignity of the profession.

(14) It is unprofessional to give currency in the Press to rumours or gossip affecting the private life of individuals. Even verifiable news affecting individuals shall not be published unless public interests demand its publication.

(15) Calumny and unfounded accusations are serious professional offences.

(16) Plagiarism is also a serious professional offence.

(17) In obtaining news or pictures, reporters and Press photographers shall do nothing that will cause pain or humiliation to innocent, bereaved or otherwise distressed persons.

FREEDOM OF THE PRESS

1453. The expression 'freedom of the Press' has been understood in various senses by different persons. It is sometimes confused with the idea of the independence of the Press. We think that the expression should be understood as meaning freedom to hold opinions, to receive and to impart information through the printed word, without any interference from any public authority.

1454. In a society where the rights of the individuals have to be harmonised with their duties towards society, all fundamental rights and their free play must be subject to restrictions. But the concept of freedom with responsibility should not be pushed to a point where the emphasis on responsibility becomes in effect the negation of freedom itself. Some kind of restriction is inherent in the concept of the freedom of the Press. The shape which such restrictions should take must depend on the state of the development of society in different countries and even in the same country must depend on the circumstances prevailing at different times. Accordingly our Constitution has carefully circumscribed under Article 19(2) to 19(6) the field of permissible restrictive legislation.

1455. The tender plant of democracy can flourish only in an atmosphere where there is a free interchange of views and ideas which one not only has a moral right but a moral duty to express. Democracy can thrive not only under the vigilant eye of its legislature but also under the care and guidance of public opinion. The Press is, *par excellence*, the vehicle through which such opinion can become articulate. The Press has not only a moral right to free expression but it is subject to certain responsibilities also. But the terrain of moral restrictions is not always co-extensive with the legal restrictions which may be imposed upon the right. Up to a point the restrictions must come from within. The legal protection may continue to remain even though the moral right to it has been forfeited. Within the limits of this legal tolerance, the control over the Press must be subjective or professional. The ethical sense of the individual, the consciousness that abuse of the freedom of expression, though not legally punishable must tarnish the fair name of the Press, and the censure of fellow journalists, should all operate as powerful factors towards the maintenance of the freedom without any legal restrictions being placed on that freedom.

1456. Article 19(2) of the Constitution, as it originally stood, permitted the State to enact any law relating to libel, slander, defamation, contempt of courts or any matter which offends against decency or morality or which undermines the security of or tends to overthrow the State. These restrictions have been regarded as unexceptionable. The Supreme Court, however, drew a distinction between 'public order' and 'security of the State' and held that restrictions in the interest of the latter and not in the interest of the former could be justified under that Article. In consequence, it was held by the Patna High Court that even incitement to murder or other violent crimes could not be made punishable, under the original Article 19(2) of the Constitution. Article 19(2) was, therefore, amended by including, among permissible restrictive legislation, matters relating to (1) public order; (2) friendly relations with foreign States; and (3) incitement to an offence. Although the Judgment of the Patna High Court was subsequently reversed by the Supreme Court, the observations of the Supreme Court would not, in our opinion, have made the amendment of the Constitution unnecessary in so far as the subject of public order was concerned.

1457. The Draft Covenant on Freedom of Information and Press prepared by the Geneva Conference of the Sub-Commission on Human Rights set up by the Economic and Social Council of the United Nations included, in April 1949, all the three subjects among matters with respect to which restrictions could be placed on the freedom of information and the Press. The *ad hoc* Committee of the United Nations adopted in September 1950 a convention on Freedom of Information which was practically on the lines of the Geneva Draft, but omitted the sub-clause relating to systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples or States. Monsieur Lopez's report to the ECOSOC recommends a formula which in general terms permits restrictions being placed *inter alia* for prevention of disorder and crime. The Resolution of the Council of Europe also permits restrictions being placed in the interest of public safety and prevention of disorder. We, therefore, think that Article 19(2) of the Constitution as it stands at present is not inconsistent with the concept of the freedom of the Press at least in so far as it relates to public order and incitement to an offence.

1458. The Constitutions of some other countries and the judicial decisions of the Supreme Court of the United States of America permit legislative abridgment of the freedom of speech and expression in the interest of public order.

1459. The 'clear and present danger' test which the Supreme Court of America applies might be a good working rule for the judiciary where, as in the American Constitution, the sphere of legislative abridgment is not defined by words in the Constitution itself. But in the scheme of our Constitution that sphere has to be defined for certain purposes. The 'clear and present danger' test cannot be utilised for defining matters in respect of which there may be legislative restrictions on the freedom of speech and expression. But the implication of that test would be a legitimate consideration when Courts have to decide whether a particular law dealing with a matter is reasonable or not, having regard to the imminence and character of the danger sought to be averted by the restrictions.

1460. The words 'public order' should be preferred to the words 'for the prevention of disorder'.

1461. There has been criticism of the clause relating to friendly relations with foreign States. But the Constitutions of other countries have a provision somewhat on the lines of the clause in our Constitution. Although we are in favour of the Parliament having this reserve power, we think that the words 'in the interest of friendly relations with foreign State' are of a very wide connotation and may conceivably be relied upon for supporting any legislation which may restrict even legitimate criticism of the foreign policy of Government. It would be difficult to devise a formula which would define the scope of the legislation by Parliament in this regard. The Constitution can at best merely indicate the topics in respect of which there may be reasonable restrictions on the freedom of speech and expression. It must be left to the wisdom of Parliament to define the precise scope of those restrictions and to the impartiality of the Supreme Court to pronounce upon the reasonableness of those restrictions. We recommend that whatever legislation might be framed in the interest of friendly relations with foreign States, it should be confined in its operation to cases of systematic diffusion of deliberately false or distorted reports which undermine relations with foreign States, and should not punish any sporadic utterance or any dissemination of true facts although they may have the tendency of endangering the friendly relations with foreign States.

1462. Although the words 'incitement to an offence' are of wide import, the main difficulty that has faced us is that if we omit these words the whole law of abetment contained in the Indian Penal Code would be open to challenge in so far as the abetment consists in inciting persons to commit offences. Although the decision of the Supreme Court has probably saved legal provisions punishing incitement to the commission of aggravated offences, there will be no constitutional authority, in the absence of these words, for punishing abetments by means of incitement to commit offences involving violence in a less aggravated form or offences in which there may be no violence at all. Moreover, when

a law is enacted, it must be regarded as an expression of the will of the people and if the law is disliked by certain sections of the people, the remedy lies not in disobeying the law but in persuading the public to see the inequity of it and in getting it altered by legitimate and constitutional means.

1463. The provisions contained in Article 19(2) of the Constitution are merely enabling provisions, and the ultimate sanction behind any legislation must be the will of the people. The Constitution merely lays down that certain fundamental principles may not be disregarded in attempting to harmonise freedom of expression of an individual with the requirements of the public good. Apart from such safeguards as the Constitution has laid down, there are two other lines of defence against undue encroachment over the fundamental right of freedom of expression. One is the Legislature itself and the other is the High Courts and the Supreme Court. Although the Constitution invests the Legislatures with power to place restrictions on the freedom of speech and expression for certain purposes, the power would, we trust, be exercised with discrimination and circumspection. If any restrictions are placed by the Legislatures on the fundamental right, we have no doubt that the impartiality and the broad and realistic outlook of the High Courts and Supreme Court will ensure that the power is not exercised by the Legislatures in an arbitrary or unreasonable manner. We, therefore, think that there is no case made out for going back to Article 19(2) of the Constitution as it stood before its amendment in 1951.

The Press (Objectionable Matter) Act

1464. The criticism of this measure falls into two sharply defined categories. On the one hand it has been suggested-

(i) that there is no emergency calling for the enactment of such legislation;

(ii) that it provides penalties unknown to law in other countries;

(iii) that the judicial order and a jury of pressmen are merely face-saving devices; and

(iv) that the existence of the Act itself is a stigma on the Indian Press.

It has further been urged that there is no necessity of a special Press Law and that the ordinary law of the land would suffice for punishing those who could be proved to have abused the freedom of the Press. On the other hand, there is a strong body of opinion represented by most of the State Governments that the Act as it stands has proved insufficient to curb the mischief which it was intended to check. They have stated that the definition of the expression 'objectionable matter' should include defamatory remarks with regard to Ministers and public servants, matters which hurt religious feelings of the people, false and distorted news or sensational reports. So far as the procedure is concerned, it has been pointed out that trial by jury has proved ineffective and that although keepers of the press and publishers of newspapers become liable, the editors of the papers cannot be proceeded against. Doubt has also been expressed as regards the legal validity of sub-clauses (v) and (vi) of Section 3 of the Act.

1465. The Press is one of the vital organs of modern life more specially in a democracy. It has enormous potentialities for good or evil. There is an essential difference between the mischief that may be wrought by an individual who gives expression to an objectionable matter and the Press which publishes such matter. In the case of irresponsible writings in the Press, the spread of harm is wider and the effect is far greater and most rapid. There is, therefore, some justification for treating individual utterance of an objectionable matter differently from the publication thereof in the Press. The Act is designed to prevent publication of objectionable matter in that small but growing section of the Press which is found to be habitually indulging in the publication of such matter. The Act cannot be regarded as a stigma on the Press as a whole, because all laws are designed to strike at the insignificant minority which intends to indulge in anti-social activities and their existence is no reflection on the conduct or the character of the overwhelming majority of the community. The amount of security required to be deposited by the keeper of a press has to be fixed with due regard to the circumstances of the case and must not be excessive. There is therefore, no point in the argument that the freedom of

expression is granted to a rich person who is in a position to furnish security and risk its forfeiture, but is denied to a person whose resources are not great. There is also no force in the argument that it is humiliating to have to conduct newspapers under a threat of forfeiture of security. It cannot be more humiliating to have to run a newspaper under the threat of losing a certain amount of money than under the threat of being sent to prison or having to pay a heavy fine which are the consequences if the ordinary law is resorted to. Moreover, there is a provision in the ordinary law of the land that security may be demanded from the printer, publisher, proprietor or editor of a newspaper under certain circumstances. (See Section 108 of the Criminal Procedure Code). Further a modern newspaper is brought out under very great pressure by working against time. It would, therefore, not be fair to treat offences committed by the Press as being in the same category as an offence committed by an individual, possibly after considerable deliberation. Therefore, some lenient remedy is called for in their case. There is also the fact that although it may be legally possible to hold one single individual responsible for what appears in a newspaper and, therefore, answerable in respect of any offence committed by that paper, there is always the possibility that the punishment of the individual may be vicarious. As the paper is the composite product of the joint efforts of several persons, personal responsibility can hardly be defined or fixed. The Press Laws Enquiry Committee appreciated all these arguments and recommended the re-enactment of practically all the provisions of the Press (Emergency Powers) Act of 1931, but it came to the conclusion that there should be no demand for security only because such a provision does not exist in the laws of other countries.

1466. It seems to us that the Press (Objectionable Matter) Act is a distinct improvement on the scheme envisaged by the Press Laws Enquiry Committee.

1467. Samples of objectionable writings brought to the notice of Commission indicate that a majority of such writings are those which (i) tend to promote communal hatred and enmity; and (ii) infringe or offend decency or morality and publish scurrilous or obscene matter defaming individuals and making intrusion into their private affairs. There is no doubt that a large section of the Press in India is sober and responsible and does not indulge in what has been described as yellow journalism. There is, however, a small section of the Press, mainly the Indian language press, which seeks to flourish on blackmail, sensationalism and obscenity. By and large the English section of the daily Press is comparatively free from objectionable writings. There are, however, a few periodicals which often indulge in vilification of persons in authority, in ferreting out of official secrets and in publishing spicy scandals having a political tinge.

1468. An analysis of the action taken so far by the State Governments indicates that the overwhelming preponderance of objectionable writings falls under clause (vi) of Section 3 of the Act. But in a very large number of cases the State Governments have taken no action either because they chose not to give undue publicity by starting proceedings or because they had little faith in the efficacy of the Act. The smallness of the section which indulges in such objectionable writings does not *ipso facto* derogate from the necessity of having a law on the subject. No responsible newspaper or periodical need be afraid of the provisions of this Act as no such paper is likely to publish material coming within the four corners of Section 3 which defines 'objectionable matter'. It is a fact, however, that the Act has not effectively stopped publication of objectionable matter and most of the State Governments have taken no action under it either because they did not intend to give undue publicity to the matter or because they considered the Act a poor weapon to deal with such writings. Having accepted the odium that attaches to the enactment of such a legislation, one would have expected that the State Governments would take steps to implement the Act effectively. But it does not appear that any serious effort has been made in this direction by the State Governments. Their grievance about the efficacy of the Act would have been legitimate if cases had been placed before the Courts and the Courts had held that, as the Act stood, no security could be ordered. We think, however, that some

legislation in the form of a provision for taking security is necessary to deal with such writings and the next question is whether it should be enacted in a separate Act or made a part of the permanent law of the land.

1469. There has been a proposal of repealing the Press (Objectionable Matter) Act and enlarging Section 108 of the Cr. P.C. Such a procedure would have eliminated one of the main objections to the Act, and the ordinary law of the land would have applied equally to both individuals and the Press. But making all these changes in the law of the land would have failed to emphasise the essentially temporary purpose of an enactment like the Press (Objectionable Matter) Act. We hope that with the establishment of the Press Council, there will be internal control over the Press and that the Press Council would see that the units of the Press publishing objectionable matter are effectively pulled up and publicly censured. As the Press Council grows in strength and prestige, the necessity of having to resort to such measures as the Press (Objectionable Matter) Act will gradually disappear and the permanent law of the land will not have to be altered for the sake of a small errant section of the Press that exists today. We, therefore, consider that it would be more desirable that the special provision relating to the Press should remain as a separate Act and not form part of the permanent law of the land. Whether the Act would require to be continued after February 1956 must depend upon the performance of the Press during the next two years and on the extent to which the Press Council, if it comes into being before then, will be able to exercise a restraining influence on the erring section of the Press.

1470. It would be presumptuous on our part to anticipate the decision of the Supreme Court but sub-clause (v) of Section 3 of the Press (Objectionable Matter) Act would appear to be not *ultra vires* of the Constitution and void under Article 13. Similarly we think that scurrility involved in writing which is coarse, vulgar or abusive could properly be hit by legislation designed to restrict freedom of expression in the interest of morality and decency.

1471. We are making proposals for tightening up the law of defamation. If these proposals are adopted, we do not think that objectionable writings which are defamatory of public servants need be brought within the scope of the Press (Objectionable Matter) Act.

1472. Abusive writings, publication of false and distorted news or sensational reports or reviews in bold headlines are matters which should not come within the purview of the law. The real cure for such manifestation of irresponsibility is both subjective and organisational and we cannot recommend any abridgment of the freedom of expression by legislative measures.

1473. We think that the system of trial by jury under the Act should continue. We think that the provision of trial by jury is a salutary one although it may have resulted in injustice in one or two cases. Journalists, like members of any other jury, have to learn to assume responsibility. There are journalists in India who have strength of character and a sense of public duty, who would be prepared to assume the responsibility involved in this. It is in that faith and hope that we have made proposals for the constitution of a Press Council which will lay down and administer its code of ethics and maintain the best traditions and standards of Indian journalism. We note, however, that the recent amendment of the Press (Objectionable Matter) Act lays down clearly that it is the duty of the jury to decide whether a newspaper contains any objectionable matter and that it is the duty of the judge to decide whether there are sufficient grounds for making an order for the demanding of security or for directing that any security or any part thereof should be forfeited to Government.

1474. It would be contrary to the usual practice to enable one State Government to deal with an offence committed within the jurisdiction of another State. We see no necessity to delete the provision with regard to giving of warning. We consider that the safeguard imposed by the Legislature of consulting the highest law officer before taking action under Section 11 is a salutary one and should be retained. We see no necessity for imposing a minimum on the amounts for which security should be taken. We cannot accept the suggestions of State Governments for tightening up the law in these respects.

1475. The recent amendment to the Press (Objectionable Matter) Act providing for an

appeal by Government where the Judge and Jury had declined to take action against a paper is a useful provision, although it is to be noted that the Criminal Procedure Code does not provide for an appeal against the orders passed under Chapter VIII of the Code when the Courts decline to pass an order demanding security.

1476. We agree with the view that the editor of the paper who is primarily responsible for the contents of the paper should also shoulder the responsibility under the Press (Objectionable Matter) Act.

The Press and Registration of Books Act

1477. A doubt has been expressed whether leaflets come within the purview of section 3 of the Act. Although there is not much room for doubt on the point, the section may be amended as was proposed to be done by clause 3 of the Bill which was before Parliament for amending the Act.

1478. There has been some divergence of opinion as to whether every copy of a newspaper should contain the name of the person who is the editor thereof. The consensus of opinion is in favour of retaining section 5(1) of the Act as it is. We agree with that view. But whenever the editor is temporarily away and does not intend to assume responsibility for what appears in the paper, his name should not appear in the newspaper as editor, and the name of acting editor should be printed.

1479. Under section 5(2) of the Act, it is open to any person to declare his intention of starting a paper. But it is not incumbent upon him to start the paper within any specified period after the declaration. We think it should be possible for a publisher to start publishing the paper within a fortnight of the declaration in the case of dailies, within a month in the case of weeklies and within three months in the case of monthlies. The declaration should be deemed to lapse if the publication of a newspaper or a periodical is not commenced within these periods. There is also no provision in the Act that any particular number of issues should be brought out within a specified period. We recommend that a 'daily' should bring out at least 15 issues in any consecutive period of 30 days and a 'weekly' not less than 12 issues in any consecutive period of six months. Failure to do so should entail lapsing of the declaration. Section 8 of the Act makes it optional on the part of the publisher of a paper to file a declaration to the effect that he has ceased to be the publisher of that paper. We think that such a declaration should be made compulsory. We also recommend that no declaration should be accepted if a new paper proposed to be published bears the same name as another paper published in the same State or in the same language.

1480. We agree with the recommendation of the Press Laws Enquiry Committee that temporary changes in the place of printing a publication may merely be notified to the Magistrate within 24 hours and that if this is done, there need be no fresh declaration, so long as the printer and the publisher continue to be the same.

1481. We agree with the recommendation of the Press Laws Enquiry Committee that a new declaration should be necessary only if the printer and publisher are absent from the Indian Union for a period longer than 30 days.

1482. One copy of each paper, book or periodical should be filed with the National Library of India. Although the recent bill 'to provide for delivery of books to the National Library and other public libraries' proposes to rectify this omission so far as books are concerned, it excludes newspapers from its purview. It is desirable, we think, that one library at least should have all the important newspapers and periodicals published in India and we recommend that a provision should be made to that effect in the Act.

1483. We consider that the whole administration of the Press and Registration of Books Act requires to be overhauled. There is a general laxity in the checking of the filing and the registration of books and periodicals. It has been a matter of great difficulty to us to obtain the files of newspapers or even to verify whether a paper is currently being published or not. In many cases the information supplied by the State Governments was grossly inaccurate and never up to date. There is little or no check to see whether a paper comes out regularly and if it does not, to find out the cause or to correct the record accordingly. There must therefore be a radical change in the

administration of the Act in the various States. It is necessary, we think, that there should be one central authority to be named the Press Registrar for India exercising supervisory jurisdiction over the Press Registrars appointed for each State. It should be the business of the Press Registrar to have a complete register of all the newspapers and periodicals, news agencies and advertising agencies in the State. It should be made obligatory on them to register themselves under the Act and if they fail to do so, they should be ineligible to carry on the business. The declarations to be made by them should include a statement of the capital structure and the staff proposed to be employed in the venture, and the Registrar should have authority to call for any additional factual information.

1484. The rules regarding registration of newspapers and periodicals under the Indian Post Offices Act of 1898 require to be altered as such registration entitles the newspapers and periodicals concerned to obtain certain concessions. We have come across several 'newspapers' purported to be registered under the Indian Post Offices Act which contain only one item of news, of three or four lines, and the rest of the paper is devoted either to market quotations or to solutions of crossword puzzles. We feel that the concessions which a registered newspaper enjoys under the Indian Post Offices Act should be given to genuine newspapers, although they may be continued in respect of publications containing market reports, especially if they give interpretations of market trends. There is no justification for extending the concession to publications which consist of nothing except possible solutions to crossword puzzles. On the other hand, we have been informed that certain magazines have been refused the postal concessions on the ground that they do not contain 50 per cent of material which could be described as news or articles relating thereto and current topics. Fiction is not included in this category of reading matter. It would be desirable to amend the definition of newspapers in the Post Office Act to enable genuine periodicals containing a reasonable quantity of fiction, literary, scientific, philosophic or artistic comment to obtain the concessions.

1485. It should be the duty of the Press Registrar of India to bring out an annual report on the working of the Press on its organisational side giving the necessary statistics, just as the Press Council should bring out an annual report on the working of the Press on its editorial side.

Official Secrets Act, 1923

1486. We agree with the view that merely because a circular is marked secret or confidential, it should not attract the provisions of the Act, if the publication thereof is in the interest of the public, and no question of national emergency and interest of the State as such arises. But in view of the eminently reasonable manner in which the Act is being administered, we refrain from making any recommendation for an amendment thereof.

Section 124A, Indian Penal Code

1487. This section, as authoritatively interpreted, was held by the Punjab High Court to have become void because it contravened the right to freedom of speech and expression and that it was not saved by Article 19(2) of the Constitution as it originally stood. In our opinion, in so far as the section penalises mere exciting or attempting to excite feelings of hatred, contempt or disaffection towards Government without exciting or attempting to excite disturbances of public order, it is *ultra vires* of the Constitution even under the amended Article 19(2). In a modern democratic society, changes of Government are brought about by expressing dissatisfaction with its doing and mobilising public opinion hostile to the Government in power. This is the normal functioning of democracy. In so far as section 124A seeks to penalise such expression this section would appear to be not only *ultra vires* of the Constitution, but opposed to the concept of the freedom of the Press. We recommend that the section be repealed. It would, however, be desirable to make punishable by a new section 121B, expressions which incite persons to alter by violence the system of Government, with or without foreign aid. This may not amount to waging war within the meaning of section 121 of

the Indian Penal Code, and is obviously more serious than offences against public tranquility and offences against persons.

Section 153A, Indian Penal Code

1488. The decision of the Punjab High Court had thrown a cloud on the validity of this section under Article 19(2) of the Constitution as it originally stood. Since then the Article has been amended by introducing the words 'public order' in that Article. Although there has been no final or authoritative decision on the point, it appears that the section could be regarded as being *intra vires* of the amended Constitution. The possibility, however remote, of its being held void does exist and it would therefore be desirable to bring this section within Article 19(2) without the possibility of a challenge by restricting its operation to those cases where there is intention to cause disturbance of public peace or knowledge of likelihood of violence ensuing. We also support the recommendation of the Press Laws Enquiry Committee that an Explanation should be added to this section to the effect that it does not amount to an offence under this section to advocate a change in the social or economic order, provided that any such advocacy is not intended or likely to lead to disorder or to the commission of offences.

Section 295A, Indian Penal Code

1489. This section which refers to deliberately and maliciously outraging the religious feelings of any class of subjects or insulting or attempting to insult religious beliefs of that class may possibly be protected by the words 'public order' and 'morality' in Article 19(2) of the Constitution. But we think that the section should be brought indisputably within the provisions of the Constitution by limiting its operation to those cases where there is intention to cause violence or knowledge of likelihood of violence ensuing.

Section 505, Indian Penal Code

1490. It seems to us that all clauses of section 505 are covered by Article 19(2) of the Constitution and are not inconsistent with the concept of the freedom of the Press. Under the circumstances, we see no necessity of suggesting any amendment to this section.

Sections 99A to 99G, Criminal Procedure Code

1491. These sections enable Government to forfeit every issue of a newspaper or a book whenever it appears to them that they contain matter falling under sections 124A, 153A and 295A of the Indian Penal Code. Following our recommendation with regard to section 124A, the reference to that section in section 99A of the Criminal Procedure Code should be deleted. The rest of the section may remain, because the reference to sections 153A and 295A of the Indian Penal Code would be construed as reference to the amended sections 153A and 295A if our recommendation is accepted and those sections are suitably amended. If, as suggested by us, a new offence under section 121B is created, that section will also have to be included in section 99A of the Criminal Procedure Code.

Section 144, Criminal Procedure Code

1492. Although the section is not inconsistent with the freedom of the Press, we support the view of the Press Laws Enquiry Committee that it was not the intention of the framers of the Code that this section should be applied to the Press. If Government consider it necessary to have powers for the issue of temporary orders to newspapers in urgent cases of apprehended danger, Government may promote separate legislation or seek an amendment of that section.

1493. While appreciating the correctness of Mr. Justice Mukherjee's report on the Calcutta Police assault on the Press reporters, that the reporters could not claim exemption from the operation of an order under section 144, merely by reason of the fact that they were newspaper reporters, we are conscious of the difficulty which that view creates. We recommend that when an order is issued prohibiting assembly of more than a certain number of persons, the authority concerned may grant, in the order itself, special exemption to *bona fide* reporters. They should be asked to wear

distinctive badges in token of the special exemption and carry the permit on their person. We are confident that such *bona fide* reporters will not participate, directly or indirectly, in the unlawful activities and thus abuse the special concession and consideration shown to them.

1494. **Section 5, Indian Telegraph Act-** In so far as the provisions of this section can come into force only on the occurrence of an emergency or in the interest of public safety, they cannot be said to be inconsistent with the freedom of the Press or outside the scope of permissible legislative restrictions under Article 19(2) of the Constitution. The recommendation of the Press Laws Enquiry Committee is that the delegation of these powers should be the exception rather than the rule, that the delegation should be issued by Government in order to ensure that these powers are not abused. As a further safeguard, if any orders are passed under subsection (3) by specially authorised officers of Government, they should be reported to the Central or Provincial Government, as the case may be, in order to enable the responsible Minister to judge the proper exercise of the powers and the orders passed in individual cases.

1495. **Sea Customs Act, 1878-** Section 19 is not limited in its operation to any emergency and would therefore appear to be not in consonance with the freedom of the Press or Article 19(2) of the Constitution. The section should be amended to limit its operation, in the case of newspapers and periodicals, to such matter as is liable to be forfeited under section 99A of the Criminal Procedure Code. It would be anomalous to ban the production of that type of literature in this country, but to permit its import.

1496. Sections 181A and 181C authorise detention of any package suspected to contain any newspaper or document, the publication of which is punishable under section 124A. Consistently, with our recommendations above, the reference to section 124A of the Indian Penal Code in these sections will have to be replaced by a reference to the new section 121B of the Indian Penal Code which is suggested for enactment.

1497. **Indian Post Offices Act, 1898-** Our observations with respect to section 19 of the Sea Customs Act apply to this section of the Post Offices Act.

Section 26: Our remarks under section 5 of the Indian Telegraph Act apply to this section of the Post Offices Act.

Section 27B: Our remarks under sections 181A to 181C of the Sea Customs Act apply to this section of the Post Offices Act.

1498. **Law of Contempt of Courts-** The Contempt of Court jurisdiction is inherent in the Court of Record. The Contempt of Court Act (XII of 1926) settled a vexed question by enacting that the High Courts of Judicature have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice in respect of Subordinate Courts as in respect of contempt of themselves. The Act also places a limit on the extent of punishment to be imposed. The provision in the Act, which lays down that no High Court shall take cognisance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code, has been interpreted to mean that the High Court jurisdiction is excluded only in those cases where the acts alleged to constitute contempt of a subordinate court were punishable as contempt, and not where these acts merely amount to offences of other description for which punishment has been provided in the Indian Penal Code. For example, the defamation of a judge of a subordinate court constitutes an offence under the Indian Penal Code, but does not oust the jurisdiction of a High Court to take cognisance of the act as contempt. The High Courts have extra-territorial jurisdiction in matters of contempt. But there has been some conflict of opinion, as is exemplified by Horniman's case, as to whether they have power to arrest, for contempt of itself, a person residing outside the jurisdiction of those courts. The Contempt of Courts Act of 1952, which has replaced the Act of 1926, has a provision which lays down that 'a High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of the contempt is within or outside such limits'. How far this provision removes the difficulty created by Horniman's case is a question

on which there has been no decision so far.

1499. It is difficult and almost impossible to frame a comprehensive and complete definition of contempt of court. But the courts in India and England have laid down rules on the subject and have stated the principles governing the exercise of this jurisdiction. If power is exercised as laid down by these authoritative pronouncements, there is no reason to apprehend that any injustice would be caused. No instance, except possibly one, has been brought to our notice where it could be said that this jurisdiction had been exercised either arbitrarily or as a result of over-sensitiveness on the part of the High Court to the criticism of the judicial proceedings. We have examined a few of the important cases on the subject. It is difficult to say that any of these cases were wrongly decided, although it could be argued that in at least one or two cases the comment which was the subject matter of contempt proceedings was provoked by some unfortunate expressions of the Court itself.

1500. We have also examined some cases where comments were made in pending proceedings. A case is said to be pending when a Court has taken cognisance thereof. There have been some decisions which seem to take the view that there may be contempt of court even when judicial proceedings are imminent, though they may not have been actually instituted. Some recent decisions of the Allahabad and Punjab High Courts have doubted the correctness of this view. The publication in newspapers of proceedings before a court of law must be true and accurate and without malice. The privilege does not extend to the publication of false reports or to the publication of material which is calculated to affect prejudicially the interests of any party to a legal proceeding. The Courts, on the whole, have taken a considerate view of the difficulties of journalists and it has been held that it is undesirable to launch upon contempt proceedings in every case of inadequate or inartistic report of the proceedings in Court published in newspapers, unless it appeared that there was deliberate misunderstanding and suppression of facts in the report.

1501. The Indian Press as a whole has been anxious to uphold the dignity of courts and the offences have been committed more out of ignorance of the law relating to contempt than with any deliberate intention of obstructing justice or giving affront to the dignity of Courts. Instances where it could be suggested that the jurisdiction has been arbitrarily or capriciously exercised have been extremely rare, and we do not think that any change is called for either in the procedure or practice of the contempt of Court jurisdiction exercised by the High Courts.

1502. **Contempt of Legislature-** Articles 105 and 194 of the Constitution establish the right of the freedom of speech in legislatures, and immunity of the Members thereof from any legal proceedings in respect of anything said in the Legislatures and the immunity of any person in respect of publications by or under the authority of the Legislature. In other respects the powers, privileges and immunities shall be such as may be defined by the Legislature and until so defined, shall be those of the House of Commons at the commencement of the Constitution.

1503. Parliamentary privilege has been described as a sum of all the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament and by Members of each House individually. In India, with its written Constitution and fundamental rights of freedom of expression guaranteed by the Constitution, it may not be wholly appropriate to adopt bodily the basic concepts of the privileges of the House of Commons as they developed in England, and greater caution is therefore necessary in adopting them, even though permitted by the Constitution, and in applying them consistently with the Indian Constitution and Indian conditions. There is nothing sacrosanct abut the procedure of the House of Commons, and it is not imperative that the House of Commons practice should be followed in every detail.

1504. The Supreme Court has held in the case of *'Blitz'* that an arrest which is executed in pursuance of an order of a Legislature is subject to the fundamental right embodied in Article 22(2) of the Constitution which requires that an arrested person shall be produced before a magistrate within 24 hours. It is no answer to that Article that the legislature was exercising the powers, privileges and immunities of the House of Commons. If so, the wider question would arise whether the powers, privileges and immunities of the House of Commons which a legislature may

exercise under Articles 105 and 194 of the Constitution can go so far as to abrogate the right of the freedom of expression save to the extent described in Article 19(2). The permissible restrictions on freedom of speech refer to restrictions in relation to contempt of court, but not to the contempt of legislature. Conceivably therefore a conflict may arise in the exercise of the fundamental right under Article 19(1) on the one hand, and the exercise by the Legislature of the powers, privileges and immunities of the House of Commons conferred upon them by Articles 105 and 194 of the Constitution, on the other. The position must remain fluid until it is set at rest by the Supreme Court, and if the decision of the Supreme Court makes it necessary, the Constitution may have to be amended by making an exception in favour of contempt of legislature also in Article 19(2).

1505. The question whether the jurisdiction of the State Legislature extends over a person residing for the time being in another State is a point on which there has been no authoritative decision.

1506. It would therefore be desirable that both the Parliament and the State Legislatures should define by legislation the precise powers, privileges and immunities which they possess in regard to contempt and the procedure for enforcing them. Such a law would have to be in consonance with our Constitution and could presumably be challenged, if it appears to be in conflict with any fundamental right. In that event the position would be clarified by the highest tribunal in the land. Articles 105 and 194 contemplate enactment of such legislation, and it is only during the intervening period that the Parliament and State Legislatures have been endowed with the powers, privileges and immunities of the House of Commons.

1507. Till the position is so clarified, we must accept the situation as it is. The justification for the privileges of the House of Commons results from the fact that without them the members could not perform their functions unimpeded. The privileges of a legislature would be entirely ineffectual in enabling it to discharge its function if it had no powers to punish the offenders, to impose disciplinary regulations on its members or to enforce obedience to its commands. The offences of the nature of contempt have been characterised as 'breaches of privileges', though that expression should be more appropriately confined only to the class of contempts consisting of a violation of or an assault on the Parliamentary privileges strictly so called, such as the right of free speech, freedom from arrest, etc. There may thus be contempts without there being breaches of privileges properly so called. The question arises in connection with the Press in two ways, (1) the publication of the proceedings of the Legislatures, and (2) comments casting reflection on the individual members or on the House as a whole or its officers.

1508. So far as the publication of the proceedings is concerned, the rule is that there is no privilege attached to the publication in newspapers of statements made on the floor of the Legislature. In Great Britain all reports of Parliamentary proceedings, whether in the whole House or in the Committee thereof, are prohibited and their publication is taken as a breach of privilege. Each House, however, waives its privilege in this respect, so long as published reports are accurate and fair. But if wilfully misleading or incorrect accounts of the debates are published, then those responsible for the publication will be punished, the technical ground for proceeding against them being that to publish the report at all is a breach of the privilege.

1509. In India there is no privilege attached to the publication of proceedings of Legislatures if such publication constitutes an offence against the law of the land. Exception 4 to Section 499 of Indian Penal code creates a privilege in respect of a substantially true report of a proceeding in a court of justice, but not in respect of publication of a substantially correct report of the proceedings in a legislature. Therefore, although the publication of a substantially true and faithful report of the proceedings of legislature will not constitute contempt of the legislature, the fact that the words complained against were privileged when they were uttered in the legislature will not confer any privilege in respect of the publication of these words, so far as the ordinary law of the land is concerned. In an English case [Wason v. Walter (1869) 4 Q.B. 73] it was held that a faithful report in a public newspaper of a debate in either House of Parliament containing matter disparaging to

the character of an individual which had been spoken in the course of a debate is not actionable at the suit of a person whose character has been called in question. But the publication is privileged on the same principle as an accurate report of proceedings in a court of Justice is privileged, viz., that the advantage of publicity to the community at large outweighs any private injury resulting from the publication. Articles 105 and 194 of the Constitution afford protection only in respect of publication by or under the authority of the Legislature. We recommend Explanation 4 to Section 499 of the Indian Penal Code be amended by inserting the words 'or of Parliament or State Legislature' to give effect to the principle of Wason v. Walter (1869) 4 Q.B. 73, referred to above.

1510. We think that no culpability should be attached to the publication of the proceedings of the Legislature before the order of the presiding office expunging those proceedings reaches the newspaper office. Such unintentional and unavoidable transgression of the rulings of the Chair should not, in our view, be regarded as a breach of the privileges of the House.

1511. So far as the premature publication of the reports of the Committees is concerned, the Parliamentary practice is clear that no act done at any Committee should be divulged before the same be reported to the House. The same principles should apply to the publication of questions or resolutions before they are admitted by the Chair. But where a question or motion sent to the Presiding Officer has been disallowed, a bare mention to that effect, without comment, should not be treated as contempt.

1512. The other branch of the law relates to the contempt of legislature in making comments which cast reflection on individual members or on the House generally. It has long been recognised that the publication of imputations reflecting on the dignity of the House, or of any member in his capacity as such, is punishable as contempt of Parliament. Reflections on Members, even where individuals are not named, may be so framed as to bring into disrepute the body to which they belong, and such reflections have therefore been treated as reflections on the House itself. If the publication was intended to bring to light matters which were true, so that an end might be put to them, then however discreditable the fact, such a publication for such a high purpose would constitute a defence.

1513. We have examined a few of the more recent cases of contempt of legislature. Some of these cases, in our opinion, disclose oversensitiveness on the part of legislatures to even honest criticism. When the decisions of the High Court and Supreme Court are liable to be criticised without any action being taken for contempt of court, there appears no reason why legislatures should claim excessive immunity from criticism in Press or public. The Courts recognise, as pointed out elsewhere, that contempt proceeding should be resorted to in extreme cases only. It behoves our legislature also not to resort lightly to contempt proceedings. The Press, as a whole, is anxious to maintain and enhance the dignity and prestige of our courts and legislatures and recognises that within the precincts of the Assembly hall the presiding officer's ruling is supreme and the freedom of the members absolute. It is, therefore, all the more necessary that the legislatures should respect the freedom of expression where it is exercised by the Press within the limits permitted by law, without imposing additional restrictions in the form of breaches of privilege, unless such restrictions are absolutely necessary to enable them to perform their undoubtedly responsible duties. No one disputes that Parliament and State legislature must have certain privileges and the means of safeguarding them so that they may discharge their functions properly, but like all prerogatives the privilege requires to be most jealously guarded and very cautiously exercised. Indiscriminate use is likely to defeat its own purpose. The fact that there is no legal remedy against at least some of the punishments imposed by the legislatures should make them all the more careful in exercising their powers, privileges and immunities.

1514. **Law of Defamation**- Under Article 19(2) of the Constitution the fundamental right of freedom of speech and expression can be curtailed by the imposition of reasonable restriction in relation, *inter alia*, to defamation. Defamation would mean both civil and criminal libel. It has

been urged that the Constitution should be amended so as to restrict the operation of the word 'defamation' to cases involving civil liability only or to such cases involving criminal liability as are likely to disturb the public peace.

1515. We think it would not be desirable to amend the Constitution in such a way as to permit restrictions being placed on the fundamental right to freedom of speech and expression only in respect of civil defamation. This view gains support from the Constitutions of other countries also.

1516. The second suggestion is to amend the Constitution in such a way as to permit restrictions being placed on the freedom of speech and expression in the form of a criminal offence for libel, but only when such libel is likely to lead to a breach of the peace. This point was present in the minds of the framers of the Indian Penal code, and the observations made by them are equally applicable at the present time. We do not think that the state of the society has altered to such an extent as to justify alteration of the law which has stood the test of time. We do not therefore think that criminal defamation should be confined to cases where there is an apprehension that a breach of the peace will be caused.

1517. It has been urged by several State Governments that there is wide prevalence of writings making allegations, sometimes well-founded and mostly unfounded, defamatory of public officials or Government servants. It is urged that public servants are debarred by Government Servants' Conduct Rules from making any rejoinders to false allegations. Prosecution of the offending person or of the offending paper is beset with numerous difficulties. There is dilatory procedure in the courts, there is inconvenience and labour involved in collecting evidence for prosecution and the cross-examination of the complainant is aimed at besmirching his character in order to prove that he had no reputation to lose. When there is no possibility of escaping a conviction, an apology is tendered, and even if a conviction takes place, the Courts impose only a nominal fine. We appreciate what has been urged, but we note that most of these difficulties are common both to public servants and private individuals, except the difficulty created by the Government Servants' Conduct Rules. There is no substance in the argument that a special provision for public servants would be an unreasonable discrimination. Public servants are recognised as a special category in the Indian Penal Code and the Criminal Procedure Code. We look at the problem not from the point of view of giving any favoured treatment to public servants, but from the point of view of public interest. As a public servant is liable to be transferred, he cannot vindicate himself by resorting to a remedy which is more easily available to others. It is also very desirable in public interest that there should be, in suitable cases, a magisterial inquiry or a police investigation in respect of serious allegations against a public servant even if the public servant himself is unwilling to initiate proceedings and clear himself of the charges.

1518. One of the remedies suggested is that when a public servant is defamed, it should constitute a cognisable offence. It is said that such a procedure would enable the police to make investigation and relieve the public servant of collecting the necessary evidence. It is also argued that it might act as a deterrent if it is feared that the offender is likely to be arrested by the police without a warrant. We think it would not be safe to make such offences cognisable, with all the consequences flowing from such a provision. As to whether any particular allegation is defamatory or not must to some extent depend upon the subjective appreciation by the police officer as to what constitutes defamation. Some cases may be simple. But in other cases it would not be so easy to decide the question. To make all such allegations cognisable offences may lead to harassment of the alleged offender. On the other hand, there may be cases where serious allegations are made which would require police investigation. There may also be public servants who would not be willing to bring cases into the Court and to clear themselves of the defamatory allegations, in which case, under the law as it stands, no action can be taken. A procedure has therefore to be devised which will strike a balance between the two considerations, viz., (1) frivolous action, and (2) the desirability of police or magisterial inquiry in some cases where it is necessary that the public servant should clear himself of the defamatory

allegations. The first result is achieved by not making defamation of a public servant in the discharge of his public duties a cognisable offence. But to achieve the second result, some amendment of the law is necessary.

1519. Under Section 198 of the Criminal Procedure Code it is only the aggrieved party that can set the law in motion, and if he happens to be hundreds of miles away or is unwilling to take any steps, nothing can be done. We think that in such cases it should be within the power of a superior officer to initiate proceedings. We therefore recommend that a third provision may be added to section 198 to the effect that when the person aggrieved under Chapter XXI of the Indian Penal Code is a public servant within the meaning of Section 21 of the Indian Penal Code by reason of allegations made in respect of his conduct in the discharge of his public duties, the magistrate with jurisdiction may take cognisance of the offence upon a complaint made in writing by some other public servant to whom he is subordinate. When the law is thus set in motion, it should be obligatory on the magistrate to order a police investigation or a magisterial inquiry. We therefore suggest that a proviso should be added to section 202 of the Criminal Procedure Code that where the complaint is in respect of defamation of a public servant in the discharge of his duties, a magistrate shall make the inquiry himself or direct an inquiry or investigation into the complaint. We think that it would be desirable, by an administrative order, to direct that such complaint should be filed in the court of a District Magistrate.

1520. This procedure will secure the following advantages:

(1) The alleged offender will not be liable to an arrest without warrant in every case where a police officer may think that there has been a defamation of a public servant in the discharge of his duties.
(2) When the public servant is physically unable to file a complaint some other officer can set the law in motion.
(3) If the public servant concerned is unwilling to file a complaint and the matter is of sufficient public importance, the law can be set in motion by his superior.
(4) The benefits of a magisterial inquiry or a police investigation are secured by making it incumbent on the magistrate to direct such inquiry or investigation before he decides whether to issue a process or not.
(5) If the inquiry or investigation shows that the allegations are false, process can be issued against the offending person. If, however, it transpires that there is some truth in the allegation the proceedings against the alleged offender may be dropped and action, if any, would be taken against the public servant concerned.
(6) If the complaint is filed in the court of a District Magistrate under an administrative order, a senior magistrate will be able to decide after reading the report of the inquiry or investigation, whether any further action should be taken or not.

1521. The main reason which deters a person from instituting a prosecution for defamation is the discursive cross-examination aimed at attempting to prove that the person has no reputation to lose, because the existence of the reputation is considered by some courts to be a fact in issue or a relevant fact. The Allahabad High Court has held that it is a fact in issue or a relevant fact. The Patna High Court has taken the contrary view. According to the latter High Court, the law does not contemplate that any person's reputation is so low that it cannot fall lower by the publication of fresh defamatory matter relating to him. It is also unthinkable that the law can intend that defamatory matter about a person of high reputation can be published without incurring liability for prosecution under Section 500 of the Indian Penal Code merely because his reputation stands so high that the imputation is not likely to be believed. We think that the view taken by the Patna High Court is correct and legislative approval should be given to it by adding an explanation to Section 499 to the effect that every person has a reputation and that it is immaterial for the purpose of the section whether the reputation of the person defamed is high or low. This will effectively stop any cross-examination directed merely to show

that the person has no reputation or that his reputation is so low that it cannot be lowered further.

1522. It is suggested that the law as it stands does not give sufficient protection to a newspaper in exposing administrative and commercial scandals and thus acts as a deterrent to the Press in the performance of its legitimate duties. There is some justification for this complaint, and the nervousness on the part of the newspapers can be considerably allayed if the law is amended on the lines of the English Defamation Act of 1952 which gives protection to a person in respect of unintentional defamation. Under Section 4 of the English Act, a person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently, make an offer of amends. If the offer is accepted by the party aggrieved and is duly performed, no proceedings for libel or slander can continue against the person making the offer. If the offer is not accepted by the party aggrieved, the offer itself constitutes a valid defence, if it is proved (1) that the words complained of were published by the defendant innocently, and (2) that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff and that the offer had not been withdrawn. For the purpose of that Section the words shall be treated as published by one person innocently in relation to another person if the following conditions are satisfied:

(1) The publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or

(2) the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person;

and in either case, the publisher exercised all reasonable care in relation to the publication.

We think that such a provision should be adopted as a general law and not merely for application to the newspapers.

1523. Four of our colleagues Acharya Narendra Deva, Sarvasri A.D. Mani, M. Chalapathi Rau and Jaipal Singh dissent from some of the conclusions and recommendations made earlier. Their views are summarised below:

Article 19(2) of the Constitution

1524. They believe that the decision of the Supreme Court in *Shailabala's* case knocked out the major premise for Government's case for amending the Constitution. They think that if Government had only waited for the judgement of the Supreme Court, there would have been no necessity for amending the Constitution in such haste. Freedom of expression is such an important fundamental right that its abridgments should not be contemplated unless a clear case exists for the imposition of the restrictions. No such case existed in 1950.

1525. Although by the introduction of word 'reasonable' in Article 19(2) there was an advance over the original Article, they hold that in regard to two fresh limitations which had been placed on the freedom of expression, the amended Article does not fulfil adequately the requirements of the concept of the freedom of the Press. As incitement to crimes has been held all the world over to be an abuse of the freedom of the Press, they have no intention of suggesting that the words 'incitement to an offence' in the amended Article 19(2) of the Constitution should be dropped. But in respect of the other two fresh limitations, *viz.*, 'public order' and 'friendly relations with foreign States', they disagree with the majority view.

1526. As there was a conflict of opinion about the desirability of the Covenant drafted by the United Nations Conference at Geneva in 1948, they think that it would be dangerous to regard the covenant or the decisions of the United Nations Bodies as a source for drawing support for fresh restrictions. They take into account the difficulties experienced by the authorities in the maintenance of public order and concede that it would be an abuse of the freedom of the Press if a newspaper indulged in publications which aggravated the situation. They would like the words 'in the interest of public order' to be substituted by the words 'in the interest of prevention of public disorder'. They think that the expression 'public order' is capable of a multiplicity of interpretations. They find that there is considerable international support for the expression 'for prevention of public disorder',

and that the phrase is not capable of ambiguity of interpretation.

1527. They think that when the words 'friendly relations with foreign States' were introduced in the Article, no adequate case was presented to the public justifying the amendment. The foreign policy of Government has been the subject of considerable discussion in the Press, and the performance of the Press in this regard did not justify the restrictions. Government had also not included these restrictions in the definition of 'objectionable matter' in the Press (Objectionable Matter) Act. It would be a useful factor for the maintenance of world peace if there is a free and unregulated exchange of information between different countries. On this ground the free Press all over the world has protested against curbs being imposed on its discussion of foreign affairs. They desire that these words should be omitted because Government should not be placed in a position that a foreign Government could draw its attention to the enabling restrictions under Article 19(2) and suggest restraints being placed on the Indian Press. It was not possible to say what the character of Governments would be 10 years hence, and some of those Governments may take a highly intolerant view of any criticism of their foreign policy. They think that there is a substantial volume of international opinion against restrictions being placed on free discussion of foreign affairs. If any emergency arises, the Constitution can always be suspended in which case the fundamental rights would be in abeyance and Government would be fully armed to take any measures they desired in the interests of national security. It is therefore not necessary that an enabling provision should be made to validate restrictions imposed on freedom of expression of views on foreign affairs during peace time. They therefore feel that if at any time in future the Constitution is amended, Government should agree to delete this restriction.

Press (Objectionable Matter) Act

1528. They are opposed to the Act on the grounds of principle in that it provides for demand of security, a provision unknown to the law of any other country. Further, it is preventive in effect and is a special law, applicable to the Press, whose freedom of expression is a part of the general freedom of expression. The Press Laws Enquiry Committee also rejected the suggestion that security provision should be incorporated in the ordinary law as a preventive measure. They do not understand why that Committee came to the conclusion that in the case of a newspaper personal responsibility can hardly be defined or fixed. They consider that the demand for security is unwholesome in principle and detrimental to the exercise of legitimate freedom of expression. However much the Press (Objectionable Matter) Act may be an improvement on the 1931 Act, its provisions do not meet the main objection, *viz.*, the security prevision.

1529. They concede that there is some distinction between an individual and the Press giving expression to objectionable matter, but think that there is no difference so far as the essence of the freedom of expression is concerned. They consider that the principle of proceeding against the Press as an institution has no sound argument to support it. Although the legislation is designed to strike at an insignificant minority which tends to indulge in anti-social activity the possibility exists, whether such legislation could be regarded as a stigma or not, that it can be used against the members of the significant majority whenever Government, present or future, want to do so. As a result of taking security, the newspaper has to conduct itself every moment of its life with the fear that the security would be confiscated. The objection is to the stultifying effect of the imposition of security, and the threat of confiscation. The security provision also undermines the independence of the editor by increasing the proprietor's fiduciary interest and providing him with an excuse to interfere with the editor's discretion.

Section 108 of the Criminal Procedure Code

1530. They do not think that the provisions of Section 108 of the Criminal Procedure Code should be extended to cover matters at present dealt with by Press (Objectionable Matter) Act, as it would be tantamount to re-enactment of the Press (Objectionable Matter) Act in another form, although such an extension would have the effect of removing the distinction between the Press on the one hand and the individual on the other. They therefore cannot agree either to the continuance of the Press (Objectionable Matter) Act or to changes in Section 108 of the Criminal Procedure

Code.

1531. They are of the view that no material had been placed before Parliament to justify either the enactment of the legislation in 1952 or the extension of its life in 1954. They do not accept the contention of the State Governments that they did not take action in a number of cases because they chose not to give undue publicity to objectionable matter. As almost every one of the offences mentioned in Section 3 is also an offence under the ordinary law of the land, the Act, they think, serves no useful purpose except to make it easy for the State Governments to muzzle the Press by hitting at its financial resources and by taking preventive action. They are against the inclusion of scurrility in the list of objectionable matters because it is a vague chunk of offensiveness and also because it would mean vesting extraordinary powers in the hands of State Governments, some of whom have not demonstrably proved that they have the capacity to exercise them with restraint and moderation.

1532. They are confident that if the Press Council is properly constituted, it will be able to deal adequately with matters of social responsibility, public taste and morals which can never be adequately dealt with under law. The existence of the Press Act would greatly weaken its position. If the Press Council is to be given a proper trial, it is the duty of Government to see that it starts functioning with a clean slate, and in that view, the Press Act should not be allowed to be renewed after the expiry of its present term. A fair start of the new set-up would be to scrap the Act and to forget Section 108 of the Criminal Procedure Code.

Defamation of Public Servants

1533. They accept the majority view that the defamation of public servants in the discharge of their public duties should not be made a cognisable offence. They, however, think that there is no necessity of making any changes in Section 198 and Section 202 of the Criminal Procedure Code. They are of the view that the State Governments have exaggerated the extent of defamation of public servants. While it may be true that some newspapers had enlarged their liberty into licence, public servants in this country are yet free from the amount of criticism which is due to democratic conditions. Under Section 198 of the Criminal Procedure Code it is only the aggrieved person who can set the law in motion, and to provide an exception in favour of public servants would be to upset the principles of jurisprudence on which Section 198 was based. Moreover, the scheme of the Criminal Procedure Code envisages that the complainant should be examined on oath before the Magistrate can take cognisance of an offence. They cannot agree that public servants are entitled to discrimination in their favour, and think they should not be allowed the benefit of the extraordinary procedure of being exempted altogether from examination prior to taking cognisance of the offence in cases in which they are the complainants.

1534. They think that if a magisterial inquiry or police investigation in cases of defamation of public servants would be in public interest, the same principle would be justified if extended also to cases in which private representations are made against such public servants. They are of the view that it is in public interest that public servants should accept the obligations that are common to all the citizens in cases of defamation. Any other course would be a fetter on the Press in the discharge of its responsibilities and would lead to undermining of public confidence in the administration.

1535. We regret that four of us are not in agreement with certain of the views expressed earlier. This has been the only point of difference and we trust it will serve to emphasise the practical unanimity of the rest of this report. We should, however, like to stress that our differences lie within a narrow compass.

1536. With regard to Article 19(2) of the Constitution, the majority recommend that there should be no change in the wording of the three items that were added by the Constitution (Amendment) Act of 1951; (1) in the interest of public order; (2) friendly relations with foreign States; and (3) incitement to an offence. The others accept the necessity of (3) above. In respect of (1) they would prefer the wording 'for the prevention of disorder' to the words 'in the interest of public order', which is not a substantial change. With regard to (2), they would omit the clause altogether, while the majority would, however, retain the words as an enabling provision and would like the power to legislate to be exercised in the particular manner suggested by them.

1537. With regard to the Press (Objectionable Matter) Act, four of us, though opposed in principle to such legislation, would like the Act to lapse after February 1956. The rest of us also recognise the essentially temporary nature of the Act and would make the continuance of the Act after February 1956 dependent on (1) the performance of the Press during the next two years, and (2) the efficacy of the Press Council in exercising a restraining influence on the errant section of the Press.

1538. With regard to defamation of public servants in the discharge of their public duties, four of us do not desire any change in the law. The only change the rest of us suggest is that without making it a cognizable offence, it should be made possible to set the law in motion on a complaint, where necessary, from an officer to whom the public servant is subordinate and a provision should be made by which there shall be a magisterial inquiry or police investigation to decide whether there is any truth in the allegation before a process is issued in pursuance of the complaint.

1539. On the rest of this Report including all other points in respect of Press Legislation all of us are in agreement.

(Sd.) G.S. RAJADHYAKSHA, *Chairman.*
(Sd.) C.P. RAMASWAMI AIYAR, *Member.*
(Sd.) NARENDRA DEVA *Member.*
(Sd.) ZAKIR HUSSAIN, *Member.*
(Sd.) V.K.R.V. RAO, *Member.*
(Sd.) P.H. PATWARDHAN, *Member.*
(Sd.) T.N. SINGH, *Member.*
(Sd.) JAIPAL SINGH, *Member.*
(Sd.) A.D. MANI, *Member.*
(Sd.) A.R. BHAT, *Member.*
(Sd.) M. CHALAPATHI RAU, *Member.*
(Sd.) S. Gopalan,
Secretary.

BOMBAY;
The 14th July 1954.

ANNEXURE

Summary of legislation recommended

A. The newspaper and periodical industry should be brought within the list of industries under the control of the Union Government.

B. An Act should be passed to regulate the industry and should *inter alia* provide for the following matters:

(1) The appointment of Press Registrars both at the Centre and in the States, whose duties and functions would be prescribed in the Act on the lines indicated in our recommendations.
(2) The collection of statistics of the newspaper industry.
(3) The fixing, by Government, from time to time of a price-page schedule on the lines we have recommended.
(4) The definition and punishment of practices which are unfair or restrictive.
(5) Laying down the manner in which accounts of different enterprises shall be maintained by a proprietor controlling more than one newspaper or publishing them from more than one centre.
(6) Making the issue and publication of fraudulent advertisements punishable.
(7) Making the new Industrial Relations legislation applicable to newspaper employees.
(8) Prescribing the method of assessment and distribution of profits from the industry, including the payment of bonus to the employees.
(9) Prescribing the terms of employment, including the notice period, minimum wage, leave, provident fund, gratuity, etc.
(10) Making it compulsory for newspapers to publish periodically a statement of ownership and control in the form prescribed.
(11) Making the provisions of the Provident Funds Act applicable to the employees.

C. There will have to be new enactments for:

(1) establishing a Press Council;
(2) bringing into existence of a State Trading Corporation for dealing in newsprint and for furnishing finances for the operation of the Press Council;
(3) establishing a Public Corporation to take over the Press Trust of India;
(4) defining the powers, privileges and immunities of legislatures.

D. Amending legislation would also be necessary, on the lines suggested by us, in the case of:

(1) the Press and Registration of Books Act;
(2) the Drugs and Magic Remedies (Objectionable Advertisements) Act;
(3) the Post Offices Act;
(4) the Indian Penal Code (repeal of Section 124A, addition of a new Section 121B, amendment of Sections 153A, 295A and 499);
(5) the Criminal Procedure Code (amendment of Sections 99A, 198* and 202*);
(6) the Sea-Customs Act; and
(7) the Indian Telegraph Act.

*(Not accepted by minority).

REVIEW ARTICLE*

INDIA'S POLITICAL ECONOMY - GOVERNANCE AND REFORM

R.M. Honavar

I

This book is a collection of essays written over a period of more than twentyfive years, some of which have been published earlier. They deal with economic policy changes which have been made or are being considered - the reform part of the subtitle. They also are concerned with the role of government itself: the politics, the texture and machinery of government, the bureaucracy and its interaction with politicians and various interests - the 'governance' part of the subtitle. Prof. Lewis, though an outsider, is well qualified to do this because he has been an observer of the Indian economic and political scene from the beginning of the sixties. His first book, *Quiet Crisis in India*, was quite perceptive and his stint as head of the US Aid Mission from 1964 to 1969 only deepened his understanding of the Indian development scenario and the knowledge of the players. Subsequently he has been making shorter trips to find out new developments and check out his views with the old and new players.

He begins with the proposition that India is a giant economy - a large country with a large population and great diversity, ethnic and linguistic. This diversity leads to a number of distinctive States among whom there is a wide range of welfare levels, different degrees of dynamism and deeply entrenched dualism. The giant economy tends to be cumbersome because of the extra-layering needed in its hierarchy for management. Downward delegation of politico-economic decision making can lead to quicker management, promote popular participation and encourage pluralism and policy experimentation generally. Sideways delegation to well-framed markets can enhance growth and productive efficiency, because in a giant economy efficiency depends more on internal competition than on the external sector.

Although high hopes were held about the Indian development experiment in the early fifties, the general assessment in the west (by the early seventies) was that India was a lumbering, confused and self-fettered giant. This was because the State took upon itself a tremendous amount of responsibility to transform the society and failed to do so because of her size and the inherent limitations of an over-layered bureaucracy. Growth was slow, poverty and unemployment were high and made worse by the rapidly growing numbers. Many were prepared to dismiss India as a typical 'basket case'.

However Lewis does not make such a harsh judgement. He argues that there are a number of attractive features about India though there are an equal number of challenging areas:

(i) Thus in a basically poor country the savings rate has been raised to over 20 per cent - much more than in most other developing countries except the Newly Industrialised Countries (NICs) and China. This plus foreign saving through external inflows has led to a respectable rate of investment. Yet the growth rate has not risen proportionately because of an inefficient use of capital.

(ii) India is a very poor country but the kind of skewness in the distribution of personal incomes to be found in other poor countries is not to be seen here.

(iii) She has a large population which grows at a little over 2 per cent per annum. This may not be as disastrous as in developing countries like Kenya but is still undesirable because of the already large numbers. Since development has to lead to large transfers of people from agriculture to industry and since industry cannot generate jobs on this scale, new ways of using their energies will have to be organised.

(iv) The educational attainments of a very large number of Indians is as good as can be found anywhere else and there are several institutions of scientific training and research which can hold their own against those in the West. But the general level of

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* John P. Lewis, *India's Political Economy - Governance and Reform*, Oxford University Press, Bombay, 1995, Pp. ix+401, Price Rs 495/-.

education is not particularly high and there is an urgent need to upgrade the facilities for this. Similarly while the upper echelons of the bureaucracy are highly competent, the bureaucratic system is stifling.

(v) The demographics, the agricultural non-agricultural gap, the economy's pervasive inequalities and the upper-end intellectual sophistication - all point to endemic dualism. This phenomenon has become more conspicuous in the last couple of decades. There has emerged a sizeable westernised so-called middle class, well educated, affluent and with large consumer appetites. This modernised elite is articulated in many ways with large cadres of professional, entrepreneurial and managerial cadres of Indians living and thriving abroad and lives in a remarkably different world from that of the poor, indigenous (mainly rural) majority.

(vi) In spite of the great diversity in the country there is a basic 'Indianness' which is unlikely to be splintered as was feared in the sixties.

(vii) The Indian Army has not shown any tendency to take over power as in other developing countries and has been content to be subordinate to civil authority.

(viii) Over almost half a century the country has learnt to run itself in a constitutional manner. Despite the aberration of the 'Emergency' in the mid-seventies the democratic form of government is firmly in place.

In such a Society the main objective of policy will have to be rapid growth because without a rate of growth higher than what has been achieved in the eighties, there is no way of making the Indian Society better off. Although inflation has been a problem in recent years and therefore stabilisation an important goal of policy, Lewis believes that over the medium term growth and distribution should be the main concern of policy. Increasing the volume of saving to the extent possible and increasing the efficiency of investment should be the two instruments of achieving rapid growth. The former can be done by proper pricing of various intermediate and consumer goods provided by the State and elimination of undesirable subsidies. Greater efficiency of investment can be achieved by privatisation, greater internal competition and elimination of distortions in the economy. These changes are bound to be opposed by vested interests such as farmers, capitalists, trade unions, bureaucrats and politicians who gather rents from the restrictions on economic activity. However if the long-term goal is to be to make the whole society less poor there is no alternative to such a policy. If restrictions and distortions are removed comparative advantage will lead to such growth based on development of industries, both for export and internal consumption, using the one abundant resource which India has, namely, labour.

Lewis is also refreshing in his attitude towards taxation in this context. At a time when the general view is towards lower taxation in the hope of getting larger revenues through better compliance, he is in favour of higher taxation - particularly from the farming sector - to achieve the goals of redistribution.

Since such growth will occur only over the medium term there is an urgent need to tackle immediately poverty and unemployment. He is no great believer that the kind of structural adjustment proposed above - export orientation and greater internal competition in place of regulated inward looking policy regimes - would make a serious dent on these two scourges. His remedy for reducing unemployment - particularly rural unemployment - is to initiate an infrastructure construction policy in rural areas. Simple assets which can be built with local materials and engineering skills, such as roads, bridges, land development, etc., could be taken up on a large scale. The needed resources will naturally be provided by the State. He is aware that initially the local elite will draw more benefit from such activity than the rural poor but he does not mind this as in course of time the poor are bound to assert themselves.

He also wants a continuation of programmes like Integrated Rural Development Programme (IRDP) as an instrument for providing support to the really poor. Much more resources need to be provided than even the higher levels in the

eighties because it is the thin spreading of limited resources over a large poor population that has come in the way of its effectiveness. According to him leakages have not been all that large and therefore an increase in the size of the programme will put pressure on rural wages.

Poverty eradication in rural areas has generally involved elsewhere a redistribution of the one asset available, namely, land. Since this does not seem possible in India an alternative way would be to increase the productivity of the poor by the development of human capital through education. Like many others he notes the fact that India has paid relatively more attention to the development of higher education than at primary education. But unlike others he does not want the growth of primary education at the expense of higher education but wants more to be spent on both because India spends comparatively much less on education than many other developing countries. However, he wants a much larger part of the cost of higher education to be recovered from the beneficiaries.

He also wants much more to be done to improve both the quantity and quality of primary education if it is to lead to substantial human capital development. The objective of such a move should not be merely to achieve higher literacy but to bring about an increase in the skill levels of those who do not wish to go beyond school levels and an improvement in the access to a higher system for those who want to go beyond. He considers that the midday meal scheme is an excellent instrument to retain children in school till they complete such an orientation.

With regard to higher education, Lewis wants more institutions of excellence to be set up in areas like engineering, medical research, management, etc., where many exist already, because they will contribute to the development of a critical mass of trained people which will have large growth benefits. He argues that this will also enable India to have export-led growth by exporting well-trained personnel in which we have a comparative advantage. Unlike those who bemoan a brain-drain, he believes that the gains from the externalities which such exports generate are much larger than the value of the product they would have generated if they had stayed at home. The externalities in question are remittances, investment of savings, interaction in technology, etc. However, he wants these institutions to be less dependent on State resources and more on private resources taking care however to see that those who come up from the poorer stream are not denied an opportunity of advancement merely because they are poor.

He also stresses the need to have a spatial policy because India is a large country with a large population and therefore there is need to ensure adequate regional development and a need to mitigate the consequences of an increase in population. As population increases there will be an increasing migration from the villages to the towns because agriculture will be able to absorb less and less of this increase even though it achieves substantial growth. Lewis estimates that nearly 200 million people will migrate to the cities in this decade. It will be virtually impossible to absorb all these people in metropolises like Bombay, Calcutta, Delhi, Madras and Bangalore. Therefore smaller towns have to be developed to take in this migration. Smaller towns are defined as those which have a population of less than 100,000. Half a dozen or so of such towns are to be found in each district. Infrastructure has to be upgraded if they are to cater to a larger population. These will be the so-called 'growth centres'.

Impressed by the failure of the Central government to perform all the development functions it had taken upon itself in the wake of Independence, Lewis believes that the changes needed are possible only with greater decentralisation - from the centre to the States and from the States to grassroots bodies like the Zilla Parishads, Mandal and Gram Panchayats. This is because in such a large and diverse society development cannot have the some pattern everywhere. The uniformity which was achieved earlier to some extent, by having Congress governments in all States and an indoctrinated bureaucracy, is no longer possible with many States having governments politically different from the centre. Therefore, each State has to be given greater freedom to plan the direction in which it moves, and given a certain basic framework of goals to be achieved. The centre's role will be to ensure adherence to these basic

goals through persuasion rather than punitive action. Along with the increased freedom, the States will have to accept the responsibility of raising more local resources to implement local initiatives.

Similarly the States will have to divest themselves of many developmental functions to lower level local bodies and allow them greater freedom to plan and implement their own development programmes. While this has been accepted in theory almost from the days of the Balwantray Mehta Committee's Report on Panchayati Raj institutions, implementation has been somewhat unsatisfactory because the State level politicians are unwilling to share their power, patronage and rents with others. There is also a fear that at lower levels the rural elite will appropriate the resources of the State more unashamedly to serve their interests because of the absence of the checks to be found at higher levels. Nevertheless, Lewis feels that such a decentralisation is necessary because that may be the only way the rural poor will learn to use their voting strength for their betterment.

Such decentralisation may lead to some States progressing faster than others. Lewis welcomes such an outcome, provided free movement of goods and persons is allowed between States. One of the foundations of the prosperity of the giant American economy is, according to him, the removal of restrictions on inter-state movement of goods.

II

This is a brief summary of the main essays which cover reform and governance, though Lewis ranges far and wide. Comment on what he has written can be on two levels, its worthwhileness and its feasibility in the current environment. Many of the measures which he advocates are currently being debated and generally accepted. Privatisation, raising the volume of savings, greater efficiency in the work of Public Sector Undertakings, increasing primary education, control of numbers, promotion of labour intensive exports, measures to eliminate unemployment and eradicate poverty, decentralisation, etc., are actively debated and pursued. The real question is why is success so limited when in almost each area some other developing country has achieved great success?

Take for example the important question of more rapid growth. It requires more savings and greater efficiency of investment. More savings can come only out of reversing the trend of public savings and increasing them through greater economy in government expenditure. It would require a drastic pruning of non-development expenditure on administration, police, making up the losses of public sector enterprises, elimination of food and fertiliser subsidies, provision of public goods and services at cost, etc. Each one of these actions would run up against opposition from some group or the other. Farmers, trade unions, government employees, employees of public enterprises would all be opposed to any change because it would mean a smaller state largesse. No government would like to alienate these groups because of their voting power and because other political parties to gain electoral advantage, would not hesitate to promise them what any government in power with a slightly longer view denies them. The protected environment which they have been provided in the past makes these vested interests loath to give it up easily. The poor, though numerous, have not been able to exercise their electoral strength and insist that economies be effected in order to promote growth because of lack of organisation. A simple example will suffice in support of such a statement: a few years ago when Maharashtra was in the grip of a severe drought and even drinking water was a problem, the sugar factories lobby insisted on the scarce water being made available to them first rather than to the whole rural community for drinking. The government in power just could not resist this demand.

Again, although Lewis is right in suggesting that rural infrastructure development should be undertaken to provide more employment, more should be spent on programmes to eradicate poverty and more should be spent on primary education, it is not clear how all of this would add up in terms of budgetary balance when the government is in the process of reducing tax rates. Lewis is in favour of raising farm taxation but, if it is not done, such expenditures may come in the

way of raising savings needed for higher growth. In a poor country the expenditure needed on social welfare is so large that unless all other expenditures are tightly controlled and efficiently made, the possibility of inflation is a real danger. Since the public debt is already high and interest charges are eating up a major proportion of revenues, investment activity in other directions also needs to be curtailed if such investment is to be undertaken. This could mean that the rapid growth of industry so necessary for higher overall growth will have to be the overall responsibility of the private sector. Will private sector industry so used to domestic protection thrive in an atmosphere of severe competition both internal and external? If it does not in the immediate future, the problem of large numbers will be no nearer a solution.

Lewis makes another point about raising resources for rural infrastructure namely, matching grants. The experience of mobilising local resources has been pretty poor in all such activities. Firstly there is always the argument: why should rural areas alone be asked to provide matching resources when this is not done for urban infrastructures. Secondly since it is only the rural elite which can provide such resources there is a tendency on their part to appropriate all the benefits. Lewis recognises this but feels that this is only a passing phase till the empowerment of the poor takes place. In how much time would this take place? Finally, the projects planned and executed with local engineering skill and organisational ability may run the danger of being of poor quality and may really involve wastage of resources. Examples of village roads constructed in this fashion having to be built every year after the rains abound in rural India.

Lewis also wants IRDP programmes to be extended in order to eradicate poverty till such time high productivity jobs become available due to general growth. Such schemes have been universally criticised as being ineffective and wasteful. It is curious that Lewis bases his favourable judgement on the basis of an evaluation by one of his students in Princeton. Not only do they not add to the poor person's ability to earn a permanent income but often they lead him into debt. Schemes like the Employment Guarantee Scheme (EGS) in Maharashtra also have not been successful because employment has to be provided near a person's home and there may not be any worthwhile activity available at such a place. In effect they amount to handouts because no real value emerges out of such schemes. That is why it is being argued that a social security system may be a better alternative. In any case the real question is: does the State have the resources to mount such an initiative, if it cannot curtail its other activities?

Like many others, Lewis believes that primary education should be emphasised more, not merely to achieve literacy but to build up human capital by improving skill levels. Primary education has not received the attention it deserves partly because government itself initially felt that the industrialisation programme drawn up would need highly trained engineers and technologists and partly because the elites lower in the caste hierarchy felt that higher education was necessary for their advancement on the social, economic and bureaucratic ladder. Primary education was not promoted actively because no elitist group saw its advantages. It is only recently that the larger benefits of primary education, particularly female education are being perceived. The state's efforts to promote it were often stultified because of the absence of teachers willing to work in rural areas, the tendency of the lower bureaucracy to use them for all odd work and the high drop out rate, Lewis's suggestion that unemployed educated young men should be used as teachers is not satisfactory because these persons would not prefer to live in villages. They would only swell the number of absentee teachers - a scourge of all rural schools. It has been found that the quality of education depends upon the knowledge of the subject rather than on formal qualifications. Therefore, employing such people may improve the numbers of educated persons but not the quality of education. His observation that each State should be 'Keralised' misses the fact that Hindus set up schools in rural areas to compete with proselytizing missionary schools and that Keralisation took a long time. Since no such threat exists elsewhere and since missionary zeal is generally absent such a process would now be difficult.

The crucial question is the high drop out rate, particularly among women. This is directly related to the fact that a child can earn something and add to the family income. A midday meal scheme can improve attendance but it is doubtful if it will really build up human capital. It is only when the family income rises to a level at which the child's contribution is not necessary that the educational process begins. Otherwise we will have a large number of people who have gone to school but who have acquired hardly any worthwhile education.

Lewis is right in asserting that the State should spend less on higher education but more resources should be raised from those who receive such education. Like, in many other areas, the State subsidy on such education is very high and recovering a larger part from students is really desirable considering that such education enhances their earning capacity substantially. To prevent such a step leading to monopolisation of higher education by the well to do, Lewis rightly emphasises that greater access should be provided to those who are able and who cannot afford the higher costs; in particular those who come from disadvantaged and poor classes.

It is however difficult to accept Lewis's other contention that we should have more centres of excellence so that we can export more trained personnel. He does not accept that there is any brain drain but contends that such exports will bring more benefits to India than their contribution to the economy had the trainees stayed behind. The benefits are in terms of technology, entrepreneurship, remittances, investment, etc. Since no data is available on this subject it would be difficult to prove this. Remittances are from those who work in the Middle East and entrepreneurship and investment are from businessmen who have gone abroad and not from IIT graduates. The technology benefit does not certainly appear to be very large considering the large number of collaboration agreements. Therefore the brain drain hypothesis protagonists may be nearer the truth than Lewis.

The most important point he makes with regard to governance is decentralisation. Since in a giant economy the span of control is limited, since the Indian government has significantly failed to achieve a large part of the ambitious agenda it set for itself and since the Congress party is no longer in overall control, it would be advantageous to pass on a lot more power to State Governments. This would mean more efficiency and more governance according to what local people want. In turn more power should be given to local bodies to tackle local problems. This problem has engaged the Indian authorities almost since the beginning of planning - central action to ensure uniformity in development all over the country and local action to tackle local problems which may not be perceived by a distant centre and which may need locally suitable action. The Constitution wants local bodies to be developed. Subsequently many States have examined this problem on their own. The Balvantray Mehta Committee long ago tackled the States vs. local bodies problem. More recently the Sarkaria Commission tackled the Centre vs. States problem.*

The solution proposed by Lewis in terms of a relatively weak Centre and strong States does not appear to be workable in the present context. Even the Sarkaria Commission is in favour of removing the gross irritants in the relationship of the Centre and the States and leaving the present constitutional position unchanged because the Indian federation has not been formed by separate States coming together as in the case of the United States of America or Canada. It is the Indian Republic which has formed the States for administrative convenience. The natural tendency everywhere seems to be for the Centre to become stronger because of economic forces which need common action. There is no need to deliberately weaken the Centre because decentralisation is considered desirable. Aberrations like dismissal of State governments belonging to a party different from that at the Centre, using the Governor as an instrument of the Centre, Central Schemes in areas which have been given exclusively to the States need to be removed and more resources should be provided for their development as a matter of right and not as a matter of central largesse. But allowing the States

*The book calls it the Zakaria Commission (p. 387). OUP editors nodding.

to go their own way would lead to severe problems of regional inequality which cannot be mitigated by allowing free movement of people from one State to another. With India's linguistic diversity, such movement will be difficult and mistreatment of immigrants will be a serious problem. In one's enthusiasm for decentralisation one must not lose sight of the ground reality. How would a weak Centre prevent the Shiv Sena Government in Maharashtra from preventing entry into the State by non-Maharashtrians as it seems to threaten now? How will the Cauvery water dispute between Karnataka and Tamil Nadu be solved by a weak Centre when even a strong Centre cannot do it? How will the demand for more economic independence by the faster growing States be contained as it will otherwise lead to severe inequality between them and other slow growing States? Lewis's citing the army as a unifying element in a weak Centre scenario is somewhat odd in the context of the general demise of democracy in this part of the world!

Therefore what is needed is an adjustment in the present structure so as to eliminate the feeling on the part of the States that they are merely agents executing the Centre's wishes and not partners who can plan and execute the policies which cater to the needs of the local people with resources which they get rightfully and not as an act of Centre's grace. This is being continuously attempted in the various debates on the role of the Planning Commission, the National Development Council, the Finance Commission, etc. Such an adjustment is inevitable because the monolithic dominance of a single party both at the Centre and the States is unlikely to emerge again.

There is no doubt that the States have to allow their local bodies greater freedom to plan and implement action covering local needs. The States, while they have been vociferous in demanding the loosening of the so-called central yoke, have often been contemptuous of local self-government by the *Zilla Parishads, Mandal Panchayats* and *Gram Panchayats*. Elections have not been held, resource transfers have been meagre and the control of the State bureaucracy has been often comprehensive. All this has to change if grassroot democracy has to flourish. However, in a basically inequitous society like India, this may often mean, as Lewis recognizes the dominance by the rural caste elite and garnering of the benefits of state resources by them. Care has therefore to be taken to ensure that this does not happen. This is not easy as the disadvantaged are too poor to assert their rights. It is also necessary to ensure that the process does not take too long a time because this may lead to what Lewis euphemistically calls 'turbulence'. One way of doing it would be to insist that the local bodies undertake a certain amount of expenditure on the disadvantaged groups in their area out of the resources transferred to them, as the shortlived *Panchayati Raj* regime in Karnataka towards the end of the eighties did. Although there was a great desire on the part of many of these bodies in Karnataka to divert these funds to something else more beneficial to the rural elite, it could not be done because this expenditure was built into the statute.

Nothing has been said so far about two essays by Lewis on the Sixties Reform in Agriculture and Pro-Liberalisation Leverage - and the Lessons of the Sixties, with regard to food aid in the mid-sixties and non-project assistance in the same period. It is a blow by blow account of what happened, how it happened and who made it happen. Only two observations seem to be in order. Reading these one gets the impression that India was ruled by Civil Servants: Jha, Sivaraman, B. K. Nehru, I. G. Patel *et al* - Ministers flit in and out in this greatest democracy in the World. It is President Johnson vs. the Indian bureaucracy and naturally the bureaucracy lost!

Secondly, while Lewis accepts Sivaraman's assessment that it was President Johnson's highhanded approach to food aid which led to India's determination to launch the new agricultural policy, he faults India for adopting a policy of self-reliance in industry as a consequence of the reneging on aid promised to sustain the devaluation of the rupee in 1966 and argues that India passed up that way the chance for rapid industrial growth based on a larger quantum of aid. Are poor countries not entitled to have any self-respect? Again at that time there was no prospect of getting much untied aid however low

we were prepared to bend. It is worth remembering that China did the same thing after Russian aid was withdrawn and the American embargo continued to be in operation. The only difference was that India was not able to accept the discipline which such a policy needed because she was a democracy and a mixed economy.

In his earlier book, *Quiet Crisis in India*, Lewis has said somewhere that there is nothing new which you can tell the Indians. Anything you mention will not only be known to them but will have been tried somewhere and given up. Thus many of the ideas and suggestions in this book are known or being debated or implemented after a fashion. The trouble is not a paucity of knowledge of what to do, but of how to get it done in a society with strong vested interests, with such inequities that the elite can nearly always get its way, and with a democratic system which elects representatives with hardly any concern other than winning the next election, a great deal of venality and mere lip sympathy for vital concerns like poverty, inequality and injustice. Lewis rightly emphasises empowerment of the poor as a solution. The question really is how to achieve it as quickly as possible. Lewis does not have much of an answer except to say that there should be turbulence which will not degenerate into uncontrollable violence. It is not his fault, however, that he has no answers, it is ours that we also have no answers.

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REVIEW ARTICLE*

CRISIS AND CHANGE IN CONTEMPORARY INDIA

B.P. Patankar

India is presently seen as going through a crisis of governability. That is not the only crisis through which India has gone. When India completely went under to the British power in the nineteenth century, the first crisis that arose was that of self-esteem. Were Indians at all capable of being their own masters? What was the essence of being an Indian and how valuable was that essence? Thinkers of the late nineteenth and early twentieth centuries had to find answers to these questions. Some of them concluded that there was nothing of value in the Indian essence and propagated wholesale adoption of western values. Probably the first person who proclaimed the greatness of Indian-ness was Vivekananda. He was of course a spokesman of the essence of Hindu culture but he also accepted the essence of Islam and Christianity and, therefore, could speak for India as a whole. But Vivekananda could reach only the elite. So could other reformers and agitators who came before Gandhi. When, under Gandhi, and then under Nehru, the freedom movement became a mass movement, all these questions of self-esteem, identity and modernisation were again tackled afresh. This book, edited by Upendra Baxi and Bhikhu Parekh in honour of their academic guru Raojibhai Patel, takes up the story from this point.

The first four essays deal with the contribution of Gandhi, Nehru and Ambedkar to this discourse about self-esteem, etc.

Bhikhu Parekh has categorised the pre-Independence thinkers into three groups: the uncritical modernists, the critical modernists and the critical traditionalists. It is significant that he does not find a fourth, balancing category, that of uncritical traditionalists, That shows that everybody wanted modernisation. The only difference was about how much of the tradition had contemporary validity and how much of modernity was really good. Bhikhu Parekh argues that Nehru was unsure of his position about tradition. He felt, partly from the fact that Indian tradition had survived several centuries and partly from some pride in his past, that India's tradition did have some strength in it. He could not however decide what were the actual strengths and weaknesses. He was sure that traditional institutions could not help in the regeneration of Indian society and were, therefore, not worth reviving. His model of regeneration was of having new institutions based on the state.

Bhikhu Parekh further argues that Nehru failed to forge a structure in which all the four institutions of the state - the Parliament, the Cabinet, the Congress Party and the bureaucracy- could play an active role. He had already settled on an ideology, he could win elections on his own, he had not much use for the party and he had also no able associates in the Cabinet. He therefore depended on the bureaucracy, which consisted of talented people and had already imbibed western culture. This statist model also meant a top-down development plan in which industry was given prominence and grew, but there was neither equitable distribution of wealth nor prosperity in agriculture. Even in the educational field, Nehru gave importance to elite and centralised institutions rather than to primary education. Bhikhu Parekh says that Nehru changed his own model in later years and realised the primacy of agriculture and primary education, gave importance to the role of the party and even accepted spirituality; that in effect, Nehru began to move from uncritical modernism to critical modernism.

While Bhikhu Parekh finds a statist model unsatisfactory, he has not put forward any alternative organisational model for society's transformation. In fact no Indian has ever put forward any alternative model, including leaders like Gandhi and Jayaprakash Narayan. Gandhi had no use for any large-scale organisation as his ideology was of reforming the individual and his society was to be as small as a village. Jayaprakash Narayan propagated a people's revolution and left the organisational model to the people's will.

Gandhi's response to the question of identity

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* Baxi, Upendra and Bhikhu Parekh, (Eds), 1994; *Crisis and Change in Contemporary India*, Sage Publications, New Delhi; Pp. 453, Price Rs 250/-.

and modernity has been examined by Judith Brown. According to her, Gandhi's central concept was of *Swaraj*, which meant each individual's mastery of his own self and his refusal to accept slavery whether it be of the British or of any other tyrant or even of material temptations. It was through such a reformation of the individual that he hoped to regenerate the whole society, not through any statist institutions. This *Swaraj*, or mastery of the self also implied a moral law. The two together had to be the basis of an individual's life as well as of state-craft. Since moral law is supreme, the state can be defied if it does not follow the moral law. Gandhi's struggle for Independence was really a struggle for the establishment of the moral law. People were called upon to identify themselves with this moral law, which was an all-time law, i.e., it was at once embedded in tradition and also constituted the essence of the future society. Since *Swaraj* and moral law were, according to Gandhi, implied in all religions, Gandhi could effectively appeal to people of all religions and conceptualise an integrated nation embracing them all. Gandhi accepted tradition as well as modernity to the extent that they were consistent with *Swaraj* and moral law. Judith Brown has observed that Gandhi's experiments and ideals 'cannot easily be borrowed across the barriers of time and culture' and yet 'his life suggests to the late twentieth century that people should reconsider the basis of radicalism and should ask fundamental questions about the nature of mankind and the goals of men and women if they are to be fully human' (p. 95).

Thomas Pantham's examination of Gandhian thought is couched in highly academic language. He finds in Gandhi 'an anticipation of some aspects of the present day post-structuralist deconstruction of the foundational 'binary oppositions' of the political theory of post-Enlightenment modernity' (p. 100). The general reader can hardly make any sense from such sentences. According to him, Gandhi saw that modernity involved a lot of exploitation of the lower order creation in the name of science and humanism and he, therefore, developed a distinctive mix of critical traditionality and critical modernity. He picked up truth and non-violence as the essence of tradition and integrated them with the conduct of politics which was of central importance in modern times. Here Pantham finds a complementarity between Gandhi and Nehru. Nehru, as we have seen, had already a gut feeling that Indian civilization had some hidden strength in it. He had the same feeling about Gandhi: 'a man who could command such tremendous devotion and loyalty must have something that corresponds to the needs and aspirations of the masses' (p 112). Gandhi also recognised the role of parliamentary democracy, or parliamentary *Swaraj* as he put it, as a means of achieving his ideal *Swaraj*. He also accepted that Nehru had a superior knowledge of the technicalities of democracy. It is, thus, that Nehru and Gandhi together found their solution to India's problems of self-esteem, identity and the necessity to modernise.

The third personality examined in this book is Ambedkar. Ambedkar devoted his attention primarily to the problems of the Scheduled Castes the problems of their emancipation, which subsumed the problems of their identity and modernisation. Upendra Baxi has devoted his essay to the study of Ambedkar. We have in an earlier volume of this Journal (Vol. 6, No. 3, July-Sept 1994), surveyed the contribution of Ambedkar and Upendra Baxi's delineation of his personality. Ambedkar's goal was liberty, equality and fraternity. His nationalism, rationalism and his western, liberal education made him committed to parliamentary democracy. It is through the institutions of parliamentary democracy that he sought to seek political and economic justice for the *atisudras*. On the social level, he sought to give a new identity to his followers by leaving the fold of Hinduism and embracing Buddhism. He also, like Nehru, did not have any hopes from the traditional institutions of Indian society.

While these were, so to say, idealistic efforts to change society, the society itself responded in its own way. These ground realities have been examined in some other essays in the book, largely by way of a theoretical analysis.

Three essays, one each by Sudipta Kaviraj, Rajeev Bhargava and Gurpreet Mahajan are on the question of modernity and its relation with religion and politics.

Gurpreet Mahajan takes stock of the argument of those who, dismayed by the atomisation of society, the fierce competitiveness and the erosion of moral values brought about by modernisation, question the very need of modernism and argue for a social-political structure which will be a 'loose confederation of different associations and natural communities ... where loyalty will be owed to one's *kula, jati, varna,* village, region and, in the last instance, state' (p. 358). Gurpreet Mahajan has noted the following justifications given for such a choice: (1) Modernisation results in an atomisation of the society where each one is for himself. (2) The state in India is becoming more and more violent and oppressive and has, moreover, been unable to handle various tensions. So it would be good to unburden the state by making traditional institutions active in certain areas. (3) Nationalism which, under modernity, takes the place of religion, is arbitrary and violent. (4) Industrial workers torn from their traditional environment are unable to absorb modernity and the universal identity associated with it and clamour for traditional values which, therefore, merit recognition. (5) Even though citizenship is an important identity, there are other identities which actually exist and which are not incompatible with a democratic state. And (6) whatever desecularisation of the state that has taken place, is not the cause of communal tensions.

Gurpreet Mahajan admits that this argument makes some sense but does not entirely agree with it. She says, firstly, that no model has been worked out to have a loose federation of castes and communities. Secondly, the multiple identities which are envisaged in such a set-up can conflict among themselves. Thirdly, the above analysis does not take into consideration the actual oppressive practices that developed in traditional communities. Only the 'essence' of religion is taken into account and it is then assumed that (a) tolerance for diversity is already built into each religion, and (b) that such religion/tradition possesses internal structures and modes of critique facilitating its growth. Gurpreet Mahajan considers both these claims to be deeply problematic (p. 362). She argues that tolerance cannot be inferred from mere co-existence. Moreover, tolerance across communities does not result in the opening up of spaces within one's own community, permitting an individual to distance himself from the community practices or to appropriate critically one's own inheritance. In fact, individuation and gender-discourse, which are important parts of modernity can hardly be promoted through an internal critique of traditional cultures. Moreover, leadership of religious communities has passed into the hands of orthodox practitioners who can hardly be expected to reconstruct religion in its 'true' form. That leadership has also historically failed to deal with communal tensions. So, ultimately we revert to the modern institution of the state. That the state tries to displace religion is only the negative part of modernity. The positive part is 'the accompanying process through which knowledge, patterns of behaviour and institutional arrangements that were once grounded in divine power are transformed into phenomena of purely human creation'. (p. 364)

Gurpreet Mahajan thus defends modernity. What, however, she considers necessary is to displace the utilitarian, need-based ethics of the liberal society by constructing a society imbued with the spirit of commonness and sociability. This, she thinks, can be done without either a rejection or a blind and romantic acceptance of our past- the past can't be rejected because we are embedded in it, and yet, we need not be its blind followers since that tradition, while it provides us with some prejudgments, always keeps a scope for their being revised or reconstructed.

Sudipta Kaviraj makes a historical study of the relation between religion and political processes in India, mediated of course by the superimposition of modernity. He cautions us against projection of our present concepts into the past. He applies a more 'authentic' historical criterion and argues that in pre-modern times, social identities could not have been anything but 'fuzzy'. While cultural and linguistic differences were there, those were graduated. There was as yet no census to divide people sharply into specific groups. There was also no geographical demarcation to indicate that beyond a particular border there was suddenly an absolutely different language. In those times the productive and ritual activities went on without any assistance or hindrance from

the state and there was no occasion for modern concepts like majorities, minorities or nationhood to take root in that society. There was no attempt to combine various sub-groups into monster groups like 'all Hindus', 'all Muslims', 'all Scheduled Castes', 'all Backward Classes', etc. There was also no concept of a nation subsuming all these groups. The formation of large groups became a necessity when politics became a function of numbers. That was also when modernism was introduced into India. Initially, modernity remained confined to the English-educated and that too in the public space of science, legality, administration, etc. Later it seeped into the vernacular-speaking masses but with grotesque transformations. The efforts to make large coalitions of traditional communities required the 'thinning' of religion. Communalism is this process of the thinning of religious beliefs and practices. Previously an individual's religious beliefs were thick in the sense that they were spread across a wide variety of levels - from large metaphysical beliefs to minute ritual practices. Religion for the communalist is a thin affair, only so much as is needed for rallying people of varying sects for a political purpose. For this reason, when communalists say that they are not fundamentalists, they are right. This thinning of religion is also not a creation of the communalists. Religion anyway becomes thin under the pressure of modernity, which weakens credulity and brings more and more of a community's life under the control of the state. Religious identities themselves, however, continue to be strong. Contrary to the belief that India had already achieved a composite culture, the historical fact is that there was only a co-existence of various communities facilitated by an absence of sharply defined and enumerated identities and the absence of any great public space in which the communities could fuse together. It is this standing aloof of communities that helped the growth of communalism. The communalist simply uses this situation. His language is of the collective advantage of the collective self. The 'nation' is now more important, religion serves only as a base. Communalism in India is thus a grotesque product of modernity. It has a contradiction within itself: whether to give primacy to religion or to political considerations? A communal party swings from one pole to another from time to time, according to the advantages perceived from either. Sudipta Kaviraj deals with all these changes and aspects in great detail, drawing on the recent behaviour of various political parties and actors. He argues that the Nehruvian state has failed to set in motion a process through which liberal, secular ideas could be communicated to the masses. That state brought the fruits of modernity and development only to the westernised elite. Its politics moreover stifled the expression of indigenous culture. All this has caused a schism between the masses and the westernised elite and facilitated the growth of communalism and allowed it to parade as a faith in India's past and as true secularism. His conclusion is that for modernism to succeed in India, a political theory needs to be fashioned which seriously takes into account this specific Indian situation.

Rajiv Bhargava also writes about the relationship between modernity and religion and particularly about the 'discontent at the dominant form assumed in Third World societies by modernity and secularism' (p. 317). He thinks that some of this discontent ignores that religion as well as modernity have some common traits. On the positive side both are imbued with spirituality. On the negative side both are contaminated by linkages of power, wealth and privilege. We must therefore look at the sub-cultures in each category. There are four such cultures. At one end is the undisciplined pursuit of desires. At the other end is an ultimate ideal towards which one aims to devote his life. In between, there is one type which is suspicious of ultimate ideal, and is satisfied with many small ideals. Finally, there is the fourth type which recognises an ultimate spiritual ideal but tries to reach it *through* small ideals rather than *past* them. These latter two sub-cultures spring up from long associations between people of differing traditions. When *faith* in the religion of high ideals begins to totter, religion needs to be proved by *evidence* and *argument*. That is the beginning of the ideologue. With his loss of faith he has probably given up his high ideals but, whatever he does, his pursuit of desires has to be justified by religious reasons.

The zealot goes further. He uses religious arguments with utter cynicism. Such divisions exist in modern secularism also. One is the high ideal of super-humanism. Here, man is supposed to be potentially perfect, capable of planning and bringing forth a perfect society. Programmes are made out to achieve such a perfection. The second category is of people who distrust such absolutist ideals and are content with the affirmation of ordinary life. This is akin to the religious category where the householder's life is considered to be the best part of life. The third category is of course the culture of unfettered desires.

Thus, religion and secularism are structurally similar. The difference between them is that religion is integrally related to God, secularism is not. But that by itself should not lead to opposition and hostility. In fact, the religious man of faith who is humble enough to be satisfied with small ideals is not much different from the secular man aware of his limitations and, therefore, humble enough to seek smaller goods. It is the religious zealots and ideologues that clash with secular zealots and ideologues. We can understand the true identities of Indian political actors only if we understand the above-mentioned differences in various identities. Nehru, though a non-believer, may have been informed with high spiritual ideals and Gandhi though a man of faith had nothing in common with religious zealots and ideologues. BJP's identity can immediately be recognised in this framework. That party has nothing to do with religion as a faith but it is fundamentally interlocked with religious ideology and zealotry.

Rajiv Bhargava concludes that a sweeping rejection of modernity is neither desirable nor possible. Its rejection is not desirable because of its spiritual aspects and its being necessary for our survival. Rejection is not possible because of the tremendous force with which it has upset traditions all over the world.

Leroy Rouner discusses the role of religion in fostering or hampering national unity and in developing a civil loyalty to the nation. Such civil loyalty is a necessity for India inhabited by diverse people, to hold together, 'a loyalty which takes people beyond their own particular community and identifies them with the common cause' (p. 170). Rouner describes how the Americans found a common cause for their own nationhood and what the Germans found as a common cause for getting rid of the load of Nazism. In both cases, the load-lifting and binding idea was not just a material value but rather a spiritual value. The Indian diversity, Rouner admits, is much more complex than the American diversity and so it would be, to that extent, more difficult for Indians to find a common cause. The traditional bonds that link one Indian to another are those of blood, language, region, caste/ class and religion. It is these bonds that give people a sense of being at home in a particular community. But there has to be a new linkage and, simultaneously, a transition from the traditional primacy of group life to the modern values of individuality, secularism and freedom. There has to be a melding of traditional values, which we can never forget and modern values which we may not ignore. Though Nehru realised this, he paid relatively little attention to the efforts at such a melding made by the religious movement in Hinduism. This movement drew creative elements from the Hindu tradition and projected them as the essence of India's culture, an essence which would make an Indian a truly universal man able to transcend the divisions and divisiveness of the historical Indian society, an essence which would be acceptable to the whole world. This essence consists of tolerance and non-violence reflecting the humility of the human being and love for all mankind. This essence is spiritual as well as social. It can form the basis of political action without being degraded. Tolerance in this complex sense is no longer exclusively Hindu, but it is distinctively Indian. That India has found such a binding ingredient has, Rouner says, considerable significance for India's political future.

The essays reviewed above were about the fundamental questions of self-esteem, identity and modernity. The other essays in the book deal with the practice of politics in India and with some specific topics/programmes.

Rajni Kothari makes what he calls a personal statement about Indian politics. His understanding is that between the late 1950s and 1970, it was through politics that India was sought to be transformed and built. Politics was to be conducted through key institutions; there was a consensus on the values and norms of politics,

giving politics a democratic character. It was the interplay between the political institutions and the various sections, classes and categories of people that was seen to be determining the content of politics. Rajni Kothari seems to be satisfied with the nature of politics of that time. He expresses his uneasiness at the later changes, which he explains in terms of class conflicts on the one hand and the de-institutionalisation and decay of norms on the other. According to him, the bourgeoisie originally supported the establishment of a huge public sector economy as it was itself weak; but once its consumer needs were gratified through this public sector, it had no use for state intervention in the economy. It then supported the transnational agencies which favoured liberalisation of the economy. The masses on the other hand aspired for greater benefits and began to ask for redistributive measures. The state, dominated by the old elite, resisted this pressure, forcing the masses to resort to turbulent protest. Alongside this protest, religious and communal issues also got prominence. The new elite also launched a tirade against the government's corruption and inefficiency. They propagated a new road to progress: autonomous corporations and, eventually, privatisation and globalisation, with no accountability to the state executive or even to the Parliament. The state was hijacked by new political actors like Indira Gandhi and Sanjay Gandhi, who eroded political institutions. Rajni Kothari feels that the way out of this mess lies through more positive action outside the state institutions. He sees such a movement emerging but what he considers necessary is an aggregation of these efforts. He, however, does not come to any specifics as to which exactly are the new, voluntary actors, what are their goals and doctrines and how can those be aggregated at all.

Subrata Mitra does not consider the above to be a political analysis at all but only a 'wistful incantation of the need of morality in politics' (p. 229). In his view a fixation about de-institutionalisation and authoritarianism cannot give us an understanding of Indian politics, which can come only through a wider discourse on how political systems cope with discontent and then achieve acceptability and legitimacy. He examines many models/theories. In his own model, discontent is expressed through crowd formation and political conflict. This crowd formation, whether in the shape of Jayaprakash Narayan's brigades or Sanjay Gandhi's brigades or the BJP/VHP brigades, is seen as constituting the problem of governability. Subrata Mitra points out that such crowd formation is not an Indian peculiarity. Rampaging crowds, corrupt state machinery and ineffective governments were not altogether unknown in England two centuries ago. Food riots and other challenges to public order occurred throughout early modern Europe. So, crowd formation and its threat to law and order are not unusual. But in Europe, through the centuries, people became accustomed to working within institutional bonds. Though subjectively free to agitate, they became institutionally bound and therefore amenable to productive, compliant roles that make orderly government possible. In India, the freedom struggle did not have the benefit of such institutions. Therefore, popular resistance, i.e., crowd formation became the means of expressing discontent. Gandhi kept the crowd under control by limiting the actual offering of *satyagraha* to a selected few or even withdrawing an agitation if it got out of hand. With Independence, came the institutions of western derivation. Our traditional selves have not so far been adjusted to them. Thus India has a modern nation-state which, being an alien structure, is inaccessible to its own citizens, who have therefore been unable to develop the attitudes necessary for playing a compliant role within it. This is the genesis of India's problem of governability. The problem can also be looked at as a mismatch between the need to govern and the need to be accountable to the people. The Establishment wanting to govern comes into conflict with the discontented and mobilised sections of the people. A nationalist discourse has attempted to overcome this conflict by inventing a new essence of Indian society: social harmony. Nonetheless, under the impact of the growing violent conflict over the allocation of material benefits as well as over issues of ethnic identity, this harmony has not consistently held. In the ensuing contest, the state, according to people like Rajni Kothari, has become increasingly violent and authoritarian. Kothari, therefore, places

increasing trust in grass roots movements and partyless democracy. However, the fact is that in spite of the periodical conflict between the state and some classes of people, India has also returned to periods of stability from time to time. This resilience of the Indian state can be explained only by recognising the positive nature of the elite response which makes it possible to overcome the conflict and restore orderly government. That response is in the nature of redistributive policies and even constitutional changes along with maintenance of law and order. It is the politics of accommodation that led Nehru to the creation of linguistic states. It is through such politics that Indira Gandhi got consistent support from below for her 'authoritarianism'. This politics of accommodation or transactions is successful only when the demands made on the government are possible to be met within the constitutional framework. When the demands transcend these limits, there emerges an unbridgeable gulf between the state on the one hand and the over-politicised and undisciplined crowds or the protagonists of communal politics on the other. Thus, the key to understanding politics is studying the roles of the political actors on either side of the conflict and not some fixation about institutions.

D.L. Seth examines the language debate in India, a solution to which is, in his view, necessary for nation-building. He points out that even thirty odd years after the creation of linguistic states, regional languages have not been firmly established as the universal media of education and administration in the respective states. Mulayam Singh Yadav tried to do it in Uttar Pradesh but was fiercely opposed by the English Press and the English-speaking elite. This shows that the debate over the language issue is no longer about linguistic identities, since those have been recognised through the creation of linguistic states. The debate now reflects the conflict between the pan-Indian English speaking elite and the new elite, speaking the regional languages and weilding power in the states. The latter have begun to have a greater say because of the numbers they represent. This process of democratisation is bound to go further and reach the dalits and the tribals. However, there will be conflicts between the elite and the masses. The roles of Hindi and English in this conflict are important. The Nehruvian elite were educated through the English language and carried on their discourse about modernisation, secularism, etc., through that language. The new pan-Indian elite, though drawn from the regions is also English-educated. The vernacular-speaking masses are therefore being continuously marginalised. In the field of education also, the English language is getting more importance. With the march of democracy, English will not be able to maintain its hegemony. There is a need to reduce its role in public affairs and in education also, so that the divide between the elite and others can be bridged and the national discourse can be conducted through regional languages. This will remove the extra advantage that the English-speaking have in the access to jobs and power and help nation-building. As for the need for a link language, Hindi is best suited for this role but, for it to achieve that status, Hindi-speaking elite will have to make common cause with other regional elite and will have in the first instance to give more attention to the growth of Hindi rather than its spread.

Prakash Desai and Ashis Nandy look at the political actors from a psychologist's angle. Prakash Desai says that politics in India is personality politics. So he enquires into how Indian personalities are formed. He says that *man*, *apaman* and *abhiman* are the most potent and the most valued aspects of the self-experience of the Indians, right from the mythical times of sage Durvasa. These values are ingrained in the child by the traditional method of up-bringing. As an adult he develops a split personality in which he has to maintain a public image but is privately unable to live up to it. Masses of such adults over-idealise a leadership function. The burden on a leader to live up to such heightened and emotional expectations becomes onerous. Ashis Nandy has projected another psychological factor. He says that in modern times the role of the psychologist as a social thinker has shrunk. His role as a social engineer has come to the fore. In this latter role, the psycho-technologist is critical of the weak and the defeated. He becomes an interventionist, not for reducing injustice but rather for supplanting the culture of the weak by a culture which supports the current doctrines of progress, high economic growth, etc. Ashis Nandy feels that this is bad psychology and that good psychology should be more concerned with human values and feelings.

Pravin Sheth examines the opposition to the Narmada River Project. He finds that the project is a very beneficial one and that even the World bank has admitted that it will enable a forty-fold improvement in environment. The Bank has also found that considerable progress has been made by the government in rehabilitating the displaced persons. Sheth therefore finds the opposition to the project as misplaced and even amoral. The opposition has not been able to present a realistic alternative which will bring so many benefits. So, while the opposition has brought environmental problems to such a high level of debate, political mobilisation and grass root activism, and while it has pressurised government to be more mindful of the problems of the displaced, enough is enough and the anti-dam movement should not go to the extent of damning the dam.

Praveen Patel examines the question of communal riots. He goes into the various explanations given for the occurrence of these riots, finds them unsatisfactory and proceeds to make a 'detailed, systematic microlevel analysis' of the three riots which occurred in Vadodra in 1969, 1981 and 1982 (p. 375). After a critical study of these riots, Patel finds that petty quarrels and conflicts over political and economic goals, rather than truly religious factors have sparked off these riots. Psychological and ethnic tensions were certainly there as necessary causes but the essential source of the riots was in the social structure. The situation was exploited by the elite who in their struggle for power mobilised people on communal lines. In the Vadodara riots, Patel sees a nexus with the infighting within the Congress and with the combination of Kshatriyas, Harijans, Adivasis and Muslims (KHAM) relied upon by Indira Gandhi for retaining power. In citing this combination Patel has perhaps overlooked his own finding that social structure is the more important factor in the riots. If we treat the KHAM combination as a socio-economic structure rather than a communal one- we have in another context accepted caste as an indicator of social backwardness- we would no longer be able to treat that combination as an instance of the communalisation of politics. One can hope, along with Patel, that with the emergence of common goals and cooperation for achieving them, the society will get more integrated and communal violence will decrease.

Jayashree Mehta examines the health scenario. After giving statistics to show that much remains to be done she refers to an assessment which says that the imported model of health services is top heavy, elite-oriented and dependency creating. She sees merit in the Primary Health Care schemes launched in rural areas, the expansion of manpower employment in health services and the co-opting of Health Volunteers and Health Guides. She pleads for some ways of instilling in people the basic value of preventing illness itself. She calls for more funds to be provided for health programmes. She also says that these programmes need to be made a part of a whole development package simultaneously addressing the social, cultural, economic, nutritional, educational and health- cum-family planning needs of the people.

The overall impression which the book makes on us is that it contains a wealth of information and thoughts about the transformations taking place in India but it *does not* lead us to a sense of crisis. The reason is that if there is a stress on a negative aspect at one point, it is generally balanced by correspondingly positive aspect at another place. The good as well as the bad points about tradition and modernity have been recognised. If de-institutionalisation is criticized there is a balancing mention of the realistic transactions between political actors. The limitations of dreamy prescriptions have been recognised. One such prescription is a 'holistic' approach to every development problem. There is enough evidence in this book and elsewhere to show that a holistic approach is not unknown to the planners but after a certain point any programme has to be specific to itself. If we look to the specific programmes like the Narmada Project, or Health Care, we find that there is a continuous political activity for solving these problems within the specific parameters of each problems. Some problems have some times been getting worse, but they have been getting better also. There is, therefore, more reason for hope than for despondency.

BOOK REVIEWS

Arun Banerji, *Finances in the Early British Raj - Investments and the External Sector*, Sage Publications, New Delhi, 1995, Pp. 338, Price Rs 375/-.

Since the publication of his *India's Balance of Payments, 1921-1939* in 1963 (Asia Publishing House, Bombay), Banerji has made his mark in the scholastic field and has kept it up with distinction. Though working in a Central Bank his labour of love has been India's economic history during the British Raj and more particularly India's external balance of payments. His main pre-occupation has been the drawing up of India's external balance of payments during the post-mutiny period. In 1982, he published his second distinctive study: *Aspects of Indo-British Economic Relations 1858-1898* (Oxford University Press, Bombay). Thirteen years later he has followed it up with the book under review bearing on the same theme. It is welcome as its predecessors.

Banerji is a model of meticulous scholarship who digs and digs to find the information that he needs. He spares no effort and literally moves mountains of old records, papers, reports, etc., to get what he wants. Not that the effort is always successful, nevertheless he persists and gathers grains of information no matter what it costs in time and energy. A highly commendable effort that is becoming rarer and rarer to find as days go by.

The book under review is in three parts with nine appendices. Part I deals with the finances of the Government of India during 1858-1898. Part II develops a detailed discussion of the irrigation policy of the Government of India during the same period followed by a study of five major irrigation projects (1850-1880) in north India. Part III discusses the old problem of investments and the external balance of payments discussed in his earlier book. The appendices deal with various small but related topics discussed in old reports and documents. All this is a solid scholarly achievement.

The author's preoccupation all these years has been the restating of the old problem of the economic drain from India under British rule by stating it in fuller and broader terms. As he had put it in his earlier book '...if the concept of drain is at all to be of significance it cannot be limited to some types of transactions to the exclusion of others... Thus instead of selecting certain payments abroad and labeling them as drain, we may look at the entire spectrum of payments abroad out of incomes generated domestically (and of savings made from them), effected by the owners of such incomes and savings (or by their nominees) to defray their current or capital expenses abroad. Varying elements of drain may inhere in such payments'... 'In this alternative way of looking at the matter, drain, as classically understood will no doubt cease to occupy the centre of the stage. This may not be an unmitigated loss.. The suggested formulation may help in some other directions. ..In the writings so far there is not even an abstract treatment of the nature of the process by which export surpluses needed to finance the large outward remittances can be generated initially and then maintained, relentlessly for a sustained outflow of a sizeable proportion of domestic incomes, year after year. Nor did these writings analyse the kinds of effects of such sizeable, sustained outflow on various indices of the state of the economy, especially domestic incomes, prices and employment, the resource allocation and investment, considered both in the short run and in the somewhat longer run, and analysed with all the restrictions and qualifications as may be necessary in the first instance' [Banerji, 1982, Pp 189-190]. In his opinion it is very nearly the same problem, called the Transfer Problem in economic literature, as was discussed in respect of war indemnities or reparations*

In the new book he proceeds to do so by means of a statistical exercise. He relates his own calculations of the balance of payments of British India during 1873-98 with M. Mukherjee's estimates of national income for the territory of the Union of India after adjusting them for territory, population and prices. He presents his results in the following table.

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* In drawing up this analogy between the economic drain from India and war indemnities Banerji is in the distinguished company of Justice M. G. Ranade, who in his 1873 lectures (in Marathi) compared the home charges with the war indemnity imposed by Germany on France after the Franco-German war of 1870. c/f M. G. Ranade's Lectures, 1873 (An English Translation), *Journal of the Indian School of Political Economy*, Pune, Jan-March, 1995, pp. 144-165.

TABLE: QUINQUENNIAL AVERAGE VALUES OF NATIONAL INCOME AND OUTFLOW OF TRANSFERS (AT CURRENT PRICES)

(Rs million)

Quinquennim	National Income	Factor Incomes sent out	Personal Remittances sent out	3 as % of 2	3 + 4 as % of 2
(1)	(2)	(3)	(4)	(5)	(6)
1873-74 - 1877-78	5,458	214	42	3.91	4.68
1878-79 - 1882-83	6,136	261	46	4.25	5.00
1883-84 - 1887-88	6,296	308	42	4.89	5.56
1888-89 - 1893-94	7,019	367	54	5.23	6.00
1893-94 - 1897-98	7,593	434	64	5.72	6.56
25 years average	6,503	317	50	4.57	5.64

He comments: 'The quinquennial average of the outward transfer of factor incomes is doubled during 1873-78 to 1893-98, and weighed increasingly heavily on the national income, from 3.91 per cent in the first period to 5.72 per cent in the last. Together with personal remittances, the total transfers were 4.68 per cent of the national income in the first period, 6.56 per cent in the last, and 5.64 per cent during the twentyfive years as a whole. In absolute terms, per capita income at current prices averaged Rs 28.21 during 1873-78, and Rs 35.26 during 1893-98 before the transfers. After transfers it fell by about 4.5 - 5.0 per cent in early 1880s and by about 6-7 per cent in the mid 1890s. Incomes at constant prices are similarly affected when adjusted for transfers' [Banerji, 1995, pp. 270-271].

'The relentless transfers, about 6 per cent of the national income, must have exercised a strong secular deflationary impact, perhaps worsened by the depression of 1880s and 1890s' [Banerji, 1995, p. 286].

For several reasons I am unhappy about the table and the comments on it. First, there is one terminological error and though small is capable of generating quite an amount of misunderstanding. The caption of Column 2 of the Table is 'national income'. According to international convention:

GDP or NDP minus outward transfers of factor incomes and personal remittances plus inward transfers of factor incomes and personal remittances = National Income.

If the figures in the Column 2 of the Table are of national income then they would have already taken into account the outward and the inward transfers and it would be wrong to subtract them again as suggested in the comments. But fortunately that is not so because the figures in Column 2 are not of national income but of GDP or NDP for Mukherjee's estimates do not include inward or outward transfers of factor incomes. The correct caption of Column 2 in the table should be GDP or NDP as the case may be and not 'National Income'.

Secondly, the figures in the Table have been adjusted for area, population, prices, etc., for making them comparable. The details of the procedure followed are not to be found in the book. One suspects that these adjustments in regard to area, in particular, and generally in the case of population have been done on a *pro rata* basis. There is every reason to doubt the underlying assumption that income, production and balance of payments flows vary proportionately with the area. In addition the basic data to which these adjustments are applied are inadequate and tenuous, as acknowledged candidly by both authors. One may be excused if one doubts whether these figures, the differences between them truly reflect reality and the changes in it.

Thirdly, the suggested analogy of the Indian transfers with transfers involved in the payment of war indemnities is misleading at best. Transfers involved in war indemnities are one-sided and without any recompense to the payer. The Indian transfers were not of this nature at all. They included not only Home Charges but interest on debt and capital invested in India, profits of international trade, remittances of British residents, etc. As Banerji himself pointed out in his earlier book "such incomes and remittances represent the services of men and capital received by the economy, the supplies of such services are

entitled to be rewarded, the services have contributed variously to the economy and such remittances are common to all countries" (Banerji, 1982). He tries to argue against this and ends up by emphasising that the overall impact of these should be taken into account. But I am afraid that in spite of the authors' cautious and careful statements about the issue, the common reader will easily misunderstand and treat the Indian transfers as identical with war indemnity transfers. I will not be surprised if in a few years this appears as the new avatar of the old drain theory, another hardy perennial!

Banerji is too good a scholar to claim finality for his conclusions. In his concluding observations, he writes: "To come up with a definite answer to the big question of the grounds for the slow pace of economic development in India in the post-mutiny decades has not been the aim of this study, but rather to draw attention to some neglected aspects of the question" (Banerji, 1995, p. 283). Let me therefore forget my misgivings and cherish the rest of this piece of scholarship for itself.

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ANNOTATED INDEX OF BOOKS AND ARTICLES IN INDIA

EDITOR'S NOTE

These abstracts are prepared by the author of each book/article sent to us voluntarily in response to our invitation through the Economic and Political Weekly. These cover publications after 1st January 1986. Only abstracts of books/articles so received are published. The index, therefore, is not exhaustive and complete.

The limit of 250 words and 100 words for abstracts of books and articles, respectively, is strictly enforced. Only a minimum amount of copy editing is done in order to bring the abstracts within the prescribed limits. The readers should approach the author of the abstract, not this Journal, for any clarifications.

BOOKS

1995

Purohit, Mahesh, C., *Structure and Administration of Sales Taxation in India; an Economic Analysis*, Gayatri Publication, Delhi, 1995.

This book provides up-to-date information on the structure and administration of sales taxation in the Indian states. The analysis of the structure includes, point of levy, rates of tax, exemptions, incentives under industrial development schemes, and the problems rate-war as well as multiplicity of rates. On the front of administration of sales taxation it analyses the organisation for tax administration and the operations of the tax in each of the states in India. It covers issues related to registration of dealers, payment of tax, submission of returns, processing of returns, assessment, pendency of assessments, appellate procedures, recovery and management information system.

In the light of the structural reforms being attempted in the country, this study presents short-term as well as medium-term measures for the reform of sales tax system of the country. The attempt of introducing a system of value added tax in the country, this study provides the ways to reform the existing system in to a state-VAT. It also suggests the administrative measures as well as management information system (MIS) that should be essential for introducing a state VAT in the country.

The Journal will publish in each issue Annotated Bibliography of Books and Articles on Indian Economy, Polity and Society, published after January 1, 1986. Authors are requested to send their entries with full details of publication and annotation not exceeding 250 words for books and not exceeding 100 words for articles. Use separate sheet for each entry.

VINAYAK MAHADEO DANDEKAR

JULY 6, 1920 - JULY 30, 1995

Vinayak Mahadeo Dandekar, the founder of the Indian School of Political Economy and the founder editor of this journal, passed away in the early hours of July 30, 1995 after a very brief illness. He was 75. He joined the Gokhale Institute of Politics and Economics, Pune in 1945, after securing an M.A. from the University of Calcutta, and worked as its Director during 1966-68 and 1970-80. On retirement from the Gokhale Institute in 1980, he was made Professor Emeritus of the Institute. In 1986 the University of Poona appointed him Professor Emeritus.

In his professional career, spanning over fifty years, Professor Dandekar produced a prodigious amount of work on a variety of subjects. Although a statistician by training, he did bulk of his work in economics - especially rural economics. He was responsible (along with N. Rath) for the seminal work, *Poverty in India*, which opened up a whole new area for others to study. His contribution to data collection in the Poona Schedules of the National Sample Survey and the first All India Rural Credit Survey were equally pioneering and distinguished. He also did a great deal of work on problems of Maharashtra. His contribution in the fields of Regional Imbalances in Maharashtra, land reforms and irrigation is particularly notable.

Being an incisive and enquiring mind, he never respected conventional wisdom and brought to bear a fresh viewpoint on a variety of problems such as: food aid and development, transformation of traditional agriculture, unemployment and employment, crop insurance, the cattle problem in India, the central budget and Gandhian Economics. He also turned his enquiring mind to the examination of such non-economic areas as education, worker management of industry, decentralisation, nutrition, and role of women in development.

His work was characterised by three attributes: (i) firm footing on data; (ii) application of rigorous analysis; and (iii) fearlessness in promoting conclusions arrived at in this way. He upset many by his uncompromising views on such issues as Gandhian economics, land reforms, the use of water in Maharashtra, and poverty alleviation programmes.

Professor Dandekar was no ivory tower scholar. He felt strongly that whatever wisdom he had should contribute to the good of Indian Society. He therefore was a participant in innumerable Government bodies set up to examine and reform this or that aspect of society. He also sought to promote debate and a re-examination of popular ideas through his public speeches. Although he sometimes gave the impression of being an acidic critic he was essentially motivated by a concern for public good.

When he died he was engaged in the preparation of a three volume collection of his writings, which was to be a kind of statement of his updated thinking on the country's economic problems. The first volume has been published and the second one is in the press. It is most unfortunate that he could not do much work on the third volume.