REPORT
OF
THE ARREARS COMMITTEE
1989-1990

CONSTITUTED BY THE GOVERNMENT OF INDIA
ON THE RECOMMENDATION OF THE CHIEF JUSTICES' CONFERENCE

PRINTED BY P.P. KAPUR AT RAJ BANDHU INDUSTRIAL COMPANY, C-61, MAYAPURI PHASE II, NEW DELHI-110064
AND PUBLISHED BY THE SUPREME COURT OF INDIA-1990

REPORT
OF
THE ARREARS COMMITTEE
1989-1990

CONSTITUTED BY THE GOVERNMENT OF INDIA
ON THE RECOMMENDATION OF THE CHIEF JUSTICES' CONFERENCE

HON'BLE MR. JUSTICE V.S. MALIMATH, CHIEF JUSTICE, HIGH COURT OF KERALA	...	CHAIRMAN
HON'BLE MR. JUSTICE P.D. DESAI, CHIEF JUSTICE, HIGH COURT OF CALCUTTA	...	MEMBER
HON'BLE DR. JUSTICE A.S. ANAND, CHIEF JUSTICE, HIGH COURT OF MADRAS	...	MEMBER

CONTENTS

VOLUME I OF THE REPORT

VOLUME II OF THE REPORT

PREFACE

Constitution of the Arrears Committee

One of the matters discussed at the Chief Justices' Conference held at New Delhi on December 11-13, 1987 under the Chairmanship of the Chief Justice of India related to the arrears of cases in the High Courts and the subordinate courts in the country. It would be useful here to extract the summary of the discussion that took place on the subject:

> "Chief Justice of India expressed grave concern over the problem of arrears. He mentioned the manner in which proceedings are conducted in some of the foreign countries. He stated that the Judges in the foreign countries are very polite but firm and emphasised that the Indian Judges must impose stricter discipline on themselves. Chief Justice, Patna High Court suggested amendment of the Civil Procedure Code and the Criminal Procedure Code making every offence compoundable with the permission of the Court except in cases of murder. Chief Justice, Andhra Pradesh High Court mentioned that a beginning has been made in the Himachal Pradesh by setting up Conciliation Courts and if the same practice is followed by all the Courts in the country, it will reduce the arrears of cases substantially. He also suggested that bunch of cases should be taken up out of turn year-wise which will help in reducing the arrears to some extent. Chief Justice, Gujarat High Court emphasised the need for proper method to fill up the vacancies of Judges in each High Court to cope with the problem of arrears of cases. Chief Justice, J & K and Calcutta High Courts also agreed with the suggestion of the Chief Justice, Gujarat High Court. Chief Justice, Assam High Court emphasised the need for classification of cases and early appointment of Judges for reducing the arrears. Chief Justice, Gujarat High Court pointed out that with the present strength of Judges, it is not possible to clear the arrears.
>
> It was further pointed out that whenever there is a suggestion for more Judges for the subordinate Judiciary, the State Government takes years to sanction the posts. The arrears go on mounting and the judiciary is not able to convince the State Government or the Central Government about the urgency.
>
> Most of the Chief Justices felt that the delay in the appointment of Judges is responsible for the arrears. After the recommendations are sent to the Government Chief Justices do not know for a long time and they keep waiting for the Government to make appointments. For a number of years Courts have been working with about 50% of their strength.
>
> Chief Justice, Calcutta High Court agreeing with Chief Justice, Gujarat High Court said that to a great extent it is the paucity of presiding judges that has contributed to the arrears of cases.
>
> Chief Justice, Kerala High Court pointed out that so far as the High Courts are concerned, there are two problems—one the appointment of Judges and the other appointment of competent Judges. it makes a world of difference in the disposal of cases.
>
> Chief Justices felt that attention is not paid at the time of recruitment of Judges. There are variety of reasons and variety of factors for this. But determined efforts for having competent men must be made. Judiciary is accountable to the people and the highest competence is required for a Judge. There cannot be any compromise on the quality of Judges.
>
> When a Chief Justice recommends a person for Judgeship the primary concern should be for having competent men. There must be full support at the appropriate level, at the Chief Minister's

level, that on no account, we will compromise this. Secondly, lack of involvement and lack of sense of devotion and taking things easy is the reason for arrears of cases. Judges tend to become more popular by giving easy admissions. The moment Court gives easy admission, it invites more and more work. The reasons for this are that a Judge may not be competent. The other is a feeling that after all what does he lose and why have displeasure of the Bar. Chief Justice, Kerala High Court was glad that Chief Justice of India has given a lead in this behalf.

Weekly statements on disposal should be circulated to all the Judges. Judges themselves go on improving as is done in the High Court of Kerala.

Chief Justice, Kerala High Court further mentioned that he had established an Arrears Committee. They take up cases subject-wise. Classification of cases and grouping of cases and placing the cases before a Judge who is proficient in that field goes a long way. Judges must realise their accountability to the common man."

After detailed discussion of the matter, the Chief Justice of India expressed the view that a Committee of Chief Justices should be appointed to examine the matter thoroughly. Accepting his suggestion, the following resolution was passed at the Conference:

"Resolved that with a view to implement the resolution of the Joint Conference of Chief Justices and the Chief Ministers and to suggest ways and means to reduce and control the arrears of cases in the High Courts and subordinate courts a Committee consisting of Chief Justices S/Shri VS. Malimath, P.D. Desai and A. Banerji is constituted to study the problem of arrears in different Courts in depth and in all its dimensions with special regard to the report of the earlier committee appointed by the Government of India pursuant to the recommendations made by the Chief Justices' Conference, 1985 and the recommendations made by the other Committees and Commissions."

(Reference in the resolution to the year '1985' is a mistake for the year '1983'.)

2. At the meeting of the Committee held at New Delhi on 9th October, 1988, it was resolved, *inter alia,* that having regard to the magnitude and importance of the work entrusted to the Committee, it was absolutely necessary, for proper discharge of its functions, that the Committee should be formally constituted by the Government of India as was done on the previous occasion and provided with the necessary staff. The Chief Justice of India was accordingly requested by the Chairman of the Committee on October 9, 1988, that the matter may be taken up with the Government of India and its formal orders obtained constituting the Arrears Committee as recommended at the Chief Justices' Conference.

3. At the next Chief Justices' Conference held at New Delhi, on October 10-11, 1988, Chief Justice Shri P.C. Jain was nominated to the Committee in place of Chief Justice Shri A. Banerji, who was due to retire on 5-12-1988. The Committee was thus reconstituted as follows:

1. Shri V.S. Malimath. Chief Justice of Kerala — Chairman;
2. Shri P.C. Jain, Chief Justice of Karnataka — Member; and
3. Shri P.D. Desai, Chief Justice of Calcutta — Member.

Formal orders constituting the Committee were passed by the Government of India by their letter No. 35/6/88-Jus (M) dated 17th January, 1989.

Other Matters Referred to the Committee

4. The Chief Justices' Conference held on October 10-11, 1988 referred the following additional subjects to the Committee:

(1) Revision of minimum pension payable to High Court Judges;

(2) Fixation of commutation value at Rs.9-48;

(3) Reducing the service requirement from 14 years to 10 years for earning full pension;

(4) Evolving a better formula to provide reasonable pension to service Judges;

(5) Providing more/adequate compensatory allowance and other facilities to a Judge going on transfer;

(6) Rent-free houses and a furnished office room with suitable library; and

(7) Family pension scheme for High Court Judges.

Terms of Reference

5. By letter dated January 23, 1989, the then Minister for law and Justice and Water Resouces, Shri B. Shankaranand, requested the Chief Justice of India that the Terms of Reference of the Committee may be spelt out clearly and that the time limit within which the Committee should complete the assigned tasks may be indicated. The Committee considered these suggestions at its meeting held on February 6, 1989 and passed the following resolutions:

"(i) Resolved that the terms of reference of the Committee be the same as spelt out in the resolutions of the Chief Justices' Conferences held in 1987 and 1988 to wit:

(A) To suggest ways and means:
(a) for the due implementation of the resolution of the Joint Conference of Chief Justices and Chief Ministers; and
(b) to reduce and control arrears of cases in the High Courts and Subordinate Courts, after making a study of the said problem with special regard to the report of the Satish Chandra Committee and recommendations made by other Committees and Commissions including the Law Commission of India.

(B) To examine and make suitable recommendations/proposals with respect to:

(a) revision of minimum pension payable to High Court Judges;

(b) fixation of proper value for the purpose of commutation of pension of High Court Judges;

(c) reduction of the qualifying service for earning full pension;

(d) evolving a better formula to provide reasonable pension to Judges of High Courts appointed from service;

(e) payment of adequate compensatory allowance and other facilities to Judges of High Courts transferred from one High Court to another;

(f) evolving a proper formula for payment of adequate family pension to the families of High Court Judges; and

(g) providing rent free houses and furnished office rooms with suitable library to the Subordinate Judicial officers.

(ii) Resolved that in view of the fact that certain other questions in addition to the problem of arrears in High Courts and Subordinate Courts have been referred to the Committee by resolutions passed at the Chief Justices' Conference held on October 10-11, 1988, which are spelt out in the draft terms of reference contained in paragraph (i) (B) above, the Government of India be requested to modify letters No. 35/(6)/88-JUS(M) dated 17th and 18th January, 1989, Ministry of Law and Justice (Department of Justice) by the addition of the following words at appropriate places in those letters:

"and to examine and make suitable recommendations/proposals with respect to the other matters contained in the terms of reference."

(iii) Resolved, having regard to the wide terms of reference with the extent of the work involved as also the fact that Members of the Committee are required to attend to judicial and administrative work as Chief justices of the respective High Courts, the Committee will endeavour to submit a report as expeditiously as possible, without any precise time-limit being specified for the purpose."

6. Though the Government of India has not passed any formal orders in this behalf, the Committee proceeded to deal with the above mentioned subjects also in accordance with the resolutions of the Chief Justices' Conference.

Appointment of Staff to the Committee

7. At the meeting of the Committee held on 9th October, 1988, the Committee had not only resolved that it

should be formally constituted by the Government of India but that it should be provided with the necessary staff. The Government of India was accordingly moved by the Chief Justice of India. The response from the Government of India was that "it would be rather difficult to provide this assistance as there is a ban on creation of posts and that the minimum required staff may be arranged either from the Registry of the Supreme Court or from the High Courts." Having regard to the nature, extent and importance of the work entrusted to the Committee, it required the assistance of adequate, competent and attached staff for collection and collation of materials and for undertaking the required investigation and research. The Members of the Committee being Chief Justices of the respective High Courts have to discharge many onerous duties and responsibilities as Chief justices, leaving not much time for other work. Government of India not having agreed to provide the necessary staff as requested, the Committee was forced to carry out its work utilising whatever limited staff that could be secured from the respective High Courts. Accordingly, by its resolution (No. HACR/3) passed on 21st and 22nd December, 1988, the Committee appointed the Registrar High Court of Kerala, the Principal Private Secretary to the Chief Justice of Karnataka and the Additional Registrar-I of the High Court of Calcutta as the Secretaries to the Committee. The ministerial staff required for the functioning of the Committee was decided to be drawn from the respective High Courts as and when found necessary.

Meetings of the Committee

8. It was decided that the meetings of the Committee be held at New Delhi or at the seat of the respective High Courts of the Members of the Committee and at such other places as the Committee may from time to time decide. The Committee has so far held eleven meetings at Delhi, Cochin, Calcutta and Bangalore.

9. The Committee requested all the High Courts to offer their views/comments/ suggestions on the recommendations made by the Satish Chandra Committee which have been accepted by the Government of India Vide: Letter D.O. No. 35/2/86—JUS(M) dated 5th October, 1988 and such of those recomendations on which the Government of India have not expressed any opinion and also to invite other suggestions and remedial measures for tackling the problems of arrears in the High Courts and subordinate courts. Several High Courts took considerable time to respond to this request.

10. The Committee simultaneously took up for consideration the seven subjects referred to it by the Chief Justices' Conference held in October, 1988 and formulated its report. The Report of the Committee on these seven additional subjects was submitted to the Chief justice of India on 16.9.1989. That report was considered and accepted by the Chief Justices' Conference held on December 5-6, 1989. The recommendations made by the Committee in the said report have been forwarded to the Government of India for implementation.

11. Minister of Law and Justice, Government of India by his letter D.O. No. 40/14/88—Jus. (M) dated 17.2.1989 forwarded a copy of the valedictory address given by Justice E.S. Venkataramiah at the Senior Judicial Officers' Conference of the North Eastern Region at Guwahati on 13.3.1988 for consideration by the Committee. Minister of Law and Justice also forwarded the suggestions made by Justice B.D. Singh retired Judge of the Patna High Court for consideration by the Committee.

12. Two more important subjects have been sent to the Committee for the consideration and appropriate recommendation, one by the Government of India and the other by the Chief Justices' Conference.

13. A Note on the subject of uniform classification of cases in the High Courts and their categorisation as main and miscellaneous cases for the purpose of determining the judge-strength in the High Courts was received from the Government of India on 1.4.1989. For examining the said additional item of work, the Committee requested Chief Justices of all the High Courts to furnish relevant information in this behalf. Some of the High Courts took considerable time for sending the required information and some others have yet to furnish the full information required in this behalf, with the result it has not been possible to make a report on that subject as yet.

14. By letter dated 7th March 1990, the Chief Justice of India has requested the Committee to furnish its opinion in regard to the suggestions made by the High Court of Madras that the provisions of the High Court Judges (Conditions of Service) Act, 1954 be suitably amended to provide leave on medical grounds on full allowances without commutation of earned leave or leave on loss of pay for a period to be fixed. The report on the subject is being submitted separately along with this report.

15. Thus, in addition to the task of suggesting ways and means to reduce and control arrears of case High Courts and subordinate courts, the Committee has been entrusted with the additional work of making in nine other important subjects.

16. The gradual increase in institutions coupled with the failure of disposals to keep pace with th resulted in an alarming rise in the pendency of cases in High Courts. There is a big leap in the pendency fro nine lakhs of main cases in 1982 to over fourteen lakhs of main cases in 1989. The problem of arrears is com nature. The contributory sources and factors are many. The judicial branch of the State has borne much brunt of criticism though the other organs of the State cannot be absolved of the blame. With the end in going into the problem of arrears and to suggest ways and means to revitalise the judicial system, as m eleven attempts have been made in the past by Commissions and Committees. The Report of the Committee, 1924 marks the beginning and the One hundred and Twenty Fourth Report of the Law Commis India (The High Court Arrears—A fresh Look (1988) signifies the latest effort in that direction. In addition are three other reports of the Law Commission of India on the subject of setting up of alternative resolution machinery so as to relieve the burden of the High Courts by establishment of specialised Tribuna 115th Report on Tax Courts (1986), 122nd Report on forum for National Uniformity in Labour Adjud (1987) and 123rd Report on Decentralisation of Administration of Justice: Disputes involving Centres of Education (1987). This Committee, thus, is not ploughing a virgin field. The approach of the Committee, fore, has been to avoid, as far as practicable, repetition of the various recommendations made in those with regard to amendment of statutory and procedural laws and taking of other remedial measures. carefully studied all the past reports and having evaluated the recommendations therein made and ascertained to the extent possible their implementation, the Committee has taken the Satish Chandra Com Report, which has been one of the latest exercises in the same direction, as the basis to make fresh recomm tions in regard to those matters only which would expedite justice without, at the same time, sacrificing th concept and content of justice. The Committee hopes, however, that its report will recall the recommend made earlier to the mind of the concerned authorities and expedite action for implementation thereof alon those herein made.

17. Chief Justice of Jammu and Kashmir, Dr. A.S. Anand was nominated as a Member of the Commi place of Chief Justice Shri P.C. Jain and the Committee stood reconstituted by the order of the Governm India dated 23.10.1989. Chief Justice Dr. A.S. Anand was transferred as Chief Justice of the High C Madras on 24.10.1989, which office be assumed on 1.11.1989. Government of India, by their letter 29.11.1989 notified that on the appointment of Chief Justice Dr. A.S. Anand as Chief Justice of Madra Court, he will continue to be a Member of the Committee. The first meeting of the reconstituted Committee be held on December 2-4, 1989.

18. The Arrears Committee having been asked to make its recommendations on a thorough examinat all the reports on the subject, a study of the following among other reports became imperative:

(i) Report of the Rankin Committee, 1924;

(ii) Report of the High Court Arrears Committee 1949 set up by the Central Government und Chairmanship of Justice S.R. Das.

(iii) Fourteenth Report of the Law Commission of India on the Reforms of Judicial Administration.

(iv) Twenty second Report of the Law Commission of India.

(v) Twenty seventh Report of the Law Commission of India.

(vi) Fifty fourth Report of the Law Commission of India.

(vii) Seventy seventh Report of the Law Commission on delay and arrears in trial courts.

(viii) Seventy Nineth Report of the Law Commission on delay and arrears in the High Court and appellate courts.

(ix) Eightieth Report of the Law Commission on the method of appointment of Judges.

(x) Ninety Ninth Report of the Law Commission on the oral and written arguments in the High Cour

(xi) One Hundred and Twentieth Report of the Law Commission on Man Power and Planning.

(xii) One Hundred and Twenty First Report of the Law Commission on providing "A New Forum for Judicial Appointments".

(xiii) One Hundred and Twenty Fourth Report of the Law Commission on the High Court Arrears—A Fresh Look.

(xiv) One Hundred and Twenty Ninth Report of the Law Commission on "Urban Litigation, Mediation as alternative to adjudication".

(xv) Report of the High Court Arrears Committee, 1972 (Justice Shah Committee) and

(xvi) Report of Justice Satish Chandra Committee.

19. Keeping in view the recommendations in the above reports, the Committee has finalised its recommendations in regard to the subjects covered by this Report. The Report on all subjects other than 'Introduction, Original Civil Jurisdiction of the High Courts and Arrears on Criminal Side' was finalised before Chief Justice Shri P.C. Jain retired. The report on the above three subjects was finalised after Chief Justice Dr. A.S. Anand joined the Committee.

20. The remaining items of work to be dealt with by the Committee pertain mainly to other causes contributing to accumulation of arrears including delay and unsatisfactory appointments of Judges and indentifying alternate modes of dispute resolution and on the subject of Uniform Classification of cases in the High Courts and their categorisation as main and miscellaneous cases for the purpose of determining the judge-strength in the High Courts. While these matters were under consideration, a letter dated 11.1.1990 was received by all the Chief Justices from the Minister of Law and Justice, Government of India, seeking their views on the proposal of the Government of India to set up a High Level Judicial Commission for appointment of High Courts and Supreme Court Judges and transfer of High Court Judges, which also the Committee may like to consider. The Committee decided that in the meanwhile, the report already finalised as aforesaid be submitted. The Report on the remaining subjects will follow.

21. Though the Arrears Committee has been formally constituted by the Government of India, the same having been constituted originally on the recommendation of the Chief Justices' Conference held on December 11—13, 1987, the first part of the Report of the Committee is being submitted to the Chief justice of India to enable him to take further and appropriate action in the matter.

(V.S. MALIMATH)
CHIEF JUSTICE KERALA HIGH COURT.
CHAIRMAN.

(P.D. DESAI)
CHIEF JUSTICE, CALCUTTA HIGH COURT.
MEMBER

(DR. A.S. ANAND)
CHEIF JUSTICE, MADRAS HIGH COURT
MEMBER.

NOTE

After the submission of Volume I of the Report to the Hon'ble Chief Justice of India on March 14, 1990, the Committee held two more sittings at Delhi, one each in July and August, 1990. Thus, in all, thirteen sittings were held to complete its deliberations. The Committee submitted Volume II of the Report to the Chief Justice of India on August 5, 1990.

Both Volumes I and II of the Report were placed before the Chief Justices' Conference held at New Delhi on August 31 and September 1—2, 1990, presided over by the Hon'ble Chief Justice of India and the Reports were accepted subject to a few modifications.

The arrangement of Chapters and the numbering of the paragraphs as given in Volumes I and II of the original Report are maintained. However, for the sake of convenience, one "Contents" and continuous paging have been given.

As this is a very important and valuable report and the recommendations made therein are required to be implemented by various agencies, the Report is being printed and Published by the Supreme Court of India as per the directions of Hon'ble the Chief Justice of India, Justice Sri. Sabyasachi Mukharji.

NEW DELHI,
22-9-1990.

(S. GHOSH)
REGISTRAR, (ADMN. J)
SUPREME COURT OF INDIA

INTRODUCTION TO VOLUME I

CAUSES FOR THE ACCUMULATION OF ARREARS IN THE HIGH COURTS

The frightful problem of mounting arrears of cases in the High Courts is one of the greatest challenges which the Judiciary is facing to-day. The disposal and institution of cases have not kept pace. For taking remedial steps, it is essential to first identify the causes for the accumulation of arrears.

Causes Identified by Satish Chandra Committee

2. The Satish Chandra Committee, in Chapter II of its report, identified the following causes for the accumulation of arrears in the High Courts:

(1) Litigation explosion;

(2) Radical change in the pattern of litigation;

(3) Increase in Legislative activity;

(4) Additional burden on account of Election Petitions;

(5) Accumulation of First Appeals;

(6) Continuance of the ordinary original civil jurisdiction in some High Courts;

(7) Inadequacy of judge-strength;

(8) Delays in filling up vacancies in the High Courts;

(9) Unsatisfactory appointment of Judges;

(10) Inadequacy of Staff attached to the High Courts;

(11) Inadequacy of accommodation;

(12) Failure to provide adequate forums of appeal against quasi-judicial orders;

(13) Inordinate concentration of work in the hands of some Members of the Bar;

(14) Lack of punctuality amongst Judges;

(15) Civil Revisions—indiscriminate exercise of jurisdiction;

(16) Second Appeals—ignoring the limitations on exercise of jurisdiction;

(17) Long arguments and prolix judgments;

(18) Lack of priority for disposal of old cases;

(19) Failure to utilise grouping of cases and those covered by rulings;

(20) Granting of unnecessary adjournments;'

(21) Unsatisfactory selection of Government Counsel; and

(22) Lawyers not appearing in Courts due to strikes, etc.

3. The Committee agrees with the causes for accumulation of arrears of cases, as indentified by the Satish Chandra Committee. This Committee has in addition to those causes, identified some more causes.

Increase in Pendency

4. At the time when the Satish Chandra Committee submitted its report, it recorded that the total pendency in all the High Courts rose from 1,91,972 in 1956 to 12,37,566 as on 31.12.1984 and to 15,46,526 as on 30.6.1987. Presumably these figures include Main and Miscellaneous cases. The pendency of main cases as on 31.12.1989, on the basis of the information furnished by various High Courts to this Committee shows that more than 14,39,025 cases were pending in the various High Courts. Inclusive of the miscellaneous cases regarding which information has been furnished by some of the High Courts, the total pendency of cases as on 31.12.1989 is more than 17,38,761 cases. The problem of pendency since the submission of that report has thus aggravated.

Population Explosion

5. The litigation explosion has further become acute due to the population explosion. The population of the country in 1971, according to the Consus Reports was 54,64,56,000 and 68,51,84,692 in 1981. It was approximately 80,67,72,300 at the end of 1989 and by the end of the current year is estimated to be 82,19,92,800. The rise in population contributes substantially to the increase in litigation and thereby it is linked and related to the causes of accumulation of arrears in the High Courts.

Changing Pattern of Litigation

6. Besides the litigation and population explosion, there is also a change in the pattern of litigation since the commencement of the Constitution of India. Ever since then, we have thrown open the doors of the courts to every man to enter and seek justice. The awareness of the legal rights of the citizen has resulted in challenging even those matters which earlier may have remained unchallenged. In our quest for building a welfare State, multifarious laws touching almost every aspect of an individual and the corporate sector have been enacted, creating in their turn numerous rights and obligations which often clash with each other and generate new disputes between man and man and between the citizen and the State.

Hasty and Imperfect Legislation

7. Hasty and imperfect legislation without adequate investigative exercise on the part of the Executive regarding the real need for the enactment of such law or a proper public debate and institutional consultation with export bodies, professional association etc. results in more institution of cases in the High Courts. That apart, the deterioration of the quality of legislative drafting has made its own contribution to the spurt in litigation which, in turn, consumes considerable time of the High Court in resolving disputes regarding interpretation, thereby resulting in back log of cases.

Election Petitions

8. The vesting of the power in the High Courts to try election petitions without augmenting the existing strength in the High Court for that purpose has also caused accumulation of arrears and that factor cannot be lost sight of.

Plurality of Appeals Hearing by Division Banches.

9. Plurality of appeals, contributes substantially to arrears. The lack of realistic valuation of subject-matter of the suit for determining the forum of second appeals, and the provisions in certain High Courts to hear all regular first appeals and even second appeals and revisions in some High Courts by Division Bench has also contributed to the accumulation of arrears in no small measure. Automatic admission of appeals for final hearing without being put to preliminary hearing encourages frivolous litigation which leads to avoidable accumulation of cases in the High Courts. Beside first appeals under the Code of Civil Procedure, there are appeals which lie to the High Court under special Acts adding to the burden.

Revisions

10. Again, resort to indiscriminate use of revisional jurisdiction of the High Court under Section 115 C.P.C. not only adds to the arrears in the High Court but also directly affects the pendency of cases in the subordinate courts and delays their disposal. Long arguments and prolix judgments even in exercise of revisional jurisdiction contribute in no small measure to the accumulation of arrears.

Original Jurisdiction

11. The vesting of ordinary original civil jurisdiction in some of the High Courts has made the problem of

accumulation of arrears in those High Courts even more acute. The justification for its continuance is far to seek with changing times.

Certified Copies—Dispensation

12. The inordinate delay in the supply of certified copy of the judgment/decree and the requirement of filing of certified copy of the judgment/decree along with the Memorandum of Appeal serves no practical purpose. It only adds to the life of litigation by extending the period of limitation for filing appeals.

Indiscriminate Resort to Writ Jurisdiction

13. The bulk of the pendency in almost all the High Courts is of the writ petitions and appeals arising out of the decision in writ petitions by single judges. Invoking the writ jurisdiction of the High Courts under Article 226 of the Constitution of India (also under Section 103 of the Constitution of Jammu & Kashmir) even in trivial matters, relegates the consideration of deserving cases into the background and adds to the problem of arrears.

Letters Patent Appeals

14. Letters Patent Appeals provide yet another scope for prolonging Litigation. It is not unknown to find single Judge's judgment in writ jurisdiction being brought up in appeal without justification. Although special Acts, such as Trade Marks Act, do not provide for intra court appeal in the High Court one more tier of appeal is availed of by virtue of Letters Patent or Statutes regulating the jurisdiction of the High Court.

Enormous Delay in Filling Vacancies

15. The largest single factor for the accumulation of arrears is the enormous delay in making appointments to the vacancies in the High Courts which results in loss of judge-days. The number of judge-days lost due to the non-filling up of vacancies is directly proportionate to the rise of the arrears. Even the revised strength of judges in all the High Courts is not sufficient to cope with the steep rise in litigation. Periodical review even when made of the judge-strength required, remains a futile exercise as no serious attempt is made to fill up the vacancies.

Unsatisfactory Appointments

16. Unsatisfactory appointments to the High Court is another factor which adds to the arrears. Since it is the Judges who have to operate the justice system, it is no exaggeration to say that justice can never be better than the man who administers and dispenses it. In the long run, the guarnatee for justice rests with the personality of the Judge. Improper and unsatisfactory selection of judges, on considerations other than merit, results in the accumulation of arrears despite the filling up of the vacancies by such appointments.

Absenteism and Unpunctuality

17. Absenteism from court on the slightest pretext not only dislocate court work but in itself is a cause for accumulation. Added to it is the non-adherence to the court hours and lack of punctuality on the part of the judges. It is unedifying to find some Judges arriving late and rising early in spite of overflowing dockets in the courts.

Unnecessary Adjournments

18. The grant of frequent and unnecessary adjournments even in cases which are listed and are part-heard prolongs litigation. Permitting change of counsel midstream also aggravates the problem because the whole case is argued afresh.

Lengthy Arguments, Etc.

19. Inordinately lengthy arguments at the Bar, citation of unnecessary authorities, concentration of professional work in a few hands and resort to courts in matters which could appropriately be dealt with by an alternative forum add to the back log of arrears.

Classification & Grouping

20. Inadequacy or lack of rules relating to classification, grouping and listing of cases adds to the problem.

Constitution of Benches

21. It is often found that Judges having special aptitude or experience in a particular branch of law are not assigned cases falling under that category and are assigned work with which they may not be quite familiar. As a result, the judicial talent is not advantageously used. The frequent changes in the constitution of Banches affects turn-over and lands Judges into a large number of part-heard cases or leads to releasing of cases which are substantially heard.

Closure of Courts—Strikes, etc.

22. Indiscriminate closure of courts on ground of death and other causes, strikes and non-appearance by lawyers without any justifiable cause results in loss of precious judicial time.

Commissions of Inquiry

23. Appointment of sitting Judges as Commissions under the Commissions of Inquiry Act keeps them away from judicial work. With large number of vacancies in the High Courts, the absence of the judge/judges from the court for any period of time is only at the cost of disposal of cases.

Inadequacy of Staff and Accommodation

24. The working in the High Court not only dpeneds upon the judges and lawyers but also on others including the menial staff and particularly the Registry in the High Court and the process serving agency. There has been practically no revision in the staff strength in most of the High Courts despite the rise in the institution of cases. The existing staff cannot cope with the pressure of work and that results in delays in preparing and listing of cases for hearing, etc. Apart from inadequacy of staff, lack of proper control over the existing staff and haphazard court management adds to the problem. Paucity of accommodation of the court buildings and lack of proper planning in that behalf impede efficiency. Corrupt and improper Practices in the registry result in holding up of cases which too is a contributory factor.

Criminal Matters

25. The preparation and/or printing of paper books in criminal cases seriously delays the disposal of cases. The hearing of criminal appeals not involving sentence of death or life imprisonment or arising out of acquittal in cases where acceptance of appeal may end in award of death sentence or life imprisonment by a Division Bench of two Judges, not only delays the disposal of such appeals but also results in the waste of time of atleast one judge which could otherwise be gainfully used. Filing of unmerited appeals against acquittal without proper scrutiny is an avoidable burden.

Unsatisfactory Appointment of Counsel for State. etc.

26. The State as well as Corporations and Undertakings under the Government are undoubtedly party to the major portion of the cases pending in the High Courts. The selecion of the counsels to represent them is generally unsatisfactory. Experience has shown that the assitance offered by the counsel representing them leaves much to be desired. This lack of proper assistance affects the speedy disposal of cases.

27. It is often not realised how important is the function of the judiciary and how essential it is to the maintenance of democratic way of life, that the State through its judicial wing should be able to dispense speedy justice. The common man has still confidence in our judiciary, but that confidence is being shaken by the undisputed fact that cases are mounting up after they are filed and are not disposed of for years together. The multifarious and multi-dimensional causes leading to accumulation of cases could be remedied by any single measure or all atonce. The situation has been allowed to develop primarily on account of total apathy and lack of will on the part of all concerned. It is high time that urgent attention is paid to the resolution of the problem by taking appropriate remedial measures before the situation deteriorates beyond repair and the system collapses under its' weight. We must act and act now; tomorrow will be too late.

INTRODUCTION TO VOLUME II

This Committee, in Volume I of the Report which was submitted on 14th March, 1990, examined some of the causes responsible for the accumulation of arrears and made various suggestions/recommendations on those matters. The areas covered in Volume I dealt with:

(a) Ordinary and Extraordinary Original Civil Jurisdiction of the High Courts;

(b) Letters Patent Appeals/Appeals against judgments of single Judges;

(c) First Appeals;

(d) Second Appeals;

(e) Revisions;

(f) Criminal Side;

(g) Election Petitions;

(h) Practice and Procedure;

and made certain general recommendations also.

2. In this Volume, the Committee proposes to deal with some of the other factors which have contributed to the accumulation of arrears in the High Courts, the proposal for the constitution of National Judicial Commission as a machinery for appointment and transfer of Judges, alternative modes of adjudication and the question regarding norms and classification of cases for determining judge strength in the High Courts, referred by the Government of India.

ACKNOWLEDGEMENTS

With the completion of the II Volume of the report, the Arrears Committee concludes the work entrusted to it. In discharging the onerous task entrusted, the Committee has received help from various authorities, officials and others, to all of whom the Committee is deeply indebted.

The Committee expresses its thanks to the Chief Justice of India for extending help in several ways and to the Chief Justices of all the High Courts for readily agreeing and arranging to furnish the statistical information and other particulars required by the Committee.

The Ministry of Law, Department of Justice, Government of India, the Registry of the Supreme Court and Shri R.L. Khurana, Joint Secretary, Law Commission of India, have ungrudgingly assisted the Committee as and when they were approached. The Committee is thankful to them.

The Committee would like to place on record its appreciation for the exceptionally commendable services rendered by Shri M.C. Madhavan, Registrar, High Court of Kerala as the Secretary of the Chairman of the Committee, Shri T. Sivadasan, Private Secretary of the Chairman and Shri V.A. Ambrose, Personal Assistant to the Registrar of the High Court of Kerala, for having borne the brunt of the most strenuous task of collecting and collating the materials and rendering very competent assistance in every possible way. But for their ungrudging, dedicated and tireless endeavours, the Committee would not have been able to complete its task in time. The Committee acknowledges and thanks each and every one of them.

Shri K.K. Basu, Additional Registrar, High Court of Calcutta and Shri K. Sampath Kumaran, Registrar, High Court of Madras have served as the Secretaries of the present members of the Committee and Shri S. Venkataraman, Principal Private Secretary to Chief Justice Mr. P.C. Jain (Retired) of Karnataka High Court as Secretary of the former member of the Committee. They have worked very hard and rendered very valuable assistance to the Committee. The Committee would like to convey its appreciation and thanks to each and every one of them.

Shri S.K. Chatterjee, Private Secretary to the Chief Justice of Calcutta, Shri R. Rajarathnam, Private Secretary to the Chief Justice, High Court of Madras and Shri S. De's Souza, Private Secretary to the Chief Justice of Karnataka, former member of the Committee have worked to the entire satisfaction of the Committee. The Committee would like to record its appreciation and convey its thanks to every one of them.

The Committee thanks the other officers who have assisted it, Shri A.C. Mitra, Registrar, Original Side, High Court of Calcutta, Shri David Pothen, the then Joint Registrar, High Court of Kerala, Shri K. Sasidharan, the then Deputy Registrar, High Court of Kerala, Shri K. Saseendran, Personal Assistant to the Chief Justice, High Court of Kerala, Shri H.M. Bhattacharjee, Recording Officer and Shri Debdas Mukherji, Assistant Registrar (Court), High Court of Calcutta, Shri M. Manohar, Personal Assistant to the Chief Justice, High Court of Madras and Shri V.A. Varghese, Personal Assistant to Judge, High Court of Kerala.

Last but not the least, we should not forget the services rendered by Shri A.K. Krishnan Nair, Escort Peon, High Court of Kerala, Shri Ayodhya Rai, Orderly, High Court of Calcutta and Shri K.M. Anandan, Peon, High Court of Madras.

(V.S. MALIMATH)
CHIEF JUSTICE, KERALA HIGH COURT,
CHAIRMAN.

(P.D. DESAI)
CHIEF JUSTICE, CALCUTTA HIGH COURT,
MEMBER.

(DR. A.S. ANAND)
CHIEF JUSTICE, MADRAS HIGH COURT,

New Delhi,
August 5, 1990.

CHAPTER I

ORDINARY AND EXTRAORDINARY ORIGINAL CIVIL JURISDICTION OF THE HIGH COURTS

Existing Original Jurisdiction

1.1 Six High Courts in the country at present exercise Ordinary Original Civil Jurisdiction to entertain and try Suits and Proceedings of civil nature. They are: High Courts of Calcutta, Bombay, Madras, Delhi, Jammu & Kashmir and Himachal Pradesh.

Chartered High Courts

1.2 The Ordinary Original Civil Jurisdiction of the three oldest High Courts at Calcutta, Bombay and Madras has a long history. The source of their such jurisdiction is to be found in the Indian High Courts Act, 1861 and in the Letters Patent, 1865 issued thereunder. It is worthwhile to note that some of the provisions of the Letters Patent make a reference back to the earlier Charters of the Supreme Courts for these three Presidency Towns.

Delhi, J & K and Himachal Pradesh High Courts

1.3 The High Court of Delhi derives its Ordinary Original Civil Jurisdiction by virtue of section 5 of the Delhi High Court Act, 1966. The precise origin of the Ordinary Original Civil Jurisdiction of the High Court of Jammu and Kashmir is not capable of being ascertained with certainty. It appears to be a remnant of the judicial system prevalent in the erstwhile Princely State of Kashmir. In 1928, the High Court of Jammu and Kashmir was established and, since then, if not earlier, the suits in which the value exceeded Rs.20,000 were made triable by the High Court. The jurisdiction continued to be vested in and exercised by the High Court after the accession of the State to the Union of India. However, a provision has now been made in the High Court Rules empowering the Registrar to transfer all suits in which the value does not exceed Rs.2-50 lakhs to the District Courts for disposal after the same are registered in the High Court. This has been done pursuant to the decision of a Full Bench of the High Court in *Tota Ram* v. *State,* A.I.R. 1975 J & K. page 73. So far as Himachal Pradesh is concerned, after the Delhi High Court was established, such jurisdiction as was exercisable in respect of the Union Territory of Himachal Pradesh by the Court of Judicial Commissioner for Himachal Pradesh, was transferred to the High Court of Delhi. It was also provided in the Delhi High Court Act, 1966 that the High Court of Delhi shall have, in respect of the territories for the time being included in the Union Territory of Himachal Pradesh, "ordinary original civil jurisdiction in every suit the value of which exceeds twenty-five thousand rupees, notwithstanding anything contained in any law for the time being in force". Subsequently, on the creation of Himachal Pradesh as a State in 1970, the High Court of Himacahl Pradesh was established and succeeded to the jurisdiction of the Delhi High Court in relation to the areas over which it had territorial jurisdiction.

Other Original Jurisdiction Under Letters Patent

1.4 So far as the three Charter High Courts are concerned, apart from the Ordinary Original Civil Jurisdiction aforesaid, they were also vested under their respective Letters Patent with Original Civil Jurisdiction in respect of Infants, Lunatics and Insolvent Debtors. They were granted Admiralty and Vice Admiralty, Testamentary and Intestate and Matrimonial Jurisdiction also. Furthermore, they exercised Original Criminal Jurisdiction to try all persons brought before them in due course of law.

Extra-Ordinary Original Jurisdiction

1.5 In addition to the Jurisdiction detailed hereinabove, these three High Courts were vested with Extra-ordinary Original Civil Jurisdiction in exercise of which they can remove and try and determine any suit, being or falling within the jurisdiction of any Court, subject to their superintendence, whether within or without the territorial limits over which the Ordinary Original Civil Jurisdiction was exercisable, if they thought proper to do so, either on the agreement of parties to that effect or for the purposes of justice. In two out of those three High Courts, Calcutta and Bombay, appeals from the Orders and Judgments of Single Judges exercising Original Jurisdiction also lie on the Original side.

Jurisdiction Under Special Acts

1.6 Beside the Ordinary and Extraordinay Original Civil Jurisdiction, as the case may be, conferred as aforesaid under the Letters Patent or the Statutes of Instruments regulating their jurisdiction, the abovementioned six High Courts, along with other High Courts, are vested with the jurisdiction to entertain and try original proceedings under different Special Acts, such as the Representation of the people Act, 1951, Companies Act, 1956, Banking Companies Act, 1949, Indian Divorce Act, 1869, Parsi Marriages and Divorce Act, 1936. The High Courts are also given advisory jurisdiction in regard to matters relating to taxation. Being Courts of Record, they have also the power to punish for their contempt as well as for the contempt of Subordinate Courts. They have Extraordinary Original Civil Jurisdiction under articles 226 and 227 of the Constitution of India (mention 103 and 104 of the Constitution of Jammu and Kashmir) to issue Prerogative writs, which power, as such, was vested prior to 1950 only in three Charter High Courts.

Curtailment of Original Jurisdiction

1.7 The relevant provisions of the Letters Patent conferring Ordinary Original Civil Jurisdiction to try Suits and Proceedings of civil nature on the three Charter High Courts and of the Statutes vesting such jurisdiction in the three other High Courts have been affected by legislation enacted from time to time. The exercise of such jurisdiction has suffered constraints by reason of the gradual enhancement of the lower pecuniary limits for entertainment of Suits and other Proceedings. In the three Metropolitan Cities (Calcutta, Bombay and Madras) the establishment of City Civil Courts have related in transferring a part of the Ordinary Original Civil Jurisdiction of those High Courts to the respective City Civil Courts.

1.8 The present position with respect to the exercise of Ordinary Original Civil Jurisdiction by the six different High Courts is as follows:

Sl. No.	Name of the High Court	Pecuniary Jurisdiction	Territorial Jurisdiction
1	2	3	4
1.	High Court at Calcutta.	Suits and proceedings of civil nature where the value exceeds Rupees one Lakh.	Calcutta City Area surrounded by the Circular Road falling within the territorial limits of the Calcutta Municipal Corporation.
2.	High Court of Bombay.	Suits and Procceedings of civil nature where the value exceeds Rupees Fifty Thousand.	Greater Bombay
3.	High Court of Madras.	Suits and Proceedings of civil nature where the value exceeds Rupees One Lakh (other than those triable by a Family Court).	City of Madras.
4.	High Court of Delhi.	Suits of all descriptions where the value exceeds Rupees One Lakh.	Union Territory of Delhi.

5.	High Court of Jammu and Kashmir.	Suits of all descriptions where the value exceeds Rupees Twenty Thousands. (Suits for recovery of money not exceeding in value Rupees 2.5 lakhs are transferred for trial to District Courts).	State of Jammu and Kashmir.
6.	High Court of Himachal Pradesh	Suits of all descriptions where the value exceeds Rupees Two Lakhs.	State of Himachal Pradesh.

1.9 The Maharashtra Legislature has passed Maharashtra Act XV of 1987, which has received the assent of the President and has been published in the Maharashtra Government Gazette on May 4, 1987, to provide for unlimited pecuniary jurisdiction in respect of trial of Suits and Proceedings of civil nature being vested in the Bombay City Civil Court. The said Act is to come into force on such date as the State Government may, by notification in the Official Gazette, appoint. The State Government, however, has not yet issued any notification bringing into force the said Act.

1.10 Further inroads have been made in the Original jurisdiction exercised by the three Charter High Courts. They no longer exercise Original Criminal Jurisdiction which has been transferred to the City Sessions Court/Courts of Competent Jurisdiction.

High Court of Calcutta

1.11 The Ordinary Original Civil Jurisdiction of the High Court at Calcutta to try any proceeding under the Guardian and Wards Act, 1890, the Indian Lunacy Act, 1912 and the Indian Succession Act, 1925 has been taken away by amendment of Section 5(3) of the City Civil Court Act, 1983. However, so far as the jurisdiction under Indian Succession Act, 1925, is concerned, a view has been taken in the case of *In the Goods of Sailendra Nath Sarkar Deceased* decided on March 26, 1984 by a learned Single Judge of that High Court that by the said amendment the Testamentary and Intestate Jurisdiction conferred on the High Court at Calcutta by its Letters Patent has been taken away only in cases arising exclusive within the territorial jurisdiction of the City Civil Court, that is, where the deceased has died having a fixed place of abode and leaving all the assets within the City of Calcutta as defined in the City Civil Court Act, 1953. If either the deceased has died having a fixed place of abode or leaving any asset outside the City of Calcutta but within the State, the High Court still retains jurisdiction to grant Probate or Letters of Administration, as the case may be, under the Letters Patent. This decision still holds the field.

1.12 Section 5(2) of the City Civil Court Act, 1953 provides that subject to the provisions of sub-sections (3) and (4), the City Civil Court, Calcutta, shall have jurisdiction and the High Court at Calcutta shall not have jurisdiction to try suits and proceedings of a civil nature, not exceeding Rupees One Lakh in value. Section 5(4) provides that the City Civil Court shall not have jurisdiction to try suits and proceedings of the description specified in the First Schedule. The First Schedule originally consisted of as many as seventeen entries all of which are reproduced in paragraph 7 of Chapter XIII of the Report of Satish Chandra Committee. For the sake of brevity they are not being reproduced here. By amendments made from time to time all the entries, save and except Entries 1, 10, 15, 16 and 17 of the First Schedule, have been deleted. The subsisting entries read as follows:

> "1. Suits and proceedings triable by the High Court as a Court of Admiralty or Vice-Admiralty, or as a Colonial Court of Admiralty.
>
> 10. Suits and proceedings—
>
> (i) under the Indian Companies Act, 1913, or the Banking Companies Act, 1949, or

(ii) relating to or arising out of the constitution, incorporation, management or winding up of corporation.

15. Suits and proceedings triable by the High Court as a Court of matrimonial jurisdiction.

16. Suits and proceedings triable by the High Court under any specified law other than the Letters Patent.

17. Suits and Proceedings triable by the Small Cause Court".

A new Entry which reads as follows has been subsequently added to the First Schedule:

"10(A) Proceedings for the relief of insolvent Debtors triable by the High Court".

In respect of these matters other than those covered by Entry 17, therefore, the High Court at Calcutta still retains Ordinary Original Civil Jurisdiction. Since the Family Courts have not been established in the State of West Bengal, the Matrimonial Jurisdiction exercisable by the High Court on the Original Side still continues to vest in it.

1.13 The High Court at Calcutta, however, in the exercise of its Ordinary Original Civil Jurisdiction, still continues to entertain and try Suits and Proceedings of the nature described in the repealed Entries 2 to 9 and 11 to 14 presumably upon a judicial construction placed on section 5(2) of the City Civil Court Act, 1953, which opens with the words "Subject to the provisions of sub-sections (3) and (4)" and closes with the words "not exceeding Rupees one Lakh in value". The view appears to be that in cases covered by those entries, the City Civil Court shall not have and the High Court will continue to have jurisidiction, if the value exceeds rupees One Lakh. The net result, therefore, is that the High Court at Calcutta still retains substantially its Ordinary Original Civil Jurisdiction subject to certain modification as to the pecuniary limits.

High Courts of Bomaby and Madras

1.14 The Bombay and Madras High Courts continue to exercise jurisdiction as Court of Admiralty, Vice-Admiralty and as Colonial Court of Admiralty. They also exercise Testamentary and Intestate and Matrimonial Jurisdiction and function also as the Court of relief for Insolvent Debtors. So far as Madras High Court is concerned, matters falling within the jurisdiction of Family Courts are, however, excluded from its matrimonial jurisdiction. By judicial interpretation pending cases are not affected.

Different Views Regarding Abolition of Original Civil Jurisdiction

1.15 The ever increasing backlog of cases in High Court and the high cost of litigation specially in the three Charter High Courts has thrown up for consideration from time to time the question whether the High Courts vested with Ordinary Original Civil Jurisdiction should be allowed to retain it at all and also whether there should be curtailment of their jurisdiction under some of the Special Acts. Other factors, such as the requirement of utilising the judicial time of the High Courts for hearing of Constitutional and Appellate Cases and cases arising under some only of the Special Statutes rather than in trying Suits and other Proceedings of civil nature involving complex and long drawn-out procedure, the desirability of introducing uniform pattern for the administration of justice within the country, the gradually decreasing relevance of the historical factors which necessitated the investment of such jurisdiction in the High Court etc. have also led to a thinking and debate as to the advisability of continuing such jurisdiction. The main argument in support of the continuance of such jurisdiction in the High Courts has been that the justice delivery system at that high level has a better quality and inspires greater confidence in the litigant public and that the transfer of jurisdiction to other Courts will only result in glut of cases in those Courts and in delayed justice as a consequence. The contrary view is reflected in the factors above enumerated.

Previous Recommendations

1.16 The question has, therefore, engaged the attention to various Commissions and Committees. Hereinbelow is given a summary of the recommendations made by those Commissions and Committees:

A. *Re: Ordinary Original Civil Jurisdiction*

Sl. No.	Description	Recommendations
1.	Report of the Judicial Reforms Committee for the State of West Bengal (Trevor Harries Committee)	The Original Side of the High Court at Calcutta should not be abolished in its entirety—its abolition would be a real loss to the litigant public of Calcutta.
2.	Law Commission of India, 14th Report (1958).	Ordinary Original Civil Jurisdiction of the High Courts should be allowed to continue.
3.	Law Commission of India 79th Report, (1979).	Same recommendations as in the 14th Report—move for the enhancement of the lower pecuniary limit to Rupees One Lakh commended.
4.	Satish Chandra Committee Report (1986)	The Ordinary Original Civil Jurisdiction of the High Courts should be abolished—Admiralty, Vice-Admiralty and Colonial Court of Admiralty Jurisdiction should be retained, in the Calcutta High Court, Jurisdiction in respect of Suits and Proceedings covered by Entries 2, 3, 4 and 5 of the First Schedule of the City Civil Court Act, 1953 be retained, subject to the provision that the limit of Rupees Five Thousand in Entries 4 and 5 be raised to Rupees One Lakh.

B. Jurisdiction under Special Acts.

Sl. No.	Description	Recommendations
1.	High Courts Arrears Committee (1972)	The original jurisdiction of the High Courts under the Indian Divorce Act, the Parsi Marriages and Divorce Act, the Representation of the People Act to try Election Petitions, the Patents and Designs Act, the Succession Act, the Divorce Act, the Indian Lunacy Act, the Guardian and Wards Act, the Indian Insolvency Act and matters such as alteration of Memorandum of Association, excusing delay in filing Returns and in registering charges under the Companies Act should be abolished and conferred on District Judges/Registrar of Companies.
2.	Law Commission of India 79th Report (1979).	The Jurisdiction of the High Courts under the Indian Divorce Act and Parsi Marriage Act should be abolished.
3.	Satish Chandra Committee Report (1986).	Same recommendations as in the High Courts Arrears Committee Report, 1972
	Law Commission of India, 115th Report (1986)	Central Tax Court excluding jurisdiction of High Courts in matters covered by the Report, should be established.

Satish Chandra Committee Report—Views of Government of India

1.17 The Government of India, Ministry of Home Affairs (Department of Justice), addressed a communication to the Registrars of High Courts (D.O. No. 35/2/86-Jus (M) dated October 5, 1988) enclosing a summary of recommendations of the Satish Chandra Committee as accepted by the Government of India. Accordingly, the Government of India have accepted the following, amongst others, recommendations of the said Committee:

"V. *Ordinary Original Civil Jurisdiction of High Courts:*

(i) The Ordinary Original Civil Jurisidiction of the High Court of Delhi, Himachal Pradesh and Jammu & Kashmir be abolished forthwith.

(ii) The City Civil Courts in the three Presidency Towns be vested with unlimited pecuniary jurisdiction for civil work.

(iii) All the cases pending in the Ordinary Original Civil Jurisdiction of the High Courts be forthwith transferred to the Courts below.

(iv) The jurisdiction under the Parsi Marriages and Divorce Act, 1936 in Presidency Towns be made exercisable by City Civil Courts by constituting them as the Special Courts under Section 18 of the said Act.

(v) The original jurisdiction under the Patents and Designs Act, Succession Act and Divorce Act, vested in the High Court, be made exercisable by the District Courts or the City Civil Courts, as the case may be,

(vi) The original jurisdiction exercised by the High Courts of Bombay and Madras under the Indian Lunacy Act, Guardians and Wards Act and Insolvency Act, be made exercisable by the District Courts or the Principal Judge of the City Civil Courts, as the case may be.

(vii) Relatively unimportant matters like the Alteration of the Memorandum of Association, excusing of delays in filing returns, etc., may be bealt with by the Registrar of Companies, instead of the High Courts."

Amendment of Companies Act, 1956

1.18 The Companies Act, 1956 has since been amended by the Companies (Amendment) Act, 1988. Wide-ranging amendments having the effect of taking away the jurisdiction conferred under the main Act upon the High Courts in respect of several matters have been made and such jurisdiction has been transferred to the Company Law Board see sections 43, 49, 111, 113, 118, 144, 163, 167, 188, 196, 225, 238, 284, 304, 307, 388B to 388E, 397 to 407 and 614 of the Companies Act, 1956, as amended). The orders or decisions of the Company Law Board, however, are made appealable to the High Court on any question of law arising out of such orders under section 10F of the Companies Act, 1956.

Summary

1.19 The foregoing survey of the Ordinary and Extraordinary Original Civil Jurisidiction of the High Courts reveals that:

(a) amendments have been made in the laws in force and new legislation has been enacted so as to curtail such jurisdiction to some extent;

(b) the legislative exercise in that direction has been halting and half-hearted; in some respects it has proved only partially effective as a result of judicial interpretation placed upon the relevant Statutory provisions; and

(c) the recommendations made by Commissions and Committee have not been fully implemented or acted upon including those of the Satish Chandra Committee which have been since accepted by the Government of India.

1.20 This Committee does not propose to traverse the ground covered in the Reports of the previous Commissions and Committee(s). No useful proposes will be served by covering the beaten track and reiterating and repeating the previous recommendations. Unless any disagreement is expressed or departure is advocated herein,

these recommendations must be regarded as having been adopted and reiterated by this Committee for their proper implementation by the competent authorities.

Abolition of Ordinary Civil Jurisdiction Recommended But No Transfer of Pending Cases

1.21 While agreeing with the recommendation of the Satish Chandra Committee regarding the City Civil Courts in the three Metropolitan Cities (Calcutta, Bombay and Madras) being vested with unlimited civil pecuniary jurisdiction, this Committee does not endorse the consequential recommendation with regard to the transfer forthwith of all the cases pending in the Ordinary Original Civil Jurisdiction of the concerned High Courts to the City Civil Courts. It is not proper to lose sight of the fact that the files of the City Civil Courts are also heavy. The City Civil Court, Calcutta had pendency of 35,621 Civil Cases and 387 Criminal Cases as on December 31, 1989. The pendency on the Original Side of the High Court at Calcutta on December 31, 1989 was 7941 Civil Suits. To this must be added miscellaneous and connected applications. In the City Civil and Sessions Court at Bombay, as on June 30, 1989, the pendency of Civil Suits was 52,626. Total number of pending Sessions Cases, Criminal Appeals and Criminal Revisions was 5946. This does not take into account miscellaneous Civil matters (14096) and other Criminal Cases (1427). On the Original Side of the High Court at Bombay, the pendency on June 30, 1989 was 12266 Civil Suits. The pendency on the Original Side of the Madras High Court on June 30, 1989 was 5888 Civil Suits and 10136 Interlocutory Applications in Civil Suits and other matters. The bulk transfer of such large number of cases from the High Courts to the City Civil Courts will create numerous problems for the judicial administration as well as for the litigants and members of the Bar. The present sanctioned strength of Judges and Staff of those Courts would not be able to cope with such substantial addition to the case files at a time. Accommodation for new Courts will have to be found even if increase in Judge strength and Staff is sanctioned which may not be immediately feasible. The transferred cases will be re-numbered and, even if they are heard according to the year in which they were originally instituted, their hearing may get further delayed because of pendency of large number of older cases in the City Civil Courts. Additional cost may also have to be incurred by litigants to conduct litigation in the new forum. Sudden break from the existing system and change of forum may bring about a sense of uncertainty in litigants whose cases are pending in the High Courts. Resentment may also have to be encountered from the members of the Bar practising in High Courts if pending cases are transferred. All this could be avoided in case the conferment of the unlimited pecuniary jurisdiction on the City Civil Courts is made prospective in operation. The transition from the old to the new system would then be smooth.

1.22 More or less similar may be the position in respect of transfer of cases upon the abolition of Ordinary Original Civil Jurisdiction of the High Courts of Delhi, Jammu and Kashmir and Himachal Pradesh. More particularly, unless more Judges, Staff and accommodation are sanctioned and made available, transfer of pending cases from the High Courts to the Civil Courts of competent jurisdiction in those States would result in the same difficulties and complications.

Preconditions for Transfer of Jurisdiction

1.23 The recommendation of the Satish Chandra Committee that the strength of the Judges in the City Civil Courts should be suitably augmented simultaneously with the enhancement of their jurisdiction to enable them to cope with the inflow of new work is emphatically reiterated. It is recommended furthermore that the additional requisite staff should be simultaneously sanctioned and provision should also be made at the same time for accommodation of additional Courts. Unless all these matters are settled in consultation with the concerned High Courts and guaranteed by the concerned State Government, the relevant law enacted in Maharashtra and the proposed statutory amendments in the existing laws in the States of Calcutta and Madras should not be brought into force. The same precondition should be satisfied also in respect of transfer of Ordinary Original Civil Jurisdiction of the High Courts of Delhi, Jammu and Kashmir and Himachal Pradesh to the subordinate Courts of competent jurisdiction.

Partial Retention of Ordinary Original Civil Jurisdiction of Chartered High Courts

1.24 So far as the recommendation of the Satish Chandra Committee with regard to retention of the Ordinary Original Civil Jurisdiction of the High Court at Calcutta in respect of Suits and Proceedings covered by Entries 2, 3, 4 and 5 of the First Schedule to the City Civil Court Act, 1953 is concerned, this Committee is of the view that there is no justification for the retention of Ordinary Original Civil Jurisdiction in respect of Suits and Proceedings relating to or arising out of carriage by air (Entry 3 of the First Schedule to the City Civil Court Act,

1953). Disputes requiring adjudication in such cases do not call for any specialised knowledge nor are they of such nature which arise only in the Metropolitan Cities. There is no reason why, therefore, the City Civil Court, which is manned by experienced Judges drawn from the Higher Judicial Service, should not be vested with powers to try such Suits and Proceedings.

1.25 This Committee, however, endorses the recommendation of the Satish Chandra Committee that having regard to the special importance attaching to commercial causes in the Metropolitan Cities, the Ordinary Original Civil Jurisdiction to try Suits and Proceedings covered by Entries 4 and 5 of the First Schedule to the City Civil Court Act, 1953, be continued to be retained, subject to the raising of pecuniary limit to Rupees One Lakh. Accordingly, the High Court will continue to have Ordinary Original Civil Jurisdiction to entertain and try Suits and Proceedings exceeding Rupees One Lakh in value,—(i) relating to or arising out of import or export of merchandize, or (ii) relating to or arising out of stock exchange transactions or future markets, or (iii) relating to or arising out of documents of title to goods as defined in the Indian Sale of Goods Act, 1930, or (iv) arising out of transactions of merchants and traders relating to the buying or the selling of goods or relating to the construction of mercantile documents, or (v) relating to or arising out of transactions of mercantile agents as defined in the Indian Sale of Goods Act, 1930, and (vi) relating to or arising out of bills of exchange, hundis or other negotiable securities for money, letters of credit or letters of advice, but not Suits and Proceedings relating to or arising out of cheques, promissory notes or currency notes.

1.26 In light of the aforesaid discussion, this Committee recommends that section 5, sub-sections (2) and (4) of the City Civil Court Act, 1953 and the First Schedule of the said Act be suitably amended to incorporate the changes suggested hereinabove. Having regard to the judicial interpretation placed upon section 5(2), which enables the High Court at Calcutta to still continue to exercise Ordinary Original Civil Jurisdiction even in respect of Suits and Proceedings covered by the repealed Entries in the First Schedule, special care should be taken while introducing amendments so as to leave no room for doubts or debate that the Ordinary Original Civil Jurisdiction of the high Court remains confined to Suits and Proceedings of the above nature only and none other.

1.27 The recommendations hereinabove made with regard to the exercise of the Ordinary Original Civil Jurisdiction by the High Court at Calcutta are to apply, as far as may be, also to the High Courts of Bombay and Madras. Suitable amendments, if any, may be carried out in the Bombay City Civil Court Act, 1948 and the Madras City Civil Court Act, 1892, or in the Letters Patent of those High Courts or a new law may be enacted to implement the recommendations.

Abolition of Jurisdiction Under Special Acts

1.28 So far as Suits and proceedings triable by the High Courts under any Special Acts other than the Letters Patent or the Statute or Instrument conferring jurisdiction on the different High Courts are concerned, this Committee is of the few that (i) the recommendations made by the High Courts Arrears Committee and endorsed by the Law Commission of India in its 79th Report and in the Satish Chandra Committee Report be implemented forthwith and (ii) a Committee (a) of Experts be appointed to make an indepth examination of the question of desirability of continuing the jurisdiction to try suits and Proceedings arising under other Special Acts not covered by the aforesaid recommendations of the Law Commission of India and the said two Committees and to suggest whether jurisdiction in that regard should be continued to be exercised by the High Court and, if so, to what extent. After inviting public debate on the Report of such Committee(s), appropriate amendments, if any, should be made in the relevant Special Acts to implement such of the suggestions as are found acceptable.

Follow up Action—Urgency Emphasised

1.29 This Committee regretfully observes that though numerous recommendations have been made in the past with regard to the abolition and/or curtailment of the Ordinary and Extraordinary Original Civil Jurisdiction of the concerned High Courts and jurisdiction exercised by all the High Courts under Special Acts, only a few have been implemented. Majority of those recommendations have been put in deep freeze. In order to tackle the problem of exploding Court dockets in the High Courts, timely action is called for. It is hoped that the recommendations herein above made would be implemented in their entirety without unnecessary loss of time so as to solve the problem or make it at least manageable.

CHAPTER II

LETTERS PATENT APPEALS/APPEALS AGAINST JUDGMENTS OF SINGLE JUDGES

Recommendations of the Satish Chandra Committee—Broadly Agreed

2.1 The Satish Chandra Committee has in Chapter IX of its report elaborately considered various aspects bearing upon Letters Patent Appeals and Appeals provided by the various instruments constituting the respective High Courts against the judgments of Single Judges to a Bench of two Judges of the High Court. The following recommendations were made by the Committee in the light of such consideration:

Appeals Against Judgments of Single Judges in Exercise of the Ordinary Appellate Jurisdiction

(i) Where the First Appeal is decided by a Single Judge of the High Court in exercise of the appellate jurisdiction, a further appeal against such decision to a Division Bench of the High Court should be abolished by suitably amending section 100A of the Code of Civil Procedure:

(ii) Central or State Legislation should be enacted in *pari materia* with the provisions of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962 as amended up-to-date which provides for abolition of appeals to a Division Bench from the judgment or order of a Single Judge of the High Court made in exercise of the appellate jurisdiction in a matter arising from a suit or proceeding instituted or commenced under certain sepcified local laws; and

(iii) Legislation should be enacted to abolish Letters Patent Appeals against the judgment of a Single Judge of the High Court in a writ petition directed against an appellate or revisional forum below.

2.2 We have also examined the matter in great depth keeping in view, *inter alia*, the observations and recommendations made in the said report. As we are broadly in agreement with the recommendations and the reasons in support thereof, it is not necessary to burden this report by reiterating the same.

No Further Appeal Against Decrees of Single Judge in First Appeals

2.3 In order that no further appeal should lie against the judgment of a Single Judge exercising even the first appellate jurisdiction, we endorse the recommendation of the Satish Chandra Committee that the following sub-section (2) be added to section 100A of the Code of Civil Procedure:

> "100A(2). Notwithstanding anything contained in any Letters Patent of any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any first appeal has been decided by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge in such appeal or from any decree passed in such appeal."

Abolition of Appeals Against judgments of Single Judges

2.4 As regards abolition of Appeals from the judgment or order of a Single Judge of the High Court made under specific local laws in exercise of the appellate jurisdiction in matters arising from a suit or proceeding instituted or commenced under specified local laws, we agree with the recommendation made in that regard by Satish Chandra Committee and are also of the view that suitable legislation should be enacted by the appropriate legislature in that behalf.

No Appeal Against Judgment of Single Judge in Writ Jurisdiction

2.5 In so far as abolition of appeals from judgment or order of a Single Judge of the High Court made in exercise of the Writ Jurisdiction under articles 226 and 227 of the Constitution is concerned, we are of the opinion that no appeal should be permitted at all against the decision or order of a Single Judge of the High Court rendered in any such proceeding to a Division Bench of the High Court. A large portion of the litigation in the High Court these days consists of Writ Petitions under articles 226 and 227 of the Constitution. Many of such cases are simple in nature and do not involve any points of importance of difficulty. By and large, they do not involve questions having an effect or impact beyond the parameters of the case. These cases can, therefore, be safely left

to be finally decided by a Single Judge. To allow a further appeal in such category of cases would not only add to the burden of arrears since such appeal would entail the attention of the High Court twice over, once before a Single Judge and thereafter before a Division Bench.

Hearing of Specified Writ Matters By Division Bench—Discretion to Refer to Larger Bench.

2.6 We are, however, conscious of the fact that there may be certain categories of Writ Cases which having regard to the importance and complexity of the questions therein involved may require consideration at the hands of a Division Bench, particularly when finality at the stage of the High Court is sought to be achieved. This problem could be solved either by providing an appeal against such decisions or by ensuring that such cases are heard by a Division Bench. Providing an appeal, as we have already pointed out, would result in protraction of litigation and add to the burden of arrears. There are other ways in which hearing of cases involving important questions can be secured before a Division Bench.

2.7 As pointed out in the Satish Chandra Committee Report, under the Rules of all the High Courts, if a Judge sitting singly takes the view that a case before him is one which should be heard by a Division Bench, the case is directed by the Chief Justice to be heard by such a Bench. This may be done by the Single Judge, either in the exercise of his own discretion or on the application of either of the parties, if the importance or the difficulty of the case justifies such a course. Normally, the Single Judge would not refuse such an application, if he is satisfied that the case is of sufficient importance to be dealt with by two Judges. Thus, cases of complexity or importance, notwithstanding the abolition of Letters Patent Appeals, can still be heard by a Division Bench. If the Rules of any High Court do not contain such a provision, similar provision should be incorporated.

2.8 Besides, certain categories of cases, may be identified which deserve to be heard by a Division Bench. The identification of such cases should be left to the discretion of each High Court which may make suitable provision in that regard in its Rules and Orders. In the Rules and Orders framed by some of the High Courts like Bombay and Gujarat, a specific categorisation of cases under articles 226 and 227 of the Constitution to be heard by a Single Judge or a Division Bench, as the case may be, is found to have been made. There is no reason why such a practice or procedure cannot be adopted in other High Courts. We are, however, of the view that cases like applications for issue of Writ of Habeas Corpus and issue of appropriate writs in externment, and deportation cases, cases arising under fiscal Acts, Labour Legislations and Public Interest Litigations, deserve to be heard by a Division Bench.

2.9 We find, however, that in some of the States a provision has been made by legislation requiring that petitions under articles 226 and/or 227 of the Constitution should be heard by a Single Judge or by a Division Bench, as the case may be. In the face of such a legislation, the High Court in those States cannot frame Rules and Orders, prescribing the respective jurisdiction of the Single Judge and the Division Bench in regard to different categories of writ cases.

Enactment of Law Recommended

2.10 Against the aforesaid background, we are of the opinion that for achieving uniformity throughout the country, Parliament should enact a law providing for:

(i) abolition of an Appeal to a Division Bench against the decision or order rendered by a Single Judge of the High Court in a proceeding under article 226 or article 227 of the Constitution; and

(ii) conferment of power on the High Courts in the matter of deciding which category of cases under article 226 and 227 of the Constitution should be heard by a Single Judge or a Division Bench, as the case may be.

2.11 The law to be enacted by the Parliament may be in the following terms:

(i) Notwithstanding anything contained in any Letters Patent of any High Court or in any other instrument having the force of law, where any decision or order has been rendered in a proceeding under articles 226 and 227 of the Constitution of India by a Single Judge of a High Court, no further appeal shall lie from such decision, judgment or order to a Division Bench of the High Court.

(ii) Notwithstanding anything contained in any law for the time being in force, the High Court may by its own Rules or Orders specify the categories of cases under article 226 and article 227 of the Constitution of India which shall be heard by a Single Judge or a Division Bench, as the case may be."

CHAPTER III

FIRST APPEALS

First Appeals Contribute Substantially To Arrears.

3.1 First Appeals constitute an important segment of civil litigation in the High Courts. Besides Regular First Appeals brought to the High Court from original decrees under section 96 of the Code of Civil Procedure, First Appeals reach the High Court under certain special Acts, such as, for example, the Guardian and Wards Act (section 47), the Land Acquisition Act (section 54), the Trade and Merchandise Marks Act (section 109(2)), the Workmen's Compensation Act (section 30), and the Motor Vehicles Act (section 110-D).

3.2 The large number of First Appeals instituted and pending in the High Courts under these different laws for decades has contributed in a substantial measure to the accumulation of arrears in the High Courts. A good deal of the time of the High Courts is taken up in disposing of First Appeals. The subject has, therefore, been the topic of discussion and recommendations in the reports of various Committees and of the Law Commission of India.

Regular First Appeals Against Decisions of Subordinate Judges.

3.3 Regular First Appeal lies under section 96 of the Code of Civil Procedure against the decree of a subordinate court passed in a civil suit. However, the value of the subject-matter of suit, which determines the forum of appeal, is not fixed by any Central Act. It is fixed by State Acts and varies from State to State.

3.4 Under the legislation in force in different provinces before the Constitution came into force. Regular First Appeals lay to the High Courts wherever the value of the subject-matter of the suit exceeded Repees Five Thousand. After the commencement of the Constitution, from time to time, the value, which is determinative of the jurisdiction, has been raised. However, such rise has not been uniform and the jurisdiction of the High Court in each State with respect of Regular First Appeals varies till date.

Recommendations/Observations of Earlier Committees and Commissions.

3.5 The High Courts Arrears Committee, 1949, set up by the Central Government under the Chairmanship of Mr. Justice S.R. Das, recommended that having regard to the depreciation in the value of money and the consequent rise in the market value of the property generally, the district Courts should be vested with the jurisdiction to deal with and decide First Appeals upto Rupees Ten Thousand.

3.6 The Law Commission of India in its 14th report (1958) also made a similar recommendation.

3.7 The High Courts Arrears Committee, 1972, recommended that the jurisdiction of the District Judges to hear First Appeals should be fixed at Rupees Twenty Thousand and that such limit should be uniformly prescribed for the entire country and that all First Appeals in the High Courts arising out of suits valued at or below Rupees Twenty thousand on the date of enactment of such law should be transferred to the District Courts unless the hearing of any appeal had actually commenced.

3.8 The Law Commission of India in its 79th report (1979) observed that the pecuniary appellate jurisdiction

of the District Judges was fixed long ago in most of the States and that having regard to the considerable depreciation in the value of rupee, it would be appropriate if the said jurisdiction was raised. However, in view of the fact that circumstances vary from State to State and place to place and the impact of the depreciation in the value of money is not felt to the same extent in different areas, the Commission did not consider it desirable to recommend a uniform figure for the entire country and observed that the matter should be left to be decided by each State.

3.9 The Satish Chandra Committee also considered the matter in great detail and expressed the firm view that having regard to the depreciation in the value of money and the corresponding rise in the market value of immovable properties and all commodities, there was urgent need to enhance the first appellate jurisdiction of the District Courts. It, therefore, recommended that retrospective legislation should be undertaken forthwith by each State providing that an appeal from a decree or an order of a Subordinate Judge should lie to the District Judge, irrespective of the value of the original suit, in accordance with the law existing in the State of Haryana. In the alternative, it recommended that in line with the existing law in the State of Punjab, an appeal from a decree or an order of a Subordinate Judge should lie to the District Judge, where the value of the original suit in which the decree or order was made, does not exceed Rupees Five lacs. The Committee further recommended that the law should provide for transfer of all pending Regular First Appeals in the High Courts of those categories to the District Courts and for the hearing and disposal of First Appeals valued at Rupees Fifty thousand or above by the District Judges personally.

Unlimited Pecuniary Jurisdiction or Jurisdiction upto Rupees Five Lakhs not Favoured.

3.10 All these reports and recommendations have been considered by us. The reasons for and against ehancement of the jurisdiction of the District Courts, so far as Regular First Appeals are concerned, have been carefully considered and weighed in these reports and in some detail in the reports of the High Courts Arrears Committee, 1972, and the Satish Chandra Committee. We need not, therefore, dilate upon them. While agreeing, in principle, with the emergent need for such enhancement, we are unable to agree with the recommendation of the Satish Chandra Committee that the District Judges should be empowered to entertain First Appeals against orders or decrees of Subordinate Judges irrespective of the value of the original suits in which the decree or order was made or where such value does not exceed Rupees Five lacs.

Appellate Jurisdiction of District Courts to be Uniformly Fixed by Central Legislation So As Not To Exceed Rupees Two Lakhs.

3.11 The problem of arrears has to be viewed primarily from the angle of litigants. Any move aimed in the direction of reducing arrears in the High Courts should not ignore the reality that the dockets of the District Courts are also overflowing and that the mere change of forum and transfer of cases from High Courts to District Courts is not going to achieve the objective of providing expeditious justice. Besides, any step in this direction must keep in view that the first appellate Court is the final forum on facts and in litigation with high stakes the litigant public naturally expects that before such finality attaches it must be dealt with at the appropriate level. A just balance has to be struck between the need to reduce arrears in the High Courts so as to provide expeditious justice and the requirement of maintaining the standard and quality of justice since neither can be sacrificed. Too radical a reform and too drastic a break from the existing system may impinge upon the faith of the people in the administration of justice. A cautious approach to the problem and a pragmatic solution with a periodical review would, therefore, be more appropriate. Taking into consideration all these factors, we are of the view that the first appellate jurisdiction of the District Courts should be enhanced so as to cover a decree of a Subordinate Judge passed in a suit the value whereof for the purpose of jurisdiction does not exceed Rupees Two lacs and that this should be done by a Central Legislation in order to achieve uniformity. There should be a review at the interval of every five years so that there may be further enlargement of such jurisdiction if the circumstances justify. Before any step in this direction is taken, however, a proper assessment of the additional requirement of Judges and staff at the District Courts level and of more court rooms and residential accommodation for the increased number of Judges must be made and the legislation should be undertaken only after the respective State Governments have agreed to the creation of such additional posts and to provide additional accommodation.

Provision That Appeals Valued At Rupees Fifty Thousand Or Above Be Heard By The District Judge Personally Not Favoured.

3.12 The Satish Chandra Committee has recommended that the legislation to be enacted in this behalf should provide that appeals valued at Rupees Fifty thousand or above should be heard and disposed of by the District Judge personally. We are of the view, however, that no such statutory provision is necessary, since the District Judge has the power to distribute work amongst his colleagues and he is expected to exercise the same with due discretion. The High Courts also have the power to issue special or general directions in the matter of distribution of work amongst the Judges of the District Courts and they too can be trusted to issue necessary instructions and guidelines depending upon the requirement of each State. It cannot be overlooked that such a statutory provision may create difficulties in its practical working and may even tend to delay the disposal of Regular First Appeals valued at Rupees Fifty thousand or above having regard to the nature of other important administrative and judicial work which the District Judge has to transact. The very purpose of enacting the law might, therefore, be frustrated if a statutory provision on the lines suggested by the Satish Chandra Committee is made.

Transfer of Pending Appeals

3.13 We agree with the recommendation of the Satish Chandra Committee that as a necessary corollary or consequences, the legislation conferring enlarged first appellate jurisdiction on the District Courts should apply to Regular First Appeals arising out of decrees passed in all original suits, whether instituted before or after the enforcement of such legislation, and that a clear provision should be made that all appeals falling within the purview of such legislation, which may be pending in the High Court on the day of its enforcement, should stand tranferred to the respective District Courts, unless the hearing of any such appeal has actually commenced.

Date For Appearance in District Courts to be Fixed by Judicial Order

3.14 Once these appeals are transferred to the District Courts, fresh notice will be required to be given to the parties by those Courts. This may occasion further delay in the disposal of the transferred appeals. In order to remedy the situation, we recommend that a provision should be made in the legislation empowering the High Courts to fix by a judicial order a date for appearance of the parties before the concerned District Courts to which such appeals stand transferred.

Date of Presentation of the Appeal in the High Courts to Decide the Age of the Appeal and Priority For Hearing

3.15 Whenever a case is transferred to another Court, the practice generally followed by the transferee Court is to give a new number to such case, as if it was filed in that Court in the year in which it was received by that Court by transfer. This would contribute to the delay in the hearing and disposal of the transferred appeals. unless they are notionally treated as having been instituted on the date of their original filing in the High Court. We, therefore, recommend that a suitable direction should be issued by the High Courts to the transferee District Courts to take the age of the transferred appeals into account, on the basis of the date of their presentation in the High Court, for the purpose of priority in the matter of listing of such appeals for final hearing.

Single Judge to Hear Appeals Below Rupees Three Lacs

3.16 In some of the High Courts, all Regular First Appeals are heard and decided only by a Division Bench. In the olden times, when the litigation proceeded at a leisurely pace, the luxury of hearing of all these appeals by a Division Bench might have been justified. It appears to us, however, in the context of the changed times, that not all such appeals need to be heard by a Division Bench. A Single Judge hears and disposes of cases involving important points of law in writ Jurisdiction and in many other categories of cases, although the effect of the decision may transcend the parameters of the case. If a District Judge sitting singly can hear Regular First Appeals, there is no reason why in the High Courts all Regular First Appeals should be heard by a Division Bench. We, therefore, recommend that Regular First Appeals arising out of decrees passed in suits, where the value of the subject-matter is below Rupees Three lacs, should be heard and disposed of by a Single Judge and others by a Division Bench. Needless to add that it would be permissible for a Single Judge, who hears an appeal,

to refer it to a Division Bench, when he thinks it necessary so to do, as for example, on the ground that an important question of law arises for decision in the case. It may be mentioned that in the report of the High Courts Arrears Committee, 1972, a similar recommendation was made with respect to First Appeals arising from decrees in regular suits where the subject-matter of the suit was between Rupees Twenty thousand and Rupees Thirty thousand and such appeals were recommended to be heard by a Single Judge. The Law Commission of India in its One Hundred Twentyfourth report has, in fact, recommended that rules of the High Courts should be amended so as to provide for hearing by a Single Judge of every matter when it comes to the High Court except where the statute provides to the contrary.

Appeals to be Listed For Admission—Brief Reasons For Rejection to be Given—Appeals Involving Triable Issues Not to be Dismissed In Limine.

3.17 Reference needs to be made next to the procedure followed in the High Courts with regard to the listing of Regular First Appeals for hearing and the need to bring uniformity and to make improvement therein. In the Calcutta High Court, Regular First Appeals are not listed for preliminary hearing. They are straightaway listed for final hearing in due course. In some of the High Courts, although preliminary hearing takes place, it is more of a formality, since the view prevails that a litigant must have atleast one chance of full review of the case by the higher court at final hearing. In our view, there is no justification for not listing Regular First Appeals for preliminary hearing or admitting them as of course. Admitting appeals for final hearing regardless of merit not only encourages frivolous litigation and adds to the cost thereof but also leads to avoidable accumulation of cases in the High Courts. Not all appeals necessarily have merit nor do they involve points which cannot be briefly dealt with and rejected at the preliminary hearing. Such appeals ought to be summarily dismissed at the admission, stage. Indeed, the provisions of Order XLI rules 11, 11A and 12 of the Code of Civil Procedure read together make it obligatory for the appellate court to fix a day for the preliminary hearing of appeal as expeditiously as possible and to make endeavour to conclude such hearing within sixty days from the date on which the memorandum of appeal is filed and, unless the appeal is summarily dismissed at preliminary hearing, to fix a day for final hearing. In other words, the question of fixing a day for the final hearing of appeal arises only if the appeal is not summarily dismised at the preliminary hearing which has to be fixed as expeditiously as possible after the memorandum of appeal is filed. In our view, these provisions should be strictly followed. However, care should be taken that an appeal which raises triable issue is not dismissed in limine. We would also like to emphasise that when an appeal is dismissed in limine, a brief order giving reasons for dismissal at the preliminary stage should invariably be recorded. A similar recommendation has been made by the Law Commission of India in its 79th report.

APPEALS AGAINST JUDGMENTS OF CITY CIVIL COURTS

City Civil Courts—Difference in Structure, Composition & Jurisdiction

3.18 In cities like Bombay, Calcutta, Madras, Ahmedabad, Bangalore and Hyderabad, City Civil Courts have been set up. However, there are difference as regards the structure and composition of the various City Civil Courts.

3.19 In the City Civil Courts at Calcutta, Bombay, Ahmedabad and Bangalore, the presiding Officers are of the rank of District Judges. The jurisdiction of the City Civil Court at Calcutta is up to Rupees One lac. The jurisdiction of the City Civil Court at Bombay is up to Rupees Fifty thousand. However, by Act 15 of 1987 passed by the Maharashtra Legislature, which has not yet been brought into force, the jurisdiction has been made unlimited. The City Civil Courts at Ahmedabad and Bangalore had unlimited jurisdiction. Appeals against the decisions rendered by the City Civil Courts in these four cities lie directly to the respective High Courts within whose jurisdiction they function.

3.20 In the City Civil Court at Madras, there is a Principal Judge and nine Additional City Civil Court Judges, all of whom belong to the Higher Judicial service, and 18 Subordinate Judges, who are called Assistant City Civil Court Judges. The pecuniary jurisdiction of the Court is Rupees one lac. Appeals up to the pecuniary limit of Rupees Thirty thousand lie before the Principal Judge of the City Civil Court who can either himself hear them or transfer such appeals to any of the nine Additional City Civil Court Judges for hearing. Appeals exceeding

the pecuniary limit of Rs.30,000 lie directly to the Madras High Court. In the High Court, appeals from City Civil Court above the value of Rupees Thirty thousand but below Rupees Fifty thousand are heard by a Single Judge.

3.21 In the City Civil Court at Hyderabad, there is a Chief Judge, eight Additional Chief Judges, five Subordinate Judges and fifteen Munsiffs. Munsiffs of City Civil Court are empowered to try original suits upto the pecunairy limit of Rupees Twenty thousand. Subordinate Judges of the City Civil Court are empowered to try original suits upto the pecuniary limit of Rupees Thirty Thousand. Appeals from the judgments and orders passed by Munsiffs and Subordinate Judges upto the pecuniary limit of Rupees Thirty thousand lie before the Chief Judge who can hear them or transfer them for hearing to any of the eight Additional Chief Judges. First Appeals from the judgments and orders involving value in excess of Rupees Thirty thousand lie to the Andhra Pradesh High Court.

3.22 It would thus appear that there is no uniform pattern as regards the forum of appeal, so far as decision rendered by the various City Civil Courts established in the country are concerned. Appeals from the decisions of four City Civil Courts lie directly to the High Court whereas there is a provision for internal appeals within the Court itself with respect to decisions of the other two City Civil Courts where the claim in the appeal or in the original suit, as the case may be, is upto a certain limit.

Views of High Courts Arrears Committee 1972 and Recommendations of the Law Commission

3.23 The High Courts Arrears Committee, 1972, was of the view that it was advisable to provide for internal appeals within the City Civil Court in matters of small value so that the High Court may not be called upon to deal with petty cases. The Law Commission of India in its 79th report considered this aspect and expressed the view that in view of the differences as regards the structure and composition of the various City Civil Courts, to adopt a uniform pattern in the matter of forum of appeal, would have the effect of not only disturbing the status quo but also causing considerable dislocation in the system operating in the different States. It was, therefore, recommended that in case any change was called for, the same should be effected by local legislation in the light of the circumstances and difficulties encounterd in the State.

Forum of Appeal to be Decided State-Wise

3.24 We are of the opinion that although uniformity in regard to the forum of appeal may be advisable and the provision of internal appeals within the City Civil Courts in matters of small value may tend to lessen the burden on High Courts, the matter may be left to be decided locally having regard to the varied structure and composition of the different City Civil Courts.

APPEALS UNDER SPECIAL ACTS

Empowering District Judges to Hear Such Appeals With Finality Attached.

3.25 As observed earlier, apart from Regular First Appeals, there are statutory appeals which lie to the High Court under special Acts. We understand that in some of the States cases arising under some of these statutes are not tried by the District Courts or Tribunals presided over by judicial officers, but by other Courts or authorities. We are of the view that in such cases the appeal should lie to the District Court and not to the High Court. The decision in such appeals should be made final. We, therefore, recommend that appropriate amendments be made in those statutes providing for appeal to the District Court in cases where the trial is held by a Court inferior to the District Court or by any other authority with a further provision that the decision in such appeal shall be final.

GENERAL RECOMMENDATIONS

Certified Copy of Decree Need Not Accompany Memorandum of Appeal

3.26 The Law Commission of India in its One Hundred Twenty Fourth report expressed the view that Order XLI rule 1 of the Code of Civil Procedure should be amended so as to dispense with the requirement of annexing a

certified copy of the decree to the memorandum of appeal and to allow the appeal being filed by producing the operative part of the judgment along with the memorandum of appeal. It was observed in the report that the period of limitation within which the apeal is to be preferred gets extended to the extent of the time-lag between the date the copy of the decree is applied for and is made ready and that occasionally the delay is such that the limitation gets extended twice, thrice and in rare cases even ten times. The copy of the decree, according to the report, is hardly relevant or necessary or even looked into for the purpose of deciding whether the appeal should or should not be admitted under Order XLI rule 11 of the Code of Civil Procedure and, therefore, the provision regarding the annexation of a copy of the decree to the memorandum of appeal has become anachronic and is of doubtful utility.

3.27 We are in agreement with the view that the requirement of annexing a certified copy of the decree to the memorandum of appeal is of doubtful utility, having regard to the fact that for the purposes of deciding the appeal, whether at the preliminary stage or at the stage of final hearing, the decree is hardly ever referred to. However, since the law requires the compliance of this formality and the drawing up of a decree by the trial court often takes considerable time after the judgment is ready and pronounced, the period of limitation within which the appeal is to be preferred gets extended and thereby the duration of litigation is also increased.

3.28 It may be pointed out in this connection that under sections 96 and 100 of the Code of Civil Procedure, an appeal lies from a decree. Order XLI rule 1 of the Code, *inter alia*, provides that the memorandum of appeal shall be accompanied by a copy of the decree appealed from. Order XX rule 6 of the Code, which deals with the contents of decree, provides, *inter alia*, that the decree shall agree with the judgment and that it shall contain the number of the suit, the names and descriptions of the parties, their registered addresses, particulars of the claim and the amount of costs incurred in the suit. Order XX, rule 7 of the Code provides, *inter alia*, that the decree shall bear date the day on which the judgment was pronounced. Article 116 appearing in the Second Division of the Schedule to the Limitation Act prescribes the period of limitation for preferring an appeal to a High Court from any decree or order under the Code of Civil Procedure and the time from which the period begins to run is the date of the decree or order. Section 12 of the Limitation Act provides, *inter alia*, that in computing the period of limitation for an appeal the time requisite for obtaining a copy of the decree appealed from shall be excluded.

3.29 On a combined reading of these various statutory provisions it is apparent that an appeal lies from a decree, that the requirement of annexing a copy of the decree appealed from to the memorandum of appeal is mandatory, that the period of limitation is computed with reference to the date of decree annd that the time requisite for obtaining a copy of the decree is excluded while computing such period.

3.30 Order XX, rule 6A of the Code of Civil Procedure, however, enables an appeal being preferred against a decree without filing a copy thereof and by a fiction permits the last paragraph of the judgment to be treated as the decree for the purpose of Order XLI Rule 1 and for execution under certain circumstances. The said Rule reads as follows:

> "6A(1). The last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment.
>
> (2) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced but where the decree is not drawn up within the time aforesaid, the Court shall if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay, and thereupon—
>
> (a) an appeal may be preferred against the decree without filing a copy of the decree and in such a case the last paragraph of the judgment shall, for the purposes of rule 1 of Order XLI, be treated as the decree; and
>
> (b) so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution and the party interested shall be entitled to apply for a copy of that paragraph only without being required to apply for a copy of the whole of

the judgment; but as soon as a decree is drawn up, the last paragraph of the judgment shall cease to have the effect of a decree for the purpose of execution or for any other purpose:

Provided that, where an applicattion is made for obtaining a copy of only the last paragraph of the judgment, such copy shall indicate the name and address of all the parties to the suit."

3.31 It is, thus, apparent that the requirement of annexing a copy of the decree along with the memorandum of appeal is relaxable if the decree is not drawn up provided a party desirous of appealing against the decree obtains the requisite certificate from the Court passing the decree.

3.32 Taking into consideration the various statutory provisions bearing upon the point under consideration, we are of the view that the requirement of annexing a copy of the decree to the memorandum of appeal needs to be dispensed with. We, therefore, recommend that not only Order XLI rule 1 of the Code of Civil Procedure but also section 96 and 100 of the Code of Civil Procedure and section 12 and article 116 of the Limitation Act will require to be suitably amended in order to achieve the purpose of cutting short the length of litigation and the extension of the period of limitation on account of the requirement of annexing a copy of the decree to the memorandum of appeal. A portion of Order XX, Rule 6A will also have to be deleted. The amendment can take the form of a deeming provision similar to the one found in Order XX, Rule 6A, sub-rule (2) Clauses (a) and (b) which enables the last or operative part of the judgment being treated as decree. At the same time, however, the requirement of annexing a certified copy of the judgment to the memorandum of appeal will have to be made mandatory and it will also have to be provided that the judgment shall indicate the names, descriptions and registered addresses of all the parties to the suit and particulars of the claim including the valuation for the purpose of jurisdiction and Court fee. Such a provision, in our opinion, will go a long way in minimising the length of period between the date of pronouncement of judgment and the presentation of appeal.

Section 17 of the Divorce Act—Provision For Confirmation to be Omitted—Appeal to be Heard by Single Judge

3.33 We further recommend that section 17 of the Indian Divorce Act, under which a decree of divorce granted by the District Judge needs to be confirmed by a Special Bench consisting of three Judges of the High Court, should be done away with altogether. This procedure not only causes delay in the final disposal of the petition for divorce but also subjects the parties to unnecessary expenses. No such provision is to be found in the Hindu Marriage Act and there is no reason why it should find place in an analogous law governing a community following another religion. We may add that substantially similar recommendation was made by the Law Commission of India in its 22nd report. Similar recommendation was also made by the High Courts Arrears Committee, 1972, and by the Law Commission of India in the 79th report. However, simultaneously with the deletion of the aforesaid provision, a right of appeal will have to be provided to a party aggrieved by a decree of divorce. Such an appeal shall lie to the High Court and should be heard by a Single Judge.

CHAPTER IV

SECOND APPEALS

Multiplicity of Appeals—Cause For Delay

4.1 The Indian Legal System permits multiplicity of appeals. A litigant resorts to appeal after appeal for the reasons that (i) he feels that injustice has been done to him. (ii) there is a good chance of his getting a decision in his favour from an appellate court, (iii) there is a provision in the relevant statutes for a number of appeals, and (iv) the intention is to prolong the litigation thereby postponing the consequences of the adverse decision.

4.2 The multiplicity of appeals not only causes enormous delays but also adds to the cost of litigation. A case commenced in the trial court is generally taken in appeal to the first appellate court and thence to the High Court. If the nature of the case permits, the case may eventually be taken to the Supreme Court.

Reduction in Number of Appeals Favoured All Along

4.3 The question is, therefore, whether, and how far, the right of appeal can be curtailed with a view to making justice cheaper and speedier and thereby reducing the ever-increasing arrears in the High Courts. The view that there should ordinarily be only one appeal in civil cases, followed by a revision on the ground of failure or miscarriage of justice, has been propounded in India for more than a century.

4.4 Sir James Stephen, in the year 1872, while summing up the view of the Judges of the Calcutta High Court, observed that the whole system of appeal in civil cases was radically faulty and the number of appeals ought to be greatly reduced and the inferior courts strengthened. Sir Barnes Peacock, one of the Judges, suggested the abolition of second appeals altogether.

4.5 The Rankin Committee, which was constituted in the year 1924 to deal with the question of dealy in the disposal of civil cases both in the High Courts and Subordinate Courts, had expressed the view that it is possible to give finality to cases of small and intermediate valuation by providing for only one good appeal on facts and law. It was pointed out by the Committee that the great volume of litigation in India was of a character and value which required "a trial and one good appeal" both on fact and law and that any other elaborate process was unnecessary.

4.6 The Law Commission in its 14th Report concurred generally with the views expressed by Rankin Committee more than 60 years ago. The Commission noted that even during the mid-fifties, a large number of second appeals pending in the High Courts were of relatively low valuation. The Commission, however, did not propose any substantial curtailment of the right of appeal. The only change proposed was in respect of section 102 of the Code of Civil Procedure. Section 102, as it then existed in the Code, provided that no second appeal would lie in any suit of the nature cognizable by courts of Small Causes when the amount or value of the subject-matter did not exceed Rupees One thousand. The Commission recommended that the limit of Rupees One thousand may be raised to Rupees Two thousand. It also recommended that there should be no second appeal even in case of suits of a value exceeding that prescribed by section 102 which are not of small causes nature and in which no right to immovable property was involved. The Commission also referred to the problem posed by the unduly lenient admission of second appeals and observed that having regard to the terms of section 100, an appeal should not be admitted merely because the appellant has shown that an arguable or *prima facie* valid point of law arises in the

appeal, but the court has to be satisfied that the decision of the lower appellate court on a point of law was erroneous and that in order to do justice between the appellant and the respondent, it is further essential that a further hearing should be given to both the parties. The Commission felt that the existing alarming position of arrears could be met if it was recommended that the High Courts should adopt the practice of circulating the papers relating to second appeal to a Judge outside the court hours for the purpose of enabling him to determine whether it should be admitted straightaway and notice issued to respondent or whether the appeal should be posted for a preliminary hearing under Order XLI Rule 11. The Commission also recommended that the scrutiny of the second appeals should be made by a senior and experienced Judge.

4.7 While dealing with the Code of Civil Procedure 1908, the Law Commission in its 27th Report agreed with the recommendations made in the 14th Report regarding amendment of section 102 for raising the limit of Rupees One thousand. However, it suggested that the limit should be raised to Rupees Three thousand instead of Rupees Two thousand as earlier recommended in view of the further fall in the value of money and that no further amendment should be made in section 102 of the Code.

4.8 The High Courts Arrears Committee, 1972, felt concerned with the pendency of a disproportionately large number of second appeals in the High Courts. The Committee pointed out that the primary cause of accumulation was the laxity with which the second appeals were admitted without serious scrutiny in the light of the provisions of section 100 of the Code of Civil Procedure, 1908. The Committee, while agreeing with the views of the High Courts Arrears Committee, 1949, and the 14th Report of the Law Commission, observed that:

> "A strict scrutiny of Second Appeals having regard to these principles would go a long way to reduce the inflow of second appeals many of which eventually have to be dismissed as not falling with the four corners of section 100 C.P. Code. A system may be devised by which all second appeals, after they are registered by the High Court registry, may be scrutinised by a Single Judge of the High Court after working hours for determining whether they should be admitted straightaway and notice issued to respondent or whether the appeal should be posted for a preliminary hearing under Order XLI Rule 11. Only those fit to be admitted should be admitted, unless caveat has been filed, straightaway and those which require further consideration or appear to be unfit to be admitted, should be put down for hearing in Court under Order XLI Rule 11."

4.9 The Law Commission in its 54th Report on "The Code of Civil Procedure, 1908" noted that the earlier recommendations made by the Law Commission and the High Courts Arrears Committees did not appear to have been implemented and the position of arrears pending in the High Courts, partly because of an indiscriminate admission of second appeals and civil revision applications, grew from bad to worse. After examining the scope of section 100, Code of Civil Procedure, 1908 in the context of the situation then prevailing in the High Courts and having considered the matter in all its aspects, the Commission recommended that the right of second appeal should be confined to cases where:

(i) a question of law is involved; and

(ii) the question of law so involved is substantial.

It was further recommended that a question of fact which has been wrongly decided by the court of first appeal or the finding of fact supposed to be perverse or *manifestly* unjust should not constitute a ground for second appeal.

Amendment of Section 100 C.P.C.

4.10 Section 100 of the Code of Civil Procedure, 1908, was amended by the Amendment Act No. 104 of 1976 with effect from February 1, 1977, prescribing that second appeals would be permitted not merely on questions of law but on substantial questions of law. Section 102 of the Code was also amended and the limit of Rupees One thousand prescribed therein was raised to Rupees Three thousand presumably in terms of the recommendations made by the Law Commission of India.

Abolition of Second Appeals Not Favoured by Law Commission

4.11 The question whether the right of second appeal should be altogether done away with again came to be examined by the Law Commission in its 79th Report on "Delay and Arrears in High Courts and other Appellate Courts." The Commission did not favour the idea of doing away with the right of second appeals on a substantial question of law as provided by section 100 of the Code of Civil Procedure for the reason that there should be uniformity of decisions on questions of law in a State. The Commission observed that if the findings of the subordinate courts when deciding a first appeal were to have a finality on a question of law, the inevitable effect of that would be that we shall be confronted with the situation wherein, on identical questions of law, the different courts in the State would be taking different and sometimes diametrically opposite views, which is wholly undesirable and should not be countenanced.

Satish Chandra Committee Views

4.12 The Satish Chandra Committee while dealing with the question of the right of second appeal observed that the actual working of the amended section seems to have shown little practical effect. However, while recommending the retention of the right of second appeal, it recommended that the limit envisaged in section 102 of the Code of Civil Procedure, 1908, should be enhanced to Rupees Ten thousand from the existing limit of Rupees Three thousand and the section should be made applicable to all suits and not restricted to those cognizable by the court of Small Causes. In other words, the Committee suggested the abolition of the right of second appeal in matters where value of the subject-matter does not exceed Rupees Ten thousand. In matters where the value exceeds Rupees Ten thousand the right of second appeal was proposed to be retained within the limitations of section 100 of the Code of Civil Procedure that a substantial question of law is involved therein.

4.13 It will be seen that there has been a preponderance of opinion that the right of Second Appeal protracts litigation and it appears to have been suggested also that such right should be abolished altogether. The cost of litigation would undoubtedly be minimised and justice may become speedier, if second appeal is dispensed with altogether by giving finality to the decision of the First Appellate Court. However, as observed in the 79th Report of the Law Commission of India, the limited right of second appeal on substantial question of alw as provided by section 100 of the Code of Civil Procedure cannot be taken away altogether since a situation may arise where, on identical questions of law, different courts in the State might take different and sometime diametrically opposite views, which is certainly not a condition which could be allowed to prevail. The important question, therefore, is whether and how far such right of appeal can be curtailed and regulated with a view to achieving the goal of expeditious and inexpensive justice.

No Second Appeal Where The Value of Subject-Matter Does Not Exceed Rupees Ten Thousand

4.14 The Satish Chandra Committee observed that in matters of small and intermediate valuation, there should be a trial and one appeal and that the said principle was buttressed by the provisions contained in the Small Causes Courts Act in force in various States in which no right of even First Appeal from decree passed in suits triable by Small Causes Courts or regular Courts exercising powers of Small Cuases is provided. We agree with this view. There is no reason to believe that if right of second appeal is abolished in matters of small valuation, injustice might result to the litigants. By and large, the District Appellate Judges, who are senior and experienced Judicial Officers, can be depended upon to decide questions both of fact and law with reasonable satisfaction. We, therefore, endorse the recommendation made by the Satish Chandra Committee that the pecuniary limit upto which no second appeal would lie as prescribed in section 102 of the Code of Civil Procedure should be enchanced to Rupees Ten thousand and that it should be applicable to all suits and not restricted to those cognizable by the Courts of Small Causes. We accordingly recommend that section 102 of the Code of Civil Procedure should be amended as follows:

> "Section 102.—No Second Appeal shall lie in any suit when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees."

Decisions against which no Second Appeal lies will continue to be subject to the revisional jurisdiction of the High Courts.

Limited Retrospectivity

4.15 We are also of the view that limited retrospective effect should be given to the proposed amendment so as to make it applicable to all original suits pending in the Trial Courts on the day on which the amendment comes into force. It follows that Second Appeals pending in the High Courts on the date of coming into force of the amendment as also appeals that may be pending in the First Appellate Court would not be affected.

Order XLI Rule 11 to be Strictly Enforced—Caveats to be Encouraged—Insistence of Proper Formulation of Substantial Question(s) of Law.

4.16 We further agree with the recommendation of the Satish Chandra Committee that the provisions of Order XLI Rule 11 of the Code of Civil Procedure should be strictly applied to Second Appeals in conformity with the spirit of section 100 as amended in 1976. This would prevent the admission of frivolous Second Appeals. Besides, the procedure to file caveat by respondent(s) should be adopted and encouraged so that he can be heard before admission and Second Appeals not involving any substantial question of law can be easily weeded out at that stage. A study of Second Appeals by prior circulation and entrustment of the work of admission of those appeals to experienced Judges would provide a great restraint against the inflow and admission of undeserving Second Appeals, There should also be insistence upon a proper formulation of substantial question(s) of law under a separate heading in the Memorandum of Appeal itself so that lengthy and rambling arguments can be curtailed and Counsel can be asked to confine his arguments to the question(s) so formulated.

Second Appeals to be Heard by Single Judge

4.17 It appears that there is no uniform practice with regard to listing of Second Appeas for preliminary and final hearing in all the High Courts. In the Calcutta High Court, Second Appeals exceeding Rupees Five thousand in value are heard by a Division Bench. The luxury of hearing of Second Appeals by a Division Bench cannot be afforded now having regard to the large pendency of cases in the High Courts. It is, therefore, essential that appropriate amendment be made in the relevant rules or statutes, as the case may be, so that the hearing of Second Appeals takes place before a Single Judge.

Certified Copy of Decree Need Not Accompany Memorandum of Appeal

4.18 The recommendation made by us in the chapter relating to Regular First Appeals that the requirement of annexing a certified copy of the decree to the Memorandum of Appeal should be dispensed with would cover second Appeals also.

CHAPTER V

REVISIONS

Indiscriminate Exercise of Revisional Power Contributes to Delay

5.1 The Revisional Jurisdiction exercised by the High Courts under section 115 of the Code of Civil Procedure has often been considered as contributing to the delay of the proceedings in the lower courts. Many suggestions had been made during the past five to six decades to restrict the scope of this jurisdiction and thus to avoid the delay in the progress of the cases in subordinate courts.

5.2 In 1976 this provision was amended introducing certain limitations to the exercise of the revisional jurisdiction. At present the High Court can interfere with an order of the subordinate court only if it has exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity. There is a further limitation that even if an order falls within any of the three clauses mentioned above the same should not be varied or reversed except where the order, if it was made in favour of the Revision Petitioner, would have finally disposed of the suit or other proceeding or the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. In spite of the several limitations imposed on the exercise of the Revisional Jurisdiction under section 115 C.P.C. there is an impression that this continues to be a source of delay of proceedings in the lower court.

Satish Chandra Committee's Recommendations

5.3 Satish Chandra Committee has recommended certain amendments to further restrict the exercise of Revisional Jurisdiction by the High Court. One of the recommendations is to confer Revisional Powers on the District Courts under section 25 of the Provincial Small Cause Courts Act and in suits or other proceedings of the value of Rupees Five lakhs. After giving careful consideration to this suggestion, this Committe is not in favour of accepting the same.

Reasons For Non-Acceptance of the Satish Chandra Committee's Recommendations

5.4 Historically, power of revision has been conferred on the High Court by way of supervisory jurisdiction. Such power enables the High Court to keep the subordinate courts within the bounds of their jurisdiction and incidentally to assess the quality of judicial work of subordinate courts at different levels. It is, therefore, not desirable to denude the High Court of such power of Superintendence by conferring revisional power on the District Courts.

5.5 Having regard to the nature of the power of revision and its misuse pointed out in the Satish Chandra Committee Report and also having regard to the observation in the said report that for its proper exercise such work has to be entrusted only to senior Judges of the High Court who are well-versed and truly steeped in the philosophy of the limited jurisdiction conferred by section 115 of the C.P.C., we are firmly of the opinion that the conferment of such an important power on the District Courts is not justified and would not, in any manner, advance the object sought to be achieved.

5.6 By conferment of revisional power on the District Courts, only the forum will be changed. Conferment of such power on the District Courts, though it may reduce the burden of the High Court to some extent, yet it will certainly add to the burden of the District Courts and will not achieve the object of reduction of arrears as a whole or of speedy disposal of cases.

5.7 Conferment of power on the District Courts may have the advantage of easy accessibility for the litigants, but at the same time it is likely to encourage frivolous invocation of the revisional jurisdiction and thereby protract the litigation, defeating the very purpose of the conferment of the revisional power on the District Courts. This is in addition to the consideration as to the quality of legal assistance and services ordinarily available at the district level.

5.8 The Committee would, however, like to clarify that it is not in favour of entrustment of revisional power on the District Courts for the reasons aforesaid and not on account of lack of trust in those Courts.

5.9 As the Committee is not in favour of conferment of revisional power on the District Courts either under section 115 of the Code of Civil Procedure or under section 25 of the Provincial Small Cause Courts Act, the question of amending articles 226 and 227 of the Constitution so as to make them inapplicable to the revisional decisions of the District Courts under those provisions, as proposed in the Satish Chandra Committee report, does not arise.

Revision Against Interlocutory Orders—Amendment of Section 115 C.P.C. Recommended

5.10 We have given anxious consideration be the question as to whether section 115 should be amended in such a way as to debar the revisional jurisdiction in respect of an interlocutory order passed in an appeal, trial or other proceeding, to prevent the delay in the proceedings of the subordinate courts caused due to the frequent filing of Revision Petitions against all interlocutory orders. The Committee is of the opinion that the object sought to be achieved can more effectively be achieved by deleting clause (b) to the proviso to sub-section (1) of section 115 C.P.C. which reads:

> "The order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made."

5.11 If revision against all types of interlocutory orders is barred it will virtually denude the High Court of the power of revision. Having regard to the constraints already placed upon the exercise of the revisional powers by the existing provisions of sub-section (1) of section 115 C.P.C., there may not be many cases where revisional power can be exercised if the said recommendation is accepted. Besides, barring of revision petitions against interlocutory orders while retaining clause (a) of the proviso to sub-section (1) of section 115 C.P.C. would, to some extent, come in conflict with the said clause which envisages interference by the High Court even with interlocutory orders which, if had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding. In fact, the retention of the existing revisional power with the restrictions contained in clause (a) of the proviso would enable the High Court to put an end to unsustainable and protracted litigation in subordinate courts. For example, in case a suit is clearly barred by limitation or by the principles of *res judicata* or is not maintainable on the ground of lack of jurisdiction and an erroneous order passed by the trial court on an issue covering such a dispute is not corrected in revision on the ground that the decision is of interlocutory nature, there would be unnecessary protraction of the litigation in the subordinate courts contributing to increase in arrears. At the same time, clause (b) of the proviso to sub-section (1) of section 115 C.P.C. which enables interference in revision on the ground that an order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it is made, leaves wide scope for the exercise of the revisional power with all types of interlocutory orders presumably not intended.

5.12 While the Committee agrees, in principle, that the scope of interference against interlocutory orders should be restricted, it feels that that object can more effectively be achieved without, at the same time, denuding the High Court of the power of revision, by deleting clause (b) of the proviso to sub-section (1) of section 115 C.P.C. The Committee, therefore, recommends that the only amendment which is required to be made in

sub-section (1) of section 115 of the Code of Civil Procedure is to substitute the existing proviso to sub-section (1) by the following:

> "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

Statutory Provision Similar to Order XLI Rule 5 not Called for

5.13 There is a proposal to enact a provision similar to Order XLI Rule 5 of the Code of Civil Procedure in regard to grant of stay in the revisional jurisdiction. This Committee is not in favour of such a proposal for the following reasons:

(i) The High Court having been conferred with the power of revision under section 115 C.P.C. it is legitimate to expect that such power will be exercised as the circumstances and justice of the case merit.

(ii) The nature of the revisional power being quite different from the appellate power, enactment of a provision similar to Order XLI Rule 5 C.P.C. in the matter of grant of stay in exercise of revisional jurisdiction is not called for.

(iii) The condition for the exercise of power of stay laid down in Order XLI Rules 5 C.P.C. may not apply *proprio vigore* to all types of cases arising under revisional jurisdiction.

Records not to be Sent Unless Directed

5.14 It has been noticed that often records of the lower court in a pending proceeding are sent for reference in Revision Petitions. It cannot be gainsaid that once the records are sent to the High Court, the trial of the suit, proceeding or hearing of the appeal comes to a halt, even though no stay of proceedings has been granted by the High Court. It is imperative that records of proceedings pending in the subordinate courts should not be sent unless the High Court expressly so desires. In order to effectively implement this proposal, instead of leaving the matter to the respective High Courts to make an appropriate provision in their Rules or Orders, we recommend that the following shall be added as sub-section (3) to section 115 of Code of Civil Procedure:

> "In a revisional proceeding under this section against interlocutory decisions, the subordinate court shall not send its records unless the High Court expressly so directs."

CHAPTER VI

REMEDIAL MEASURES FOR ARREARS ON CRIMINAL SIDE

Need for Speedy Justice

6.1 There is no denying the fact that there has been a considerable increase in the crime-rate in the entire country. Though the Judiciary may not have any direct concern with the increase of the crime-rate it has its concern with the disposal of criminal justice and how delay in that area contributes to the increase in the crime-rate. The delay in the disposal of criminal cases at the trial stage is not only against the mandate of the law but it also does a great injustice both to the victim and the society as also to the assailant. It is injustice to the victim and to the society because human memory is short and with the passage of time much of evidence is lost as apparently many influences are at work. We are living in a materialistic society where temptations on account of economic considerations tend to overtake many, and the truth becomes the first casualty. Justice suffers, and so does the society. The crime goes unpunished and the criminal is encouraged. That is how the delay in the disposal of criminal cases becomes in a way the negative contribution of the Judiciary to the increase in the crime-rate. Instances are many of cases where on account of gross delay in the matter of disposal of cases, accused have to languish in jail pending trial or appeal for a longer period than the period of punishment that could be imposed for the commission of which offence they have been charged. Criminals who are let on bail pending trial have often availed of that opportunity for committing many more offences. The Supreme Court has time and again emphasised the need to speed up the criminal justice delivery system in the country. Though several loopholes which contributed to delay have been plugged by the Code of Criminal Procedure, 1973, we find that there are several areas where the problem has not been adequately tackled. Delays are caused having regards *inter alia* to the nature of the procedural laws, practice and procedure followed by the criminal courts, and the inadequacies of the investigating and prosecuting agencies.

Hearing by Division Bench and Single Judges

6.2 Under the Rules of several High Courts, criminal appeals are required to be heard by a Bench of two Judges. We are in entire agreement with the recommendation of the Satish Chandra Committee that only criminal appeals involving sentence of death or imprisonment for life should be heard by a Bench of two Judges. We would like to add that appeals against acquittals in cases which are likely to result in the imposition of the sentence of death or imprisonment for life should also be heard by a Bench of two Judges. All other criminal appeals and revision applications should be heard by a Single Judge. The relevant rules or statutory provisions of different High Courts which do not contain such provisions, should be suitably amended.

SEC. 397 CR.P.C. No Concurrent Jurisdiction

6.3 Section 397 of the Code of Criminal Procedure has conferred revisional jurisdiction concurrently on the High Court and the Court of Session. It is not desirable to leave it to the party to choose his forum. We recommend that Court of Session should have exclusive power of revision against orders of criminal courts subordinate to the Court of Session and that the High Court should have power of revision only against the orders of the Court of Session/Special Courts other than those passed in exercise of their revisional jurisdiction.

Anticipatory Bail

6.4 Section 438 of the Code of Criminal Procedure confers jurisdiction on granting anticipatory bail to the High Court as also the Court of Session. As the Court of Session has the power to deal with Sessions Cases resulting in the imposition of the death sentence or imprisonment for life, there is no reason why such a Court

could not be considered adequate to deal with applications for grant of anticipatory bail. Needless time of the High Court would be spent in dealing with applications for grant of anticipatory bail. We, therefore, recommend that Section 438 of the Code of Criminal Procedure be suitably amended restricting the power of granting anticipatory bail to the Court of Session.

Acquittal Appeals—Need For Scrutiny

6.5 We find that a large number of frivolous appeals are filed by the State against orders/judgments of acquittals without proper scrutiny on behalf of the State. We recommend that State Governments should set up proper machinery to carefully and objectively scrutinise proposals for preferring appeals against orders/judgments of acquittals, before taking decision to prefer appeals.

Public Prosecutors—Appointment of

6.6 The functioning of the criminal courts is often handicapped for want of adequate number of Public Prosecutors. The State Government should appoint not less than two Additional Public Prosecutors for each criminal court. Adequate attention must be paid to appoint competent lawyers as Public Prosecutors to improve the quality of assistance to the criminal courts.

Paper Books—in Appeals

6.7 We agree with the recommendation of the Satish Chandra Committee that no paper book need be prepared in regard to criminal appeals which are required to be heard by a Single Judge as the original records of the case would be readily available for the Judge.

6.8 As regards criminal cases involving death sentence we find that in some of the High Courts provisions exist which require that the records in such cases should be got printed. There is considerable delay in getting the records printed and consequently the disposal of such criminal cases is delayed, though they are required to be dealt with expeditiously. We, therefore, recommend that the statutory rules or provisions which require printing of paper books/records should be suitably modified providing for typed or cyclostyled paper books.

6.9 Preparation of paper book for appeals and furnishing of copies by the criminal courts under section 207 of the Code of Criminal Procedure can be speeded up considerably if photostat copying machines are used. We, therefore, recommend that every criminal court should be provided with atleast one photocopying machine.

Service of Summons—Effective Machinery

6.10 Trial of criminal cases is often delayed because the service of summons on the accused is not effected promptly. Similary delay occurs in securing attendance of prosecution witnesses and even in securing the presence of the accused who are in jail. The reason often assigned is that there are not adequate number of police men and that the limited force available was required for emergency bandobust work, etc. The criminal courts do not have any effective control in this behalf over the functioning of the police constable. We, therefore, recommend that adequate number of police constables should be attached to each police station exclusively to attend to the work of each court as per its directions.

6.11 It is often noticed that delay occurs in serving medical officers, expert witnesses and even investigating officers, when they are transferred to other places and their new addresses are not easily available. To avoid delay in such circumstances, we recommend that appropriate provision should be made to serve these officers through their Heads of Department.

Vacant Courts

6.12 In many States large number of vacancies of Magistrate remain unfilled for long periods. The respective State Governments should take adequate steps on an emergant basis for providing presiding officers to man all the criminal courts.

Paucity of Staff and Funds

6.13 It is often noticed that criminal courts are not provided with adequate funds to provide batta to the witnesses and for incurring other necessary office expenditure. Many of the courts are suffering from inadequacy of staff also. We, therefore, recommend that all the State Governments should provide adequate staff, funds and stationery for all the criminal courts within their respective States.

CHAPTER VII

ELECTION PETITIONS

Trial of Election Petitions by High Court—Reasons Therefor

7.1 One of the causes for accumulation of arrears in the High Courts, all over the country, is said to be the jurisdiction conferred on the High Courts to try petitions, challenging election to the Parliament and the State Legislatures. This jurisdiction has been conferred on the High Courts by section 80A which was introduced in the Representation of the People Act, 1951 with effect from 14.12.1966 by the Representation of the People (Amendment) Act, 1966 (Central Act 47 of 1966). Before that, election petitions were required to be tried by the Election Tribunals specially constituted for that purpose.

7.2 Although the statement of Objects and Reasons for the amendment does not contain any reasons for the change of forum, it would be reasonable to infer that the Parliament felt that the trial of election Petitions by the specially constituted Election Tribunals is not satisfactory and that, therefore, it is necessary to confer jurisdiction in this behalf on the High Courts. In majority of the election petitions, allegations of corrupt practices are made requiring leading of voluminous evidence. It is a matter of common knowledge that election petitions are hotly contested and occupy considerable time to the High Courts. This, no doubt, places additional burden on the High Courts.

Views of The High Courts Arrears Committee, 1972 and Satish Chandra Committee

7.3 The High Courts Arrears Committee, 1972 headed by Justice J.C. Shah felt that investment of this jurisdiction has resulted in slowing down of other works in the High Courts and recommended that the Election Tribunals should be revived and conferred jurisdiction to try election petitions. The Satish Chandra Committee after examining this matter in great depth has disagreed with the recommendation of the High Courts Arrears Committee, 1972 and favoured the retention of the jurisdiction for trial of election petitions in the High Courts, even though the trial of election petitions by the High Courts adds to the problem of arrears.

High Courts' Jurisdiction be Retained

7.4 Very heavy stakes are involved in the election petitions. The result of the election petitions may affect the right of the persons to hold important public offices like that of the Prime Minister, the Speaker, the Chief Minister, Ministers etc. The result of such election petitions may have serious political consequences and may even affect the foundation of the democratic process. Such being the grave and serious consequences affecting the life of the Nation itself, it is very necessary to take all possible measures to prevent abuse of the election process and to ensure that corrupt and dishonest people do not acquire the right to represent the people in the Parliament and the State Legislatures. Confidence of the people in the verdict on the election petitions is of paramount importance. Though retention of jurisdiction in the High Courts affects the problem of arrears to some extent, it must yield in favour of larger national interest. We are, therefore, in entire agreement with the weighty and good reasons given by the Satish Chandra Committee for retention of the jurisdiction in the High Courts.

7.5 We shall deal with the requirement of additional number of Judges for the trial of election petitions while dealing with the appointment of ad hoc Judges under article 224 A of the Constitution.

CHAPTER VIII

PRACTICE AND PROCEDURE

CLASSIFICATION, GROUPING AND LISTING OF CASES

Classification of Cases Subject-Wise—Rules to Be Framed

8.1 One of the suggestions made in the Satish Chandra Committee report is to resort to grouping of cases in such a manner that several cases can be disposed of together with the spending of the minimum amount of court time. Broad classification of cases should be made subject-wise. So far as writ proceedings are concerned, they can be classified depending upon the subjects such as, Labour cases, Service matters, Tax matters, Land matters cases relating to acquisitioning and requisitioning, etc. Similar classification could be made in respect of other categories of cases such as civil appeals and revisions against interlocutory orders and Rent Control Orders, etc. Cases which do not fall under the specified categories should be classified as falling under 'miscellaneous category'. Such broad categorisation of cases subject-wise should be made and published in the form of a rule or a circular.

Registry to Check

8.2 A provision should be made to the effect that the particular category under which the case falls, should be indicated on the docket or on the first page just below the number of the case as in the proforma given herein below

IN THE HIGH COURT OF .....
..... No: ..... OF 19.....
(Case Number)

: .....

C.C.
(Category classified as Tax,
Labour, Service, etc.)

The High Court office should check up if the classification indicated on the docket or on the first page is correct and if not, call upon the counsel to correct the classification given. If there is doubt or dispute about the classification the same should be got decided by placing the matter before court.

8.3 If the office or the Judges dealing with the miscellaneous category of cases, come across cases which should be classified under a new or a separate category, the said suggestion should be placed before the Chief Justice for appropriate action. This broad categorisation subject-wise should be taken into consideration by the Chief Justice in the matter of allocation of work. If cases falling under the same category subject-wise are posted before the same Judge, they would be disposed of much quicker and will bring about greater amount of consistency thereby avoiding conflicting decisions.

Manner of Grouping Cases

8.4 Cases falling under a particular category subjectwise, may be capable of being grouped together for the purpose of convenient and speedy disposal. The grouping may be made taking into consideration factors such as

cases involving substantially the same questions of law; cases strictly covered by the decision of the Supreme Court or by the binding decision of the same High Court; cases which have become infructuous such as cases challenging grant of temporary permits, period of the permit itself having since expired or cases challenging elections, wherein the period of the term of office having expired; etc.

8.5 Actual work of grouping of cases shoulld be assigned to specified officials of the High Court. They should examine cases and make the grouping. They should seek guidance whenever required from the Chief Justice or such other Judge/s as may be directed by the Chief Justice.

8.6 Judge/s dealing with different categories of cases subject-wise may, from time to time, made appropriate suggestions for the classification or grouping of cases, indicating the basis or criteria to be followed. Whenever it is brought to the notice of the Judge that a similar case has been admitted or is pending before a Bench, the Judge, on being satisfied about it, should direct that those cases should be posted together for hearing. The official should bring to the notice of the Chief Justice the grouping of cases made by them to enable him to issue directions in regard to the posting of such groups of cases.

Priority in Listing of Cases

8.7 Preference in the matter of listing of cases should be given to matters which, having regard to the very nature of the subject-matter, require prompt attention, such as criminal cases in which the accused are in jail, matrimonial cases, maintenance cases, cases relating to admission to colleges and universities, cases challenging interlocutory orders, etc.

8.8 Adequate attention should be paid for listing of older cases. Subject to availability of judges, older cases alone should be posted for final hearing before Judge/s who are not burdened with the admission or other miscellaneous work.

BENCHES NOT TO BE CHANGED FREQUENTLY

8.9 As regards the recommendations of the Satish Chandra Committee about the distribution of work among Judges by the Chief Justice, made in paragraph 7 of Chapter XIV of the report, we are of the opinion that the allocation of judicial work must be made by the Chief Justice in such a manner as to ensure optimum output in terms of quantity without affecting the quality of work. Such allocation should not be changed frequently, but should be allowed to function, ordinarily, for a period of not less than three months and not more than six months. Before the term of the Benches is to expire care should be taken that no case of that Bench is left out as part-heard as that would not only result in dislocating the judicial work but also result in undue delay in the disposal of such cases.

HEARING OF MATTERS IN CHAMBERS

8.10 In the Satish Chandra Committee report it is recommended that revision applications or writ petitions for admission arising out of certain categories of cases, such as interlocutory orders, proceedings under section 144, 145 and 482 of the Code of Criminal Procedure etc. and other categories of applications such as applications for transfer, applications in connection with abatement, etc. should be heard by one or two Judges, as the case may be, in the chambers, once a week or as often as may be required by circulation. This recommendation will not in any way contribute to the saving of judicial time, as the same amount of time, if not more, would be required to be spent by the Judge or Judges in Chambers for disposing of these matters during court hours. That apart, these categories of cases are not such which can be necessarily disposed of without the assistance of lawyers. The decision taken without proper assistance of lawyers is likely to lead to miscarriage of justice. If these categories of cases are required to be disposed of only on perusal of the relevant papers, it may result in spending more judicial time. Our experience shows that such matters can be disposed of with greater despatch with the assistance of lawyers by restricting the arguments to the relevant points. If such matters are disposed of without the assistance of lawyers, it is likely to give rise to review petitions, etc. requiring spending of further and additional time of courts. The disposal of these categories of cases in chambers, many of which involve exercise of discretion by the courts, is likely to impair the confidence of the litigants, which is not at all conducive to the sound administration of justice.

HEARING OF CERTAIN CASES BY SINGLE JUDGES

8.11 The Satish Chandra Committee Report has recommended that all First Appeals, Second Appeals, and Civil Revision Petitions and Writ Petitions shall be heard by a Single Judge at the time of final hearing and that the High Court Rules and orders should be suitably amended with a further provision that if an important question of law arises a single Judge may refer the case to a larger Bench.

8.12 So far as second Appeals and Civil Revision Petitions are concerned, they are being heard by single Judges in almost all the High Courts. If however there are any High Courts where they are required to be heard by a Division Bench, the relevant Rules and orders should be amended to bring in line with other High Courts providing for their being heard only by Single Judges.

8.13 So far as Writ Petitions are concerned, we have dealt with them separately and have made appropriate recommendations.

8.14 So far as First Appeals are concerned, having regard to the recommendation that appeals upto the value of Rs. Two lakhs should lie to the District Court, we are of the opinion, having regard to the magnitude of the claim and importance of the matters, that appeals involving the subject-matter of the value of Rs. Three lakhs and above should be heard only by a Division Bench of the High Court. Relevant rules or orders of the respective High Courts should be suitably amended.

LIST OF DATES AND POINTS TO BE FURNISHED

8.15 We welcome the suggestion that in writ pettions, First Appeals, Second Appeals, Civil Revision petitions, etc. the party should be required to file a brief list of points formulated for arguments (except second appeals) with a list of authorities to be cited in respect of each point after serving the same on the Counsel appearing for the opposite parties. As such a procedure would enable the court to concentrate on the real points in controversy, thus avoiding undue waste of time, the counsel for the opposite party will also not be taken by surprise. We would like to add one more requirement of filing a list of all relevant dates concerning the case arranged chronologically. We suggest that the same should be followed in criminal matters also.

RECORDING OF EVIDENCE

Provisions of Order XIX CPC Adequate—Resort Thereof Favoured.

8.16 In paragraph 12 of Chapter XIV of the Satish Chandra Committee Report, several recommendations have been made in regard to the recording of evidence, namely:

(i) that evidence in regard to cases arising out of original suits and election petitions should be recorded by way of affidavits: the examination in chief of the witnesses should be in the form of affidavits and that the witnesses be called only for the purpose of cross-examination;

(ii) that sufficient number of Commissioners should be appointed attached to the High Court from among lawyers to record evidence with power to entertain and decide objections regarding admissibility subject to review by the court;

(iii) that when the Judge is otherwise occupied with other work and is therefore not in a position to record evidence of witnesses summoned for the day in other cases, the Judge should have the discretion to direct one of the Commissioners to record evidence of such witnesses who are present and that the cost of such Commissioners should be borne by the State; and

(iv) that recording of evidence by the Judge of the High Court should be by dictation to a Stenographer or to a typist and the copies of the depositions should be furnished on payment of charges at the rate of Re. 1 per page in cash.

After giving our careful consideration to all these suggestions, we are of the opinion that the provisions of Order XIX of the Code of Civil Procedure are adequate enough to deal with these matters and that the same should be more freely made use of so that examination of witnesses in court could be avoided wherever possible to ensure saving of court's time.

Evidence to be Recorded on the Day of Appearance and Appointment of Judicial Officers as Commissioners Favoured

8.17 We endorse the recommendation that the witnesses summoned should, as far as possible, be examined on the very same day by the Judge and that, if that is not possible, by the Commissioner or officer of the court appointed or attached to the High Court, as this has the advantage of not only saving the time of the court, but also avoiding inconvenience to the witnesses who are summoned for the day. We are, however, not in favour of the suggestion that evidence should be recorded by Commissioners appointed from amongst lawyers. We are of the opinion that such functions should be entrusted to Judicial Officers of the cadre of District Judges and they should form part of the regular staff of the High Court with appropriate designation such as Commissioner for recording evidence in the High Court. Services of retired District Judges who have considerable experiance could also be utilised for this purpose with advantage. However, decisions of such Commissioners in regard to admissibility of evidence, etc. should be subjected to the final decision by the court only at the time of the final hearing of the case and not at the interlocutory stage.

Order XVIII CPC Adequate—High Courts to Adopt

8.18 As regards the method of recording evidence, we are of the opinion that there are provisions already available in Order XVIII of the Code of Civil Procedure which are adequate to deal with the situation. If the same are not applicable under the Rules of any of the High Courts, the rules of such High Courts should be suitably amended to make the said provisions of the Code of Civil Procedure applicable.

Copies of Evidence be Furnished the Same Day.

8.19 We agree in principle that provision should be made for furnishing copies of the evidence recorded on the very same day of the recording of the evidence to the parties. This object can be achieved by making suitable provision for furnishing photostat copies of the same on payment of usual charges in accordance with the relevant rules. If in any of the High Courts such facilities are not available, it is necessary that such facilities are made available immediately.

REGULATION OF COURT PROCEEDINGS

Adjournment of Listed Cases not Favoured

8.20 Inordinately lengthy arguments, citation of numerous authorities, inequitable distribution of professional work and concentration thereof in a few hands, deteriorating standard of pleadings, resort to Writ Jurisdiction in cases involving highly disputed questions of fact or civil or criminal disputes which can be normally tried in regular courts, negative or obstructive attitude in settlement of cases and stern opposition of any reformative measure, are all contributory factors delaying justice, for which the Judges and members of the Bar are equally responsible. Judges, however, have a greater responsibility to ensure that court proceedings are not being dragged on account of such of those factors which are within their control.

8.21 The Satish Chandra Committee has expressed the following view regarding the grant of frequent adjournments:

> "Frequent and unnecessary adjournments sought by counsel undoubtedly contributes very much to the arrears. Equally they add to the longevity of the cases pending. The cause list in most of the courts are drawn up in such a manner that counsel having their cases listed at the bottom do not expect the same to be called and are not necessarily ready for arguments therein. An unwarranted adjournment of cases high up on the list, apart from being burdensome to the other members of the Bar, is equally wasteful

of the court's time as the parties may be somewhat imprepared for the case. The procedure strictly followed by the Supreme Court for denial of adjournments once the case has been duly listed, deserves adoption and strict adherence in the High Courts as well."

(See Chapter II, page 19(vii))

The views have great force. It is desirable to evolve a convention to the effect that no adjournment shall be allowed once the case has been duly listed save and except in exceptional circumstances such as sudden illness of the counsel, bereavement in his family etc. Strict enforcement of such a convention would prevent unnecessary adjournment of cases and help the eradication of arrears to some extent.

Bench and Bar—Need for Adherence to Proper Norms of Conduct and Rectitude—Emphasised

8.22 Senior members of the Bar often wield apparent influence over the courts for more than one reason. By virtue of their standing reputation and volume of practice, many of them want to make their presence felt in Court and regrettably succeed in doing so quite often. The Judges need the co-operation of the Bar for efficient functioning of the Court and the members of the Bar, more particularly the senior members, often take the advantage of this situation. In modern times the opportunity of socialisation has increased with the Judges coming out of the ivory tower and attending, and participating in all kinds of functions. If the legal system in the country is to achieve its true goal of delivery of expeditious justice and maintain independence and image, the Bench and the bar will both have to recognise the urgent need of adhering to proper norms of conduct and rectitude. A concerted effort should be made to control the judicial proceedings so as to make the more effective than at present

BRIEF JUDGMENTS IN CERTAIN CASES

8.23 The recommendation of the Satish Chandra Committee is to the effect that a single Judge while dismissing a Second Appeal, a Civil Revision Application under section 115 of the Code of Civil Procedure and a Criminal Revision Application under section 397 of the Code of Criminal Procedure could dispose of the same by merely stating the point raised and recording his view that they do not attract the jurisdiction of the High Court under sections 100, 115 of the Code of Civil Procedure or section 397 of Code of Criminal Procedure as the case may be. It is further recommended that in dismissing the cases thereby affirming the judgment of the Court below, no elaborate judgment should be deemed necessary.

8.24 In our opinion it would be enough to state the point raised and the Judge's view that the case does not attract the provisions of section 100 or 115 of the Code of Civil Procedure or section 397 of the Code of Criminal Procedure while disposing of the case at the stage of admission. We are, however, of the opinion that when these cases are disposed of after final hearing, even when they are being dismissed affirming the judgments of the courts below, the Court should do so by rendering a brief judgment and not merely by stating the points raised and stating that interference is not called for.

DICTATION OF JUDGMENTS IN COURT IMMEDIATELY AFTER HEARING-FAVOURED

8.25 The recommendation in the Satish Chandra Committee Report is that judgments should not be dictated in open court by a Division Bench, on the ground that it will involve a pointless waste of time on the part of the second Judge (Para 9 in Chapter XIV). The further recommendation is that even single Judges should not dictate judgments in the open court if the judgment is likely to take more than 15 minutes. We find it difficult to agree with these recommendations, when a judgment is being dictated by one of the Judges in a Division Bench, the other Judge would be following the dictation and assisting the Judge dictating the judgment to avoid errors and inaccuracies in the judgment. It cannot, therefore, be said that it would amount to pointless waste of time on the part of the second Judge. Besides, when the judgment is pronounced in open court, the Judge will also have the assistance of the lawyers as and when required. We have often found that though several grounds are taken, only a few of them are actually agreed or pressed and that on some points concessions are made. But, when the matter is taken up by way of review or by way of appeal to the superior court, a complaint is made that some of the contentions urged have not been dealt with or that the concessions though not made are wrongly recorded in the

judgment. There will be less or no scope if the judgment is dictated immediately on the conclusion of the argumen in the presence of the counsel. This will also avoid, to a considerable extent, the instances of reserving judgment and not pronouncing it within a reasonable time. This will certainly ensure quicker disposal of the cases, as the case gets concluded immediately on the conclusion of the argument. For the same reasons, we find it difficult to agree with the suggestion in the report of the Satish Chandra Committee that in case dealt with by a single Judge, the judgment should be reserved if it is likely to take more than fifteen minutes.

REASONS AND DECISION TO BE GIVEN SIMULTANEOUSLY

8.26 A practice is being followed in several High Courts of pronouncing only the operative portion of the order and reserving the judgment or reasoning portion of the order for being pronounced later. This causes great hardship to the litigants and to the appellate court to which such decisions are carried in appeal. This requires to be remedied by making a suitable provision in the Rules of the High Courts.

RESERVED JUDGMENTS—STATUTORY LIMIT FOR PRONOUNCEMENT

8.27 Reserved judgment should ordinarily be pronounced within a period of six weeks from the date of conclusion of the arguments. If, however, a reserved judgment is not pronounced for a period of three months from the date of the conclusion of the arguments, the Chief Justice may either post the case for delivering judgment in open court, or withdraw the case and post it for disposal before an appropriate Bench. It is desirable than appropriate rule or statutory provision is made in this behalf.

JUDGMENTS—OPERATIVE PORTION ALONE NEED BE READ

8.28 We are in entire agreement with the recommendation of the Satish Chandra Committee that precious time of the Court should not be expended in reading the entire or parts, of the reserved judgments in Court. It is enough if the operative portion of the judgment is read.

CERTIFIED COPIES OF JUDGMENTS/ORDERS ETC.

Delay Deprecated

8.29 One of the serious problems noticed on the administration side is about the inordinate delay in furnishing the certified copies of judgments and final orders, etc. The litigants are entitled to know as to what is the decision of the court about their dispute. It becomes necessary for them to obtain a certified copy of the judgment or final order for the purpose of execution or for invoking their remedies by way of appeal, review, etc. It is not enough that the judgments and orders are rendered by the Judges without delay. It is equally important that the same reach the hands of the parties expeditiously. The anxiety on the part of the parties in securing certified copy of the judgment/orders early, is being exploited resulting in the vice of corruption spreading in this area. This affects to a considerable extent the image of the judicial system. The problem is both serious and complicated which is required to be tackled at all levels, with imagination and determination.

Causes for Delay

8.30 Delay normally occurs in two areas; viz., one in the High Court office and the other contributed by the lawyers/applicants. The rules or practice generally prevailing in this behalf show that considerable time is taken between the date of the signing of the judgment/order by the Judge and the date when it actually reaches the section where certified copies are prepared, as the same have to travel through different sections for different purposes such as making of entries in the relevant registers, etc. This can be avoided if a photostat copy of the judgment is taken and authenticated immediately after it is pronounced by the Judge and preserved in the copying section for the purpose of issuing certified copies and sending the records with the original judgment/order to the other branches or sections for further actions.

Remedial Measures Photocopying

8.31 Delay in preparing certified copies can be avoided by providing sufficient number of photocopiers

exclusively for use in the copying section. The photostat copies taken with the aid of such machines should be authenticated and certified as true copies.

FURNISHING CERTIFIED COPIES FREE OF COST—RECOMMENDED

8.32 Lawyers/applicants contribute to delay by making defective applications and by delaying the Payment of requisite fees or furnishing of stamp papers. This delay, more often than not, occurs on account of the system prevalent in some courts of fees being charged or stamp papers being required to be furnished on the basis of folios (group of words) of the judgment. This system can be advantageously replaced by the determination of the fees or furnishing of stamp papers being made dependent upon the pages of the authenticated Xerox copy of the judgment in the copying section. It is, therefore, suggested that an appropriate rule should be made by each High Court on the following lines:

(i) Applications should be scrutinised and the requisite fee/stamp papers should be determined and made known to the party/advocate by notifying on the Notice Board of the Copying Section within 48 hours of the receipt of the application.

(ii) The exact amount of fees or number of stamp papers should be supplied by the party/advocate within 48 hours of its being notified as aforesaid, failing which the application should be rejected by the authorised officer.

FURNISHING CERTIFIED COPIES FREE OF COST—RECOMMENDED

8.33 There is a still better and an ideal method of solving this problem by making a provision to the effect that it shall be the duty of the High Court to furnish free of cost certified copy of the judgment/final order to all the parties to the case, who are not ex parte/advocates at the time of the pronouncement of the judgment/final order or within a specified period from the date of the pronouncement of the judgment/order. Several statutes contain provisions requiring the respective Tribunals constituted under such statutes to communicate their orders to the parties concerned free of cost. Rule 22 of the Central Administrative Tribunals (Procedure) Rules, 1987 is one such provision. If copies of orders of such Tribunals are statutorily required to be communicated to the parties, there is no good reason why such a salutary and wholesome provision should not be made for communication of judgments/orders of the High Courts to the parties. It is no doubt true that this would result in enormous increase of work in the copying section and increase in the expenditure. For implementing this laudable policy, as a condition precedent, the Government has to provide additional staff, adequate number of photocopiers and gadgets and made provision for special grant of funds to meet this extra burden.

CHAPTER IX

GENERAL RECOMMENDATIONS

RESOLUTION OF CONFLICT OF DECISIONS AMONGST HIGH COURTS

Amendment of Article 139-A of the Constitution not Favoured

9.1 It is suggested that article 139-A of the Constitution should be so amended that, when there is difference of opinion between High Courts on the question or questions involved in a particular case, the same should be referred for final decision of the Supreme Court so that the controversial questions of law are settled by the Supreme Court at the earliest.

9.2 In our opinion this suggestion does not in any way advance the object of expediting the disposal of cases or reducing the arrears. It brings about a change in the forum when the case is transferred from the High Court to the Supreme Court. If the case involves other questions of fact and law, the case has to be referred back to the High Court for decision on those aspects. This will ultimately result in longer time being taken for the disposal of cases. Besides, having regard to the heavy pressure of work on the Supreme court, it is not likely such matters may get early disposal, thus delaying the disposal of cases in the High Court and, at the same time, adding to the existing burden of cases in the Supreme Court. The suggestion will also result in placing undue burden on the parties of incurring an extra expenditure for the conduct of their cases in the Supreme Court. It is also our experience that though there may be conflict of decisions on some questions among the High Courts, the ultimate decision at the time of final hearing, may rest on the decision of other questions of law or fact. Hence, in our opinion, there is no need to amend article 139-A of the Constitution as suggested.

JUDGES—PUNCTUALITY IN ATTENDANCE

9.3 Non-observance of punctuality by the Judges has become a serious problem. This was commented upon a little more than a decade and half back by the High Courts Arrears Committee, 1972, which observed as follows:

> "Complaints were voiced before us by the members of the Bar in certain places that Judges do not sit in Court in time. We were told that some of the Judges in one High Court used to sit after more than an hour of the scheduled court time and then leave the Bench earlier. Unless Judges sit in Court punctually and for at least five hours on every working day, it would not be possible to obtain the maximum turnover in the matter of disposal. This is one of the factors which certainly contributes to the accumulation of arrears."
> (See paragraph 27, page 45 of Volume I of the Report.)

CAUSES CONTRIBUTING TO LOSS OF JUDICIAL TIME

9.4 In the Satish Chandra Committee report it is recommended that court hours should not be spent for the purpose of doing administrative work, for the purpose of preparing judgments and for the purpose of attending social functions. The time of the court is meant to be utilised principally for discharging judicial work. When there is such tremendous pressure of work on the courts, utmost care should be taken to ensure that judicial time is not utilised for doing any work other than judicial work. While expressing our entire agreement with these recommen-

dations in the Satish Chandra Committee report, we would like to emphasise several other factors which contribute to the arrears, such as:

(i) absenting from court for more than 14 days a year by way of casual absence;

(ii) not sitting in the court for the entire five hours period prescribed for judicial work, either by assembling late or by rising early;

(iii) absenting from court without reasonable prior intimation given to the Chief Justice, as a result of which the Chief Justice is prevented from making reasonable alternate arrangements for transacting the business of the court;

(iv) By one of the Judges of a Division Bench absenting without reasonable prior intimation to the Chief Justice or by one of the Judges in a Division Bench being not punctual, thereby resulting in the wastage of judicial time of the other Judge who attends the court punctually;

(v) Court days being lost on account of strike by lawyers or on account of their abstaining from court work for one reason or the other;

(vi) Keeping cases as part-heard for unduly long time;

(vii) Inordinate delay in pronouncing judgments in cases where judgment is reserved.

This is a matter for introspection and self-correction by the Judges.

STRIKE—DEFAULT IN APPEARANCE OF LAWYERS

9.5 A very disturbing phenomenon is developing in our country, of the lawyers going on strike or boycotting the Courts. That the High Court of Delhi and the Supreme Court had to remain closed or were prevented from transacting their business for a long period, does not really do credit to us, the enlightened section of the society. In a country where rule of law prevails, and is a basic feature of our Constitution, disputes are required to be resolved not by taking them to the streets but by bringing them for adjudication by a competent and impartial judge functioning in the court. Strike by lawyers is, therefore, the very negation of this basic concept. It is obvious that strike or boycott by lawyers or absence of lawyers from the court in the name of one issue or the other has resulted in adding to the already existing backbreaking burden. Educating public opinion and persuading the legal fraternity to see this problem in the right perspective is no doubt one way of tackling this problem. Though such attempts were attempted, the problem very much exists and it is virtually getting out of control, as lawyers go on strike all over the country on even the smallest of provocations. The lawyers who hold the briefs for their clients, when they resort to delay the disposal of their cases or allow their cases to be dismissed for default, betray not only the trust reposed by their respective clients but also the confidence which the courts repose in the legal profession. The problem has not so far been tackled by the lawyers by themselves who are masters of their profession. The statutory provisions available have not been found to be adequate to meet the situation. Unless this problem is tackled, it will further add to the problem of arrears. We would, therefore, like to make a few suggestions principally from the angle of tackling the problem of arrears. If the Judge dealing with the case finds that the advocate appearing for a party is absent without reasonabe cause and proceeds to dispose of the case after recording a finding in this behalf against the lawyer, such a finding should be deemed to amount to misconduct. On a copy of the said decision being forwarded to the Bar Council appropriate action should be taken on the basis of such a finding.

9.6 A provision should be made to the effect that whenever a case decided in the absence of a lawyer is restored by the Court, a statutorily fixed amount by way of compensation for the loss of time and inconvenience caused in the administration of justice by his absence, should be deposited in the Registry, in addition to the costs, if any, payable to the opposite party. Such a statutory amount may be directed by the court to be deposited by the lawyer personally, if it is satisfied, on consideration of the facts and circumstances that the absence of the lawyer was without justifiable cause. A statutory provision should also be made requiring the court to communicate to the party who had engaged the lawyer and who remained absent when the case was taken up for hearing, inviting the party's attention to the lawyer's absence and the order made by the Court. This will go a long way in discouraging lawyers from absenting from court on untenable grounds.

CONVENTIONS TO BE ESTABLISHED

No Change of Counsel Midstream

9.7 Two more factors which have a bearing on arrears may also be mentioned. Sometimes, when the case is part-heard, another counsel takes over and the case is allowed to be argued afresh, or some of the points which have already been covered are attempted to be reopened or an adjournment is sought on that ground. This leads to additional time being taken in the hearing of the case.

9.8 A convention needs to be established therefore that once the counsel has commenced the arguments no other counsel should, in the midst of the hearing, be permitted to take over nor should the engagement of another counsel be made a ground for adjournment of the case.

Discouragement of Negative Practice

9.9 When a Judge has a relative or a person known to him practising in the court, who does not appear before him, a sort of negative practice develops, to achieve the object of avoiding the court of that particular judge if the same is found inconvenient for some reason.

9.10 An effort should be made by the Judge concerned and, if possible, by the Chief Justice, to discourage such practice.

INCREASE IN WORKING HOURS/DAYS

9.11 Section 23 A of the High Court Judges (Conditions of Service) Act empowers the President of India to fix from time to time the period of vacation or vacations for the High Courts. In exercise of the said power the President has notified that the High Court shall work for 210 days a year, leaving it to the High Courts to suitably regulate their vacations. Though the High Court has to function for 210 days, Judges of the High Court need not necessarily work for 210 days. By convention each Judge can be on casual absence for 14 days each year. Judges are entitled to leave on full allowances and leave on half allowances. The amount of leave on full allowances that can be availed of by a Judge is about 15 days for each year of service. Thus, a Judge may avail 14 days of casual absence and 15 days of leave on full allowances every year. Thus, the actual number of days that he may work may come to 210—29-181 days. This would be a little less than half the number of days of the year. The suggestion of the Government of India for increasing the number of working days of the High Courts did not find favour with most of the High Courts. When there is such tremendous pressure of work in all the High Courts and the problem has become so acute, we should explore every possible avenue of effectively tackling this problem. We are conscious of the fact that the Judges work very hard not only during court hours but outside the court hours, not only during working days of the High Court but also during holidays and vacations. We are also conscious of the fact that it is a highly taxing intellectual work which requires adequate time for relaxation. The Judges have to catch up with a lot of general reading, the progress and trends in law and jurisprudence in other countries in the world. They may be required to participate in seminars for updating their knowledge and for mutual exchange of views. These being the special requirements of the Judges, their working cannot be compared to the working of other administrative and executive branches. These special requirements of the Judges cannot be served without providing vacations for reasonable periods. At the same time, the Judges, who should be vitally concerned with the problem of arrears, particularly when the problem has reached such critical levels, should come forward to make some sacrifice for achieving the larger goal at least for the next couple of years, until the problem is brought under control. It is against this background that we feel that we should come forward to make some sacrifice in the larger interest. There are two alternatives which we can think of in this direction. We may increase the sitting hours of each High Court by half an hour each day. As we are working for 210 days, increasing the sittings by half an hour for 210 days means that each Judge will be working an extra period of 105 hours. This, at the rate of the present five hours sitting per Judge per day, amounts to virtually working for 21 more days. The increase of the sittings by half-an-hour could be conveniently equally divided between the pre-lunch session and the post-lunch session, in which case the increase for each session would be about 15 minutes which burden we should be willing to take.

9.12 The other alternative is to increase the working days of the High Court by 21 days, thus bringing the total number of working days to 231 days. This would necessitate reduction in the periods of vacations of each High Court.

9.13 Which of the two alternative should be preferred may be left to the High Courts to decide, taking into

consideration the views of the Bar. This undoubtedly calls for hard work and sacrifice on the part of the Judges which we feel must be offered ungrudgingly and graciously for achieving the noble cause. We trust that the Bar will not be found wanting in making their own contribution by extending their full co-operation.

PROPER CHOICE OF COUNSEL FOR THE STATE AND OTHER STATUTORY AUTHORITIES

9.14 Major portion of the litigation in the High Courts consists of writ petitions in which relief is sought against the State Governments, Central Government or the statutory authorities and public sector undertakings. The speed with which these cases can be decided depends to a considerable extent, on the assistance which the Judge received from the lawyers appearing for the parties in the cases. It has been the experience of the Judges in the High Courts that assistance of the required quality and standard is not forthcoming. In a large number of cases counter affidavits are not filed and important averments made in the writ petitions go uncontroverted. Many times, we find that proper instructions are not obtained and records are not carefully studied. The attention of the Court is not drawn to the relevant statutory provisions, rules and orders and the earlier decisions of the Court in regard to the issues arising in the case. In the anxiety on the part of the Court that injustice should not be done, the Court is required to spend considerable time of its own for investigation. This contributes to considerable delay in disposal of cases. If the case of the State is not studied properly and is not presented effectively, the interest is likely to suffer. To a large extent, this situation is attributable to the unsatisfactory appointments of counsel by the State, the statutory authorities or the public sector undertakings. The required care is not taken in the matter of selecting and appointing suitable counsel. Political and other considerations appear to have influenced the selection of counsel. It is no doubt true that the party is entitled to engage a lawyer of its own choice. But in a country like ours, with a written Constitution, where rule of law is a basic feature of the Constitution, the largesse of the State cannot be dealt with arbitrarily. The appointment of lawyers by the State, the statutory authorities and public sector undertakings also amounts, in one sense, to dealing with the largesse. Though we do not undermine the importance of the State being required to have confidence in the lawyer it appoints to represent it, the need to appoint the competent lawyer cannot be ignored. In the years by gone, there used to be a convention in many States of appointing counsel for the State in consultation with the Chief Justice. This is one method of ensuring satisfactory appointment of the counsel for the State. What is, however, of crucial importance and of imperative necessity is that the State should have the services of very competent counsel. Though there is no dearth of competent counsel, it is unfortunate that many times the State goes in for the less or the last competent among them. This must be remedied. It is not realised when making appointments of State counsel that a small error by its counsel in the Court may result ultimately in loss to the extent of crores of rupees besides putting the State in very embarrassing and difficult situations. This could and should be avoided without any delay. It would be in the interest of the State itself to make appropriate provisions in the relevant statutes to the effect that no counsel should be appointed by the State, the statutory authorities and the public sector undertakings, without the concurrence of the Chief Justice of the High Court. This could be achieved either by requesting the Chief Justice to send a penal of lawyers from whom the State can make the choice or the State may send a penal of lawyers for the concurrence of the Chief Justice. This is a very serious matter which requires immediate and urgent attention at the highest level.

CLOSURE OF COURT ON DEATH OF DIGNITARIES AND ON OTHER OCCASIONS

9.15 Of late, the phenomenon of the closure of the High Courts as a mark of respect to the memory of retired Judges and members of the Bar upon their demise has been presenting a real problem in some of the High Courts. The cessation of work for a full day affects the norm of 210 working days in a year fixed by the Presidential Notification issued under section 23A of the High Court Judges (Conditions of Service) Act, 1954.

9.16 It is pertinent to point out in this connection that at the Chief Justices' Conference held in 1974, the following resolution was passed:

> "Resolved that the courts be closed as a mark of respect to the memory of the following dignitories only:
>
> 1. President
> 2. Prime Minister
> 3. Governor
> 4. Chief Minister
> 5. Sitting Chief Justice and Judge of the Supreme Court and Chief Justice and Judges of the High Court."

This resolution was reiterated at the Chief Justices' conference held in 1979. It is a matter of common knowledge and experience that this resolution has not been strictly adhered to and that the closure of court takes place on many other occasions. Such closure sometimes takes place officially, that is, as a result of the decision taken by the High Court and sometimes on account of a unilateral decision taken by the Bar to abstain from work, without prior consultation with the Chief Justice, such as when a member of the Bar dies.

9.17 It is of prime importance to realise that the closure of court is not the only way of showing respect to the deceased. The same objective can be achieved by making reference, if that is the practice prevalent in the particular High Court, and by cessation of work for half-an hour or so at the most. Ordinarily, the High Court should not be closed except on the occasions referred to in the resolution of the Chief Justices' Conference held in 1974. That apart, since a decision to abstain from work taken by the Bar has a direct impact on the working of the Court no unilateral decision in that regard should be taken without prior consultation with the Chief Justice, who may, on rare occasions, accede to the request of the Bar. Even in such cases, however, the shortfall of a working day should be made good by the Court working on any of the closed saturdays.

RELATIONS OF THE CHIEF JUSTICE WITH PUISNE JUDGES

High Courts Arrears Committee 1972 Views Reiterated

9.18 The Chief Justice occupies a position which thrusts upon him great responsibility. There is an implied conferment upon him of the powers of supervision over the entire work of the High Court and also of the subordinate courts. The relations of the Chief Justice with the puisne Judges have a special significance and a direct nexus with the extent of his effective role in the administration of justice in the State. A proper appreciation of his pivotal position would ultimately reflect in an increased output, improved administration and betterment of the image of the High Court. The High Courts Arrears Committee, 1972, Volume I, has devoted a full Chapter on this subject, Chapter IX. The precise and pertinent observations and suggestions made therein are of equal, if not, of greater relevance today. They read:

> "*Relations Of Chief Justice With Puisne Judges*
>
> We may refer to the problem of the relation of a Chief Justice with the puisne Judges, which is somewhat delicate. But, on that account, we do not think we would be justified in ignoring it.
>
> The Constitutional position of the Chief Justice involves the principal responsibilities of:
>
> (a) maintaining the highest traditions and prestige of the High Court;
>
> (b) ensuring proper and effective administration in all the courts subordinate to the High Court; and
>
> (c) ensuring maximum utilisation of the available judge strength of the High Court and in the subordinate courts.
>
> On account of the investment of these responsibilities, there is an implied entrusment in him of powers of supervision over the entire work of the High Court, including the performance of individual judges and of benches and of the subordinate courts. Without such power he cannot discharge his responsibilities effectively. He has to exercise certain amount of supervision over the performance of his brother Judges. In the United States of America, each Judge makes a weekly report of the number of hours he spent on the bench each court day, the number of cases and motions he has heard and disposed of, and of the number of cases and motions he has heard but not disposed of at the end of the week, with the reasons. With that information available, the Chief Justice is in a position to assign to the Judges the work for which they are best fitted. The adoption of this practice with appropriate modifications may be usefully done in our High Courts. Care should be taken that the reports are not publicised but kept exclusively for circulation among the Judges. These reports will enable the Chief Justice to utilise to the maximum and in the best manner possible the judge strength available and a periodic review by the Chief Justice of the turnover of each Judge to whom a particular class of cases are entrusted may enable him to ascertain the particular forte and talent of each Judge attached to his Court. Appreciation of the true relationship between the puisne Judges and the Chief Justice and the responsibilities of the latter will, in our opinion, be conducive to the smooth working of the High Court and to greater turnover of work, and would prevail any embarrassing situations where the Chief Justice is required to advice a puisne Judge in regard to his performance. It cannot be gainsaid that for

continued and effective administration of justice in the State, the Chief Justice should have the fullest support and co-operation of every puisne Judge in his Court in the discharge of his onerous responsibilities and any step or machanism which is calculated to ensure such support and co-operation would make the work of the High Court more effective, resulting in an increased turnover and exhibiting an improved administration and a true image of the High Court among the public."

APPOINTMENT TO JUDGES AS COMMISSIONS UNDER THE COMMISSIONS OF INQUIRY ACT, 1952

Need For Reappraisal Emphasised

9.19 The demand for appointment of Judges of the High Courts and the Judges of the Supreme Court under the Commissions of Inquiry Act is ever on the increase. Solutions to several problems that confront the Nation are sought to be found by appointing Judges of the High Courts or the Judges of the Supreme Court as Commissions under the Commissions of Inquiry Act. Many of the issues which are referred to such commissions, it is a matter of common knowledge, are not of such magnitude or importance requiring the attention of the Judges of the superior courts. The work of these commissions takes several months and sometimes years depriving the High Courts/ Supreme Court their valuable services, which we cannot afford to lose with the problem of mounting arrears staring in our eyes. Unlike a judicial verdict, the report of a Commission of inquiry does not result in resolving the problems. Further steps have to be taken for that purpose. The opinion of the Commission is also not binding on the Government which appoints such Commissions. It is a matter of common knowledge that though commissions are appointed with great amount of enthusiasm and expectation after the report are submitted by the Commissions, there is hardly anything done in most of the cases to give effect to the views expressed or the recommendations made. Many such reports lie only collecting dust in the offices. Another curious thing which we have noticed is that after a Judge of a High Court submits his report it is announced that it is being scrutinised by a Committee of officials and many times it is on the advice of the committee of such officials it is decided as to which of the recommendations of the commission deserve to be implemented and which not. We often find allegations being made against the Judges appointed as Commissions, their reports criticised as being biased or rendered with a view to favour one or the other. The manner in which this machinry has been utilised has to a considerable extent, affected the image of the Judges of the High Court and the Supreme Court. The bedrook of the judiciary is the confidence of the people. Appointment of Judges of the High Courts and the Supreme Court as Commissions and the manner in which their reports have been dealt with have to some extent contributed to affecting the confidence of the people. Is it, therefore, not a very useful exercise to draw the Judges from the High Courts and the Supreme Court for appointment as such Commissions when their services are badly needed in the Courts for tackling the problem of arrears? It is no doubt true that the increasing demand for appointment of Judges as Commissions of Inquiry is an indication of the confidence of the people in the Judiciary. It is also true that when there is a paramount need for the services of Judges in the interest of the Nation, we should not be found wanting in offering our services. But are we really in a position to spare the services of the Judges? Arrearsare mounting, the required number of posts of Judges are not sanctioned and those sanctioned are also not promptly filled up. When such is the acute problem of the judiciary itself, we should give serious thought to this problem.

Appointment of Retired Judges on the Advice of The Chief Justice Recommended

9.20 When a large number of retired Judges, who are in good health and mentally alert are available in the country their services can be utilised for appointment of Commissions rather than sitting Judges of the High Courts. Appointment of sitting Judges of High Courts should be made only under exceptional circumstances. The sitting Judges are appointed as Commissions of Inquiry on the advice of the Chief Justice and with the consent of the Judge concerned. This ensures that the person appointed as the Commission is not the nominee of the government. In order to inspire the confidence of the people, it is desirable that the choice of the personnel of the commission is not left to the executive discretion of the Government. This problem can be solved by suitably amending the Commissions of Inquiry Act making provision to the effect that a Commission under the Commissions of Inquiry Act should be appointed only with the consent or concurrence of the Chief Justice. Thus, even if a retired Judge is to be appointed as a Commission, it should be done in accordance with the advice of the Chief Justice. This will ensure the confidence of the people in the Commission without at the same time denuding the High Courts of the services of the sitting Judges of the High Courts. This will go a long way in tackling the problem of arrears in our courts.

INADEQUACY OF STAFF

9.21 Gross inadequacy of staff in the High Court Registry has also contributed to the accumulation of

...ars: Even though the institution of cases in the High Court has risen sharply and consistently after independence, there has been no corresponding increase in the staff of the Registry. Great difficulty has been experienced by the High Courts in getting the respective State Governments to sanction adequate staff to cope with the work. Requests made by the Chief Justices to their respective State Governments have been frequently turned down on the plea of lack of finance. Both the High Courts Arrears Committee, 1972, and the Satish Chandra Committee have highlighted this point (see paragraph XXXI at page 81, paragraph 15 at page 34 of the Reports of the High Courts Arrears Committee, 1972 and Satish Chandra Committee respectively).

9.22 The High Courts Arrears Committee, 1972, observed that the decision in *M. Gurumoorthy* v. *Accountant General,* AIR 1971 Supreme Court 1850, has apparently approved the view that article 229 of the Constitution which empowers the Chief Justice of a High Court to appoint officers and servants of the High Court, confers on him by necessary implication the power to create posts of such officers and servants required for the Court's administration. As a practical measure, it recommended the adoption of a convention that every High Court should work out its distinctive norms in regard to the work turnover for different sections of the Registry and determine the strength of the staff. The Chief Justice may then proceed to appoint the additional staff based on those norms and give intimation to the State Government in that behalf for inclusion of provision in the budget as a charged item. We commend these recommendations for early acceptance.

UTILISATION OF COMPUTERS AND OTHER MODERN TECHNOLOGY

Computer

9.23 Computer will be of great help to the High Courts in discharging their functions, both in the administrative and judicial fields, expeditiously. The following are the advantages in the judicial field:

(i) It will help in classification of cases which subject has been discussed earlier and also to ascertain and find out the number of cases under each category to enable the same being posted.

(ii) This will help grouping of cases involving same question of law. If the particulars of cases with questions of law involved are fed to the computer, at any time the Court can get the particulars of all cases involving the same question and this would help in quick disposal of all those cases, once the question of law is decided.

(iii) If the decisions given by the particular High Court and Supreme Court on various points of law are stored in the computer, when a question of law arises for consideration, the Court can readily find out if that question has been decided earlier by the very Court or by the Supreme Court and if so, what was the decision.

(iv) The computer could be used to maintain statistics of cases filed, disposed of and pending as well as of cases which are ready for hearing and cases which are required to be disposed of expeditiously. With the help of these statistics, which can be obtained at any time, preparation of cause lists could be streamlined facilitating disposal of older cases.

9.24 On the administrative side the computer could be used, *inter alia*, for the following purposes:

(i) The service records of the subordinate judicial officers as well as of the High Court staff can be maintained and whenever the service particulars of any officer or official are required the same can be obtained readily. In the case of Judicial Officers, adverse comments or commendations made by the High Court while dealing with their judgments could be recorded in the computer along with other service particulars so that it would be possible on a later date to assess the capabilities of the officer on the basis of such information.

(ii) The statistics of cases, filed disposed of and pending in the lower courts could be monitored with the help of the computer. The percentage of disposal given by each officer could be obtained accurately to assess his/her performance.

(iii) Accounts regarding salary, allowances, etc. of the establishment can be maintained and the time taken for preparation of pay bills etc. could very much be minimised. Similarly, particulars regarding court deposits and withdrawals can also be accurately and effectively maintained.

Modern Technology

9.25 The Courts should be furnished with modern equipment such as xerox Copiers, Telex mechines, Word

Processors, Electronic Typewriters and Calculators, Dictaphones, etc. to facilitate speedy work.

9.26 The Microfilming equipment could be used for preservation of records in the Record Room. This would not only minimise the space required for maintenance of records to a great extent but would also ensure preservation of old and valuable records of archive value for the posterity. Once this method of preserving records is adopted, the rule requiring destruction of certain records after the prescribed time may be reviewed.

9.27 In the first instance the States should provide the requisite finance to the High Courts for purchasing the above equipment. However, if the States are unable to do so, due to any financial stringency, the Central Government should allot the necessary funds.

PAUCITY OF FUNDS—NEED FOR CENTRAL ASSISTANCE

9.28 Article 229(3) of the Constitution provides that the administrative expenses of a High Court including all salaries, allowances and pensions payable to or in respect of officers and servants of the Court shall be charged upon the consolidated fund of the State. S. 29 Financial position of most of the State Governments being not very satisfactory, they do not show much interest in matters pertaining to the administration of justice which involve considerable additional expenditure. Some of the measures for tackling the problem of arrears on an emergent basis require incurring of considerable additional expenditure, such as appointment of more Judges, providing additional staff, court buildings. etc. As most of the recommendations for reducing the arrears involve considerable expenditure which the respective State Governments have to incur, the State Governments are bound to be cool or indifferent or are not sufficiently enthusiatic to implement such recommendations. As the problem of arrear has reached critical stage. it has become a serious all India problem which is required to be tackled on a war footing. If adequate funds are made available to each State, the recommendations for reduction of arrears will certainly be given effect to more enthusiastically and expeditiously. We, therefore, recommend that the Government of India should, as a special measure made ad hoc grants for each of the States, for the next five years towards the additional expenditure required to be incurred for implementing our recommendations to reduce the arrears.

AVOIDANCE OF HASTY AND IMPERFECT LEGISLATION

Need for Investigative Exercise, Institutional Consultation and Public Debate Emphasised.

9.30 The proliferation of legislation enacted in undue haste had been one of the major factors contributing to the arrears. Such legislative exercise leads to spurt in litigation since many questions of constitutionality and interpretation are raised in courts and this, in its turn, defeat the very purpose of legislation, because, in most cases, the implementation of the legislation is stalled. Between 1955 and 1970, 959 Bills were passed by Parliament and 6358 by the various States (See Appendix XIII to the Report of the High Couts Arrears Committee, 1972). Any proposed legislation, unless it is of a routine nature, should invariably be preceded, *inter alia*, by adequate investigative exercise on the part of the executive in order to ascertain whether there is real need for the enactment of such law and, if so, whether the form in which it is proposed to be enacted would subserve the end. This should be done keeping in view particularly the pitfalls which might lead to avoidable litigation. This purpose can be achieved by public debate, institutional consultation with expert bodies, professional associations, etc.

Training In Legislative Drafting Recommended

9.31 It is common experience of courts that the quality of legislative drafting has deteriorated considerably which has contributed to a spurt in litigation and that it consumes considerable time of court in resolving disputes regarding interpretation. It is high time, therefore, that the task of drafting was entrusted to highly specialised experts. Since there is dearth of expert draftsmen, suitable measures are required to be taken soon to provide academic training of a high order in the field of draftsmanship and appointing only such persons as draftsmen who qualify in such training.

Reference To Select Committee—Favoured.

9.32 If a bill introduced in legislature covers a field of considerable importance and affects a class or section of the public such Bill should invariably be referred to the Select Committee so that it can be examined in depth as well as in all its dimensions.

9.33 Similar measures with suitable modifications and adaptations should be taken also in regard to the subordinate law making process in the form of rules, orders, bye-laws and regulations which are multiplying at an alarming rate in view of delegation of legislative powers in the welfare State.

TRAINING OF GOVERNMENT OFFICERS IN GENERAL PRINCIPLES OF LAW AND RELEVANT STATUTES.

9.34 It is the decisions of the officers or the authorities under the various statutory provisions which are

challenged in a large number of writ petitions filed in the High Courts. As it is the duty of the High Court to keep all the authorities within the bounds of law it is bound to interfere with the decisions that are rendered in contravention of the statutory provisions or in violation of principles of natural justice, or on the ground of lack of application of mind or on the ground of arbitrary or *mala fide* exercise of power. The errors committed, in a large number of cases, it is found, are easily avoidable errors. It is on account of unfamiliarity with the statutory provisions of the basic principles governing exercise of statutory powers that such errors often result. We may illustrate this problem with reference to one set of problems that are brought before court. There are various statutes providing for preventive detention. How the power of detention should be exercised is fairly well settled by a catena of decisions of the Supreme Court. But we find that the same errors pointed out by the courts are committed by the authorities empowered to make orders of detention, under various statutes. This happens because the officer who is appointed to exercise the power of detention is not familiar with the statutory provisions and the decisions of the courts bearing on the exercise of his powers. Some of the mistakes often committed are that the grounds of detention are not furnished promptly, that the grounds of detention are funished in a language not known to the detenu, that the representations made by the detenu are not dealt with utmost expedition, that irrelevant grounds or non-existing materials are made the foundation for the order or detention, etc.

9.35 Another species of errors consist of violation of principles of natural justice. The orders are made without giving an opportunity of showing cause to the person against whom the order is made, depriving him of his right or privilege. Many times we find that the order of the authority does not indicate that it has applied its mind to the relevant factors which it was required to take into account for making the order. In land acquisition matters, the errors often committed are that the final notification or the award is not made within the prescribed time. Many times these errors are not committed deliberately but on account of ignorance either of the statutory provisions or the principles of natural justice or the decisions bearing on the question. In most of these cases, courts interfere not because the decision is faulty, but because the decision making process is wrong. These errors can very easily be avoided by properly equipping the officers and the authorities before entrusting them with the responsibility of discharging the statutory functions. This could be solved by an appropriate training programme. Before appointing a person who is empowered to exercise statutory powers under various enactments, training should be given to him in regard to the exercise of the powers under the various statutes. A training programme should be properly planned with the help of legal experts, who should analyse the statutory provisions and indicate the manner in which the powers should be exercised. All the principles bearing on the exercise of such power as also the decided authorities should be summarised for the benefit of the officers and the authorities. No person should be appointed to responsible positions which clothe him with important statutory powers without his being trained in regard to exercise of those powers. This is the normal practice followed in the armed forces. If the officers are trained well, it would help in minimising the errors and thereby reducing interference by the Court with the decisions of the officers and the authorities. This will go a long way in eradicating the arrears and minimising interference on technical grounds.

NEED TO PROVIDE ALTERNATIVE MACHINERY FOR REDRESSAL OF GRIEVANCES

9.36 Arbitrariness in executive action and misconception regarding true scope, intendment and purpose of a legislation in the course of its implementation and/or failure to implement the same, bring forth a large number of cases in the Constitutional Writ Jurisdiction. This happens because in most cases there is no alternative remedy. Even trifling issues which could be easily resolved if an alternative mechanism is available, are brought to the Court for adjudication. Ways must, therefore, be found to provide alternative machinery for redressal of these grievances. This can be done by providing for statutory Appeals, setting-up of Quasi-Judicial Forum and Grievances Cells or Agencies with adequate remedial powers and creation of authorities to oversee the implementation of legislative and executive actions.

(V.S. MALIMATH)
CHIEF JUSTICE, KERALA HIGH COURT,
CHAIRMAN

(P.D. DESAI)
CHIEF JUSTICE, CALCUTTA HIGH COURT,
MEMBER

NEW DELHI,
MARCH 14, 1990

(DR. A.S. ANAND)
CHIEF JUSTICE, MADRAS HIGH COURT,
MEMBER

VOLUME-II

CHAPTER I

HISTORICAL BACKGROUND

The Problem

1.1 The problem of arrears has many facets. The factors contributing to the mounting arrears of cases are diverse in nature. The judiciary has been the primary target of criticism but it cannot be overlooked that the other organs of the State, and more particularly, the executive, are not free from blame.

Contributory Factors—Satish Chandra Committee

1.2 Satish Chandra Committee, while dealing with the causes for accumulation of arrears, *inter alia*, identified the following as the contributory factors:

(i) inadequacy of judge-strength;

(ii) delay in filling up vacancies in the High Courts; and

(iii) unsatisfactory appointment of judges.

Executive Inaction

1.3 It cannot be gainsaid that unless sufficient number of judges of proven merit are appointed without undue delay, pendency of cases is bound to constantly rise. This matter primarily concerns the executive branch of the State in whom vests the ultimate power in this regard under the present Constitutional scheme. The failure on their part to provide adequate number of competent judges from time to time has substantially contributed to the mounting arrears in the High Courts. This has been the considered view of the Law Commission of India and several other Committees. A reference to the views expressed in their reports may be made to highlight the point.

Civil Justice Committee—1924

1.4 In 1924, the Civil Justice Committee under the Chairmanship of Mr. Justice Rankin, then puisne Judge of the High Court of Judicature at Port William in Bengal, was set up to enquire, *inter alia*, as to whether any and what changes and improvements should be made so as to provide for the more speedy, economical and satisfactory despatch of the business transacted in the courts. Sir Taj Bahadur Sapru, one of the Members of the Committee, in his "Note on causes of delay in Civil Courts", had enlisted insufficient judge strength in some of the High Courts as one of the causes of delay.

Arrears Committee, 1949

1.5 The High Courts Arrears Committee set up by the Government of India under the Chairmanship of Mr. Justice S.R. Das in 1949 for enquiring and reporting, *inter alia*, as to what measures, if any, be adopted to reduce the accumulation of arrears, recommended that inordinate delays in filling up vacancies on the High Court Bench should be avoided as much as possible and that there should be an immediate increase in the judge strength of such of the High Courts where the judge strength was not commensurate with even the current volume of work.

U.P. Judicial Reforms Committee, 1950

1.6 The Uttar Pradesh Judicial Reforms Committee constituted in the year 1950 was of the unanimous opinion that the main cause of delay in the disposal of appeals in the Uttar Pradesh High Court was the shortage of Judges.

Law Commission 14th Report

1.7 The Law Commission of India which was constituted in 1955 undertook the task of reviewing the system of judicial administration in all its aspects and suggested ways and means for improving it and making it speedy and less expensive. One of the matters which it was called upon to enquire into was recruitment to the judiciary. In its 14th Report the Law Commission examined the problem of arrears in the High Courts in its various aspects and expressed the view that the important cause for the accumulation of arrears was the denial of to the High Courts of the necessary judge strength. A reference was made in the report to the unsuccessful endeavours of the Chief Justices of the High Courts to obtain additional judge strength for their courts, which efforts were thwarted by reason of the faulty tests adopted by the Home Ministry, in assessing the necessary judge strength. Yet another factor which was found responsible in a considerable measure for accumulation of arrears in the High Courts was the delay in filling up vacancies in the High Courts and unsatisfactory appointments.

1967 Survey

1.8 Concerned with the problem of arrears in various High Courts, the Government of India conducted a survey of the work in each High Court in 1967 and found that inadequacy of Judges was the main cause for such accumulation and that the other contributing factors were: delay in filling up vacancies; lack of court accommodation and diversion of serving Judges to other duties such as, Commission of Inquiry, etc. without providing replacement. The survey revealed that seven High Courts called for special attention and steps were taken for increasing judge strength in those High Courts and also to fill up all vacancies without delay. Recommendation was made that when a serving Judge is diverted to other duty and is not likely to come back within six months, an additional or ad hoc Judge should be appointed in his place and that additional court accommodation wherever required should also be made available within six to nine months.

Arrears Committee 1972

1.9 The High Court Arrears Committee, 1972 under the Chairmanship of Mr. Justice J.C. Shah, found that the piling of cases was largely attributable to the denial of necessary judge strength to the High Courts at appropriate time coupled with the undue delay in filling up normal vacancies. It recommended immediate refixation of the permanent strength of High Court Judges making it commensurate with the recent rise in the volume of work and also the appointment of additional and *ad hoc* Judges for clearing the arrears. Periodical review of the strength so fixed and expeditious processing of proposals for filling up vacancies was also advocated.

Administrative Reforms Commission—Study Team

1.10 The procedure for appointment of Judges of the High Courts was again gone into by the Study Team, headed by Shri M.C. Setalvad, on the Centre/State Relations of the Administrative Reforms Commission. The team advocated that a limited role should be assigned to the State executive in the matter of appointment of Judges as recommended by the Law Commission in its 14th Report. The recommendation of the Study Team was considered by the Administrative Reforms Commission which did not agree and felt that the existing procedure and method should continue. The Commission, however, recommended that the role of the Ministry of Home Affairs should be taken over by the Ministry of Law and Justice and this recommendation was accepted.

Law Commission 79th Report

1.11 In the 79th report on "Delay and Arrears in High Courts and other Appellate Courts", the Law Commission observed that the delay in the making of proper appointment of judges of the High Courts when

vacancies arise, and the comparative indifference in regard to the strength of the Judges in the High Courts in spite of increase in institutions and heavy backlogs have also very appreciably added to the gravity of the situation.

Law Commission 80th Report

1.12 In 1977 the Law Commission was requested to consider the matter relating to the appointment of Judges of the High Courts and the Supreme Court since the Prime Minister had desired an examination of the question. In its 80th Report on "The Method of Appointment of Judges" the Law Commission made an indepth study of the problem and highlighted the adverse effects of wrong appointments. It was of the opinion that the effect of wrong or improper appointment would be felt not only for the time being, but its repercussions would enure long thereafter. After examining the positions in various countries, the historical background, the constitutional provisions and the present practice, it made detailed recommendations as to the method of appointment of Judges in the High Courts and the Supreme Court.

Estimates Committee 31st Report

1.3 The Estimates Committee of the Parliament in its 31st Report focussed the attention on the pendency of cases in the Supreme Court and various High Courts and noticed that a large number of vacancies were lying unfilled in various High Courts in 1986. It expressed regret that in spite of the detailed recommendations set out in the 80th Report of the Law Commission, the situation had further deteriorated and the time lag in filling of vacancies in the Supreme Court and the High Courts had enlarged on account of the further delay in attending to this urgent task. It further expressed an opinion that the delay in filling of vacancies by the authorities charged with the duty to undertake this task was primarily responsible for the enormous increase in the arrears. It further said that if the situation was not considerably improved or allowed to continue the same should be interpreted as denial of speedy and less costly justice to the litigant community. The Committee accordingly suggested that the ways and means be found out to replace the present procedure for appointment of Judges as the existing mechanism was partially responsible for the inordinate delay in selection and appointment of Judges.

Law Commission 120th Report

1.14 The Law Commission in its 120th Report on "Manpower Planning in Judiciary: A Blue-print" observed that judicial manpower planning was an area which has been generally ignored and that after four decades of independence it had not been possible to organise even the minimum level of information on the basis of which concrete proposals for judicial manpower planning may take place. Judicial services, in its opinion, were a crucial aspect of the services that the modern Indian State should provide to its citizens. It approached the question firstly from the perspective of increase in population rate and the corresponding increase in the number of Judges in all cadres on the ground that the demographic factor is relevant. It was observed that in India the total judge strength in different cadres was only 7675 in 1987, which works out to only 10.5 judges per million population. This, it was found, was grossly inadequate. It recommended that the present ratio of 10.5 Judges per million of population should be raised to at least 50 Judges per million of population within a span of five years and in any case not later than 10 years. It further recommended that by the year 2,000, there should be 107 Judges per million of population, and that the *inter se* distribution of the enhanced number among various cadres State-wise should ordinarily proceed on the basis of population in each State and the institution of cases. It also observed that an additional criterion that can be used to quantify the much needed judge strength is either or both the litigation rate, i.e. the number of cases and petitions instituted per annum since independence, or the rate of pendency. In its opinion the expenditure on judiciary formed an infinitesimally small portion of tax receipts of each State, including receipts from court fees which must at any rate be exclusively spent on administration of justice, and recommended for a re-thinking whether expenditure on administration of justice can ever be called non-plan expenditure.

Law Commission 121st Report

1.15 In its 121st Report on "A New Forum for Judicial Appointments", the Law Commission observed that there is inordinate delay in filling up the vacancies. It voiced its concern that the review of the manpower strength

is not undertaken regularly and at regular intervals. Even when such a review is done, it more or less remains a paper exercise. While augmenting the strength, the judges are not put in position by selection and appointment in time. When additional strength is sanctioned, more often couple of years are spent in making the appointments by which time, there being a direct and inseverable relation between the strength of the Judges and the disposal of cases, the arrears have further piled up necessitating a further upward revision of the strength. According to the Law Commission the whole thing moves in a vicious circle. It pointed out that the failure to fill up the vacancies is a failure to perform a constitutional duty.

Law Commission 124th Report

1.16 In the 124th Report of the Law Commission on "The High Court Arrears—A Fresh Look" the earlier view that the vacancies should be expeditiously filled in and that the judge strength of the High Courts should be reviewed periodically and attempt should also be made to appoint *ad hoc* judges to tackle the problem of arrears was reiterated. It was further observed that inordinate delay in filling up vacancies in the High Courts coupled with unsatisfactory appointments and inadequate judge strength of the High Courts, not commensurate with their work load, are the two most important causes for the piling arrears.

Conclusion

1.17 Various reports to which reference has been made above have, with one voice, highlighted the factors, already identified by us, namely, inadequacy of judge-strength, delay in filling up vacancies and unsatisfactory appointment of Judges, as substantially contributing to the accumulation of arrears. Notwithstanding the remedial measures suggested, nothing worthwhile appears to have been done, resulting in worsening of the problem of arrears. A continuing imbalance in the proper operation of the constitutional system ranging over a long period of time by reason of one of its primary organs remaining ill-equipped to discharge its essential responsibilities cannot but be viewed with grave concern.

CHAPTER II

INADEQUACY OF JUDGE-STRENGTH

2.1 Keeping in view the background of past experience, shortcomings which have come to surface and deficiencies which have manifested, it shall now be our endeavour to redefine the methods and explore new solutions in so far as the problem of inadequacy of judge strength is concerned.

2.2 Chapter V of Part VI of the Constitution of India makes provisions in respect of the High Courts in the States. Articles 216, 224 and 224-A in particular have relevance to the subject under discussion.

Article 216

2.3 Article 216 reads as follows:

> "Every High Court *shall* consist of a Chief Justice and such other Judges as the President may *from time to time* deem it *necessary* to appoint".
>
> (Emphasis supplied)

The True import of this article was examined in detail in different judgments rendered in *S.P. Gupta* v. *Union of India,* AIR 1982 SC 149. In substance it was therein laid down that while fixing the strength of Judges in each High Court is a purely executive function left to the discretion of the President, the power accordingly conferred casts a mandatory obligation as well as a constitutional duty on him to ensure that each High Court is fully constituted, i.e. it consists of sufficient number of Judges necessary to cope with and dispose of the work falling within its jurisdiction. The expressions "shall", "from time to time" and "necessary" finding place in the Article are crucial. They mandate periodic review of the annual institution of cases and pending bulk of arrears resulting in a reasonable assessment of the number of Judges needed in each High Court and the creation of required posts. A duty is thus imposed on the President to review periodically the number of cases and to increase the number of Judges as and when necessary. As experience shows, a neglect in this area is bound to cause serious injury because the pending cases would continue to accumulate.

Law Commission 14th Report

2.4 The Law Commission of India, in paragraph 54 of Chapter VI of Volume I of its 14th Report, has made the following pertinent observations which are apposite in this context:

> "The large increase in the volume of annual institutions which has been referred to earlier must now, we think, be taken as a permanent feature. This position accordingly necessitates a thorough revision of existing ideas regarding the number of judges required for each High Court. The strength of some of the High Courts has been increased from time to time. In doing this, however, the post-constitutional developments which have thrown a much heavier burden on the High Courts have, in our view, not been adequately taken into account. To expect the existing number of Judges in the various High Courts to deal efficiently with the vastly increased volume of work is, in our opinion, to ask them to attempt the impossible. As pointed out to us by a senior counsel, if there is a congestion on the roads due to an increase in traffic, the remedy is not to blame the traffic but to widen the roads. The first essential, therefore, is to see that the strength of every High Court is maintained at a level so as to be adequate to dispose of what may be called its normal institutions. The normal strength of the High Court must be fixed on the basis of the average annual institutions of all types of proceedings in a particular High Court during the last three years. This is essential in order to prevent what may be

termed the current file of the court falling into arrears and adding to the pile of old cases. The problem of clearing the arrears can be satisfactorily dealt with only after the normal strength of each court has been brought upto the level required to cope with its normal institutions. We suggest that the required strength of the High Court of each State should be fixed in consultation with the Chief Justice of that State and the Chief Justice of India and the strength so fixed should be reviewed at an interval of two or three years. Such a review will be necessary not only by reason of changing conditions but because the implementation of our recommendations made elsewhere will lead to a quicker disposal of work in the subordinate courts which, in its turn, will result in an increase in the work of the High Courts."

Workload Increase—Reasons

2.5 It is indisputable that the workload of the High Courts is steadily increasing. Some of the reasons for the increase in the work of the High Courts as enumerated in paragraph 2 and 3 of Chapter 6 of Volume I of the 14th Report of the Law Commission of India are:

> "The problem of arrears in the High Courts must in our opinion be viewed against the very large increase in the work of these courts in recent years, particularly during the period following the Constitution. Two main causes of this increase need mention. Firstly, the growing volume of ordinary litigation following the economic and industrial development of the country, has considerably added to the normal works of all the courts. We append a Table (Table 1) showing the extent of the increase under various heads. Secondly, there has been an expansion of the High Court's special jurisdiction under a variety of fiscal enactments like the Income-tax Act and Sales-tax Act and other special laws. The fact of such expansion was noticed by the High Courts Arrears Committee as far back as 1949. A very recent example of the conferment of the special jurisdiction of the High Courts will be found in the Representation of the People Act by which the High Court is empowered to hear appeals from the decisions of Election Tribunal.
>
> The fundamental rights conferred by the Constitution and resort to the remedies provided for their enforcement have contributed largely to the increase in the volume of work in the High Courts. Applications for the enforcement of fundamental rights, applications seeking to restrain the usurpation of jurisdiction by administrative bodies and applications or suits challenging the constitutionality of laws have made large additions to the pending files of the High Courts. It has to be observed that many laws have come in for challenge in the courts on the ground of their inconsistency with the Constitution. The complexity of recent legislation has resulted in a large number of novel and difficult questions having been brought before the High Courts. Their decisions have not only taken longer time, but have led not infrequently to references to Full Benches which necessarily divert the available judge-power from what may be called normal judicial work. As a result of this large addition to their work, the disposal of ordinary civil and criminal work in the High Courts has suffered very considerably. This increase of work and its specially difficult and novel character can well be regarded as an important cause of the accumulation of old cases."

Added to these factors are the natural increase in the bulk of litigation on account of increase in population and new rights coming into existence from time to time in an egalitarian society committed to the cause of a welfare State. The gradually falling standards of draftsmanship also contributes in no small measure to the problem.

Additional Workload

2.6 As against the gradual spurt in the workload which would require increased judge strength, there are other contingencies which actually result in reduction of the number of Judges available for normal judicial work on account of utilisation of services of sitting Judges for other purposes. In this context, the following observations from Paragraph 11 of Chapter II of the Satish Chandra Committee Report may be profitably extracted:

> "Even the sanctioned judge strength comes to be considerably depleted by deputing Judges to Commissions and Committees for holding judicial, quasi-judicial and sometimes political inquiries and also to various Tribunals set up from time to time. This has contributed in no small measure to the accumulation of the undisposed causes. The fixation of the Judge strength of the High Courts on the basis of pendency of 650 cases per judge, per year is also somewhat unrealistic. It does not seem to take

into account the deputation of Judges for Commissions, the spate of election petitions that invariably come in after the general elections and the bye-elections, as also that the Judges have to go out for inspection of subordinate courts once in a year involving loss of judicial time from a week to a fortnight, and equally the factor of Judges going on earned or medical leave."

Substantially to the same effect are the observations in Chapter IV Paragraph 9 of the Report of the High Courts Arrears Committee, 1972.

Review of Judge Strength

2.7 Let us now examine whether the constitutional obligation of periodical review has been discharged in true spirit. We shall, for purposes of illustration, confine our examination, through the following statistical data, to cover the period of the last two decades:

1. Years	1968,69,70	1976,77,78	1978,79,80	1982,83,84,	1987,88,89
2. Average Annual Institutions	166338	469217	524071	680763	488346
3. Average Annual Disposal per Judge	* 650	1239	860	1498	1032
4. Total Pendency at the end of the period	324118 (as on June '71)	624927	678951	1251945	1421589
5. Sanctioned Judge	P 233	292	308	393	422
	A 71	79	97	31	39
Strength	T 304	371	405	424 (As on	461 1.12.84)
6. Actual Judge Stregnth at the end of the period	P 224	280	277	358	354
	A 54	65	43	13	20
	T 278	345	320	371 (As on	374 1.12.84)
7. Required Judge Strengh to deal with annual average institutions	225	379	609	454	473
8. Required Judge Strength to deal with pendency	100	101	158	167	276
9. Total Judge Strength Required	325	480	767	621	749
10. Shortfall	47	135	447	250	375

* As no information is available, taken as 650.

© As on 1.1.1972

& As on 31.3.1979

£ As on 18.3.1981

P — Permanent, A — Additional, T — Total

Note I: The figures in the table are the total of all the High Courts in the country.

Note II: A block of preceding three years has been taken to work out the average institutions/dispoals.

NoteIII: Required Judge strength has been worked out on the following basis:

(a) taking disposal per Judge at the rate of 650 cases per year or the average per Judge disposal whichever is higher;

(b) taking into account the number of permanent Judges required to dispose of average institutions in a year;

(c) taking into account the number of Judges required to dispose of the arrears over a period of five years.

Note IV: Reference in col: 7 is to the average anticipated annual institutions in the succeeding years.

Note V: The factual information reflected in the table has been obtained from:

(a) Report of the High Court Arrears Committee, 1972;

(b) 79th Report of the Law Commission;

(c) AIR 1982 SC 149 (Paragraph 1045);

(d) 124th Report of the Law Commission;

(e) Ministry of Law & Justice, Government of India;

(f) Information received from the High Courts.

The aforesaid tabular data demonstrates how on account of the neglect on the part of the constitutional authority to discharge its obligation, the substantial shortfall in the judge-strength has remained a constant phenomenon. The persistent executive indifference, to say the least, is indefensible, in the light of what has been pointed out in the 14th Report of the Law Commission, as noticed by us in paragraph 1.7 of Chapter I.

Judge Strength Determination—Defect in Existing Mechanism

2.8 Against the aforesaid background, there is justification for reviewing the existing constitutional mechanism for determining the judge-strength for each High Court. The power presently vests in the President, that is, the executive. Unlike the power of appointment of judges, it is not required to be exercised in consultation with any constitutional functionary of the judicial organ. True, there is nothing to prevent the Chief Justices of the High Courts from taking up the question of augmenting the judge-strength with the executive in the light of the existing guidelines in that behalf and this in fact is being done. However, as observed in the 14th Report of the Law Commission, such exercise on the part of the Chief Justices of various High Courts has not always yielded desired results and the efforts have actually been thwarted on account of apathy or unawareness of the realities of the situation on the part of the executive. This is amply borne out by what has been demonstrated in paragraph 2.7. The Law Commission suggested that the requisite judge-strength should be fixed in consultation with the Chief Justices of the High Courts concerned and the Chief Justice of India. The solution accordingly mooted has apparently not proved effective.

Power to Determine Judge-Strength—Committee's view

2.9 The Committee is, therefore, of the view that the power to determine the judge-strength required for each High Court from time to time should be entrusted to the Chief Justice of India who will exercise the same in consultation with the Chief Justice of the High Court concerned to enable the President to appoint the requisite number of judges in accordance with such determination. We shall propose an appropriate amendment, on these lines, to Article 216 at the appropriate place hereafter.

Formula for Determining Permanent Judge Strength

2.10 According to the existing guidelines followed by the Government of India, the Judge strength of the High Courts is calculated with reference to the institution and pendency of main cases and the working norm of average disposal per judge. The working norm adopted by the Government of India is 650 main cases per judge

per year, or the average actual disposal of main cases per judge per year over the preceding three years, whichever is higher. The strength of permanent judges of each High Court is calculated taking into account this norm of disposal and average number of main cases instituted over the preceding three years. Posts of additional judges are sanctioned for clearing arrears. The number of additional posts to be sanctioned depends upon the decision to clear the arrears within a period of two, three or four years, as the case may be, using the same working norm of disposal. Main cases pending over two years are treated as arrears for this purpose.

Judge Strength for Current Institutions—Committee's view

2.11 The Committee is of the opinion that the aforesaid guidelines adopted by the Government of India for determining the strength of permanent judges for disposal of current institutions may be accepted subject to review of norms of disposal which matter is separately dealt with. The permanent judge strength required for disposal of main cases instituted in a year on the basis of the said formula ought to be sanctioned without any delay and a periodical review at an interval of not later than three years should be regularly made to ensure that the requisite judge strength is available to deal with fresh institutions in each High Court.

Judge Strength for Arrears—Committee's view

2.12 As regards the appointment of additional judges as per the guidelines to deal with the arrears, the Committee is of the view that the system is required to be reviewed in the light of past experience. The pendency of cases in all the High Courts as on the 1st of January, 1990 is 14,21,589 cases. On the basis of the working norm of 650 cases per judge per year, 437 judges, and on the basis of the average annual disposal of 1032 cases per judge per year, 276 judges, respectively, would be required to clear the pendency within five years and 729 judges and 459 judges respectively, within three years. This would require appointment of a very large number of judges at a stretch. It would be difficult to find, at a time, such a large number of competent persons for appointment as additional judges. It cannot also be overlooked that arrears have become a chronic feature and that the problem cannot, therefore, be tackled by appointment of additional judges for a term of two years or so. Members of the Bar may not come forward to accept appointment for such a short term. For other good and weighty reasons, to be discussed later, the very system of appointment of additional judges requires to be discontinued. Having regard to all the circumstances, the Committee is of the view that even for the purpose of clearing the arrears, permanent strength of judges should be raised. For this purpose, the period during which the arrears should be cleared may be reasonably taken as five years. The number of permanent judges required should be determined applying the formula and norms recommended by the Committee. If the arrears are cleared within the aforesaid period of five years and meanwhile there has not been any further accretion to the pendency, new appointments in the sanctioned posts of permanent judges may be deferred and such number of permanent posts which are not immediately required to be filled may be kept vacant. In very exceptional circumstances requiring the judge strength being increased on account of a sudden spurt or temporary increase in work or unforeseen accretion to the arrears, resort can be had to the appointment of *ad hoc* or acting judges.

Perspective Planning

2.13 The Committee's views expressed in the preceding two paragraphs relate to determining the judge strength required in foreseeable future in the light of the existing circumstances. However as in all other spheres of State activity, perspective planning is a concept which has to apply to the judicial organ of the State as well. The Law Commission in its 120th Report has emphasised the need for manpower planning in judiciary and it has also suggested a perspective planning for the increase of judge strength on the basis of a certain percentage of population and, in the alternative, on the basis of litigation and pendency rates, bearing in mind the need and requirement for the next 20 years period. It is high time that the suggestion made by the Law Commission was implemented and a blue print prepared in the light of the past experience, available data and the financial resources on the basis of which the future need can be reasonably assessed and increased judge-strength over a period of time projecting into the future can be provided for. The assessment of judge strength required for the next decade taking into consideration the demographic factor and the judge strength obtaining in other countries made by the Law Commission has already been adverted to in paragraph 1.14.

Infrastructure

2.14 Mere manpower planning would not, however, be sufficient. The necessary infrastructure, such as

vision for court buildings, additional staff, equipment, etc. will have to be simultaneously worked out and provided. Unless systematic steps in this direction are taken coupled with periodical review, as suggested by the Committee, the court dockets will not remain within manageable limits and the problem of arrears will continue to live with us.

Financial Resources

2.15 The expenditure presently incurred on judges, staff and other miscellaneous items of the Supreme Court of India and of the High Court is set out in Appendices 1(1) and 1(2) of the 121st Report of the Law Commission. In Appendix 1(3) have been set out the total tax receipts of each State for the year 1981-82 and the expenditure incurred on the State judiciary. The data accordingly furnished shows at a glance that the expenditure incurred on the State judiciary is only a negligible portion of the tax receipts of each State, including receipt from court fees. There should, therefore, be no grudge or hesitation on the part of the State to lay out more expenditure for efficient management of the judiciary in the light of the assessed requirement. Financial constraint shall not be an excuse not to meet the needs of judicial organ.

Judiciary—Plan Subject

2.16 The expenditure on administration of justice is still treated as non-plan expenditure. With a concept of perspective planning for manpower and infrastructure, expenditure on judiciary can no longer be treated as non-plan expenditure. A fresh thinking is required to be made and the administration of justice should be made a plan subject.

Article 216 Amendment Suggested

2.17 In the light of the discussions in the preceding paragraphs, the conclusion is irresistible that Article 216 has failed to achieve the objective for which it was enacted. The Committee has highlighted the shortcomings which have manifested in the working of the said article. The Committee has expressed the view that the power to determine the judge-strength required for each High Court should be entrusted to the Chief Justice of India, to be exercised by him in consultation with the Chief Justice of the High Court concerned on the basis of the objective criteria recommended in the next chapter. In the light of such determination, the President would exercise the power to appoint the required number of judges for each High Court. To achieve this objective, it therefore becomes necessary to amend Article 216. The Committee proposes that the present Article 216 be replaced by the following article:

> "216. Every High Court shall consist of a Chief Justice and such number of other Judges as the President deems it necessary to appoint from time to time;
>
> Provided that the number of Judges required for each High Court shall be determined from time to time by the Chief Justice of India in consultation with the Chief Justice of the High Court concerned."

Article 224—

2.18 Article 224 of the Constitution of India, which deals with the appointment of Additional and Acting Judges, reads thus:

> "224. (1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.
>
> (2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.
>
> (3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty two years."

Historical Background

2.19 We may briefly advert to the historical background against which the article came to be enacted and

amended from time to time. There was no provision in the High Courts Act or the Charter Act, 1861 for appointment of an additional Judge with a restricted tenure. It was for the first time in the Government of India Act, 1915 that a provision was enacted for appointing additional Judges. Clause (1) of the proviso to sub-section (2) of section 101 authorised the Governor General in Council to appoint persons to act as additional Judges for such period not exceeding two years as may be required. The Government of India Act, 1915 was replaced by the Government of India Act, 1935. Section 222, sub-section (3) of the said Act provided for appointment of additional Judges in the following terms·

> "222. (3) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such Court it appears to the Governor General that the number of the Judges of the Court should be for the time being increased, the Governor General (in his discretion) may, subject to the foregoing provisions of this chapter with respect to the maximum number of Judges, appoint persons duly qualified for appointment as Judges to be Additional Judges of the Court for such period not exceeding two years as he may specify."

It would, thus, appear that the system of appointment of additional Judges was prevalent when the Constitution was being framed. Article 198 of the Draft Constitution provided in clause (1) for appointment of an acting Chief Justice and in clause (2) for appointment of an acting Judge. Article 199 of the Draft Constitution was in identical terms with sub-section (3) of section 222 of the Government of India Act, 1935.

2.20 When the Constituent Assembly took up for consideration articles 198 and 199 in the Draft Constitution, it had before it a number of representations suggesting the deletion, *inter alia*, of article 199. Sir Taj Bahadur Sapru and other eminent jurists opposed the appointment of acting or additional Judges in the course of their speeches. The main ground of opposition was that temporary or acting Judges do great harm when after they sit on the Bench for a short period, they revert to the Bar. A seat on the Bench gives them a pre-eminence over their colleagues and embarrasses the subordinate Judges who were at one time under their control and thus instead of their upholding justice, they act as a hindrance to free justice. Besides, the prohibition against resuming practice on retirement, which could be applied to permanent Judges, could not be made applicable to acting or temporary Judges.

2.21 The Drafting Committee agreed with the view expressed by the eminent jurists and expressed its opinion that "it will be better to delete Articles 198 and 199 relating to appointment of temporary and additional Judges, than to retain these articles without the ban on practice by persons who held office as additional or temporary Judges ..... it was possible to discontinue the system of temporary and additional Judges in the High Courts altogether by increasing, if necessary, the total member of permanent Judges of such Courts."

2.22 The Constituent Assembly adopted the recommendations of the Drafting Committee to delete article 198(2) and 199 of the Draft Constitution providing for appointment of acting and additional Judges and the result was that when the Constitution was enacted, it contained no provision for appointment of acting or additional Judges. A provision was, however, made in Article 224 for appointment of retired Judges at sittings of High Courts.

2.23 Within six years of the coming into force of the Constitution, the problem of mounting arrears in the High Courts manifested itself. The provision contained in article 224 of the Constitution, which empowered the Chief Justice of a High Court at any time, with the previous consent of the President, to request a retired Judge to sit and act as a Judge of that Court was forced to be neither adequate nor satisfactory in reducing the arrears. The Constitution (Seventh Amendment) Act, 1956 was, therefore, enacted. The then existing articles 224 was substituted by a new article which now finds place in the Constitution as article 224. The old article 224 was added after renumbering the same as Article 224A. Clause (1) of Article 217 was also simultaneously amended to make provisions in regard to acting or additional Judges.

Misuse of Article 224

2.24 Article 224(1) of the Constitution confers power on the President to appoint an additional Judge if by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to him that the number of Judges of that Court should be, for the time being, increased and in that event to appoint an additional Judge for such period not exceeding two years. The experience of operating Article 224(1)

of the Constitution from the year 1956 till date shows that the object of the said provision far from being fulfilled has been frustrated by consistent misuse of the said power. Whereas the said power was intended to be exercised for clearing the arrears within a short period of two years, appointments of additional Judges were being made even when there was a clear need for appointment of judges on a permanent basis and in some cases when permanent vacancies were available. In this connection, it would be useful to extract the following observations of Justice Bhagawati, in *S.P. Gupta* v. *Union of India,* (A.I.R. 1982 S.C. 149) in paragraph 37, which represent the majority view:

> "..... The entire object and purpose of the introduction of clause (1) of Article 224 was perverted and additional judges were appointed under this Article not as temporary judges for a short period who would go back on the expiration of their term as soon as the arrears are cleared of, but as Judges whose tenure, though limited to a period not exceeding two years, at the time of each appointment of an additional judge, would be renewed from time to time until a berth was found for them in the cadre of permanent judges. By and large every person entered the High Court judiciary as an additional judge in the clear expectation that as soon as a vacancy in the post of a permanent judge became available to him in the High Court, he would be confirmed as a permanent judge and if no such vacancy became available to him until the expiration of his term of office, he would be reappointed as an additional judge for a further term in the same High Court. Therefore, far from being aware that on the expiration of their term, they would have to go back because they were appointed only as temporary judges for a short period in order to clear off the arrears—which would have been the position if clause (f) of Aritcle 224 had been implemented according to its true intendment and purpose—the additional judges entered the High Court judiciary with a legitimate expectation that they would not have to go back on the expiration of their term but they would be either reappointed as additional judges for a further term or if in the meanwhile a vacancy in the post of a permanent judge became available, they would be confirmed as permanent judges."

Apart from the perversion in the operation of Article 224(1) of the Constitution, it may be pointed out that the apprehensions and concern expressed by legal luminaries in the Constitutent Assembly appear to be more valid now than ever before, having regard to the general fall in the standards of conduct, character and integrity.

Article 224—Deletion Suggested

2.25 As we have already discussed earlier, having regard to the chronic problem of arrears in our country, it is preferable to appoint permanent Judges to deal with the arrears of cases than to appoint additional Judges for short terms. The temporary need that may arise in exceptional circumstances can be met by resorting to the provisions of Article 224-A of the Constitution by requesting the retired Judges to sit on the Bench as *ad hoc* or acting Judges.

2.26 In the light of what we have discussed above, Article 224 of the Constitution needs to be deleted and the status quo ante prior to 1956 amendment to the Constitution needs to be restored.

CHAPTER III

NORMS AND CLASSIFICATION OF CASES FOR DETERMINING JUDGE STRENGTH

Five Chief Justices Committee Report

3.1 Realising the desirability of evolving uniform classification of cases in the High Courts as main and miscellaneous cases and to fix a uniform yardstick for sanctioning the posts of High Court Judges, a Committee consisting of Chief Justices S/Shri D.M. Chandrashekhar, Satish Chandra, V.D. Misra, Ranganath Misra and M.P. Thakkar, was constituted in the year 1981. The said Committee submitted its report in August, 1982 a copy of which is annexed as Appendix—I. The Committee classified the cases and categorised them as main and miscellaneous cases as provided in Annexure—I to their report. The other recommendations and findings of the Committee are as follows:

(i) That miscellaneous cases should also count for evolving a norm for determining the judge strength of the High Courts by equating five miscellaneous cases to one main case on the ground that miscellaneous cases occupy significant amount of time of Judges for disposal.

(ii) That the judge strength of the High Courts should be suitably increased to compensate for the loss of judge time when they function as Members of the Advisory Boards and Commission of Inquiry;

(iii) As regards weightage being given to different categories of main cases, no definite recommendations were made, there being divergence of opinion among the Members of that Committee. Among those Members who favoured weightage being given, there was no uniformity as to the categories of main cases meriting weightage and the quantum of weightage. Annexure II to the Report contains the three different views of the Members in this behalf; and

(iv) Though the revised classification recommended by the Committee would justify substantial increase of the judge strength of each High Court, by applying the present yardstick of 650 main cases per judge per annum, it suggested that the judge strength of each High Court should be determined on practical considerations taking into account the peculiar conditions prevailing in each High Court.

Approval and Acceptance

3.2 The Chief Justices' Conference held in 1983 approved the recommendation of the Committee regarding classification of cases in the various High Courts and their categorisation as main and miscellaneous cases. It further suggested weightage of six times for original suits by whatever name called. Government of India introduced in 1986 the classification and categorisation of main and miscellaneous cases as recommended by the said Committee.

Reference to this Committee

3.3 The Government of India at the instance of the Minister of Law and Justice, by D.O. No. 36/19/88-JUS(M) dated 29th March, 1989, has forwarded a self contained note regarding uniform classification of cases and their categorisation as main and miscellaneous cases for the purpose of determining the judge strength in the High Courts and requested the Committee to consider the same and make appropriate recommendations in that regard.

The note sets out the following reasons for not implementing the recommendations of the five Chief Justices' Committee in toto:

(i) If weightage was given to miscellaneous matters and extra weightage was given to certain categories of main cases, as recommended by the Committee, the average rate of disposal per judge per year worked out to more than 650 main cases per judge per year.

(ii) The recommendations of the Committee regarding extra weightage to be given to certain categories of cases was not unanimous.

(iii) The recommendation that the strength in each High Court be determined on practical considerations taking into account the peculiar conditions prevailing in each High Court, implied different norms for different High Courts which was not desirable. If the standard guidelines for working out the judge strength on the basis of average annual rate of disposal of main cases over the preceding three years was adopted, the courts having higher rate of disposal of main cases would stand to lose as compared to the courts having lower rate of disposal.

3.4 The Note further says that the existing average sets of disposal of 650 main cases per judge per year may require upward revision for the purpose of determining the judge strength, the average rate of disposal having gone up after the introduction of the revised classification in the year 1986. It is further observed in the note that it is desirable to have a uniform norm for determining judge strength, applicable to all the High Courts.

Weightage for Miscellaneous Cases—Recommended

3.5 The Committee of five Chief Justices' has recommended weightage having given to miscellaneous cases by equating five miscellaneous cases to one main case. As considerable time of the Court is occupied for disposal of miscellaneous cases, we agree with the recommendation that five miscellaneous cases should be treated as equivalent to one main case.

No Weightage for Division Bench/Full Bench Cases—Recommended

3.6 The majority of the Committee of five Chief Justices was in favour of giving weightage for the following categories of cases:

(i) Original Suits by whatever name called;

(ii) Election Petitions;

(iii) All cases to be heard by Benches of three or more judges.

Even in regard to weightage to be given to main cases to be heard and decided by Division Benches there was no unanimity among the majority. There was no uniformity also amongst the majority in regard to the extent of weightage to be given. This Committee is not in favour of any weightage being given to the category of main cases including references and criminal cases that are required to be heard and decided by a Division Bench or cases to be beard and decided by a Bench of three or more Judges. All along, determination of main cases was being done irrespective of whether they were decided by Single Bench, Division Bench or a Bench of three or more Judges. There is no uniformity among the High Courts in regard to the categories of cases that are required to be heard by Single Judges or Division Benches. The number of cases heard by three or more Judges is comparatively small. There is no justification, therefore, for such weightage.

Weightage for Suits/Election Petitions—Recommended

3.7 The High Courts of Calcutta, Bombay, Madras, Delhi, Jammu & Kashmir and Himachal Pradesh are the six High Courts having ordinary original civil jurisdiction and the three Chartered High Courts have also extraordinary original civil jurisdiction. We have in Chapter I of Volume 1 of this Committee's Report made substantial recommendations regarding abolition of the ordinary original civil jurisdiction of these High Courts and for retention of the extraordinary original civil jurisdiction, to a limited extent. The Committee has, however, recommended that the pending cases shall not stand transferred. Hence, original suits cannot be ignored in the matter of formulating the norm for determining the judge strength. The original suits, undoubtedly, take considerable time for disposal as compared to the time taken for disposal of other types of cases in the High Courts.

Similarly, election petitions challenging elections to the State Legislatures and the Parliament also occupy substantial time of the Courts. This Committee is, therefore, in favour of according weightage for original suits, by whatever name they are called, and also for election petitions. As regards the extent of weightage, the majority amongst the five Chief Justices suggested six times weightage being given to election petitions. For original suits one view was in favour of weightage to the extent of four times and the other of six times. The Chief Justices' Conference, 1983 recommended weightage of six times to original suits. This Committee recommends weightage of six times being accorded to original suits, by whatever name they are called, as well as to the election petitions.

Uniform Norm for Judge Strength—Recommended

3.8 The Committee of five Chief Justices suggested that the judge strength of each High Court should be determined on practical considerations taking into account the peculiar conditions prevailing in each High Court and not on the basis of any norm or principle of uniform application. This was done apprehending that on the adoption of the revised classification of main cases as recommended by them, by the application of the present yardstick of 650 main cases per judge per year, the judge strength of each High Court may have to be increased substantially by twice or thrice the present number. It should not be forgotten that the Committee was constituted for recommending uniform classification of cases in High Courts and their categorisation as main and miscellaneous cases for the purpose of determining the judge strength of each High Court on the basis of a uniformaly applicable norm. If the strength of the judges of each High Court is required to be enhanced on the application of objective criteria, steps ought to be taken to provide the required number of judges to effectively tackle the problem of arrears. If the norm of disposal of 650 main cases per judge per year is unrealistic or unreasonable, having regard to the changed circumstances, the same may have to be suitably revised. In some cases, the actual increase of judge strength in accordance with the fixed norm may not be immediately possible for reasons such as constraints of accommodation. In such cases, the judge strength should be increased after taking expeditious steps to remove the constraints. But, these are not valid grounds for not fixing a uniform norm. The Committee is, therefore, in favour of evolving a uniform norm for determining the judge strength of the High Courts in the country.

Upward Revision of Norm—Favoured

3.9 The norm of disposal of 650 cases per judge per year was fixed by the Chief Justices' Conference held in the year 1960, without giving any weightage to the disposal of miscellaneous cases, the original suits, by whatever name they are called, and election petitions. The national average rate of disposal for all the High Courts for the years 1986 and 1987, according to Annexure-III to the Note of the Government of India, is 972.7 and 998.0 cases respectively. The national average rate of disposal of all the High Courts for the years 1988 and 1989 worked out by this Committee on the basis of the information received by it comes to 955.94 and 1138.57 cases respectively. Thus, it is clear that there is a general trend of increase in the rate of disposal of cases per judge per year. Further, the Committee has recommended weightage to miscellaneous cases, original suits by whatever name called and to election petitions. If these recommendations are accepted, the rate of per judge disposal per year of 650 main cases fixed by the Chief Justices' Conference in the year 1960 would require an upward revision.

Enhanced Norm of 800—Recommended

3.10 The following statement gives the average rate of disposal per judge per year of the respective High Courts during the last three years, viz., 1987, 1988 and 1989:

Average per Judge Disposal

Name of the High Court	1987	1988	1989
(1)	(2)	(3)	(4)
Allahabad	628	727	676
Andhra Pradesh	2183	2128	2177
Bombay	720	925	799
Calcutta	544	440	1101

Delhi	573	443	656
Guwahati	394	399	595
Gujarat	958	1346	1399
Himachal Pradesh	910	667	1277
Jammu & Kashmir	1087	1102	1434
Karnataka	1407	1959	1682
Kerala	1584	1383	2193
Madhya Pradesh	831	824	974
Madras	1212	879	1674
Orissa	832	765	636
Patna	758	947	944
Punjab & Haryana	1464	1236	1689
Rajasthan	804	815	901
Sikkim	33	21	41

From this statement, it emerges that the average rate of disposal per judge per year was less than 650 cases in respect of five High Courts in the year 1987, four High Courts in the year 1988 and three High Courts in the year 1989. The average rate of per judge disposal of cases per year was less than 800 in respect of seven High Courts in the year 1987, seven High Courts in the year 1988 and six High Courts in the year 1989. Having regard to this data, this Committee considers it reasonable to recommend enhancement of the rate of per judge disposal of cases from 650 to 800 main cases, after giving due weightage as recommended.

Formula—Judge Strength Determination

3.11 This Committee has recommended in Chapter II of this Volume that the judge strength should be periodically reviewed once in every three years, taking into account the national average per judge disposal of the preceding three years and the average institution and pendency of cases in each High Court at the end of the said period of three years. The Committee recommends that the judge strength of each High Court should be determined on the basis of the working norm of disposal of 800 main cases per judge per year or the actual national average rate of disposal per judge per year over the preceding three years, whichever is higher.

Compliance of Classification—Need Stressed

3.12 The Committee has noticed that the uniform classification of cases and their categorisation as main and miscellaneous cases prescribed in Annexure—I to the Report of the Five Chief Justices' Committee and which has been accepted by the Government of India is not being uniformly and strictly followed by all the High Courts. It has also come to the notice of this Committee that in some of the High Courts, figures of disposal of main cases have been worked out by giving weightage to cases decided by Division Bench and Full Bench, even though no such weightage has been accepted to be given by the Government of India. This Committee, therefore, recommends that the Government of India should prepare a proper proforma to be used by all the High Courts for furnishing information in regard to institution, disposal, pendency and weightage, so that accurate information becomes available for satisfactory determination of judge strength of each High Court.

Temporary Increase of Judge Strength

3.13 This Committee also endorses the recommendation of the five Chief Justices' Committee that the judge strength of the High Courts should be suitably increased to compensate for the time taken by the Judges when they function as members of Advisory Boards, Commissions of Inquiry etc.

CHAPTER IV

DELAY IN FILLING UP VACANCIES IN THE HIGH COURTS

Problem Identified

4.1 One of the three major factors identified for the accumulation of arrears is the enormous delay in filling up the vacancies. This malady of delay has become chronic. It has not been remedied despite the concern voiced and the recommendations made from time to time by the various Committees and the Law Commission, to which reference has been made in Chapter I of this Volume.

Vacancy Position Analysed

4.2 In Satish Chandra Committee's Report, which is the latest on the subject, the position has been reviewed upto 1985. The Law Commission, in its 121st Report, has made an analysis of the relevant data for the period from 1981 to 1985. The information is furnished in Annexure V of its report and it demonstrates that there has been persistent delay in filling up the vacancies resulting in substantially contributing to the accumulation of arrears on account of loss of judge-days. The inaction and indifference on the part of the executive in not filling up the vacancies has been continuing as the following statement with regard to the vacancies existing during the different periods would demonstrate:

Date	*No. of Vacancies*
1-1-1972	26
1976	69
1986	69
1-1-1990	87

These figures do not take into account the number of posts which the Government had agreed to sanction only at the time of actual appointment. For example, as on 1.1.1990 in addition to the sanctioned strength of 461 posts, the Government had agreed to sanction 93 new posts, the sanction obviously having been agreed to be given taking into consideration the arrears. Hence, the posts agreed to be sanctioned at the time of actual appointment could legitimately be regarded as available vacancies during the relevant year. On that basis, there would be 180 vacancies as on 1.1.1990.

Statistical Data

4.3 If all the vacancies of Judges were filled up as and when they occurred, substantial reduction in the pendency could have been made by now. The Committee will illustrate this with reference to the factual position for the period from 1.1.1986 to 1.1.1990. On the basis of the information received from the various High Courts, the figures in regard to the pendency, the vacancies, the average disposal per judge per year and the additional number of cases that could have been disposed of if the vacancies had been filled up from time to time are furnished in respect of each High Court in the statement appended to this report as Appendices II to II (q) (collectively). A consolidated statement containing the same information in regard to all the High Courts is annexed as Appendix III. From a perusal of the same, it would be seen that about 4,57,200 more cases would have

been disposed of during the said period if all the vacancies had been filled up as and when they occurred. This would have resulted in a substantial reduction in the pendency. The total pendency as on 1.1.1990 is 14, 21, 589 cases whereas the pendency would have been only 9,64,389 if the vacancies had been filled up in time. Keeping in view the fact that the pendency as on 1.1.1986 was 10,04,483, during the period from 1.1.1986 to 1.1.1990, 4,17,106 cases had accumulated. But, had all the vacancies which arose during the said period been filled up in time 4,57,200 more cases could have been disposed of reducing the pendency very substantially. In fact, there would not have been any increase in the total pendency from 1.1.1986 to 1.1.1990 and instead 40,094 cases more would have been disposed of out of the backlog as on 1.1.1986.

4.4 To emphasise this aspect reference may be made, by way of illustration, to the data in respect of the High Courts of Gujarat, Karnataka and Kerala. The pendency in the Gujarat High Court as on 1.1.1990 was 73,465. If the vacancies had been filled up in time, the pendency would have been only 6,962. So far as the High Court of Karnataka is concerned, the pendency as on 1.1.1990 was 79,492, whereas the pendency would have been only 32,902 if the vacancies had been filled up in time. So far as the High Court of Kerala is concerned, there would not have been any pendency at all, had the vacancies been filled up in time.

Causes Identified

4.5 The delay in appointment occurs mainly on account of the protracted and cumbersome procedure which is being followed in the matter of appointment of Judges. The different constitutional functionaries are the contributories to the delay. In some cases, the proposals are not initiated by the Chief Justices well in advance of the occurrence of the vacancy which could be anticipated. The Chief Minister normally take inordinately long time to process the recommendation, on account of irrelevant and extraneous considerations. Even after the recommendation has been cleared by all the Constitutional consultees, the approval to the appointment takes considerable time and the delay, more often than not, takes place again on considerations other than relevant. The modality for processing the recommendation also contributes to the delay. The enquiry regarding the antecedents undertaken at the instance of the Central Government, even when the name has been cleared by the high Constitutional functionaries after being satisfied about the character and integrity of the person concerned, is known to take unduly long time. According to the practice currently followed, the change in office of any of the Constitutional consultees requires a reference back being made to the new incumbent which starts the processing of the recommendation *de novo*. The time schedule fixed in the Memorandum of Procedure circulated by the Government of India is not adhered to and even when the Chief Minister and the Governor do not send their views in regard to the proposal made by the Chief Justice within the stipulated period of one month, no presumption as to their having concurred with the proposal is raised and the proposal is allowed to remain pending for an unreasonably long time, awaiting their views. Instances are not unknown that when the views of the Chief Minister on the recommendation of the Chief Justice are sought, the Chief Minister makes his own proposal and sometimes even the Union Government proposes a new name, both of which entail the entire consultative process being set in motion once again, further stalling the proposals already made. Sometimes cognisance is taken of baseless complaints about the antecedents of the person recommended, which even *prima facie*, do not have any merit and a back reference or fresh inquiry follows. This is being done even in cases where the complaints are pseudonymous or anonymous. Beside causing avoidable delay, the entertaining of such complaints, encourages an unhealthy trend of sending anonymous or pseudonymous complaints against the proposed candidates by vested interests. This denigrates the person recommended and sometimes this itself is a factor which dissuades competent and honest persons from agreeing to be considered for judgeship.

Committee's Recommendations

4.6 These are maladies which have existed for years. The delay in the appointments is now a matter which stands acknowledged in the Statement of Objects and Reasons annexed to the Constitution (Sixty-seventh Amendment) Bill, 1990. The sheer apathy to eliminate the causes resulting in delay has considerably affected the administration of justice and the timely disposal of cases as hereinabove shown. It is high time that steps were initiated to overhaul the entire procedure for the appointment of Judges with the end in view of securing expeditious appointments. It is essential that these deficiencies and maladies are remedied by an appropriate statutory enactment and in the event of the Constitution (Sixty-seventh Amendment) Bill, 1990, being made into a law, by an appropriate provision made therein.

CHAPTER V

UNSATISFACTORY APPOINTMENT TO HIGH COURT BENCHES

Problem Identified

5.1 That unsatisfactory appointment of Judges to the High Court Benches have contributed in a large measure to the accumulation of arrears in the High Courts is a fact which is so true that it needs no emphasis. Justice can be dispensed with fairly, effectively and impartially when we have courts manned by competent persons of unimpeachable integrity and character, learned in law and dedicated to the Constitution. Merit and merit alone, coupled with the reputation for integrity, suitability and capability, has to be the criterion for selection. Judges not selected on that basis or who are appointed on considerations other than merit, may, more often than not, be not able to act impartially and fairly. Therefore, selection of Judges should be made with utmost care and concern.

Law Commission Fourteenth Report

5.2 It indeed, is a matter of regret, but a self evident fact, that there has been a steep fall in the quality of appointments. The Law Commission, in its Fourteenth Report, voiced its concern about the rising tide of unsatisfactory appointments and said:

> "We must next refer to an important factor which, in our view, has considerably aggravated the situation, caused by the accumulation of arrears. We refer to the selection of unsatisfactory judicial personnel. We have visited all the High Court centres and on all hands, we have heard better and revealing criticisms about the appointments made to High Court Judiciary during recent years. This criticism has been made by the Supreme Court Judges, High Court Judges, retired Judges, Public Prosecutors, numerous representative associations of the Bar, Principals and Professors of Law Colleges and very responsible members of the legal profession all over the country. One of the State Governments had to admit that careful scrutiny was necessary. The most universal chorus of comment is that the selections are unsatisfactory and that they have been induced by executive influence. It has been said that these selections appear to have proceeded on no recognisable principle and seem to have been made out of considerations of political expediency or regional or communal sentiments."

Arrears Committee, 1972 & Law Commission—Seventy-ninth Report

5.3 The High Courts Arrears Committee, 1972 as well as the Law Commission, in its Seventy-ninth Report expressed identical sentiments. Despite the consistent warning voiced, the trend continues unabated.

Satish Chandra Committee Report

5.4 Satish Chandra Committee, in Chapter V of its Report, dealing with the unsatisfactory appointments was of "the confirmed view" that the deterioration is attributable to appointment of the Judges who have not been truly recommended by the Chief Justice of the High Court and have, instead, been foisted on the High Court. It noticed that if this trend continued, the Chief Justice could find a person appointed in his Court whom he considers unsuitable and this, at the instance of the State executive and against his own preference. With such a colleague, it would be very difficult for the Chief Justice to effectively transact the judicial business of his Court. The position, observed Satish Chandra Committee, would be further aggravated by the knowledge of the newly appointed Judge that he has been appointed to the Bench by the executive and against the recommendation of the Chief Justice. Such a situation would have a deletorious effect on the homogenity of the court and may deter the Chief Justice from recommending someone, however capable, whom he has reason to believe that the executive might not favour, or in the alternative, drive him to recommend someone whom he believes acceptable to the executive. The apprehension voiced as aforesaid, as the experience of last few years shows, has become a stark reality.

5.5 The selection of a person, on considerations other than merit, has far reaching consequences and does more damage than what apparently meats the eye. Such an appointee does not even receive from the members of the Bar the

measure of respect and co-operation which is imperative for proper administration of justice. He may not have confidence even in himself and a command over the proceedings of the Court. All this would be at the cost of proper administration of justice. The effect would be felt not only on the quality but also on the quantity of the work turned out.

5.6 According to Satish Chandra Committee, the sea change which has gradually come into the political process is directly responsible for the grave deterioration and the fall in the high standards of appointments to the High Court Bench previously maintained. Barring exceptions, the Chief Ministers to-day have come to think that even filling up vacancies on the High Court Bench is a matter of patronage, political or otherwise. It noticed that formerly members of the Bar were invited to accept judge-ship. Now, the judge-ship of the High Court seems to have become a post to be canvassed for. It was found that as long as the State Executive has an effective hand in such appointments, this disquieting feature would continue and that it could be remedied only by providing the safeguard of the executive having no final say in the matter of appointment and that the last word in the matter should be of the Chief Justice of the High Court concerned and the Chief Justice of India. The Committee, therefore, suggested amendment of the Constitution, as a guarantee for ensuring the quality, that an appointment to the High Court must have the concurrence of the Chief Justice of India and should not be made merely in consultation with him. An amendment was suggested to Article 217(1) of the Constitution on those lines.

Committee's Views

5.7 This Committee is broadly in agreement with Satish Chandra Committee as to the causes for unsatisfactory appointments and with the view that such unsatisfactory appointments have contributed in no small measure to the accumulation of arrears in the Courts and to the deterioration of the quality of justice. The Committee has given its views and made suggestions for amendment of Article 217(1) of the Constitution and it, therefore does not propose to examine the amendment proposed by Satish Chandra Committee.

5.8 This Committee is of the firm view that to ensure that the judicial system functions effectively and to maintain both the quality and quantity of judicial work, as well as the faith and confidence of the public, the appointments be made only on considerations of merit, suitability, integrity and capability and not of political expediency or regional or communal sentiments. The apprehension that the recommendation made by him may not meet with the approval of the executive, may sometimes induce a Chief Justice to propose the name of a person who does not measure upto the requisite standard, which is rather unfortunate. It is fundamental for the preservation of the independence of the judiciary that it be free from threats and pressures from any quarter. It is the duty of the State to ensure that the judiciary occupies, and is seen to occupy, such position in the polity that it can effectively perform the functions entrusted to it by the Constitution and that can be done only if the process of appointment is left unpolluted.

Appendices—Relevant Information and Factors

5.9 With a view to assisting the Chief Justice in making a proper selection, as also to enable the Governor and the Chief Justice of India or any other body responsible for making recommendation and the appointing authority to have a clear and comprehensive picture of the person recommended, two appendices have been prepared and annexed to this report as Appendices IV and V. Appendix IV is the proforma for eliciting the requisite information from the person to be recommended. This would constitute the bio-data of such person. Appendix V contains the list of factors on the basis of which the Chief Justice would assess the suitability of the person to be recommended. The recommendation should reflect the opinion he has formed about the person recommended as to the factors enumerated in the said Appendix. This will eliminate the possibility of purely subjective consideration entering into the process of making the recommendation and also guard against any irrelevant or extraneous considerations being projected by the other constitutional functionaries, since these are essentially the material factors to be kept in view. The Committee is also of the considered view that before making the recommendation, the Chief Justice should consult such of the Judges of the High Court as he deems necessary as that would undoubtedly assist him in making a proper selection.

Conclusion

5.10 The Committee is of the opinion that if the procedure, as aforesaid, is followed and appointments are made in accordance with the recommendation of the Chief Justice of the High Court, concurred in by the Chief Justice of India, it would prevent unsatisfactory appointments being made to the High Courts.

CHAPTER VI

EXISTING SCHEME FOR APPOINTMENT AND TRANSFER OF JUDGES

6.1 In the preceding Chapters of this Volume, we have demonstrated that the lack of periodical review of judge strength, delay in filling up of the vacancies and unsatisfactory appointment of Judges are some of the major factors for accumulation of arrears. In this Chapter we propose to examine the existing scheme in all its aspects and to analyse whether it is basically sound, whether in its functioning any aberration or shortcomings have surfaced and to recommend the remedial measures.

Appointment of Judges—Government of India Act, 1919

6.2 Under section 101 of the Government of India Act, 1919, the power to appoint a Judge of the High Court was conferred on His Majesty, while the power to fix salary, allowances, leave and retirement pension of the High Court Judge vested in the Secretary of State in Council. Section 102 provided that every Judge of a High Court shall hold his office during His Majesty's "*pleasure*". The executive, thus, had not only the complete authority to appoint judges but also to remove them.

Appointment of Judges—Government of India Act, 1935

6.3 Subsequently, when the Government of India Act, 1935 was promulgated, Part IX of the same provided for setting up of Federal Courts and High Courts. Section 220 provided for the establishment of High Courts. The power to appoint a High Court Judge, however, under section 220(2) remained vested in His Majesty, but some security of tenure was provided to the Judges. Whereas under the Government of India Act, 1919, the tenure of office of a High Court Judge was "at His Majesty's pleasure", the Government of India Act, 1935 changed it from one "at His Majesty's Pleasure" to the attaining of sixty years of age subject to the provision regarding removal. Thus, both under the Government of India Act, 1919 and the Government of India Act, 1935, the power to appoint Judges of the High Court was unreservedly vested in the executive and no one else was required to be consulted. These were the provisions which were in vogue when the Constituent Assembly was convened and it embarked upon the task to determine the procedure for selecting Judges for appointment to the High Courts and the Supreme Court.

Experts' Committee—1947 Report

6.4 Keeping in view the importance of an independent judiciary, the Constituent Assembly set up an Experts' Committee consisting of some of the most distinguished jurists in the country for drafting the provisions relating to the judiciary. Paragraph 14 of their report dated 21st May, 1947 dealt *inter alia* with the mode of appointment of Judges. It read thus:

> "..... *we do not think that it will be expedient to leave the power of appointing Judges of the Supreme Court to the unfettered discretion of the President of the Union.* We recommend that either of the following methods may be adopted. One method is that the President should, in consultation with the Chief Justice of the Supreme Court (so far as the appointment of puisne judges is concerned), nominate a person whom he considers fit to be appointed to the Supreme Court and the nomination should be confirmed by a majority of at least 7 out of a panel of 11 composed of some of the Chief Justices of the High Courts of the constituent units, some members of both the Houses of the Central Legislature and some of the Law Officers of the Union. The other method is that the panel of 11 should recom-

mend three names out of which the President, in consultation with the Chief Justice, may select a judge for the appointment. The same procedure should be followed for the appointment of the Chief Justice, except of course, that in this case there will be no consultation with the Chief Justice. To ensure that the panel will be both independent and command confidence, the panel should not be an ad hoc body but must be one appointed for a term of years".

(Emphasis supplied)

Judges Conference 1948—Memorandum

6.5 The Draft Constitution was forwarded to Judges of the Federal Court for their views. A conference was convened in March 1948 by the Chief Justice of the Federal Court and was attended by Judges of the Federal Court and the Chief Justices of the High Courts. The conference considered the provisions affecting the judiciary and authorised the Chief Justice to submit a memorandum embodying its views, which he accordingly did. The memorandum recommended that appointment of Judges of the High Court should be made by the President of India, *on the recommendation of the Chief Justice of the High Court after consultation with the Governor of the State and with the concurrence of the Chief Justice of India.*

Constituent Assembly—Debate

6.6 The recommendations contained in the memorandum, and an amendment to draft Article 193 to the same effect, however, did not meet with the approval of the Constituent Assembly even though most of the members shared the objectives which the recommendations sought to achieve. Pandit Jawaharlal Nehru, speaking in the Constituent Assembly on 24th May, 1949, called upon the Assembly to consider,—

> "What rules to frame so that we can get the best material from the Bar for the High Court or Federal Court Judges. It is important that these Judges should be not only first-rate, but should be acknowledged to be first-rate in the country and of the highest integrity, if necessary, people who can stand up against the Executive Government and whoever may come in their way"

Dr. B.R. Ambedkar shared the same sentiments and observed,—

> "There can be no difference of opinion in the House that our judiciary must both be independent of the Executive and must also be competent in itself."

Dr. Ambedkar, however, felt that the requirement of *concurrence* of the Chief Justice of India was *unnecessary*. Instead, he advocated providing for *consultation* with the Head of the country's judiciary. According to Dr. Ambedkar, considering the personalities of the two constitutional functionaries, viz., the President of India and the Chief Justice of India, the consultation between them for appointment of Judges of the High Court was "*sufficient for the moment*".

Article 217

6.7 Chapter V in Part VI of the Constitution of India was thereafter framed. Article 217 therein was enacted to provide that every Judge of a High Court shall be appointed by the Prasident by Warrant under his hand and seal after *consultation* with the Chief Justice of India, the Governor of the State and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court concerned. This was contrary to the recommendation of the Judges' Conference, but in tune with the views expressed in the Constituent Assembly. Thus, even under Article 217, the supremacy given to the executive in the Government of India Act, 1919 and the Government of India Act, 1935 in the matter of appointment of Judges of the High Court was to a large extent retained, because while exercising the executive power to appoint a Judge, the President will be bound by the advice tendered to him under Article 74. Of course, it is obligatory upon the President before making an appointment to consult the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court to which the Judge is to be appointed and the consultation with the Governor of the State only implies consultation with the State executive, represented by the Chief Minister, but "consultation" and "concurrence" are entirely different concepts. Although "consultation" does not mean "concurrence", it implies full and effective consultation after placing complete and identical material before each constitutional functionary (see *Union of India* v.

S.M. Sheth, AIR 1977 SC 2328 and *S.P. Gupta* v. *Union of Inida,* AIR 1982 SC 149). Here, it would be advantageous also to notice the observations of the Supreme Court in *Samsher Singh* v. *Union of India,* [1974] 2 SCC 831 at 834:

> "In all conceivable cases, consultation with the highest dignitary of Indian justice will and should be accepted by the Government of India and the court will have an opportunity to examine if any other extraneous circumstances have entered into the verdict of the Minister, if he departs from the counsel given by the Chief Justice of India. In practice, the last word in such sensitive subject must belong to the Chief Justice of India, the rejection of his advice being ordinarily regarded as prompted by oblique considerations vitiating the order".

Supremacy of the Executive—S.P. Gupta v. *Union of India*

6.8 The provisions of Article 217 came up for consideration by a Bench of seven Judges of the Supreme Court in *S.P. Gupta* v. *Union of India,* AIR 1982 SC 149. During the course of the arguments, it was asserted that in the matter of appointment of Judges to the High Court, the last word should be with the Chief Justice of India. It was pointed out that leaving the last word with the executive in the matter of appointment to superior judiciary could enable the executive to pack the judiciary with its own nominees, sacrificing the merit, suitability and ability in some cases, which would be subversive of the independence of the judiciary. The majority view, however, rejected the contention that the view of the Chief Justice of India in the matter of appointments should be accorded primacy. Bhagwati, J., opined that the proposal for appointment of a person as a Judge could be initiated even by the Central Government or by any of the three constitutional functionaries required to be consulted and from whomsoever the proposal emanates, the other two constitutional functionaries are required only to be consulted in regard to it, 'on the basis of full and identical materials' and that it would be open to the Central Government to override the opinion given by the other constitutional functionaries required to be consulted, including the Chief Justice of India and to form its own judgment about the appointment of the selectee. Bhagwati, J. concluded that the opinion of *each* of the *three* constitutional functionaries is entitled to *equal* weight and that it is not possible to say that the opinion of the Chief Justice of India could have primacy over the opinions of the other two constitutional functionaries. Of course, it was also observed that in case the Chief Justice of India and the Chief Justice of the concerned High Court were unanimous in their opinion, the Central Government *should ordinarily accept it.* The majority of the Judges by and large leaned in favour of the view expressed by Bhagwati, J. Thus, the Supreme Court put its seal of approval on the supremacy of the executive in the matter of appointment of High Court Judges. Armed with this judicial verdict, experience tells us that after 1982, even the safeguards which were provided in *S.P. Gupta's* case were respected more in their breach. The ultimate say of the executive not only resulted in further delay in the appointment of Judges but also brought in unsatisfactory appointments.

Memorandum of Procedure—Not Followed

6.9 Under the memorandum of procedure, six months prior to the arising of a vacancy, the Chief Justice of the High Court is required to forward his recommendation to the Chief Minister. He is also to forward copies of his communication to the Union Law Minister and the Chief Justice of India. Where the Chief Minister agrees with the recommendation the same is forwarded to the Governor and through him, to the Union Law Minister. In case the Chief Minister does not agree with the recommendation and chooses to make his own recommendation, he is required to communicate his views to the Chief Justice concerned and give him an opportunity to make his comments. Thereafter, the entire correspondence is required to be forwarded to the Union Law Minister, whether or not an agreement is reached between the Chief Justice and the Chief Minister. Experience, however, shows that some Chief Ministers choose to sit tight over the recommendation made by the Chief Justice and thereby "kill it'. They do not adhere to the time schedule, as given in the memorandum of procedure. Even though it is specified in the memorandum of procedure that if the State Government, i.e., the Chief Minister and the Governor, do not send their views within one month, it should be taken as exiomatic that they have no comments to make on the Chief Justice's recommendation and that it should be assumed that they agree with the same and thereafter, the process of consultation by the Union Law Minister with the Chief Justice of India should commence and be completed within three months, it is not invariably followed with consequences which are all too obvious. There are cases that even where the Chief Justice of India on being consulted, agrees with the recommendation made by the Chief Justice of the concerned High Court which is also concurred to by the Governor of the State and

forwards his recommendation to the Union Law Minister, appointments are either not made or made after inordinate delay. Sometimes, the Union Law Minister even adopts the "pick and choose" policy to appoint Judges out of the list of selectees recommended by the Chief Justice of the High Court duly concurred in by the Chief Justice of India or makes appointments by disturbing the order in which the recommendations have been made. The malady has become more acute in view of the political interference and undesirable influence of "extra constitutional authorities" in the appointment of judges. Thus, the authority of the Chief Justice of India and the role of the Chief Justice of the High Courts in the matter of appointment of superior judiciary have, to a great extent, been undermined, leaving to the executive to appoint Judges not on "excellence" but on "influence". Thus, merit, ability and suitability which undoubtedly the Chief Justice of the High Court is the most proper person to judge, are sacrificed at the alter of political or other expediency. This attitude is essentially responsible for the deterioration and the fall in the high standards of appointments to the High Court Benches. It is unfortunate, but absolutely true, that the Chief Ministers have come to think and the Union Law Minister has come to believe that the vacancy in the High Court Bench is a matter of political patronage which they are entitled to distribute or dole out to their favourites. This veto power with the executive has played havoc in the matter of appointment of Judges.

Expression of Concern

6.10 The fact situation aforesaid has led to a loss of credibility and a serious threat to the independence of the judiciary. Alarmed by this development, the Law Commission, jurists, academicians, lawyers etc. bestowed serious thought upon the matter. An almost unanimous voice came to be echoed to minimise the executive's say and to vest the last word in the matter of appointment of Judges in the Chief Justice of India.

Failure not of System but Men

6.11 The present system of appointment of Judges to the High Courts has been in vogue for about four decades. It functioned satisfactorily as long as the well-established conventions were honoured and followed. The gradual, but systematic violation and virtual annihillation of the conventions over the past two decades or so is essentially responsible for the present unfortunate situation. Has the system, therefore, failed or have the concerned failed the system is an all important question. It is apparent that the system has not failed, but all those concerned with operating the system have failed it by allowing it to be perverted.

The Law Commission of India—80th Report

6.12 In its Eightieth Report (1979), the Law Commission addressed itself to the question of method of appointment of Judges. The supersession controversy of 1973 and 1977 was still fresh. At page 21 of the Report, the Law Commission observed thus:

> "After giving the matter our earnest consideration, we agree with the High Courts and are of the view that the present constitutional scheme which was evolved by the framers of the Constitution after much reflection and after taking into account the various modes of appointment in different countries, is basically sound. It has worked, on the whole, satisfactorily and does not call for any radical change".

The Law Commission of India—121st Report

6.13 The Law Commission of India in its One Hundred Twentyfirst Report on "A new Forum for judicial Appointments" addressed itself to the need and justification for a change from the present system of appointment of Judges. It observed:

> "The questions which must now be faced are: Is the mechanism functioning or has it become disfunctional? If it has become disfunctional, whether the failure is of the constitutional functionary on whom power is conferred or search should be made for causes outside the mechanism for its failure? In other words the questions to be posed are: (1) Is the judicial strength regularly reviewed to keep pace with mounting court dockets? (2) Are first rate persons of high intellect, unquestioned integrity and character and efficient in discharge of duties being selected by making the machanism operational? (3) Are the vacancies filled within reasonable time which is the obligation of the President? A citizen of

this country has a constitutional right to have a forum easily accessible for the resolution of the disputes by efficient Judges and with a reasonable time. Is this object achieved? If the power to appoint inheres duty to appoint and if it can be shown that the appointments are tardy, inordinately delayed, not of the quality expected, then not only failure can be ascribed to the centres of power but also to the mechanism. In that event, a rethinking in this direction is a high priority necessity".

6.14 Having found the failure of the functioning of the present system, the Law Commission proceeded to search for a new model and took a look around the world to acquaint itself whether any existing model of any other country could deliver the goods or indigenisation of such a model could be helpful or to totally devise a new one.

National Judicial Service Commission—Suggested

6.15 The Law Commission reviewed the method of selection in the U.S.A., United Kingdom, France, Australia, Canada and the U.S.S.R., but did not find any of the methods employed in any of those countries to be *wholly* suitable to the Indian environment and circumstances. It ultimately *suggested* the setting up of a *National Judicial Service Commission.*

"The broad based National Judicial Service Commission representing various interests with pre-eminent position in favour of the judiciary is the demand of the time. Composition and functions of such a National Judicial Service Commission will have to be worked out in meticulous details. The Commission must also be of such a nature as to provide an answer to the criticism that the constitutional scheme as interpreted by the courts heavily tilts in favour of the Executive in the matter of recruitment to superior judiciary and the transfer of judges of the High Courts. All over the English speaking democracies the executive enjoys the power to make appointments to superior judiciary. In all these countries a new trend towards diluting the position of executive in this field is clearly visible, Decentralisation of power by providing a body representing various interested groups is suggested as a substitute. The suggestion is that the power to make appointments must be a shared power i.e., from individual subjective opinion to an opinion of a body arrived at after internal discussion and deliberation by people who are supposed to be in the know of things. Such an approach will marginalise the preponderent role of the executive. The thinking of the Law Commission is considerably influenced by this trend. The present thinking is not a reaction by way of a tilt against the executive. The approach is to devise a body where power is shared so that the objects underlying the conferment of power can be effectively achieved. It cannot be disputed that a deliberated decision amongst knowledgeable persons has a greater chance of acceptability than the decision of an individual unsupported by any tangible reasons arrived at though it may not be the outcome of a prejudicial mind. Viewed from this angle, the composition of a National Judicial Service Commission dictates itself.

While examining the question of composition of the Commission what is uppermost in the mind of the Law Commission is that its functions are going to be extensive and all pervading. This has to some extent shaped the thinking of the Law Commission about the composition of the Commission. The views expressed in this behalf and referred to earlier have also contributed colour and content to this thinking. Briefly it must be a body of experts drawn from various interest groups in close touch with administration of justice such as Judges, Lawyers, law academics and litigants.

Unquestionably, the Chief Justice of India must be at the head of this body and must be designated as Chairman. His pre-eminent position should not be diluted at all. Three seniormost Judges of the Supreme Court next in rank to the Chief Justice of India, because of their long judicial experience in close proximity of the Bar, should be members of the Commission. The predecessor in office of the Chairman, i.e., the person who has retired as Chief Justice of India to whom the Chairman has succeeded will also be a member. He would be an asset to the Chief Justice of India. Three Chief Justices of the High Courts, according to their seniority as Chief Justices would be members. Minister of Law and Justice, Government of India would by virtue of his office would be a member. He represents at the highest level, in the executive Attorney-General of India would be a member by virtue of his office. As the leader of the Bar and not owing his position to any questionable electoral process he can adequately represent the interests of the Bar. An outstanding law academic would also

be a member of the Commission. Thus the body will consist of eleven persons which cannot be said to be unweildy looking to the wide ranging functions that it will have to discharge. The composition of the Commission, as recommended herein, gives adequate representation to the Judiciary, the Executive, the Bar and the Legal Academics, which are the interests vitally affected by the functions of the judiciary. The last unrepresented interest is the consumer of justice—litigants. It would not be advisable in the present state of affairs to provide any representation to it on the Commission.

As this body would exclusively deal with the question of selection and appointment of Judges of High Courts the question is what role should be assigned to the Chief Justice of the High Court in which the vacancy has occurred and the Chief Minister of the State in which the High Court is situated. Today, as the situation stands, both have a vital say in the matter. Should they be wholly excluded? That would be rather too radical. The Chief Justice of the High Court. Who has also to deal with the administrative side of the High Court, must have some say in the selection of an individual who is to be his colleague. This would foreclose any dispute and ensure harmonious working of the High Court. The next important interest, which at present has a consultative status, is the Governor of the State who acts on the advice of the Chief Minister. In the effective working of the High Court, the Chief Minister of the State has an interest and it cannot be ignored. And once he is given an opportunity to react to any proposal that is under consideration, one can dispense with the consultation with the Governor. Therefore, to make the new scheme operationally effective, the National Judicial Service Commission, while deliberating over selection and appointment of Judges of the High Courts, must co-opt the Chief Justice of the High Court in which the vacancy has occurred and which is under the process of being filled in as well as the Chief Minister of the State in which the High Court is situated. This will accord an opportunity both to the Chief Justice of the State and the executive of the State to express their opinion on the merits or otherwise of the persons under consideration both from the Bar as well as from Indian Judicial Service.

The Functions of the Commission would cover a large area. Therefore, depending upon the task undertaken, the Commission can co-opt experts from various different segments of the society in order to effectively discharge its functions. The power to appoint the Commission must obviously vest in the President of India."

Collegium—Bhagwati, J's View

6.16 While making these suggestions, the Law Commission had the benefit of the following observations of Bhagwati, J. in *S.P. Gupta* v. *Union of India,* (supra):

"There must be a collegium to make recommendations to the President in regard to appointment of a Supreme Court or High Court Judge. The recommending authority should be more broad-based and there should be consultation with wider interests. If the collegium is composed of persons who are expected to have knowledge of the persons who may be fit for appointment on the Bench and have qualities required for appointment and this last requirement is absolutely essential—it would go a long way towards securing the right kind of Judges, who would be truly independent in the sense we have indicated above and who would invest the judicial process with significance and meaning for the deprived and exploited sections of society. We may point out that even countries like Australia and New Zealand have veered round to the view that there should be a judicial Commission for appointment of the higher judiciary."

The Bar Council of India Views

6.17 The Bar Council of India Trust, after the judgment in *B.H. Sheth's* case, organised a Seminar of lawyers on Judicial appointments and transfers at Ahmedabad between the 17th and 19th of October, 1980. It discussed policies, principles and procedures involved in the matter of appointment and transfer of High Court Judges. The proceedings of the Seminar were published in the Journal of the Bar Council of India, Volume B(1)(1981). The following summary of the proceedings is informative:

"The seminar deprecated the fact that the concept of 'committed judiciary' had been invoked in the past to mean commitment not just to the Constitution but to the policies and programmes of the ruling party of the day . Thus used, the concept is pernicious and subversive not just of independence of judiciary but the very foundation of Constitutionalism .....

The Seminar was of the view that the role of the Executive in appointment as provided in the Constitution, as far as possible, be passive and a formal one. As such, the initiative in judicial selection must invariably rest with the Chief Justice of India. The seminar was of the view that judicial selection to Supreme Court must be made by a collegium consisting of the Chief Justice of India, five senior Judges of the Supreme Court and two representatives of the Bar representing the Bar Council of India and the Supreme Court Bar Association. Ordinarily the recommendations of the Collegium shall be binding on the Government though it may ask for reconsideration of specific cases on justifiable grounds. If necessary, minimal constitutional amendments may be effected for the purpose.

It is the considered view of the Seminar that the consultation procedure in judicial selection today is too secretive with the result that there is lack of communication of relevant information to the appointing authorities. The collegium proposal which excludes the scope for Executive interference will eliminate lobbying, undignified canvassing and backbiting. The proposal for Parliamentary representation in the collegium was considered. The Seminar, after weighing pros and cons of the issue felt it undesirable in the present circumstances to associate Parliament with judicial selection .....

In regard to the appointment of Chief Justice of High Courts the Seminar was of the view that the selection process must be entrusted with a Collegium consisting of the Chief Justice of India, two senior Supreme Court Judges, two Chief Justices of High Courts and two senior members of the Bar, preferably the Chairman of the Bar Council and President of the Bar Association, who shall be nominated by the Chief Justice of India wherever there is more than one Bar Association. The initiative for the appointment of Chief Justice will remain with the Collegium and ordinarily its recommendation must be accepted by the Executive."

Collegium—Chandrachud, CJ's View

6.18 Shri Y.V. Chandrachud, the then Chief Justice of India, while inaugurating a Seminar at Patna on 26th February, 1983 under the auspices of the Bihar State Bar Council on *"The Erosion of Judiciary and Remedial Measures"* also favoured a collegium and suggested that the same should comprise of three Judges, two representative of the Bar, two of the Government and two of the Opposition. He was of the opinion that a recommendation of this collegium could be far more credible and acceptable than by a single individual in the narrow confines and secrecy of his Chamber.

6.19 One common thread which passes through the various suggestions is that the role of the executive in the matter of appointment of Judges should be diluted and that the cause for most of the ills in the functioning of the present system could be traced back to the veto power of the executive. This, indeed, is capable of being remedied by making certain amendments to Article 217 providing for concurrence of the Chief Justice of India, instead of consultation with him, in the matter of appointment of Judges of the High Courts. The Committee is conscious of the fact that the recommendation of the Joint Conference of the Judges of the Federal Court and Chief Justices of the High Courts, convened by the Chief Justice of the Federal Court, and also a specific amendment moved to Draft Article 193 (corresponding to Article 217 of the Constitution), providing for concurrence of the Chief Justice of India came to be rejected, when the articles concerning the judiciary came up for debate, in the Constituent Assembly. However, it cannot be overlooked that Dr. Ambedkar had expressed the view that the provision regarding consultation with the President of India and the Chief Justice of India was "sufficient for the moment". The experience of the working of Article 217 for the last about two decades has belied the hope and belief expressed by Dr. Ambedkar. A time has come to revive the proposal with regard to the concurrence of the Chief Justice being made a pre-requisite to the appointment of Judges. The Satish Chandra Committee had also expressed a similar view. The misgivings and apprehensions which weighed in rejecting the

proposed amendment during the debate in the Constituent Assembly can be allayed by providing that the Chief Justice of India should consult such of the senior Judges of the Supreme Court as he deems necessary, besides the Chief Justice of the High Court concerned before giving his concurrence.

6.20 In the light of the foregoing discussion, the Committee proposes that the main portion of clause (1) of Article 217 be substituted as follows:

> "217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Governor of the State, and, in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of the High Court and with the concurrence of the Chief Justice of India and shall hold office until he attains the age of sixty-two years.
>
> Provided that the Chief Justice of India shall give concurrence after consultation with such of the Judges of the Supreme Court as he deems necessary and the Chief Justice of the High Court concerned."

The Committee further recommends that in the existing proviso to clause (1) of Article 217, the word "further" be added in between the words "provided" and "that". In view of the recommendation of the Committee regarding deletion of Article 224, the expression "in the case of an additional or acting judge, as provided in Article 224, and in any other case" has not been incorporated in the amendment proposed above.

Transfer of Judges—Historical Background

6.21 Next question for examination is the constitutional provision for transfer of High Court Judges and the exercise of power thereunder. Article 222(1) of the Constitution provides:

> "222.(1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court."

6.22 The draft Constitution published in February, 1948, did not contain any provision for the transfer of High Court Judges from one State to another at all. There was no such provision in the Government of India Act, 1935 either. It is only in Article 222 of the Constitution of India that the provision for transfer of Judges from one High Court to another has been incorporated.

6.23 Dr. Ambedkar, speaking in the Constituent Assembly on 16th November, 1949, conceded his awareness of the possibility of abuse of power of transfer, but he assured the Constituent Assembly thus:

> "We also took into account the fact that this power of transfer of judges from one High Court to another may be abused. A Provincial Government might like to transfer a particular judge from its High Court because that judge had become very inconvenient to the Provincial Government by the particular attitude that he had taken with regard to certain judicial matters, or that he had made a nuisance of himself by giving decisions which the Provincial Government did not like. We have taken care that in effecting these transfers no such considerations ought to prevail. Transfers ought to take place only on the ground of convenience of the general administration. Consequently, we have introduced a provision that such transfers shall take place in consultation with the Chief Justice of India who can be trusted to advise the Government in a manner which is not affected by local or personal prejudices."

Law Commission Fourteenth Report

6.24 The Law Commission of India also had an occasion to consider the question relating to transfer of Judges in its Fourteenth Report on the Reforms of Judiciary and Administration. It did not fully approve of the policy of transfers. It dealt with the pros and cons of transfers. It would be advantageous to notice the view of the Law Commission of India, as reflected in paragraphs 70 to 73 of its Fourteenth Report:

"70. Judges of the High Court are under Article 222 of the Constitution transferable from one High Court to another by the President after consultation with the Chief Justice of India. This power has been rarely exercised. In fact some evidence before us stated that such a power was likely to affect the independence of the High Court judiciary in as much as State executive may make efforts to obtain the transfer of a judge who for some reason or other had not found favour with it.

71. It is no doubt true that judges recruited from the State itself have local connections and probably know some of the litigants whose cases come before them. We are dealing elsewhere generally with the need for the judges to keep themselves detached and mix less freely at clubs and social gatherings so that their contacts may not be such as to embarrass them in the discharge of their duties, and, what perhaps is more important, that the public may not consider that a judge may not be impartial by reason of his contacts or connections. It may be that in some cases the existence of such contacts and connections has led to a belief that justice has not been done as impartially as it should have been.

72. We are, however, unable to say that as a whole, members of the High Court judiciary recruited from within the State have failed to maintain that attitude of detachment and impartiality which is expected of them. Indeed, it would only be fair to them to say that by and large they have fully adhered to the traditions of their high office. It appears to us, therefore, that the argument based on the need for the judges to have less local connections has not much force. Even persons appointed to the High Court Bench from outside would in the course of a few months, form connections in the State to which they are appointed though perhaps not to the same extent. It would, we think, be unjust to treat members of the Bar or the service appointed to the High Court judiciary as suspects who need to be moved from place to place to keep them to correct standards.

73. A unified cadre of High Court Judges with free transfers all over the country would undoubtedly greatly help to break down the barriers of regionalism which unfortunately hold away in many parts of the country. At the same time, we have to consider carefully the effect which the suggested measures would have on recruitment to the High Court Bench from the Bar in a State. The local Bar has for years rightly been a recruiting ground for the High Court Bench and during recent years recruitment from the Bar has been on the increase. As far as we can visualize, the Bar must remain the main recruiting ground for the future. We have already dealt earlier with the difficulties which were at present being experienced in making selections of judges from the Bar and have suggested measures for making satisfactory selections from the Bar. We feel that the difficulty of recruiting leading men from the Bar will be greatly accentuated, if the acceptance of a judgeship involves the probability of transfer from the home State to another State as an ordinary incident of that office. We are, therefore, averse to making a recommendation which is likely to affect adversely recruitment of competent persons from the Local Bar."

Transfer Policy

6.25 In spite of the views of the Law Commission, the Government of India decided to adopt a policy of having Chief Justices of all High Courts from outside. In this respect, a Press Note was issued on January 28, 1983 which is reproduced below:

"Pursuant to persistent demand from responsible bodies, the Government have, after considering various aspects of the matter and after consulting the Chief Justice of India, decided to adopt a policy of having Chief Justices of all High Courts from outside and to keep in view certain broad guidelines when implementing this policy. These guidelines are as follows:

(i) For purposes of elevation as Chief Justices the *inter se* seniority of puisne Judges will be reckoned on the basis of their seniority in their own High Courts and, subject to suitability, they will be considered for appointment as Chief Justices in other High Courts when their turn would normally have come for being considered for such appointment in their own High Courts.

(ii) A Chief Justice who has only one year or less to retire may not be transferred to another High Court.

(iii) A puisne Judge in a High Court who has one year or less to retire when his turn for being considered for elevation as Chief Justice arrives may, subject to suitability, be considered for appointment as Chief Justice in his own High Court if a vacancy is to occur in the office of the Chief Justice in that High Court during that period.

2. While implementing the aforesaid policy the appointments/transfers shall be made in accordance with the provisions of Article 217 or Article 222 of the Constitution, as the case may be."

Satish Chandra Committee Report

6.26 In due implementation of this policy, first transfers were effected during the course of that year itself and the policy is being implemented since then although there have been deviations in the process of such implementation.

6.27 In Chapter II of Satish Chandra Committee's Report, the consistent manner in which the policy regarding transfer has been violated is highlighted as follows:

"The principal guideline was that a puisne Judge who has one year or less to retire when his turn for being considered for elevation as Chief Justice arrives may be appointed as Chief Justice in his own High Court. Obviously a puisne Judge who has more than one year to retire should not be considered for appointment of Chief Justice in his own High Court. Apparently in pursuance of this policy the Chief Justices of Allahabad and Punjab and Haryana were transferred in November, 1983 to Calcutta and Patna respectively. At that time the next senior most puisne Judge of Allahabad High Court as well as in Punjab & Haryana High Court had more than one year to retire. They were, however, appointed as Acting Chief Justices and this appointment continued for over a year. Later on, they were appointed as permanent Chief Justices in their own High Courts, namely, Allahabad and Punjab and Haryana. Both these cases contravened the guideline of the policy declaration of January 28, 1983.

The Chief Justice of Andhra Pradesh was transferred to Assam High Court when he had only 13 months to retire. These days whenever a permanent vacancy occurs in the office of a Chief Justice, the senior puisne Judge is appointed as an Acting Chief Justice and such appointment as Acting Chief Justice is continued for an indefinite period. Neither is he appointed as permanent Chief Justice in his own High Court or any other High Court nor any other Judge is brought from outside and appointed as Chief Justice. There are at present more than half a dozen High Courts with an acting Chief Justice.

The first guideline was that puisne Judges will be considered to appointment as Chief Justice in other High Courts, when their turn would normally have come in their own High Court. But this guideline was not adhered to a Judge of Allahabad High Court who was junior and several other Judges and who had no chance to being considered for appointment as Chief Justice in his own High Court in the normal course, was appointed as Chief Justice of Assam High Court. Similarly a junior Judge of Calcutta High Court was appointed Chief Justice of Rajasthan High Court.

The policy of transfer without consent and the haphazard and arbitrary manner of its implementation has brought demoralisation and adversely affected the initiative and leadership of the Chief Justice. It is doubtful if it will improve the administration of justice or solve the problem of arrears in the High Courts. It seems to have grievously damaged the independence of the Judiciary."

Deviations from Policy

6.28 The arbitrary departures from the above policy have increased thereafter. The instances of a junior

Judge, who had no chance whatever of being appointed as a Chief Justice in the normal course in his High Court, having been appointed as Chief Justice of another High Court, have multiplied. Similarly, the seniormost Judges who, in ordinary course, would have become Chief Justices of their High Courts, had the transfer policy not been evolved and implemented, were not appointed as Chief Justices in other High Courts, when their turn came. In one case, having presumably realised the gross injustice, the seniormost Judge of a High Court was appointed as Chief Justice of another High Court during the last two weeks of his tenure. There are also instances when the seniormost Judge was appointed acting Chief Justice and continued to function as such for long period and then without his being appointed as Chief Justice in any High Court, an outside Chief Justice was transferred to his High Court thereby requiring him to revert as a puisne Judge in his own court. By an arbitrary and capricious working of the policy, there have been instances where no Judge from a High Court has for a considerable period of time been appointed as Chief Justice of another High Court. Whereas in some cases Chief Justices have been transferred although their remaining tenure was marginally more than one year, in other cases the seniormost Judge has been allowed to function as acting Chief Justice for a long period and has been confirmed as Chief Justice in the same High Court when the remaining period of his tenure has been less than a year. At a given point of time, more than one Chief Justice from one High Court and sometimes as many as three Judges of the same High Court had the privilege of being Chief Justice of different High Courts. To illustrate, in 1983-84, there were as many as three Judges originally belonging to Kerala High Court who were the Chief Justices of different High Courts. Similarly, the Calcutta High Court had the distinction of having three of its Judges occupying the position of Chief Justices in different High Courts. On the other hand, for long periods, Bombay and Rajasthan High Courts did not have any Judge functioning as Chief Justice. As on today, Himachal Pradesh High Court, Rajasthan High Court and Bombay High Court have no Chief Justice in any High Court from amongst the Judges of those High Courts. Often senior Judges functioning in larger High Courts having considerable experience and whose turn for appointment as Chief Justice in their High Courts had arrived have been transferred as Chief Justices to comparatively much smaller High Courts resulting in injudicious utilisation of their experience. Many Judges, whose turn to be appointed as a Chief Justice has not arrived, are allowed to function in their own Courts as "acting Chief Justice" for long periods, without adequate justification by delaying the transfer of a permanent Chief Justice. The haphazard and arbitrary manner of implementation of the transfer policy has adversely affected the authority, initiative and leadership of Chief Justices.

6.29 Though In *S.P. Gupta's* case one of the safeguards laid down against the arbitrary exercise of power to transfer Judges was that before giving his opinion, the Chief Justice of India must take into consideration all the relevant facts and should informally ascertain from the Judge concerned if he has any personal difficulty or any humanitarian ground on which the transfer proposed should not be made and having done so, he must convey the response of the Judge to the President, the Committee is aware of at least one instance where even this minimum safeguard was given a go-by.

6.30 The Constitutional Authorities responsible for effecting the transfer of the Chief Justices have failed to ensure that the amenities to which they are legally entitled are made available at the place of transfer. Despite the resolutions passed at the Chief Justices' Conference on a number of occasions to ensure the availability of suitable accommodation for the Chief Justices and Judges transferred to other High Courts, no attention is paid to this aspect before ordering transfers. For example, Chief Justice K.B.N. Singh of the Patna High Court remained during his complete tenure as the Chief Justice of the Madras High Court in the State Guest House; Chief Justice P.C. Jain of the Punjab and Haryana High Court, on his transfer to Karnataka High Court, had to spend almost one year in the State Guest House before shifting to the Chief Justice's House; Chief Justice M.N. Chandurkar of the Bombay High Court, on his transfer to the Madras High Court, had to spend almost one year in the State Guest House; Chief Justice Anand of the Jammu and Kashmir High Court, on his transfer to the Madras High Court, was put up in the State Guest House because of the non-availability of any bungalow for over three months. Even the official residence provided to Chief Justice Tewatia, during the whole of his tenure and to Chief Justice, P.D. Desai, for a few months after his transfer to Calcutta, was not independent. There may be many such other examples also. How can a Chief Justice who, by the very nature of his office, has to function from the moment he assumes office, do so effectively under such a situation? The provision of official residence befitting the status of the Chief Justice should be a pre-requisite for his transfer.

1976 Transfers

6.31 Even before the evolution of the transfer policy, in 1976, sixteen Judges, including Chief Justices, were transferred enmasse which demonstrates how an attempt was made to exert supremacy of the executive to make the judiciary subservient. When one of the transferred Judges challenged his transfer and the matter ultimately reached the Supreme Court, a statement was made by the learned Attorney General on behalf of the Government of India to the effect that on the facts and circumstances of the case on records, the then Government did not consider that there was any justification for transferring him and that it was proposed to transfer him back (see *Union of India* v. *S.H. Sheth*, A.I.R. 1977 SC 2328. There cannot be any better proof about the abuse of power than the admission made before the apex Court by the Attorney General of India on behalf of the Government of India.

Transfer in Public Interest not Punitive

6.32 Having regard to the view expressed by the Supreme Court in *S.P. Gupta* v. *Union of India,* A.I.R. 1982 SC 149 to the effect that a transfer effected in the context of complaints of misdemeanour or misbehaviour against a Judge would be punitive, transfer which is otherwise intended to serve public interest, could be successfully challenged. There may arise several situations where it would be in the public interest or for preserving the credibility and image of the judiciary that a particular Judge, against whom there are allegations of misdemeanour or misbehaviour, should be transferred. Such a course may be expedient since the procedure for impeachment may take considerable time and having regard to the nature of the allegations and the materials available in proof of the same, it would be in the public interest to transfer him. Whenever situations affecting the credibility and image of the judiciary assume serious proportion, it may become imperative to take such prompt and effective action to obviate any permanent damage to the institution.

6.33 The policy of transfer of Chief Justices and Judges of the High Courts, it appears, has come to stay. To prevent arbitrariness on the part of the executive in the matter of effecting transfers and, at the same time, to give protection to transfers made in the public interest under compelling circumstances, the present Article 222(1) of the Constitution should be substituted by the following article:

Amendment Proposed

> "222. (1) The President may, with the concurrence of the Chief Justice of India, transfer a Judge from one High Court to another High Court.
>
> Provided that any transfer made in the public interest, with the concurrence of the Chief Justice of India, shall not be deemed to be punitive."

Conclusion

6.34 We have adverted above to the historical background of the constitutional provisions relating to the appointment and transfer of Judges of the High Courts, the actual working of those provisions and the aberrations and shortcomings noticed in the operation of the existing scheme. After giving the matter our anxious consideration, we are of the view that the present constitutional scheme which was framed by the founding fathers after great deliberation and much reflection is intrinsically sound and that if worked in the true spirit it does not require any radical change. In order to guard against and obviate the perversion revealed in the operation of the scheme we have made suitable recommendations. We believe that if these reommendations are given effect to, there would not be any need to substitute it by a different mechanism.

CHAPTER VII

CONSTITUTION (SIXTY-SEVENTH AMENDMENT) BILL, 1990 NATIONAL JUDICIAL COMMISSION

7.1 The Government of India being conscious of the criticism of the Executive interference in the matter of administration of justice delivery system, which has to be operated upon by the Judges, in whose appointments and transfers it has been playing a vital role, as is borne out from the Objects and Reasons of the Constitution (Sixty-seventh Amendment) Bill, 1990, proposes to replace the present system by the setting up of a National Judicial Commission.

Chief Justices' Conference 1988

7.2 The Chief Justices at their conference held on October 10 & 11, 1988, with one voice, disfavoured the setting up of a National Judicial Service Commission as proposed by the Law Commission in its 121st Report and passed the following resolution:

> "After discussing the 121st Report of the Law Commission on providing "A New Forum for Judicial Appointment", it was resolved that it is neither necessary nor expedient to set up such a forum, since the existing Constitutional provisions are adequate to ensure satisfactory appointments being made to the higher judiciary, free from executive influence and extraneous considerations, provided they are worked in true spirit and proper perspective and without departing from the past conventions established with a view to ensuring timely and proper selections. The strain to which the system has been put in the recent past on account of the erosion of the primacy of the judiciary in the matter of appointments to the higher judiciary is capable of being rectified by devising suitable ways and means within the existing constitutional framework and appropriate measures in that direction being taken expeditiously."

7.3 Despite the opinion of the Chief Justices' Conference which was conveyed to the Government of India, the Union Government has decided to set up a National Judicial Commission for appointment and transfer of Judges and has introduced the Constitution (Sixty-seventh Amendment) Bill, 1990 in the Parliament. Does the Bill achieve the object for which purportedly it has been introduced is the question to which we shall now address ourselves.

D.O. Letter of the Minister of Law and Justice Dated 11th January, 1990

7.4 On 11th January, 1990, the Minister of Law and Justice, Government of India, wrote a D.O. Letter No. 11011/1/90-Desk-II to all the Chief Justices, wherein the "decision of the Government of India to set up a *high level judicial commission* for the appointment of High Court and Supreme Court Judges and the transfer of High Court Judges" was communicated. The letter reads thus:

> "The Government of India have decided to set up a High Level Judicial Commission for the appointment of High Court and Supreme Court Judges and the transfer of High Court Judges. The necessary Constitutional Amendment Bill for this purpose is proposed to be introduced in the coming Budget Session.
>
> The establishment of such a Commission will result in the appointment of High Court and

Supreme Court Judges without any delay and will also obviate the criticism of arbitrariness on the part of the Executive in such appointments and transfer of High Court Judges.

It is proposed that the composition of the Commission will be as follows:

For appointment of Judges in the High Courts

1. Chief Justice of India—Chairman.
2 & 3. Two seniormost Judges of the Supreme Court.
4. Attorney General.
5. Chief Minister of concerned State.
6. Chief Justice of the High Court.
7. Seniormost puisne Judge of the High Court.

For appointment of Chief Justice of High Courts and Judge of the Supreme Court

1. Chief Justice of India-Chairman.
2 & 3. Two seniormost Judges of the Supreme Court.

As far as appointment of the Chief Justice of India is concerned, it is proposed to continue the existing practice.

It has been decided that the advice given by the Commission will be recommendatory in nature. The advice, however, will be normally accepted and where the Government decide to depart from the recommendations, the reasons for doing so should be recorded.

I shall be grateful to have your views on the following issues relating to the setting up of the High Level Judicial Commission:

1. What should be the composition of the Commission?
2. On what grounds can its recommendations be rejected?
3. What procedures should the Commission adopt? Should these procedures be laid down by law made by Parliament?

As the time left is rather short, I would request you to kindly send me your views, on the subject, as early as possible, and in any case not later than the end of this month. In case I do not hear from you in time, I am afraid, we will have to proceed in the matter without the benefit of your views."

Constitution (Sixty-Seventh Amendment) Bill, 1990—Objects and Reasons.

7.5 The Government of India has, thereafter, introduced in the Lok Sabha on 18th May, 1990, Bill No. 93 of 1990 being the Constitution (Sixty-seventh Amendment) Bill, 1990 to amend the Constitution. The statement of Objects and Reasons of the Bill is as follows:

"The Government of India have in the recent past announced their intention to set up a high level judicial commission, to be called the National Judicial Commission for the appointment of Judges of the Supreme Court and of the High Courts and the transfer of Judges of the High Courts so as to *obviate the criticisms of arbitrariness on the part of the Executive in such appointments and transfers and also to make such appointments without any delay*. The Law Commission of India in their One Hundred and Twenty-first Report also emphasised the need for a change in the system.

2. The National Judicial Commission to make recommendations with respect to the appointment of

Judges of the Supreme Court will consist of the Chief Justice of India and two other Judges of the Supreme Court next in seniority to the Chief Justice of India. The Commission to make recommendations with respect to the appointment of the Judges of the High Courts will consist of the Chief Justice of India, one seniormost Judge of the Supreme Court, the Chief Minister of the State concerned, Chief Justice of the concerned High Court and one seniormost Judge of the High Court.

3. The Bill seeks to achieve the above object."
(Emphasis supplied)

Proposed Article 307

7.6 Part XIIIA which is sought to be introduced after Part XIII of the Constitution, contains provisions for the constitution of a "National Judicial Commission" for the purpose of making recommendation to the President for the appointment of a Judge of the Supreme Court (other than the Chief Justice of India) and a Judge of the High Court and for the transfer of a Judge from one High Court to any other High Court. Article 307 of the Constitution of India, which is sought to be introduced by the Constitution (Sixty-seventh Amendment) Bill, 1990, reads thus:

"307. (1) The President shall by order constitute a Commission, referred to in this Constitution as the National Judicial Commission.

(2) The National Judicial Commission shall make recommendations to the President as to the appointment of a Judge of the Supreme Court (other than the Chief Justice of India), a Judge of a High Court and as to the transer of a Judge from one High Court to any other High Court.

(3) The National Judicial Commission shall,—

(a) for making recommendation as to the appointment of a Judge of the Supreme Court (other than the Chief Justice of India), a Chief Justice of a High Court and as to the transfer of a Judge from one High Court to any other High Court, consist of—

(i) The Chief Justice of India, who shall be the Chairperson of the Commission; and

(ii) two other Judges of the Supreme Court next to the Chief Justice of India in seniority;

(b) for making recommendation as to the appointment of a Judge of any High Court, consist of—

(i) the Chief Justice of India, who shall be the Chairperson of the Commission;

(ii) the Chief Minister of the concerned State or, if a Proclamation under Article 356 is in operation in that State, the Governor of that State;

(iii) one other Judge of the Supreme Court next to the Chief Justice of India in seniority;

(iv) the Chief Justice of the High Court; and

(v) one other Judge of the High Court next to the Chief Justice of that High Court in seniority.

(4) Subject to the provisions of any law made by Parliament, the procedure to be followed by the National Judicial Commission in the transaction of its business shall be such as the President may, in consultation with the Chief Justice of India, by rule determine.

(5) The National Judicial Commission shall have a separate secretarial staff and their conditions of service shall be such as the President may, in consultation with the Chief Justice of India, by rule determine."

Article 307—Analysis

7.7 Article 307 of the Constitution, which is proposed to be introduced by the Constitution (Sixty-seventh Amendment) Bill, 1990 basically deals with the composition and functions of the National Judicial Commission

(hereinafter referred to as 'The Commission'). It provides in Article 307(1) & (2) for the constitution of the Commission by the President to make recommendations as to the appointment of a Judge of the Supreme Court (other than the Chief Justice), a Judge of a High Court and transfer of a Judge from one High Court to another High Court. Article 307(3) provides for separate composition of the Commission, one for taking recommendation for appointment of a Judge of the Supreme Court, a Chief Justice of a High Court and for the transfer of a Judge from one High Court to another High Court and the other for making recommendation for appointment of a Judge of any High Court.

Different Compositions—Commission—Not Justified

7.8 The Committee is unable to find any logic or justification for different compositions. There is no valid reason as to why the Commission constituted for appointment of Supreme Court Judges, Chief Justice of a High Court and transfer of the High Court Judges cannot be entrusted with the task of appointment of High Court Judges also. Keeping in view the Objects and Reasons for the constitution of the Commission, namely, to obviate the criticism of executive arbitrariness in the matter of appointment and transfer of High Court Judges and to prevent delay in making appointments, there is no justification for the executive through the Chief Minister to be on the Commission. Instead of removing the vice of executive interference, which has vitiated the working of the present system, the presence of the Chief Minister on the recommendatory body actually elevates him from the status of a *mere consultee* to the position of an *equal participant* in the *selection process of* the recommendatory body. By making the Chief Minister as an equal party, when he is not equipped to offer any view in regard to the merit, ability, competency, integrity and suitability of the candidates for appointment, the scope of executive interference is enhanced.

Chief Minister—Not to be a Member

7.9 The presence of the Chief Minister as a Member of the Commission is even otherwise not justified as he cannot make any useful contribution in the matter of selecting suitable candidates in the context of the need of the Court having regard to the work and its present composition. It is well settled that his role is limited to offering views only regard to character and integrity, antecedents and social philosophy of the person under consideration (vide *S.P. Gupta's* case).

High Court Chief Justice—Not to be a Member

7.10 As the Committee is in favour of constitution of only one Commission contemplated by Article 307(3)(a) and is not in favour of the Chief Minister of the State concerned being associated as a Member of the Commission for the reasons discussed above, it follows that the Chief Justice of the High Court concerned would not also be a Member of the Commission. As to the actual role to be assigned to the Chief Justice and the Chief Minister in the scheme of appointment of Judges, the same will be dealt with at an appropriate place later.

Composition of Commission—Modification suggested

7.11 The Commission under Article 307(3)(a) is to consist of the Chief Justice of India as the Chairman and two other Judges of the Supreme Court next to him in seniority. Though there cannot be any objection in principle to two other seniormost Judges of the Supreme Court being members of the Commission, the Committee is of the opinion, having regard to practical considerations that another composition may be thought of. In a given situation, the tenure of office of one or both the senior most Judges may be so short as to make it inexpedient to associate them in the process of selection. By reason of this provision, situation may arise when the Commission may consist of all or majority of its members coming from the same State. It is preferable to make the Commission as broad-based as possible and to ensure continuance of the Members of the Commission for a reasonable term. Having regard to these considerations, the Committee is of the opinion that the other two Members of the Commission should be appointed by the President from amongst the Judges of the Supreme Court on the recommendation of the Chief Justice of India.

Acting Membership

7.12 Another aspect that has not been taken care of is the problem that may arise in the functioning of the Commission by reason of absence, disability or otherwise of one or more of its Members. The Committee, therefore, recommends that an appropriate provision should be made in this behalf to meet such situations empowering the President to appoint on the recommendation of the Chief Justice of India any other Judge of the Supreme Court to perform the duties of such a Member.

Article 307(4)-Procedure

7.13 Article 307(4) provides that the procedure to be followed in the transaction of its business by the Commission shall be regulated by the Law made by the Parliament and until then, in accordance with the rules made by the President, in consultation with the Chief Justice of India. The procedure to be followed in the matter of initiating recommendation for appointment of Judges and about their consideration by the Commision are matters of vital importance. A wrong and imperfect procedure without necessary safeguards may virtually nullify the object of the Constitutional provision. It is an unsatisfactory situation that till the procedure is regulated by any law made by the Parliament, the same can be prescribed by the President in consultation with the Chief Justice of India. The President would act on the advice of his Council of Ministers. He is only required to consult the Chief Justice of India and consultation is not the same as concurrence. There is, thus, scope for the executive to prescribe by rules a procedure which may not be conducive to the attainment of the object of the proposed amendment. In the opinion of the Committee, the procedure should be prescribed along with the enactment of Article 307 and the amendment of other articles and it should be annexed as a Schedule to the Constitution. That would almost ensure that the prescribed procedure then cannot be amended by a simple majority and the possibility of tinkering with it is minimised. Such procedure should *inter alia* provide for full and formal record of the deliberations of the Commission being maintained which alone would constitute the official record of the transaction of the business of the Commission.

Article 307(5)—Secretariat

7.14 Article 307(5) provides that the Commission shall have a separate secretarial staff and that their conditions of service shall be such as the President may in consultation with the Chief Justice of India by rule determine. The provision is silent in regard to the authority who is competent to make the appointments and exercise control over the staff. In the opinion of the Committee, the power of appointment and control over the staff should vest in the Chief Justice of India and that an appropriate provision similar to Article 146 of the Constitution be incorporated in Article 307(5).

7.15 We now deal with the corresponding amendments proposed in the Bill to Articles 124(2), 217(1), 222(1) and 231(2)(a) of the Constitution.

Article 124(2)

7.16 Clause (2) of Article 124 of the Constitution would, after the amendment, read as follows:

> "2. Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Commission and shall hold office until he attains the age of sixty-five years:
>
> Provided that where the recommendation of the National Judicial Commission is not accepted, the reasons therefor shall be recorded in writing:
>
> Provided further that the Chief Justice of India shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose:
>
> Provided also that—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

Explanation.—Nothing in the first proviso to this clause shall be construed as empowering the President to appoint any person as a Judge of the Supreme Court unless he is recommended by the National Judicial Commission for such appointment.

Article 124(2)—Analysis

7.17 A mere glance at the article would show that it is not binding on the President to appoint the person recommended by the Commission as a Judge of the Supreme Court. Therefore, the ultimate power to make appointment to the Supreme Court still continues to vest in the executive. The proviso which lays down that where the recommendation of the Commission is not accepted, the reasons therefor shall be recorded in writing, is not by itself sufficient to obviate the arbitrariness on the part of the executive for the reason firstly, that the recorded reasons are not required to be communicated to the Commission and, secondly, the Commission would have no opportunity to reconsider its recommendation in the light of those reasons. There is also inherent danger that if the recommendation of the Commission is not binding, the best person recommended may not be appointed. The executive may go on rejecting the recommendation of the Commission till ultimately it finds that the candidate recommended is of its own choice. In case more than one vacancies exists and recommendation is made for filling all of them, after arranging the names in order of preference, keeping in view their relative seniority, standing etc. whether from the Bar or by elevation of the Judges of the High Court, the executive may choose to appoint one who is placed lower in the list earlier in point of time, while holding back the appointment of others, thereby disturbing the order in which the recommendation has been made and the ranking given. In such an eventuality the persons placed higher in the list and whose appointment is held back may well refuse the appointment when offered. This will not only result in the possibility of the best talent not being selected but also will unnecessarily delay the appointment of Judges, thereby defeating the very objects for which the Bill has been introduced. The lacuna in the existing system of "killing" the recommendation for appointment by sheer inaction is also not taken care of.

Committees Recommendations

7.18 In the light of the foregoing discussion, the Committee recommends:

(1) That the reasons recorded for not accepting the recommendation of the Commission regarding appointment of a Judge of the Supreme Court shall be communicated to the Commission to enable it to reconsider the matter in the light of such recorded reasons.

(2) That in case the Commission on reconsideration affirms its earlier recommendation, it shall be made obligatory on the President to make the appointment in accordance with such recommendation.

(3) That the reasons should also be required to be recorded in case the appointment is proposed to be made by varying the order in which the names are recommended by the Commission; such reasons should be communicated to the Commission to enable it to reconsider the matter and in case the Commission, after reconsideration, reaffirms the order in which the recommendations had been made, the appointments shall be made in that order.

(4) A reasonable time limit shall be fixed within which the President to take a decision on the recommendation of the Commission.

Appointment of Chief Justice of India

7.19 The Chief Justice of India is required to be appointed, under the present system, only after consultation with such of the Judges of the Supreme Court and High Courts as the President may deem it necessary. The

views of the Judges so consulted are not binding and no reasons are to be recorded for not accepting the views of the Judges so consulted. It leaves scope for arbitrary appointment of the Chief Justice of India, the highest judicial authority, as there is nothing to prevent the appointment of a junior Judge on the basis of irrelevant considerations. The supersession of the senior Judges on two occasions is a proof positive of this possibility. The provisions now proposed do not ensure that such arbitrariness is obviated.

Committee's Recommendations

7.20 The Committee, therefore, recommends that the second proviso to Article 124(2) be deleted and an appropriate proviso be substituted to the effect that the seniormost Judge of the Supreme Court shall ordinarily be appointed as the Chief Justice of India. However, in case he is not proposed to be appointed as Chief Justice of India, reasons therefor shall be recorded in writing and the appointment shall then to made in consultation with the seven Judges next in order of seniority to the seniormost Judge, after communicating to them the recorded reasons.

Article 217(1)

7.21 We shall now take up for consideration Article 217(1) incorporating the proposed amendment which reads as follows:

> "217 (1). Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Commission and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years;
>
> Provided that where the recommendation of the National Judicial Commission is not accepted, the reasons therefor shall be recorded in writing:
>
> Provided further that—
>
> (a) a Judge may, by writing under his hand addressed to the President, resign his office;
>
> (b) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;
>
> (c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.
>
> Explanation.—Nothing in the first proviso to this clause shall be construed as empowering the President to appoint any person as a Judge of any High Court unless he is recommended by the National Judicial Commission for such appointment."

Committee's Recommendations

7.22 Article 217(1) which deals with the appointment of a Judge of the High Court is in *pari materia* with Article 124(2) in so far as it deals with the appointment of a Judge of the Supreme Court. We have in paragraph 7.17 discussed the serious infirmities in the proposed scheme and suggested appropriate amendments to Article 124(2) in paragraph 7.18. As the same infirmities are manifest in the proposed Article 127(1) also, we recommend similar amendments to Article 217(1) in the following terms:

(i) That the reasons recorded for not accepting the recommendation of the Commission regarding appointment of a Judge of the High Court shall be communicated to the Commission to enable it to reconsider the matter in the light of such recorded reasons.

(ii) That in case the Commission on reconsideration affirms its earlier recommendation, it shall be made obligatory on the President to make the appointment in accordance with such recommendation.

(iii) That the reasons should also be required to be recorded in case the appointment is proposed to be made by varying the order in which the names are recommended by the Commission; such reasons should be communicated to the Commission to enable it to reconsider the matter and in case the Commission, after reconsideration, reaffirms the order in which the recommendations had been made, the appointments shall be made in that order.

(iv) That a reasonable time limit shall be fixed within which the President to take a decision on the recommendation of the Commission.

Role of Consultees—S.P. Gupta's case

7.23 While dealing with Article 307(3) we have already recommended that the Commission constituted under Article 307(3)(a) above should be the recommendatory authority for appointment of High Court Judges as well. We have also indicated there that the role of the Chief Minister and Chief Justice in the procedure of appointment shall be dealt with separately. It would be advantageous, at this stage, to extract the relevant observations from the judgments of different Judges comprising the Bench in *S.P. Gupta's* case, which have a direct bearing on the subject. They are as follows:

Bhagwati, J:

Paragraph 29 at page 200:

> ". . . . . If we look at the *raison d etre* of the provision for consultation enacted in clause (1) of Article 217, it will be obvious that the opinion given by the Chief Justice of the High Court must have at least equal weight as the opinion of the Chief Justice of India, because ordinarily the Chief Justice of the High Court would be in a better position to know about the competence character and integrity of the person recommended for appointment as a Judge in the High Court. The opinion of the Governor of the State, which means the State Government, would also be entitled to equal weight, not in regard to technical competence of the person recommended and his knowledge and perception of law on which the Chief Justice of the High Court would be the proper person to express an opinion, but in regard to the character and integrity of such person, his antecedents and his social philosophy and value system. So also the opinion of the Chief Justice of India would be valuable because he would not be affected by caste, communal or other parochial considerations and standing outside the turmoil of local passions and prejudices, he would be able to look objectively at the problem of appointment. There is, therefore, a valid and intelligible purpose for which the opinion of each of the three constitutional functionaries is invited before the Central Government can take a decision whether or not to appoint a particular person as a Judge in a High Court."

Tulzapurkar, J.:

Paragraph 626 at page 402:

> "In the first place in the very nature of things it is difficult to accept the submission that all the three consulting functionaries under Art. 217(1) must be regarded as of co-ordinate authority for the simple reason that on aspects like capacity, character, merit, efficiency and fitness which converge on the suitability of the person proposed for appointment the Governor of the State will be least informed and will have nothing to say whereas the Chief Justice of the High Court and Chief Justice of India, being best informed, are well equipped to express their views and tender advice; further it is an accepted position which has been alluded to by the Law Commission in its 14th Report, that it is because of the financial aspect (salary and emoluments of a High Court Judge being charged on the Consolidated Fund of the State) and information about the antecedents, local affiliations and like other matters, capable of objective proof, concerning the proposed appointee which the State Executive would be possessing, that consultation with the Governor has been provided for. It is, therefore, difficult to regard the Governor of the State as being of co-ordinate authority with the other two

consulting functionaries especially on the aspect of suitability which is the primary thing in the matter of making appointment of High Court Judges."

Desai, J.:

Paragraph 717 at page 455:

"... Further, as the system functions, proposal for appointment of a High Court Judge is initiated by the Chief Justice of the High Court. The person recommended may be a member of the Bar or from the subordinate judiciary, say a District Judge. As the High Court has both administrative and judicial control over the subordinate judiciary, the Chief Justice of the High Court is more knowledgeable about the capacity, ability and eligibility of a District Judge for being considered for the post of High Court Judge. Chief Justice of India will have very little information about the capacity, eligibility and quality of a District Judge. Similarly, while recommending a person from the Bar in the State, Chief Justice of the High Court is more advantageously placed compared to Chief Justice of India. And, Chief Justice of India will have to depend upon his sources of information which may not either exclude grapevine or hearsay. He has little or no opportunity of seeing the member of the Bar functioning as a lawyer in the Court. Cumulatively, therefore, Chief Justice of the High Court is more advantageously placed compared to the Chief Justice of India in this behalf. About the various other factors which enter into the verdict, the State executive will be more favourably placed than the Chief Justice of India because it has its own instrumentalities for inquiry and information."

Pathak, J.:

Paragraph 878 and 879 at pages 529 and 530:

"As has been observed, clause (1) of Art. 217 prescribes that besides the Governor of the State, the Chief Justice of India and the Chief Justice of the High Court must be consulted in the appointment of a Judge of a High Court. Three distinct constitutional functionaries are involved in the consultative process, and each plays a distinct role, and the nature and scope of the role are indicated by the character and status of their respective offices. The Chief Justice of the High Court is the head of the institution to which the Judge will be appointed. He is, therefore, particularly qualified to know the needs of the court in the context of its present constitution and the work which is pending. Generally, an appointment is made either from the High Court Bar or from the District Judiciary. In both cases, the Chief Justice can be expected to possess an intimate knowledge of the legal ability of the person under consideration and to have a sufficiently accurate estimate of his character, antecedents and reputation, including his integrity, in the context of the legal profession or the judicial service, as the case may be, as well as his potential capacity as a Judge. It is also conveniently possible for him to obtain a fair measure of information in respect of a member of a District Bar, should such a member be under consideration. In regard to persons practising in other courts or members of judicial tribunals it is not difficult for him to secure adequate information. It is apparently for this reason that the practice which has prevailed for several years in this country postulates that it is the Chief Justice of the High Court who should initiate the process of appointment by suggesting a person for the office of a Judge. But by virtue of his position in the High Court and the State, the Chief Justice is also exposed to local influences and to prejudice or bias in relation to lawyers appearing before him or judicial officers who meet him. His assessment can be subjectively affected. The Chief Justice of India has been brought in, and it is apparent that, in virtue of the exalted office held by him and the circumstances that he is far removed from the local pull of influence and the temptations of partisanship, he can be trusted to apply a strictly objective approach to the recommendation proceeding from the High Court. Besides, the Chief Justice of India possesses the advantage of viewing the matter from the superior plane of a national perspective. He is seized with knowledge of prevailing standards and trends in the different High Courts, and as the head of the highest court in India exercising appellate jurisdiction over the High Courts by way of the widest power under Article 136 he would be cognisant of the need to ensure

that the highest quality was maintained in the appointment of Judges of the High Courts. Indeed, he is expected by the Constitution to keep himself adequately informed of the affairs of each High Court. For it is not merely for the purpose of appointing a Judge to the High Court under cl. (1) of Art. 217 that he is to be consulted. The President is also obliged to consult him before he can transfer a Judge under clause (1) of Art. 222 from one High Court to another High Court, a matter in which the Constitution does not expressly stipulate consultation even with the Chief Justices of the two High Courts concerned, the High Court from which the Judge is to be transferred and the Court to which his transfer is contemplated. It must also be remembered that in the determination of the age of a Judge of a High Court under clause (3) of Art. 217 it is the Chief Justice of India alone whom the President is required to consult.

The Part played by the Governor of the State must, it seems, be limited. The State Government possesses the advantage of being able to secure information which may not be within the knowledge of the Chief Justice in regard to the character and integrity of the person recommended and his local position and affiliations. Besides, as the High Court is the highest court of the State and the funds for it flow from the State Exchequer, it is only logical that the State Government should be allowed a voice in assessing the suitability of the person recommended for appointment (Law Commission of India, Fourteenth Report. Vol. 1. p. 74). The State Government, however, can have no role in commenting on his legal ability, knowledge of law and judicial potential."

Venkataramiah, J.:

Paragraph 1002 at page 579:

"From the scheme of the constitutional provisions, it appears that each of the three functionaries mentioned in Art. 217(1) of the Constitution who have to be consulted before a Judge of a High Court is appointed has a distinct and separate role to play. The Chief Justice of the High Court is the most competent person to evaluate the merit and efficiency of a person recommended for the judgeship. The Governor is the proper authority who through the executive agency available to him may be able to report about the local position of the person proposed, his character and integrity, his affiliations and the like, which have a considerable bearing on the working of the person proposed for appointment as a Judge. The Chief Justice of India is brought into the picture to prevent any vagaries on the part of the Chief Justice of the High Court who may be moved on occasions by petty considerations such as communalism and favouritism or who may even be capricious in proposing names of persons for judgeship. The Chief Justice of India will naturally be able to assess the qualities of persons proposed having in view the standard of efficiency of Judges in all the High Courts in India and also to prevent unsatisfactory appointment being made on the basis of faulty recommendations made by the Chief Justices of High Courts."

7.24 Fazal Ali, J. in paragraphs 430 and 592 of the report, expressed his general agreement with the interpretation of Article 217 as given by Bhagwati, Desai and Venkataramiah, JJ.

7.25 The interpretation of existing Article 217(1), as aforesaid, is a clear pointer as to the proper role of each consultee in the process of appointment. As we have seen, the delineation of the functions of the different consultees as envisaged has been more or less obliterated and there is overt or covert interference in the field reserved for one by the other consultee. In that process, the executive has gained greater say and more weight in the matter of appointment. Does Article 217(1), as proposed to be amended by the Bill, prevent the mischief?

Roles of the Chief Justice—Chief Minister

7.26 It would be seen from the observations of the Supreme Court that the learned Judges are unanimous on the question that the Chief Justice of the High Court, by virtue of the position he holds, is the most competent person to evaluate the merit, ability, efficiency as also the capacity and eligibility of the selectee for appointment as a High Court Judge, be he from the Bar or from the subordinate judiciary. He is also the authority particularly qualified to know the needs of the Court in the context of its present composition and the work of the court. As

against this, the Chief Minister may be in a position to offer his views about the character and integrity of the person recommended, his local position and affiliation and his antecedents and social philosophy, but not in regard to his legal ability, knowledge of law and judicial capacity. This is the only limited role that he can play. The aforesaid position of the Chief Justice is recognised even under the existing system. The practice which is prevailing is that the process of appointment of a Judge of the High Court is normally initiated by the Chief Justice. The recommendation is then forwarded to the Chief Minister who sends it with his views to the Governor, who in turn forward it to the Union Govennment with his views. The entire correspondence is then forwarded by the Union Government to the Chief Justice of India who has to be consulted for making the appointment.

Present System—Draw Backs

7.27 Two major draw-backs or defects, which have been noticed in the working of the present system, that give an upper hand to the executive in the process of making appointments are, firstly, that quite often the Chief Minister sits tight over the recommendation made by the Chief Justice, thus delaying or virtually killing the proposal and, secondly, it is also not an uncommon experience to find the Chief Minister initiating a proposal for appointment not only from the Bar but also from the judicial service. In view of the clearly defined and limited role of the Chief Minister, it is inconceivable that he should have the privilege to initiate the proposal for appointment.

Memorandum of Procedure

7.28 The Committee, therefore, is of the view that to prevent such mischief and to achieve the object of the proposed amendment, an appropriate method or procedure should be devised. The existing procedure as laid down in the memorandum of procedure to be adopted in connection with the appointment and transfer of Judges of High Courts, circulated by the Government of India, is that the recommendation for appointment is to be initiated by the Chief Justice. Since this procedure is not being strictly followed, it is necessary to make a suitable provision to the effect that the proposal for the appointment shall emanate only from Chief Justice and not from the Chief Minister. The Chief Justice will forward his recommendation to the Chief Minister. The role of the Chief Minister should be limited to offering views in regard to the character, integrity, antecedents, local position, affiliation and social philosophy of the person recommended by the Chief Justice. The Chief Minister, within a prescribed time limit, not exceeding six weeks from the date of receipt of the recommendation from the Chief Justice, shall forward the recommendation to the Commission along with his and the Governor's views. If the Chief Minister does not send the views within the stipulated, time, it should be presumed that the recommendation is concurred in. A reasonable time limit should be prescribed within which the Commission should complete the processing of the proposal and forward its recommendation to the President. It should be further provided that in the event of the Commission not accepting the recommendation made by the Chief Justice, the Commission should communicate the reasons for the same to the Chief Justice and the Chief Minister.

Committee's Recommendations

7.29 The Committee has recommended in paragraph 7.13, while dealing with Article 307(4) that the entire procedure to be followed in the matter of initiation of recommendation for appointment of a Judge and about its consideration by the Commission, should be prescribed along with the enactment of Article 307 and the amendment of other articles and that the same should be annexed as a Schedule to the Constitution. The Committee recommends that appropriate provisions incorporating the aforesaid suggestions should be made part of the procedure and included in the said Schedule. Such amendments as may be necessary for implementing this recommendation may also be enacted in Article 217(1).

Article 222(1)—Analysis

7.30 Under Article 222(1) of the Constitution as it stands at present, transfer of a Judge from one High Court to another can be made by the President after consultation with the Chief Justice of India. Article 222(1) after the proposed amendment would read thus:

> "222 (1). The President may, on the recommendation of the National Judicial Commission, transfer a Judge from one High Court to any other High Court.

Provided that where the recommendation of the National Judicial Commission is not accepted, the reasons therefor shall be recorded in writing."

It would be seen that the changes which the proposed article seeks to make in the existing article are the following:

(i) Instead of the President transferring a Judge of a High Court after *consultation* with the *Chief Justice of India,* the power has been given to the President to do so on the *recommendation of the Commission.*

(ii) By addition of the proviso, it is required of the President to record reasons in writing in case the recommendation is not accepted.

7.31 The proposed amendment fails to achieve the object for which it is seemingly enacted. A cursory look at the article shows that it is not binding on the President to transfer a Judge recommended by the Commission. The ultimate power to transfer a Judge, thus, still continues to vest in the executive. The proviso which lays down that where the recommendation of the Commission is not accepted, the reasons therefor shall be recorded in writing, is not by itself sufficient to obviate the arbitrariness on the part of the executive, for the following two reasons:

(i) the recorded reasons are not required to be communicated to the Commission; and

(ii) the Commission would have no opportunity to reconsider its recommendation in the light of such recorded reasons.

If the Commission is composed as suggested by the Committee, it would comprise the Chief Justice of India and two senior Judges of the Supreme Court and its recommendation should be considered binding as they would be the best authority to know whether a Judge is required to be transferred from one High Court to another in the public interest. As already indicated earlier, a transfer effected in public interest and on the recommendation of the Commission should not be considered as punitive.

7.32 The article also does not take care of a situation as to whether the President can transfer a Judge of the High Court on his own without any recommendation having been made by the Commission, since an explanation similar to the one appended to Articles 124(2) and 217(1) does not find place in this article. Such an explanation requires to be added along with the other safeguards as indicated above.

Committee's Recommendations

7.33 The Committee accordingly recommends:

(1) That the reasons recorded for not accepting the recommendation of the Commission regarding transfer of a Judge of the High Court shall be communicated to the Commission to enable it to reconsider the matter in the light of such recorded reasons.

(2) That in case the Commission on reconsideration affirms its earlier recommendation, it shall be made obligatory on the President to make the transfer in accordance with such recommendation.

(3) That a reasonable time limit shall be fixed within which the President may take a decision on the recommendation of the Commission.

(4) That an explanation providing that nothing in the proviso to Article 222(1) shall be construed as empowering the President to transfer a High Court Judge unless a recommendation is made by the Commission, be added.

Transfers—Principles—Safeguards

7.34 It is needless to add that the safeguards provided in the transfer policy formulated by the Government of India should be strictly adhered to and that the legitimate exceptions of the Judges of the court to which a

transferred Judge is sent, must be adequately protected and safeguarded. Whenever the turn of the seniormost Judge of that court comes up for consideration, then, unless there is something adverse, which prevents his appointment as Chief Justice, he should be considered for appointment as Chief Justice in any other High Court. Similarly, the position of the transferee Judge must be safeguarded in the sense that his legitimate expectation to be appointed as Chief Justice in his turn in the Court from which he has been transferred, be also kept in view. No transfer of a Judge or a Chief Justice should, however, be effected without consulting him as laid down in *S.P. Gupta's* case. These aspects have already been adverted to by us in the earlier Chapter in paragraph 6.29. No second transfer of a Chief Justice or a Judge should, however, be made except on his own request or with his consent.

Article 231

7.35 Any discussion about the proposed amendment to Article 231 by substituting sub-clause (a) of clause (2) thereof to the effect that "the reference in sub-clause (b) of clause (3) of Article 307A to the Chief Minister of the concerned State shall be construed as a reference to the Chief Ministers of all the States in relation to which the High Court exercises jurisdiction", becomes unnecessary having regard to the recommendation which the Committee has made that there shall be only one Commission as envisaged under Article 307(3)(a). The only further observation which the Committee would like to make is that in case this amendment is made, the scope for executive arbitrariness will increase in cases where the High Court exercises jurisdiction in relation to more than one State, as in the case of High Courts of Bombay, Madras, Punjab and Haryana, Guwahati, etc. In the case of appointment of Judges to those High Courts there would be over representation of the executive wing, since more than one Chief Minister would simultaneously become Members of the Commission and shall have equal right of participation and decision making.

Omisssions in the Bill

7.36 The Committee would also like to point out before concluding its discussion on the Bill that though it is proposed to be enacted so as to obviate the criticism of arbitrariness on the part of the executive in the matter of making appointments and transfer of Judges, only some of the relevant articles of the Constitution are proposed to be amended. The Bill is conspicuously silent with regard to amendment of Articles 216 and 224 of the Constitution of India. Both these articles have a vital bearing on the judge strength of the High Courts and by not proposing any amendment to those articles, the executive retains for itself the ultimate power for determining the judge strength. We have in paragraphs 2.17 and 2.26 dealt with this question and made appropriate recommendations for amendment of Article 216 and deletion of Article 224, which may be carried out along with the proposed amendments.

7.37 Before concluding our discussion the Committee would like to reiterate what has been stated in paragraph 6.34 of Chapter VI, viz., that the present constitutional scheme is sound and if worked in the true spirit, it would not require any radical change and that in order to guard against the obviate the perversions revealed in the operation of the scheme, suitable amendments should be made as suggested in that Chapter. The Committee believes that if those recommendations are given effect to, then there would not be any need to substitute the present system by the machinery contemplated by the Bill i.e. the National Judicial Commission. The Committee has, however, offered its views on the subject without prejudice to the recommendations made in Chapter VI, having regard to the fact that the Bill has already been introduced in Parliament.

CHAPTER VIII

ALTERNATIVE MODES AND FORUMS FOR DISPUTE RESOLUTION

8.1 In the foregoing Chapters of the report the Committee has made several recommendations with a view to improving the existing justice rendition system. While making these recommendations what has been largely kept in view is the need to improve the working of the present hierarchical mechanism by introducing much needed reforms so that the best quality of justice is delivered at the least cost in the shortest possible time. However, the visible deep malaise of alarming arrears needs some structural reorganisation and basic changes and the exploration of alternative avenues for dispute resolution. A new thinking in this direction is overdue.

8.2 A discussion on the subject may start with the following luminous observations of Mr. Justice Eichelbaum of the High Court of New Zealand:

Views of Justice Eichelbaum

> "Any democracy worthy of the name must provide adequate means of dispute resolution. And while we have all become accustomed to think of the Westminister model as the ideal form of machinery, as Lord Devlin said in *The Judge,* the obligation of the State is to provide as many modes of trial as are necessary to cover the variety of disputes that may commonly arise, so that for each type there is available a process that will offer a reasonable standard of justice at reasonable cost. The precept of equal justice under the law for all, cannot be taken literally. What then may be the preferred modes of the future? One might develop small claims tribunals so as to enable them to deal with the majority of disputes between individuals; dispose of matrimonial litigation of most kinds administratively; recognise a good deal of work currently performed through the court system for the administrative regime and extract it for processing elsewhere. Major commercial litigants could be encouraged to resort to arbitration, with wider use of court-appointed arbitrators; that suggestion seems in harmony with the recent establishment of specialised centres for dispute resolution in Victorial and New South Wales. The court system proper would be left with a smaller proportion of civil work, including, however, the still burgeoning field of administrative law."
>
> (See: 61(9)(1987) Aust. L.J. p. 456)

Law Commissions Observations

8.3 The field which the Committee proposes to explore is not altogether virgin. In the recent years the Law Commission of India has made several Reports after having a fresh look at the wide jurisdiction enjoyed by the High Courts and made numerous recommendations with the end in view of providing alternative mechanism in order to stem the inflow of work in the High Courts. In its view:

> "Unless, therefore, the jurisdiction of the High Court is substantially curtailed, simultaneously providing effective forum for juridical review enjoyed by the High Courts, the situation, by cosmetic peripheral changes, is not likely to improve and the situation which was once considered 'alarming' can now be described as catastrophic, crisis ridden, almost unmanageable, imposing such an immeasurable burden on the system as led the former Chief Justice of India warning that 'the system is about to crash'
>
> (See para 1.20, Chapter I of the 124th Report on the High Court Arrears—A Fresh Look)

8.4 A few of the recommendations made by the Law Commission consistently with its thinking on the aforesaid lines may be adverted to.

Law Commission—114th Report

8.5 Approaching the question from the angle that unless the base level is restructured where a litigation is initiated and vertically moves upward to the High Court by way of appeal or revision, the inflow of work in the High Court would neither be regulated nor diminished, the Law Commission in the 114th Report on Gram Nyayalaya (1986) recommended the setting up of a forum designated as "Gram Nyayalaya". The said forum would have jurisdiction to resolve certain categories of civil disputes, property disputes, family disputes and other disputes emanating from rural areas, and also to try all offences committed in those areas which are triable by Judicial Magistrate, 1st Class, and to impose sentence which such Magistrate can impose under the extant law. The said forum would be manned by Munsiff/Civil Judge and two lay Judges residing in rural areas and familiar with local traditions, culture, environment, habits and approach and its jurisdiction would be exclusive. In this system of participatory justice by restructuring of judiciary at the grassroot level from where the maximum litigation emanates, there would be decision by majority and one revision to the District Court to correct errors of law and an appeal to the Sessions Court in cases in which substantive sentence is imposed and no further revision or appeal to the High Court.

Law Commission 115th Report

8.6 Concerned with the delay in disposal of litigation arising out of the various direct and indirect Tax Laws, the Law Commission in the 115th Report on Tax Courts (1986) recommended the setting up of separate Central Tax Courts for dealing with disputes arising out of direct and indirect Tax Laws excluding simultaneously the reference jurisdiction of High Courts in such matters. The Central Tax Court dealing with direct Tax Laws would have All India jurisdiction and would be the appellate forum against the decisions of the Income-tax Appellate Tribunal on a question of law. The Principal Judge of the said Court would always be a person who is or has been a Judge of the High Court. There would be no statutory appeal to the Supreme Court against the decision of the said Court but an error of law in its decision would be amenable to correction under Article 136 of the Constitution. Yet another Central Tax Court would deal with matters arising out of indirect Tax Laws and would be the appellate forum against the decisions of the Customs, Excise and Gold (Control) Appellate Tribunal. The said Court would also hear appeals agianst the decisions of the Chief Controller or the Additional Chief Controller of Imports and Exports, as the case may be, rendered as appellate or adjudicating authority. In all other respects including constitution, power, authority, jurisdiction etc. the said Court would be on a par with the other Central Tax Court.

Law Commission 122nd Report

8.7 The Law Commission next turned its attention to the Industrial and Labour disputes. In the 122nd Report on Forum for National Uniformity in Labour Adjudication (1987), it observed that both the Central Government and the State Governments have enacted laws for resolution of such disputes through the specialist machinery of Labour Court, Industrial Tribunal/Court, Wage Board and National Tribunal. However, the decisions of those Courts/Tribunals, barring a few exceptions in some States, are not subject to review by any appellate forum. Consequently they are generally questioned before the High Court in Writ jurisdiction or the Supreme Court of India under Articles 32 or 136 of the Constitution. Taking into consideration the nature of litigation under Labour Laws, the equipment necessary for dealing with the same, the coflicting approach and decisions of different High Courts and other incidental and ancillary aspects, the Commission recommended the setting up of Industrial Relations Commission or Tribunal for adjudication of Industrial Disputes at the State and Central levels, simultaneously excluding the jurisdiction of the High Courts in respect of those matters and providing for participatory justice. The Industrial Relations Commission at the Central and State levels would be composed of President drawn from the ranks of retired Judges of the Supreme Court and of the High Courts respectively. An equal number of members would be drawn from the rank of the union leaders and employees' organisations having adequate knowledge in the field of industrial relations, management of industries, economic planning etc. Both the Commissions would have original and appellate jurisdiction. The State level Industrial Relations Commission will have original jurisdiction in respect of matters now being dealt with by the Industrial Tribunals and it will have appellate jurisdiction against the decisions of the Labour Courts on important questions

of law. It will have powers of superintendence over the Labour Courts in the State. The Industrial Relations Commission at the central level will have jurisdiction over all matters which could have been referred to National Industrial Tribunal and its appellate jurisdiction will extend over the awards and decisions of the Industrial Relations Commission at the State level confined only to important questions of law to be specified at the time of the admission of appeal.

Law Commission—123rd Report

8.8 Numerous disputes in the field of education reach up to the High Court year after year. The disputes relate not only to service matters but also to matters pertaining to academic field. Having found that the disputes need specialist approach the Law Commission in the 123rd Report on Decentralisation of Administration of Justice: Disputes involving Centres of Higher Education (1988) recommended the setting up of a three-tier machinery consisting of a grievance handling machinery at the University level and Educational Tribunals at the State and Central levels excluding the jurisdiction of the High Courts. The grievance handling machinery or forum, based on participatory model, would deal with admission to University and affiliated colleges, malpractice at examinations, disciplinary action against students, complaints of students against the members of the teaching staff and inadequacy of facilities for effective educational programme. Disputes arising out of conditions of service but excluding the pay scales, dearness allowance and perks would also be dealt with by a separate wing of this machinery. The State Educational Tribunal would have both original and appellate jurisdiction. The appellate jurisdiction would be against the decisions of the grievance handling forum. The original jurisdiction would relate to vital matters of policy affecting teachers, students and the University administration. The Central Educational Tribunal would be at the apex level. It would have both original and appellate jurisdiction. Appeals against the decisions of the State Education Tribunal would lie to the said Tribunal. The original jurisdiction would be confined to vital policy questions having a national level impact such as laying down guidelines for selection of Vice-Chancellors etc. Both the Tribunals would have judicial and non-judicial members and would be presided over by a sitting Judge of the High Court and the Supreme Court respectively.

Law Commission—126th Report

8.9 In the 126th Report on Government and Public Sector Undertaking Litigation—Policy and Strategies (1988) the Law Commission examined at length the role and character of Government and Public Sector Undertakings as litigants, highlighted the lack of litigation policy and strategy in that area resulting in prolification of wasteful and avoidable litigation and its spill over in the overflowing court dockets and suggested certain far reaching remedial measures.

8.10 The Law Commission recommended that the Central Government should issue a compulsory directive binding on Public Sector Undertakings that in the event of a dispute *inter se* between them or between them on the one hand and the Government on the other, the dispute must be referred to arbitration. It should be presumed by a legal device that a valid arbitration agreement subsists. To make the suggested remedy effective the Law Commission recommended that the Central Government should set up an arbitration panel composed of retired Supreme Court Judges and High Court Judges from which the parties can agree to the selection of one or more arbitrators and failing agreement, the appointment should be made by the Minister of Law from the panel. If necessary, an amendment should be made in the Arbitration Act, 1940 empowering the court before which the Public Sector Undertaking had initiated litigation without resorting to arbitration to compel it to go to arbitration and not merely stay the suit but dismiss the same. The award of arbitrator should be treated as final and unless the Ministry of Law permits the challenge to the award on a valid and rational ground, no challenge before any Court should be permitted to be made.

8.11 As regards disputes of other parties with the Government, the Law Commission suggested that upon the expiry of two weeks from the receipt of notice under section 80 of the Code of Civil Procedure or demand for justice or receipt of notice of initiation of any legal proceeding where no prior notice or demand is required to be served or made, it should be made obligatory for the concerned authority to formally write to the aggrieved person to agree to refer the dispute to arbitration. In case such person agrees to arbitration, the terms of reference would be drawn up and he should be called upon to choose an arbitrator from the panel drawn up by the Government. In case the said person declines to accept arbitration and initiates litigation, then the Government must appear and make the same offer again in the Court and by suitably amending the Arbitration Act, 1940 the Court shall be empowered to refer the matter to arbitration.

8.12 In Writ matters, the Law Commission recommended that on receipt of a notice of admission received from the Court. the concerned department should apply its mind within a reasonable time limit whether there is any legitimacy in the demand and, if so, the claim must be conceded in the Court. If the demand, however, appears to be illegitimate or one which cannot be conceded, upon entering appearance, the Government must agree to an informal conciliation by a Judge of the same High Court or a Judge of the Supreme Court, as the case may be, other than the one who issued notice with a view to resolving or narrowing down the dispute and the decision of the Court should be invited only if there still remains any issue calling for decision.

8.13 To deal with the disputes between the Public Sector Undertakings and its employees, the Law Commission recommended that the Public Sector Undertakings must set up a Grievance Cell composed of management's and workmen's representatives, not exceeding three on either side, and presided over by a retired Judge of the Supreme Court or High Court or Chairman of the Industrial Court/Tribunal. Every dispute must be brought before the Grievance Cell and its decision would be binding and the Court must decline to entertain such dispute.

8.14 As reagards complaints by Government employees, the recommendation was that a similar Grievance Cell should be set up which must remain active and must be in a position to dispose of the problems raised by the staff. In case the Grievance Cell is unable to resolve the dispute because of the involvement of law point without a precedent, the concerned department and the employees involved must agree to abide by the opinion of a member of the panel of arbitrators to whom a reference on a point of law be made and his opinion invited.

8.15 The Law Commission also recommended that a central body called the Federal Legal Cell should be set up whose function should be of a co-ordinating nature, of devising ways and means of reducing *inter se* litigations between Union and States, States and States, Public Sector Undertakings *inter se* between Public Sector Undertakings and Taxing authorities, and lastly between Government and Public Sector Undertakings on the one hand and the citizens on the other. The Cell should be composed of retired Judges, retired Law Officers and senior executives who have worked in Public Sector Undertakings. The function of the Cell should be to evolve policy and devise strategy with a view to reducing frequent resort to litigation. It may also function as a courier between the executive and the judiciary which link till today is missing and is responsible for many ills which are otherwise curable.

8.16 The Law Commission lastly suggested the setting up of a Parliamentary Committee on Litigation with power to enquire into every litigation undertaken by and on behalf of the Government and Public Sector Undertakings and to question the correctness of such decision. This, in the opinion of the Law Commission, would introduce sufficient accountability of the officers in whom the decision making power for initiating and continuing litigation vests.

Law Commission—124th & 129th Reports

8.17 In its two other reports, namely 124th Report on the High Court Arrears—A Fresh Look (1988) and the 129th Report on Urban Litigation—Mediation as Alternative To Adjudication (1988), the Law Commission has emphasised the desirability of the Courts being empowered to compel parties to a private litigation to resort to arbitration or mediation. Although it is a better and quicker mode of dispute resolution than a proceeding in a Court, one of the two parties is more often than not interested in delaying matters. As the law stands at present, arbitration or mediation would be possible only with the consent of parties. In the opinion of the Law Commission, arming the courts with power of compulsory reference so as to make arbitration and mediation on obligatory mode for adjudication would reduce the burden on courts. Necessary statutory amendment was recommended to be made.

8.18 In the 129th Report the Law Commission also examined at length the nature of litigation in urban areas and highlighted and staggering pendency of cases in various Courts of urban areas. It was pointed out that as on 31st December, 1984, 2,48,845 cases were pending in sessions Courts, 77,41,459 cases in Magisterial Courts, 29,22,293 cases in civil courts of Original jurisdiction and 10,91,760 cases on the Appellate side, Special attention was given in the Report to house rent/possession litigation in urban areas and as an alternative to the present method of disposal of disputes under the Rent Acts, four distinct modes were considered. They are: (1) Establishment of Nagar Nyayalaya with a professional Judge and two lay Judges on lines similar to Gram Nyayalaya and having comparable powers, authority, jurisdiction and procedure, (2) Hearing of cases in Rent Courts by a Bench

of Judges, minimum two in number, with no appeal but only a revision on questions of law to the district court, (3) Setting up of Neighbourhood Justice Centres involving people in the vicinity of the premises in the resolution of dispute and (4) Conciliation Court system now working with full vigour in Himachal Pradesh. In the case of Nagar Nyayalaya the Law Commission disapproved the suggestion of drawing one lay Judge each from the association of landlords and the association of tenants in view of bias by association. The function of Neighbourhood Justice Centre composed of three local residents including preferably a retired Judge residing in the areas was envisaged to be to try to reconcile the two parties and bring them to a common understanding. The knowledge of local conditions, traditions and needs would enable them to resolve the dispute in an informal manner. Such legislation for setting up these centres as may be necessary could be enacted. The Law Commission was of the view that the participatory model along with Conciliation Courts, which have been worked successfully in Himachal Pradesh, should be introduced as an alternative forum.

8.19 The Law Commission further recommended that in respect of suits involving disputes as to inheritance, succession, partition, maintenance and those concerning wills, which are generally between blood relations, the Conciliation Court system must be made compulsory by an effective amendment of the Code of Civil Procedure on the lines of Rule 5B, Order XXVII. In respect of all other kinds of suits also it was recommended that an attempt should be made at the pre-trial stage by the lawyers of respective parties for a reasonable settlement of the disptue on give and take basis and that in case the dispute is not resolved or fully resolved litigation may start but in that case the matter should be referred to the Conciliation Court and if such Court finds that its persuasion to the parties to go in for a fair settlement has failed the party who was recalcitrant and unjust in approach must be visited with heavy costs.

8.20 In the field of criminal jurisdiction the Law Commission recommended the reintroduction of the system of appointing Honourary Magistrates who should be drawn from amongst the retired personnel of the judiciary. The Honourary Magistrates should be empowered to do any work which a stipendiary Magistrate can undertake and they should take over all the old cases.

8.21 As regards suits falling within the umbrella of Service Jurisprudence, the recommendation was that State Government must take steps for setting up State Administrative Tribunals under the Administrative Tribunals Act, 1985.

Articles 323-A & 323-B

8.22 Before considering the various recommendations made in different Reports of the Law Commission, more particularly the recommendation with regard to the establishment of several Tribunals/Courts ousting the jurisdiction of Subordinate Courts and High Courts and in order to appreciate the underlying approach in the proper perspective, it is necessary to refer to the provisions contained in Part XIV-A of the Constitution. The said Part was introduced in the Constitution by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3.1.1977. This Act is, however, not applicable to the State of Jammu & Kashmir. It consists of only two Articles, namely, Articles 323-A and 323-B. Article 323-A clauses (1) empowers Parliament, by law, to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. The law accordingly enacted may provide for any one or more of the matters specified in clause (2) including exclusion of jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136. Article 323-B empowers the appropriate legislature, by law, to provide for adjudication or trial by tribunals of any disputes complaints or offences with respect to all or any of the matters specified in clause (2) with respect to which the legislature has power to make laws. Clause (2) casts the net wide and covers, *inter alia*, matters relating to levy, assessment, collection and enforcement of any tax, industrial and labour disputes, land reforms of certain categories, ceiling on urban property, dispute relating to elections to Parliament and State legislatures and offences against laws with respect to any of these matters. Clause (3) of the said Article contains a provision similar to clause (2) of Article 323-A with regard to the ouster of jurisdiction. The tribunalisation of justice to the exclusion of jurisdiction of all Courts except the Supreme Court is thus a constitutionally recognised concept. With the enactment of the Administrative Tribunals Act, 1985 and the setting up of the Central Administrative Tribunal and the State Adminstrative Tribunals in some of the States thereunder, the concept has been translated into a reality.

Specialist Tribunals

8.23 The establishment of the Railway Claim Tribunal under the Railway Claims Tribunal Act, 1987, for enquiring into and determining claims against the Railway Administration and of the Customs, Excise and Gold Control (Appellate) Tribunal for adjudication of disputes under the Customs Act, 1962, Central Excises and Salt Act, 1944, and Gold (Control) Act, 1968, are yet other recent moves in the direction of diverting the judicial work from the Courts to the Tribunals. These two Tribunals, in contradistinction to the Administrative Tribunals, are subject to the jurisdiction of the High Courts under Articles 226 and 227 of the Constitution. The remedy by way of Reference is also available in the case of Customs, Excise and Gold Control (Appellate) Tribunal. In addition to these recently constituted Tribunals, there are in existence for long years other Tribunals, such as the Income-tax Appellate Tribunal, Industrial Tribunals at the Central and State level, and also myriad other Tribunals such as the Sales Tax Tribunals, Co-operative Tribunal, Education Tribunal and Revenue or Land Tribunal at State level. Besides, in other parts of the world, the experiment of divesting the regular Law Courts of the powers of adjudication in certain spheres has been worked successfully. In England, there are as many as 2,000 Tribunals operating in various fields subject to the supervision of the Council of Tribunal which was set up under the Tribunals and Enquiries Act, 1958, which was repealed and replaced by the Tribunals and Enquiries Act, 1971. Under the French legal system, known as *droit administratif*, which is very old and has been put to regular use since the 18th century, the Administrative Courts administer the law as between the subjects and the State, whereas ordinary Courts administer the ordinary civil law as between subjects and subjects. The *Council d' Etat* which administers the law as between the subjects and the State is technically speaking a part of the administration. However, it is staffed by Judges and professional experts and is reputed to provide expeditious and inexpensive relief and better protection to the subjects against the administrative acts and omissions than the common law courts. It is too late in the day now to say, therefore, that tribunalisation of justice is an unhealthy or unwelcome encroachment on the judicial powers vested in the regular hierarchy of Courts or that the experiment should be altogether eschewed for other reasons.

Need For Re-Evaluation

8.24 Yet another aspect to be borne in mind is that every human institution need periodic re-evaluation and also change or modifications, wherever and whenever necessary, in order to meet the varying demands of time. The organisation of Courts in our country has not been the product of gradual self-evolution like the common law courts in England. The judicial hierarchy in different spheres is the creation of statutes. Frankfurter, J. of the American Supreme Court has said "..... framers of Judiciary Acts are not required to be seers, and great Judiciary Acts, unlike great poems, are not written for all times." Since the socio-economic conditions are not static and the Government has now assumed an activist role in a welfare State, the litigation is increasing in direct proportion to the increase in legislative activity and executive energisation. The judicial system has, therefore, to adapt itself to the changing scenario so as to be able to perform, in an efficient manner, the functions entrusted to it by the Constitution and the laws. In the process, some of the assumptions with which we have been familiar might require to be reviewed. There need not be any undue conservatism in this regard. Though there is every reason to be proud of our judicial process, we have no right to be smug. The fact that the present system of justice is over-burdened and that the arrears are mounting year by year cannot be underplayed. The need for diversification in specialised fields, in order to secure quicker and more predictable justice is, therefore, being strongly advocated. The establishment of "specialist courts and tribunals" is the end-product of such thinking.

The Two Views

8.25 The protagonists of this view assert that a knowledgeable adjudicator would not need to be educated as to where, in the corpus of law, the dispute in hand falls and, consequently he would resolve the points in issue faster, effortlessly and perhaps more correctly. He would be able to devote more time to the causes presented before him for want of pressure of other business. Besides, there would also be uniformity and predictability. The opponents of the view assert, on the other hand, that the setting up of specialist courts or tribunals would result in isolation and less research and industry in the class of cases withdrawn from the judicial mainstream. There would also be a danger of indoctrination and less exposure to new thoughts and developments. There would be concentration of work in the hands of a few legal practitioners confining their practice to such forum and also congestion

of cases in the dockets of such specialised machinery. Unless the judicial business is transacted in such forums at different places the litigants would find it more expensive and troublesome to litigate at distant centres. There being a widespread tendency to regard and treat the specialist courts and tribunals as inferior in status regardless of their place in the judicial hierarchy, and a general lack of faith in its processes and want of esteem for its work, they do not by and large inspire confidence amongst the litigant public. Recruitment of competent persons from the Bar and from the regular cadres is not easy in view of uncertainty of tenure unattractive conditions of service, inferior status, monotony of work and limited promotional avenues. These rival view points have to be kept in view and weighed while considering the alternative of specialised courts and tribunals.

Committee's Approach

8.26 Against the aforesaid background, there is enough justification for an indepth examination of the question whether the real object and purpose behind the setting up of such courts and tribunals, namely, providing speedy and specialised justice, has been achieved in a substantial, even if not in a full measure, in spheres in which such an experiment has been carried out in our country. There is also enough warrant to pause and ponder whether the strategy should be extended to new areas and that too by the exclusion of the jurisdiction of the High Courts. The Committee's approach to certain far reaching recommendations of the Law Commission in this direction will be guided by these considerations.

Participatory Model of Justice

8.27 One more question falling for consideration is whether the participatory model which the Law Commission has advocated while making a large number of its recommendations is a practical proposition and would really help in dispensation of speedy and specialised justice. The answer would depend upon the fields or spheres in which the experiment is to be made and the availability of the human material of right type of discharge the functions. These matters would be examined as we discuss the various recommendations and suggestions made by the Law Commission which have been noticed above.

Gram Nyayalayas not Favoured

8.28 The proposal for the establishment of Gram Nyayalayas has to be viewed in the context of the experiment of Nyaya Panchayats set up under the Panchayati Raj Laws enacted by different States. Experience shows that whereas the Nyaya Panchayats might have successfully resolved simple matrimonial family or neighbourhood disputes on man to man level without going into the intricacies of law, when it comes to the administration and application of laws, the results have not been satisfactory always. Lack of awareness of procedures and essential principles governing trial of cases, besides local pressures, preferences and prejudices, have quite often resulted in lopsided justice. Illiterary, ignorance of rights, economically disadvantaged position, class and caste-ridden social structure, political interference etc. have all contributed to the rich having predominance over the poor and the strong overturning the weak in such participatory justice rendition system. Against the aforesaid background, it is not possible to assuredly conclude that the time is ripe for establishing Gram Nyayalayas with much wider powers exercisable in more enlarged areas as recommended by the Law Commission. The recommendation is not acceptable also for the reason that although a Munsiff/Civil Judge would be one of the constituents of the forum, the decision would be taken by majority and, therefore, in case of divergence of opinion, he may be overruled by the two lay Judges, even where a question of law is involved. There being no appeal but only a revision to the District Court to correct errors of law in civil matters and an appeal only against substantive sentence to the Sessions Court in criminal jurisdiction, the suggestion is rendered all the more unacceptable. The time is not yet ripe to launch such an experiment and this Committee, therefore, is not in favour of the establishment of Gram Nyayalayas.

Central Tax Court

8.29 The proposal regarding the establishment of Central or National Tax Court for disposal of cases arising out of the various Tax Laws is not new. The Tax laws require specialised knowledge and uniformity and predictability of approach and verdict. This is said to be lacking under the present system. There is also inherent need for the speedy disposal of cases in the interests both of the revenue and the assessee. The existing procedure of an appeal to the Appellate Assistant Commissioner and then to the Appellate Tribunal and thereafter a Reference to

the High Court on stated questions of law has been found to be inadequate and cumbersome and leading to avoidable delay in the finalisation of assessment. Since the question arising for decision in the course of proceedings for an assessment year has its impact on the assessment for the subsequent periods, the assessment proceedings for the following years are also held up sometimes at the lower levels. These considerations have largely weighed in favour of the proposal for the establishment of the Central or National Tax Court.

Choksi Committee Report

8.30 The precise suggestion in this behalf was made by the Direct Tax law Committee, popularly known as the "Choksi Committee", constituted by the Government of India in June, 1977. In its Report the Committee recommended the abolition of the Reference procedure and the setting up of a Central Tax Court with All India Jurisdiction to the exclusion of the High Courts with Benches located at important centres. The proposed Court would be manned by High Court Judges or persons eligible to be appointed as High Court Judges and its jurisdiction would extend not only to decide questions arising under the statutes but also those relating to the constitutional validity of the statutes and the rules framed thereunder.

Views of Commissions—Committees

8.31 The previous Law Commissions and Committees, however, have consistently not been in favour of the establishment of such Court. In the 12th Report, the Law Commission noticed the cumbersome and delay producing procedure under the Income-tax law before the assessment acquires finality but recommended only the abolition of the Income-tax Appellate Tribunal and in substitution an appeal to the High Court from the orders of the Appellate Assistant Commissioner both on questions of fact and law. the High Courts Arrears Committee, 1972 was of the view that the suggestion regarding the establishment of the Indian Tax Court was "ill-conceived" for the following reason:

> "Decisions of Tax cases require a grounding and experience of general laws and especially Commercial Laws and isolating the Judges doing Tax cases from other cases relating to disputes not concerning personal and other laws, especially Commercial Laws, in the interest of Judicial administration would be ill-advised."

In the 58th Report on "The Structure and Jurisdiction of the Higher Judiciary" (1974), the Law Commission observed that the concept of the National Tax Court may have merit of leading to uniformity of decisions in respect of Direct Tax Laws throughout the country and its members would inevitably be chosen for their expertise and that Judges pre-eminently qualified might sit on such Court from whom it could be legitimately expected that Tax Appeals would be disposed of expeditiously. However, there were other considerations, "very much against the practicability and feasibility of this concept". First, unless the Constitution is amended, the applicability of Article 226 and Article 136 of the Constitution to the decisions of such Court would not be excluded and "we are reluctant to make such a recommendation". Secondly, if such Court is to deal with appeals arising from the Appellate Tribunals all over the country, it would be flooded with a large number of appeals and only the situs of the problem of arrears in Tax matters would be shifted without any solution forthcoming. Lastly, it would be essential for the Court to sit in Division Benches at convenient places all over the country and that weakened the argument based on uniformity of decisions. The Law Commission observed: "Therefore, in our opinion, it would not be reasonable or feasible to support the idea of the National Tax Court. Having thus carefully considered all the pros and cons in the matter, we have no hesitation in coming to the conclusion that the idea of National Tax Court cannot be recommended." In the 79th Report on "Delay and Arrears in High Courts and other Appellate Courts" (1979), the Law Commission took note of the recommendation of the Choksi Committee for the creation of the Central Tax Court and indicated its preference for the view expressed by the High Courts Arrears Committee, 1972, and in the 58th Report of the Law Commission against the establishment of such Court. The Law Commission expressed itself thus: "In our view, low disposal of references relating to direct tax laws can be adequately remedied by resorting to continuous sitting of Tax Benches in the High Courts where the volume of work so warrants. In High Courts where there are not sufficient number of tax references, the Tax Bench can have a continuous sitting till all the ready tax matters are disposed of." As regards the need of a constitutional amendment to exclude the exercise of writ jurisdiction against the decisions of the Central Tax Court, such a change in the Constitution was not favoured on the ground that it should be resorted to "only in exceptional situations of the most compelling nature". The Law Commission observed that the Constitution cannot be changed "with a view to taking us out of every difficulty, fancied or genuine". The difficulties and inconveniences of the litigants or

account of their being required to go outside their State for approaching the Central Tax Court, since the Choksi Committee's recommendations did not contemplate the functioning of the Central Tax Court in all the States, was regarded as a factor weighing against the establishment of such Court. It was recognised that the disposal of References by the various High Courts sometimes results in different and conflicting views but it was observed that in the very nature of things this could not be helped. To obviate the difficulty, however, it was suggested that the Appellate Tribunal should make a reference direct to the Supreme Court on a question of law if it was considered expedient so to do on account of a conflict in the decisions of the High Courts in respect of any particular question of law.

Central Government's View

8.32 It may be mentioned that although the Choksi Committee Report was submitted a little more than a decade back and the Government of India have accepted in principle the proposal for the establishment of the Central Tax Court as per the long term fiscal policy declared in 1986, neither a law has been enacted nor a Bill has been introduced in Parliament giving effect to the proposal. Underlying object behind the setting up of such court is the requirement of specialised knowledge, uniformity of decisions and speedy disposal. The question is whether the Central Tax Court would secure this and better or whether the present forum and frame work, that is, High Courts hearing reference cases, can serve the same purpose effectively by taking appropriate measures.

Committee's Views

8.33 So far as specialised knowledge is concerned, the Tax Benches in High Courts are almost invariably composed of Judges who have acquired expertise and experience in Tax laws. Judicial members of the Appellate Tribunal have often been elevated as Judges of the High Courts and they usually sit on the Tax Benches. Even the Central Tax Court envisaged by the Choksi Committee is to be composed of High Court Judges or persons eligible to be appointed as High Court Judges. No redical change in the personnel constituting the Court is, therefore, contemplated. Almost in all High Courts a few members of the Bar specialise and practice on the taxation side. There is thus a well-trained Bar available in the existing forum. Besides, as pointed out in the Report of the High Courts Arrears Committee, 1972, tax cases often involve questions relatable to other laws such as Commercial laws, Company Law, Partnership Law, Hindu Law and even Industrial Laws concerning Bonus, gratuity etc. Specialised knowledge in this field thus envisages a comprehension of many other associated or analogous statutes. Lawyers with adequate equipment would be more readily available in a forum where the practice of law is not exclusively confined to tax cases.

8.34 As regards uniformity of decisions and identity of approach, as pointed out in the 58th Report of the Law Commission, since the Central Tax Court will have to sit at different centres all over the country, the possibility of want of uniformity of approach, lack of predictability and divergence of decisions cannot be altogether ruled out. True, all such Benches being a part of a homogeneous judicial entity, would have to act on the principle of precedents. However, as in the case of Circuit Benches of High Courts, the possibility of conflicting decisions being rendered for want of facilities of communication and collation cannot be altogether ruled out. The difficulty arising out of the possibility of conflicting decisions of the High Courts on important questions of law having far reaching effect can be obviated by the Appellate Tribunal making a reference direct to the Supreme Court, if it considers expedient so to do, or by moving the Supreme Court for withdrawal to itself for disposal cases involving identical questions of that nature pending before one or more High Courts.

8.35 To ensure speedy disposal of tax cases, providing more Judges having background of tax laws in High Courts where the volume of work so warrants and ensuring continuous sitting of Tax Benches in such High Courts would be a more efficacious and economic remedy. It would not be out of place to mention, in this connection that continuous sittings of Tax Benches in High Courts have sometimes to be interrupted or discontinued because the revenue is not ready to go on with cases for want or preparation of paper books, non-availability of Standing Counsel who are sometimes required to attend also to the cases involving important questions before the Appellate Tribunal and for such or similar reasons. A reform in the present system of reference to the High Court on questions of law, which often throws up peripheral questions resting on technicalities and consume a lot of judicial time in their resolution, would also lead to speedier disposal besides meeting the ends of justice. There is no guarantee that the Central Tax Court with its Benches sitting at different centres would ensure speedy disposal of cases unless adequate number of competent Judges are appointed so that it can cope up with the pending cases and

new institutions within a reasonable time. Mere change of forum without more would not ensure speedier and specialised justice. The same object can be achieved at much lesser cost by strengthening the High Courts.

8.36 Both, in the 58th and the 79th Reports of the Law Commission, it was pointed out that until the Constitution is amended, the applicability of Articles 226 and 227 of the Constitution to the decisions of the Central Tax Court would not be excluded. Even now the position is no different despite the enactment of Article 323-B of the Constitution enabling the appropriate legislature, by law, to set up a tribunal for adjudication, *inter alia*, of any disputes, complaints or offences with respect to levy, assessment, collection and enforcement of any tax. In the 115th Report on Tax Courts, the Law Commission has specifically dealt with this question by drawing a distinction between "court" and "tribunal" and it has opined that the Central Tax Court is not intended to be a Tribunal within the meaning of Article 323-B but a court of appeal with all its powers, paraphernalia procedures and with the jurisdiction to examine the constitutional validity of a taxing statute or a rule or regulation made thereunder and that, therefore, although the Law establishing such court may take away the reference jurisdiction of the High Court it would not be able to bar the writ jurisdiction unless Article 226 is suitably amended. If this be so, then all the three objectives sought to be achieved by the establishment of the Central Tax Court could be defeated by the interposition of the High Court under Articles 226 and 227 of the Constitution not only when a case is finally decided but also at the interlocutory stage. The Committee is not in favour of amendment of those two articles.

Central Tax Court—Not favoured

8.37 Having taken into consideration all the material aspects the Committee agrees with the view of the High Courts Arrears Committee, 1972, endorsed in the 58th and 79th Reports of the Law Commission that there is no need to establish a separate Central Tax Court and that the existing mechanism with suitable adaptations and modifications would prove more economic and advantageous.

Industrial Relations Commission—Law Commission—Recommendations

8.38 The recommendation of the Law Commission with regard to the establishment of Industrial Relations Commissions at the State and Central levels for the adjudication of industrial disputes with exclusive jurisdictions has merit, although as to its suggested composition on the basis of the principle of participatory justice, this Committee has reservations. A reference to the historical background would help to appreciate the aforesaid view point.

Historical Background

8.39 Rule 81A of the Defence of India Rules was the precursor of the Industrial Disputes Act, 1947. It empowerd the appropriate Government to intervene in industrial disputes by compelling the parties to go for compulsory adjudication. The Rule was due to lapse on and from October 1, 1946, but was kept in operation by the Emergency Powers (Continuance) Ordinance, 1946. The Industrial Disputes Act, 1947, making elaborate provisions, *inter alia*, for investigation, settlement, conciliation and adjudication of industrial disputes was thereafter enacted and came into force from March 11, 1947. The provisions of the Act have been amended from time to time in the light of experience gained in its actual working.

Industrial Disputes Act, 1947

8.40 The Act is a self-contained Code. It provides for compelling the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes on a new pattern hitherto unknown to the existing judicial machinery of the country. It envisages the appointment of Conciliation Officers and setting up of Boards of Conciliation, Labour Courts. Industrial Tribunals and the National Industrial Tribunal. It confers powers on the appropriate Government to refer any existing or apprehended industrial dispute to a Board for promoting settlement or to a Labour Court or a Tribunal for adjudication. The appropriate Government is also thereunder authorised, while making a reference of an industrial dispute for adjudication, to include in the reference such establishment or group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in any such establishment or group or class of establishments, Labour Courts, Industrial Tribunals and National Industrial Tribunal all of whom are conferred with the powers of compulsory adjudication, are empowered to give awards enjoying finality. The Act does not envisage any appeal over the decisions of the aforementioned forums. Since the advent of the Constitution, however, the awards became amenable to the writ

jurisdiction of the High Courts under Articles 226 and 227 and of the Supreme Court under Article 32 of the Constitution and also to its appellate jurisdiction, under Article 136.

8.41 With the pace of industrialisation, numerous Labour Courts and Industrial Tribunals had to be set up throughout the country. Inherent in the situation was the conflict in the awards, decisions and approaches of these adjudicatory authorities. Invocation of the High Court's jurisdiction under Articles 226 and 227 of the Constitution could at best bring about some uniformity at the State level. However, the High Courts *inter se* could differ and no finality would attach to the adjudication of any important question relating to the labour jurisprudence until the matter was taken to the Supreme Court. Both these remedies are expensive and time-consuming. The parties to the dispute, and, more particularly, the workmen had, therefore, to live with uncertainty for long periods.

Industrial Disputes (Appellate Tribunal) Act, 1950

8.42 To obviate these difficulties in the working of the statute the Industrial Disputes (Appellate Tribunal) Act, 1950 was enacted. It provided for the constitution of the Labour Appellate Tribunal having all India jurisdiction for hearing appeals from the awards or decisions of the Industrial Tribunals if any substantial question of Law was involved or such award or decision was in respect of specified matters. The Appellate Tribunal when constituted, however, incurred the wrath of the leading national organisation of workmen on account of the cost involved and delay in disposal of appeals. A feeling also generated amongst them that it disclosed a tilt in favour of the management. This led to the abolition of the Appellate Tribunal for which provision was made in the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1965. The formal abolition came in 1956. In responsible and informed circles a weighty opinion has since been formed that this was a retrograde step since the Appellate Tribunal had succeeded in achieving some uniformity in the basic principles governing awards of Industrial Tribunals and that its abolition on the ground of protraction of proceedings was not based on any factual data and that the situation has actually worsened since its abolition by accumulation of a large number of cases arising out of awards of various courts and tribunals in the High Courts and the Supreme Court. A renewed demand for either devising a new appellate forum over the awards of industrial courts and tribunals having all India jurisdiction or for the revival of the Appellate Tribunal started being voiced.

Law Commission 14th Report

8.43 The Law Commission in the 14th Report (1958), Vol. I, pp. 50-51 recommended that an adequate right of appeal in labour matters either by constituting Appellate Tribunals or by empowering the High Courts to hear appeals in suitable cases should be provided by law. The representatives of the All India Trade Union Congress, while conceding in principle the setting up of an All India forum for entertaining appeals, simultaneously submitted that the jurisdiction of the High Courts should be excluded. They even went to the extent of suggesting that the writ jurisdiction of the Supreme Court should also be excluded. The Indian National Trade Union Congress, which was in the forefront for the demand for the abolition of the Labour Appellate Tribunal, reconsidered its stand in view of the prevailing situation and expressed an opinion in favour of an appellate forum having All India jurisdiction. It suggested that at least one Appeal should be allowed against such awards either to the Special Bench of the Supreme Court or to the revived Labour Appellate Tribunal. The National Labour Commission constituted and appointed by the Government of India, under the Chairmanship of Mr. Justice P.B. Gajendragadkar, retired Chief Justice of India, recommended the setting up of Industrial Relations Commissions at the Central and State levels for settling disputes broadly covering matters listed in the Third Schedule to the Industrial Disputes Act, 1947. The National Labour Conference held in 1988 appointed a Committee to examine, *inter alia*, the machinery for the resolution of industrial disputes. The Committee recommended the setting up for Industrial Relations Commissions and Standing Labour Courts to work under their overall supervision. The Standing Labour Committee approved the report and suggested the infra-structure and jurisdiction of the proposed mechanism and recommended that the Industrial Relations Commission at the State level should have appellate jurisdiction over the orders and decisions of the Labour Courts and the Industrial Relations Commission at the Central level should have both original and appellate jurisdiction. These different views broadly converge on the central idea that the existing system which promotes protracted litigation and leads to divergent approaches and inconsistent decisions has failed and that there was a need for an exclusive forum at the national and State level having original and appellate jurisdiction.

Setting up of Industrial Relations Commission—Favoured.

8.44 It is indisputable that a large number of matters arising out of industrial adjudication are pending before the High Courts. In 1986-87, 14,82,450 cases were pending in different High Courts. The need for decentralisation

of administration of justice in the field of Industrial Law at the higher level cannot, therefore, be underestimated. The setting up of a specialised forum with All India jurisdiction would ensure uniformity of approach, predictability of decisions and expeditious disposal of cases. Decentralisation at the lower levels has already taken place long back by the establishment of Labour Courts, Industrial Tribunals/Courts and National Industrial Tribunal with powers of compulsory adjudication, exclusive jurisdiction and finality attached to their awards. The Labour Appellate Tribunal with All India jurisdiction provided a national specialist forum for a period of about six years. Since its abolition, there is a vaccum at the higher level which needs to be filled not only to secure the final resolution of industrial disputes in a specialised forum but also to relieve the High Courts and the Supreme Court of the heavy burden of cases in this field. The society has a deep and abiding interest in ensuring that industrial disputes are settled finally and expeditiously in a national forum manned by persons with requisite experience and expertise so that the energies of partners in production are not dissipitated in cerimonious class war leading to direct action and confrontation and thereby thwarting economic growth and creating law and order problems. If the High Courts continue to have writ jurisdiction against decisions of such ultimate forums there would be no finality and the present malaise of huge arrears, divergence of approach and conflict of decisions in this vital field would continue to exist. There is thus full justification to set up Industrial Relations Commissions at the State and Central levels, which can also be designated as Tribunals for adjudication of industrial disputes, by a law enacted in exercise of powers conferred by Article 323-B of the Constitution, simultaneously excluding the writ jurisdiction of the High Courts and with the powers conferred upon them as suggested by the Law Commission.

Composition of the Commissions

8.45 The recommendation that the composition of such Commissions or Tribunals at both the levels should be made keeping in view the principle of participatory justice does not, however, carry conviction. While agreeing that a retired High Court and Supreme Court Judge, as the case may be, should be the Chairman, it is not possible to agree that an equal number of persons drawn from the rank of Union leaders and representatives of employers' organisations, who need not necessarily have a degree of law and legal training as essential qualifications, should also be members. To provide expertise and experience and intimate knowledge of the conditions obtaining in the field of employer-employee relationship, a provision can be made in the law that the Commission or Tribunal at both the levels should comprise, besides the Chairman, Members:

(i) directly recruited from amongst legal practitioners ordinarily practising before the Labour Courts, Industrial Tribunals/Courts and the National Industrial Tribunal;

(ii) consultants and executive having a law degree and possessing requisite experience in this field;

(iii) persons with legal qualification and training who have had experience in trade union movement;

(iv) by promotion of the Presiding Officers of the Labour and Industrial Tribunals/Courts, who have gained experience at the grass root level, so far as the State Level Industrial Relations Commission is concerned; and

(v) by promotion of the members of the State Level Industrial Relations Commissions in so far as the Central Level Industrial Relations Commission is concerned.

The Commissions should be so composed that both the labour and the management have representation on them as members persons who are drawn from the aforesaid categories. Even if lawyers are not to be permitted to appear as of right before the proposed forums, both the sides to the dispute would be adequately and effectively represented—the employer through one of its executives, who has specialised knowledge in the field of Industrial Law and the employee(s) through a Trade Union leader who is similarly well-equipped. None of the existing Courts and Tribunals are functioning on the principle of participatory justice. The Labour Appellate Tribunal also was not composed on that basis. There is every reason for entertaining a genuine apprehension that if the two parties to the dispute are given representation through their respective Unions and Organisations, the acrimonious atmosphere might be brought into the decision making process. The differences of approach and divergence of views would also result in protracted hearing and delayed justice. The very purpose and object sought to be achieved by the creation of an exclusive forum would be thus frustrated.

Committee's Recommendations

8.46 This Committee, therefore, endorses the recommendations made in the 122nd Report of the Law

Commission that Industrial Relations Commissions or Tribunals for Adjudication of Industrial Dispute should be set up at the State and Central level with powers, authority and jurisdiction as suggested, by a law passed under Article 323-B of the Constitution, simultaneously excluding the writ jurisdiction of the High Courts against the decisions of such Commissions or Tribunals and providing no appeal to the Supreme Court under the Statute but leaving it open to an aggrieved party to seek special leave to appeal under Article 136 of the Constitution from the Supreme Court. The composition of such Commissions or Tribunals should not, however, be on a participatory model suggested by the Law Commission but as recommended by the Committee.

Law Commission 123rd Report

8.47 The recommendation contained in the 123rd Report of the Law Commission regarding the setting up of a three-tier machinery to the exclusion of the jurisdiction of the High Courts to deal with the disputes involving centres of *higher education* is altogether novel. No Commission or Committee has gone so far as yet. In the Report there is no indication about the existence of a specialist forum in any other country which, to the exclusion of regular courts, adjudicates such disputes. The legislative exercise in our country is confined to the setting up of Domestic Disciplinary Tribunals for resolving disputes in disciplinary jurisdiction between the University and the members of its teaching and non-teaching staff and between the teachers and other employees of the affiliated colleges on one hand and the management of the Colleges and the University on the other. Such a provision is found in some of the statutes establishing the Universities. In some States, Education Tribunals have been set up under independent statutes and they are conferred with appellate jurisdiction over the decisions of the University authorities or the Domestic Tribunals, as the case may be, in disciplinary matters. However, none of these tribunals is known to have jurisdiction over disputes concerning students, admissions, examination malpractices, educational programmes, affiliation and deaffiliation of colleges, election to University bodies etc. or a dispute between the University and the state Government. Besides, these Tribunals are subject to the writ jurisdiction of the High Court.

Existing Forums—Service Matters—Education

8.48 The existing laws already provide exclusive forums for the resolution of disputes relating to discipline and service conditions of a class of employees in the field of education. Under the Industrial Disputes Act, 1947 such a dispute can be referred to a Labour Court/Industrial Tribunal, if it is raised by a "workman", in view of the decision of the Apex Court in *Bangalore Water Supply & Sewage Board* v. *Rajappa,* reported in 1978 (2) S.C.R. 213 which held that "education" is comprehended in the expression "industry" as defined in Section 2(j) of the said Act. The decision still holds the field since the legislative exercise undertaken to undo the effect of the said decision has not yet fructified. The enactment and coming to force of the Administrative Tribunals Act, 1985 and the establishment of the Administrative Tribunal(s) thereunder could provide yet another exclusive remedy in service matters to the teaching and non-teaching employees of the University, provided the appropriate Government by a notification applies the provisions of section 14 or 15, as the case may be, of the said Act to the Universities which are a local authority within the meaning of the said provisions. In view of the applicability of the Industrial Disputes Act, 1947 to service disputes, in case the recommendation regarding the establishment of the Industrial Relations Commission is accepted, an appellate forum would also be available whose decisions would not be amenable to writ jurisdiction. Alternatively, if the appropriate Government issues a notification applying the relevant provisions of the Administrative Tribunals Act, 1985 to Universities the decisions of the cocerned Administrative Tribunal would not also be amenable to writ jurisdiction. It is thus apparent that at least with respect to resolution of service matters involving Universities there is no need to establish a new specialist forum simultaneously excluding the writ jurisdiction of the High Courts. The said object is capable of being achieved in a different way.

8.49 It cannot be overlooked also that service matters in the field of education do not have any special flavour or colour. There is no reason why they cannot be dealt with equal efficacy in the regular forum. There is, in fact, a genuine apprehension in the minds of the teaching and non-teaching staff of the Universities, which has been taken note of by the Law Commission, that in the absence of the shield of protection of High Courts, there would be no real redressal of their grievances against victimisation by the University authorities. Yet another apprehension in their mind, which too has been noticed by the Law Commission, is that if a participatory model is introduced in the composition of the higher forum for dispute resolution, they would not get justice since retired Vice-Chancellors etc. may find place as members of such forum with a strong bias in favour of the University administration. All these considerations also weigh against the creation of an exclusive forum so far as service matters involving Universities are concerned, if one of the prime objects is to exclude the writ jurisdiction.

Other Disputes—Education

8.50 Disputes of other nature involving Universities and other centres of higher education are required to be determined at present in a regular suit or writ jurisdiction. Experience shows that a number of such disputes have been brought up for adjudication before the High Courts in writ jurisdiction and that they have also been carried upto the Supreme Court. The Apex Court has delivered many judgments dealing with questions such as reservation in educational institutions in favour of socially and educationally backward classes, principles and methodology governing admission to Medical Colleges and other institutions of higher learning, the adequacy of experience or qualifications, wherever they are prescribed as essential one, for securing appointments to higher academic posts etc. It is not possible to agree with the view that these matters require specialist attention and that in the writ jurisdiction they cannot be satisfactorily dealt with for want of requisite expertise or otherwise. In fact, some of these disputes involve questions of law which have to be determined taking into account not only the conflicting interests of the parties but also the relevant statutory provisions, rules of interpretation, jurisprudential principles and matters of general knowledge. The High Court is the appropriate forum to decide such issues.

Exclusion of High Court Jurisdiction not Justified

8.51 No precise data or material is available to ascertain the number of cases involving Universities and other centres of higher education pending in various High Courts and the Supreme Court. It may be accepted that they are not small in number. It cannot be denied also that there is an element of urgency in some of such disputes and that they require speedy disposal and uniformity of approach. This objective can be achieved by the classification of writ cases relating to education/higher education under a separate heading and entrusting the hearing of such cases to a designated Bench so as to ensure speedy disposal as well as consistency of approach and decisions. If the pendency and institution of cases belonging to this category are large, the Bench can sit continuously or at regular intervals, as the case may be, so that the arrears are cleared and newly instituted cases can be disposed of as soon as they become ready. In almost all the High Courts, a practice is being followed of issuing notice whenever necessary when the writ cases come up for preliminary hearing. This eliminates the possibility of cases without merit being admitted and provides an opportunity to the parties to be heard on the question of interim relief and enables the Court to mould such relief in a manner conducive to the interest of justice. With the proper assistance forthcoming from the rival parties at the trial of the writ petition, there is no reason to believe that justice rendered in the High Court would not be as good, if not better, than a specialist tribunal.

Articles 323 (A) & (B)—Not Applicable

8.52 Another pertinent question is whether, even if a separate forum is set up to deal with all disputes involving Universities and other centres of higher education, the law establishing such forum would be able to simultaneously provide for the exclusion of the writ jurisdiction of the High Court. Article 323-A of the Constitution cannot be invoked except in respect of service matters. Article 323-B cannot also be resorted to because it does not authorise the appropriate legislature by law to provide for adjudication or trial by tribunals of any disputes or complaints concerning education or involving educational institutions. It would not, therefore, be possible to immunise the decisions rendered by the specialist forum, if any, constituted under any law, unless Articles 226 and 227 are amended. The Committee is not in favour of such amendment being carried out in those Articles. If the Writ jurisdiction cannot be excluded, then the decisions of such forum would become amenable to challenge before the High Court. The addition of one more adjudicating authority may thus defeat the objects sought to be achieved by the establishment of such forum, namely, speedy justice, finality of decisions and predictability and uniformity of approach and verdict.

8.53 In the Committee's opinion, the establishment of the three tier machinery recommended by the Law Commission may not serve the underlying object and purpose. At best, it may enable the flow of Writ Petitions being checked by insisting upon the requirement of first exhausting the alternative remedy provided by such machinery. If, instead of approaching the High Court directly, an aggrieved person seeks remedy for his genuine grievances in one of those forums, which is competent to deal with and decide the dispute, the probability of his getting relief there and not being required to approach the High Court cannot be ruled out.

8.54 Since the Committee is of the view that the decisions of the authorities forming part of such machinery would continue to be amenable to Writ jurisdiction, it is unnecessary to go into the other related aspects such as

composition, participatory model, cognizance of and jurisdiction over disputes, power of selection and appointment of personnel etc.

Law Commission—126th Report

8.55 The Law Commission's 126th Report on Government and Public Sector Undertaking Litigation makes far reaching recommendations of great public utility. If accepted, they would bring about considerable decentralisation and diversification and thus reduce the burden of Courts. The Committee is broadly in favour of the several recommendations made in this regard.

Compulsory Arbitration—Conciliation

8.56 The Committee agrees with the recommendation that the Central Government should issue a binding directive to the Public Sector Undertakings regarding reference of disputes *inter se* between them or between them on the one hand and the Government on the other to arbitration. The machinery and procedure prescribed therefore are just and proper. Similar is the view of the Committee with regard to the suggestion of arbitration being made compulsory for the resolution of disputes of other parties with the Government and Public Sector Undertakings by suitably amending the Arbitration Act, 1940. The introduction of conciliation procedure in Writ matters, as recommended by the Commission, is also worth giving a trial. The establishment of the Grievances' Cell to deal with disputes and complaints of employees of Public Sector Undertakings and the Government in regard to service matters and reference to compulsory arbitration of issues involving law points in certain eventualities should also be accepted since it will reduce not only the burden of the High Courts but also of the Administrative Tribunals. The establishment of Federal Legal Cell and the constitution of a Parliamentary Committee on Litigation are also well conceived measures to regulate and restrict the flow of litigation and curtail frivolous litigation. To sum up, the Committee is of the view that if the recommendations made in the Report are accepted and implemented, all interested and affected parties would be able to secure speedy justice at lesser cost.

8.57 The Committee endorses the recommendation made in the 124th and the 129th Report of the Law Commission to the effect that the lacuna in the law as it stands today, arising out of the want of power in the Courts to compel the parties to a private litigation to resort to arbitration or mediation, requires to be filled up by necessary amendment being carried out. The conferment of such power on courts would to a long way in reducing not only the burden of the trial courts but also of the revisional and appellate courts, since there would be considerable divergence of work at the base level and the inflow of work from trial courts to the revisional and appellate Courts would thereby diminish.

Law Commission 129th Report

8.58 The recommendations made in the 129th Report with respect to litigation in urban areas with special reference to house rent/possession cases contain a few novel features, such as, the establishment of Nagar Nyayalaya on the basis of the principle of participatory justice and the setting up of Neighbourhood Justice Centres. For the reasons given by the Committee, while dealing with the recommendation regarding the establishment of Gram Nyayalaya, the recommendation with respect to the establishment of Nagar Nyayalaya is also not found acceptable. Having regard to the prevailing conditions in the sphere of housing, such an experiment is not worth undertaking for the present. More often than not, high stakes are involved in the litigation in urban areas connected with rent and possession of premises—commercial as well as residential. To entrust the resolution of such disputes to an adjudicating authority in which a Professional Judge is associated with two lay Judges and whose decisions are to be arrived at by majority in case of divergence of views and the remedy of an aggrieved party against which, before the higher forum, is restricted, may not promote the interest of justice and in some cases may result in miscarriage of justice. That apart, the money and muscle power influencing the verdict cannot also be ruled out.

Neighbourhood Justice Centre

8.59 The idea of setting up of Neighbourhood Justice Centres and giving them a statutory status is welcome. Their function should, however, be confined to resolving the dispute by reconciliating the parties. The Rent Court

may also be enabled by law to secure and utilise the services of the said agency during the course of its endeavour to assist the parties in arriving at an amicable settlement. A provision similar to the one found in Order XXXII—A Rules 3(1) and 4 of the Code of Civil Procedure should be made in the Rent Acts for achieving the said purpose. The recommendation with regard to such disputes being resolved through the machinery of the Conciliation Court has also great merit. While dealing with the experiment of Conciliation Courts in Himachal Pradesh hereafter, it will be pointed out that those courts have effectively brought about reconciliation and amicable settlement through their intervention even in disputes arising under Rent Act.

Rent Cases Hearing By Bench

8.60 The suggestion regarding the hearing of rent/possession cases by a Bench of Judges, minimum two in number, with no intracourt appeal also has merit. The Committee is, however, of the view that it should be open to the aggrieved party in such cases to prefer an appeal to the High Court instead of a revision on the questions of law to the District Court as recommended by the Law Commission.

Honorary Magistrates—Favoured

8.61 The Committee favours the recommendation with respect to the introduction of the system of appointing Honorary Magistrates drawn from the rank of retired personnel of the Judiciary and empowering them to do any work that a Stipendiary Magistrate can undertake. With the staggering arrears of cases in Magisterial Courts (77,41,459 as on December 31, 1984) the reinduction of retired Judges as Honorary Magistrate would be a well-conceived measure. It would enable the backlog being cleared expeditiously. With the background of experience gained over years, the quality of justice rendered by them would also be high.

8.62 The foregoing discussion centres round the recommendations recently made by the Law Commission in its various Reports covering a wide field. If the recommendations therein made with which the Committee is in agreement are implemented, they would go a long way in achieving the aim of decentralisation of administration of justice and reducing the burden of regular Courts including the High Courts and the Supreme Court. There are a few other matters to which reference needs to be made before evaluating the experiment of the Conciliation Courts working in Himachal Pradesh.

Functioning of Tribunals

8.63 Several tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals.

8.64 Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. The decisions of the State Administrative Tribunals are not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in some of the States where they have been established for their abolition.

Tribunals—Tests for Including High Court's Jurisdiction

8.65 A Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be *no less efficacious than the High Court*. Such a tribunal must inspire confidence and public esteem that it is a highly competent and expert mechanism with judicial approach and objectivity. What is needed in a tribunal, which is intended to supplant the High Court, is legal training and experience, and judicial acumen,

equipment and approach. When such a tribunal is composed of personnel drawn from the judiciary as well as from services or from amongst experts in the field, any weightage in favour of the service members or expert members and value-discounting the judicial members would render the tribunal less effective and efficacious than the High Court. The Act setting up such a tribunal would itself have to be declared as void under such circumstances. The same would be the result if the appointment of personnel to man the tribunal is left to the absolute discretion of the executive, inasmuch as leaving unfettered and unrestricted discretion in the executive to make such appointments would not at all be conducive to judicial independence and may even tend, directly or indirectly, to influence their decision making process, especially when the Government is a litigant in most of the cases coming before such tribunal. (See *S.P. Sampat Kumar* v. *Union of India,* reported in 1987 1 S.C.R. 435). The protagonists of specialist tribunals, who simultaneously with their establishment want exclusion of the Writ jurisdiction of the High Courts in regard to matters entrusted for adjudication to such tribunals, ought not to overlook these vital and important aspects. It must not be forgotten that what is permissible to be supplanted by another equally effective and efficacious institutional mechanism is the High Courts and not the judicial review itself. Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the frame work of the tribunal intended to be set up to attain them must still retain its basic judicial character and inspire public confidence. Any scheme of decentralisation of administration of justice providing for an alternative institutional mechanism in substitution of the High Courts must pass the aforesaid test in order to be constitutionally valid.

8.66 The overall picture regarding the tribunalisation of justice in our country is not satisfactory and encouraging. There is a need for a fresh look and review and a serious consideration before the experiment is extended to new areas of fields, especially if the constitutional jurisdiction of the High Courts is to be simultaneously ousted. Not many tribunals satisfying the aforesaid tests can possibly be established.

High Courts Separate Divisions—Recommended

8.67 Against the aforesaid background, it is worthwhile to consider whether, by a judicial reform involving basic restructuring, it is possible to provide specialist justice in an expeditious manner at a lesser cost, both to the State and to the litigants, while still retaining the existing jurisdiction of the High Courts. If a suitable provision could be made in Article 216 of the Constitution requiring the High Courts to consist of several divisions such as Civil, Criminal, Constitutional, Exchequer, Family, etc., as in England, and assignment to those divisions of Judges having specialist knowledge and experience in the subject is made, the above mentioned objectives could be achieved. The proposal has many advantages. The High Courts will retain their existing power, authority, jurisdiction, status and indentity. The need for setting up an alternative dispute resolution mechanism at considerable cost to the State will not arise. The status, dignity and independence of the specialist forum will be assured. The public confidence in the adjudication machinery will be sustained. The quality of justice and the competence of persons delivering it will not be open to doubt or criticism. The infrastructure of the existing justice delivery system including the Bar and the ministerial staff and buildings is readily available. All that would be needed is the addition of a few Judges to man the separate divisions, the cost of providing which would be far less than the expense that would be required to be incurred in setting up a full-fledged forum as an alternative to the existing mechanism. The Committee is of the view that this experiment can be safely carried out, in the first instance, in the three Chartered High Courts, where the nature of litigation is variegated, and then to the other High Courts.

Commercial Disputes—Domestic Forums

8.68 Commercial disputes constitute an important segment of litigation. On the original side of the Chartered High Courts such litigation is plentiful. Some of the apex bodies of agents, brokers, traders, manufacturers, industrialists etc. have devised an indigenous mode of resolution of disputes between their memebrs *inter se* and between the members and non-members, with whom they have dealings, by making suitable provisions in their bye-laws for the setting up of domestic Adjudicatory Forums. The machinery devised is generally on the following lines. At the base level stands the Complaints Committees constituted by elected representatives of the members of the association. The nature of disputes cognizable by the Complaints Committees are prescribed. The complaints are to be lodged in the prescribed manner within a period of limitation which

is also prescribed. A procedure is laid down for the determination of the dispute. Upon receipt of the complaints notice is issued to the opposite party. The complaints are required to be disposed of as expeditiously as possible after hearing the parties and giving them an opportunity to produce evidence. The decision of the Complaints Committee is required to be complied with by the person against whom it is given within a specified time limit. In the event of non-compliance, the matter is placed before the Enforcement Committee which is empowered to black-list the defaulting party if it is found to have neglected, refused or otherwise failed to abide by the decision. The black-listed member is debarred from exercising any of the rights under the bye-laws. Any other member who enters into a business transaction with a black-listed member is treated as an offending member and he too is subjected to penalty by the Enforcement Committee. An appeal lies both against the decisions of the Complaints Committees as well as of the Enforcement Committee and the forum of appeal is the Appellate Committee which also is constituted of elected representatives of the members of the association. Apart from the machinery aforesaid, their is constituted a Conciliation Board which consists of elected representatives of the members of the association. The function of the Conciliation Board, *inter alia*, is to hear emergency complaints and also to hear and decide complaints and disputes of specific nature. An appeal against the decision of the Conciliation Board lies to the Executive Committee. This is the Broad frame-work within which this domestic forum works although its constitution may differ from trade to trade or industry to indusy depending upon its own requirements.

8.69 This mechanism for resolution of disputes between members *inter se* and even between members and non-members who have had dealings with members is ideal and is found to have worked with success and satisfaction. The sanction behind the decisions is the power to impose penalty and of black-listing of the defaulting person against whom the decision is made and also of others who still continue to have business dealings with him. He is treated as a virtual outcast with whom nobody would enter into any business transaction. Such isolation has the potential of weeding out the person economically and otherwise.

Committee's Recommendations

8.70 If a law is enacted giving legal sanction to such machinery for resolution of disputes and resort thereto is made compulsory, much of the inflow of commercial litigation in regular civil courts gradually moving up hierarchically would be controlled and reduced. The Committee recommends accordingly.

Conciliation

8.71 The congestion in courts, more particularly in the trial courts, can be relieved considerably by the adoption of the system of conciliation of cases. If adopted, it would also result in reducing the inflow of cases in superior courts, because there would be no revision or appeal at the instance of any of the reconciled parties.

8.72 Settlement of cases by mutual compromise is a much better method than seeking adjudication in the adversory system. Fighting a litigation to its bitter and final end, apart from generating tension and leaving a trail of bitterness, burdens the parties with heavy financial expenditure. Besides, the successful party has to wait for years before enjoying the fruits of litigation. Results in consonance with justice, equity and good conscience can sometimes be achieved by having a mutual settlement of the dispute than by inviting the court to decide a case one way or the other.

Law Commission—14th Report—Experiments Abroad

8.73 In the 14th Report of the Law Commission, it is mentioned that the system of conciliation was being tried in three countries, namely, Japan, France and Norway. The following is the relevant extract from the Report:

> "The Code of Civil Procedure does not contemplate such (conciliation) proceedings but such a procedure exists in Japan, France and Norway. In Japan it is the duty of the court either on the application of the parties or suo motu to send all civil proceedings either to a body consisting of two laymen and a judge or to judicial commission for a negotiated settlement. If the conciliation court succeeds in persuading the parties to arrive at a settlement, its terms are recorded by the court and the order becomes binding as a judgment. In the event of a failure, the proceeding is dealt with in the ordinary

manner. In France, all cases go to Cantonal Court presided over by a layman for conciliation and an agreed settlement. Failing a settlement, the case goes for disposal to the court. In Norway, such proceedings are an essential preliminary to a proceeding in a civil court. The proceedings first go before a conciliation council, composed of three mediators, designated by the local authority. The council can record an agreement. If any of the parties fail to appear, the council can in petty cases settle the proceedings. If the conciliation proceedings fail, the parties may approach the court for the redress of their grievances."

Law Commission 77th Report—Conciliation—Japan

8.74 In the 77th Report of the Law Commission on Delay and Arrears in Trial Courts, a full Chapter is devoted to conciliation. It is mentioned therein that this system was originally adopted in Japan in 1922 for the purpose of settling a dispute involving land and house lease as indicated in the Law for conciliation concerning Lease of land or house but since then its scope has been expanded and now it is made available to settlement of all types of civil disputes. The extent of utilisation of the system is very great. In 1968, the cases newly received for conciliation numbered 54,323 while the total number of cases received by the courts of the first instance was 1,84,808. The ratio between the two is roughly 1 to 3.

Conciliation—Norway

8.75 In Norway, when it is intended to bring an action against someone, the case cannot as a rule be brought before the court unless an attempt has been made to settle the dispute by way of mediation carried out by the Conciliation Councils. In 1957, there were about 750 Conciliation Councils. Conciliators are normally non-lawyers. Legal representation is not permitted before the Conciliation Councils. If the Council succeeds in bringing about a settlement, a formal agreement is entered into and recorded in the official records which has the same effect as a final judgment. The Conciliation Council is also empowered to pronounce judgment in any case provided both the parties appear and request it to settle the dispute. On request of one of the parties also, judgment may be delivered in specified class of cases. The judgments of Conciliation Councils are appealable to the Country or Town Court. In 1954, Conciliation Councils dealt with 24,733 cases out of which 2712 were settled by way of mediation, 9065 by delivery of judgment by default and 761 were otherwise adjudged.

Conciliation—Pakistan

8.76 The system of conciliation has also been tried in Pakistan. The Conciliation Courts Ordinance was promulgated in 1961. Primarily role of the court is to conciliate between the parties petty civil and criminal cases and that is why it has been given the name of Conciliation Court. Each of the parties to the dispute nominates two representatives out of whom one must be a member of the Union Council concerned. The constitution of the court, therefore, varies with each case. These courts have been playing a useful role in settling disputes amicably. It has provided relief to the ordinary courts and also enables the parties to get speedy and quicker justice. A sizeable number of cases has been dealt with by these courts. Adjudication of disputes is not the primary function of such courts; however they are not deprived of the judicial powers and not restricted or limited to their function of settlement of disputes through conciliation only.

Law Commission—77th Report—Recommendations

8.77 The Law Commission in the 77th Report made the following recommendation in light of the experience gained in other countries as regards the functioning of the Conciliation Courts:

> "We would recommend the setting up of conciliation boards on experimental basis in certain areas in disputes giving rise to claims for the recovery of money not exceeding five thousand rupees. Every such board should cover a block of population of about one lakh in rural and about two lakhs in urban areas. Every aggrieved person, before filing a suit for the recovery of money not exceeding five thousand rupees, should first approach the conciliation board. The board should try to get the dispute amicably settled within three months of the service of the notice on the person complained against.

If settlement is arrived at within that period, the settlement should be reduced to writing. It should be signed by all concerned and be filed in court like a compromise. If no settlement is arrived at within three months, an order should be made by the board to that effect. Even if no order about settlement having been not arrived at is made by the Board within the above period of three months, the court shall presume that no settlement was possible.

Such category of suits as may be considered advisable may be kept out of the jurisdiction of the conciliation boards.

No plaint should be filed in any court relating to dispute mentioned above without the aggrieved person first approaching the conciliation board. In case, however, sufficient ground or urgency is shown to the satisfaction of the court for straightway starting such proceedings without approaching such board, the court may entertain such a plaint. In case no such sufficient cause or urgency is shown, it would be within the competence of the court to reject the plaint or, in appropriate cases, to stay further proceedings in the suit till such time as recourse is had to the board. Suitable provisions for this purpose will have to be enacted if it is decided to adopt the above scheme. The details of the scheme can also be gone into at that stage.

As mentioned earlier, the setting up of the conciliation boards would have to be done only on experimental basis in certain areas. If it is found that the conciliation boards have proved a useful agency in relieving the workload of courts and the experience in other respects is also happy, we might extend the system to more areas. In case, however, our experience is to the contrary, we may do away with conciliation boards even in those areas where they are set up on an experimental basis."

Legislative Policy—Conciliation

8.78 Although no regular Conciliations Courts or Councils are set up in our country, the legislative policy is to cast a duty upon the court to make efforts and to assist the parties in arriving at a settlement in certain suits/proceedings such as litigation by or against the Government or public officers in their official capacity, litigation relating to matters concerning the family such as suits/proceedings for matrimonial relief, guradian and custody, maintenance, adpoption, succession, etc. (see rule 5B of Order XXVII and rule 3 of Order XXXII—A of the Code of Civil Procedure, 1908). Similar provisions are also found in section 23, sub-sections (2) and (3) of the Hindu Marriage Act, 1955 and Section 9, sub-section (1) of the Family Court's Act, 1984. The machinery of conciliation set up under the Industrial Disputes Act, 1947 is also a step in that direction. The classical view of the judicial role, namely, that Judges are not supposed to get involved into the controversies they adjudicate to enable them to decide cases fairly and impartially has thus been departed from to some extent as reflected in this new legislative policy.

Conciliation Courts—Himachal Pradesh High Court Scheme

8.79 The Himachal Pradesh High Court being aware that the judicial system is overstreched and is bursting at the seams initiated the "Pre-trial, In-trial and Post-trial Conciliation Project in the Subordinate Courts in Himachal Pradesh on September 1, 1984. A full text of the scheme is annexed to this Report as Appendix VI. The scheme has been worked with great success and has received recognition and approbation at the hands of the Law Commission, Chief Justices' Conference, Jurists, Lawyers and the general public. It has been warmly welcomed by the litigants.

Law Commission—129th & 131st Reports—Scheme Approved

8.80 In the 129th Report on Urban Litigation—Mediation as alternative to adjudication, the Law Commission has discussed the whole scheme in detail in paragraphs 3.21 to 3.29 of Chapter III of the Report. Having considered the scheme in all its aspects and having suggested certain amendments in the Code of Civil Procedure, the Law Commission opined that "as the scheme is successfully working, it must be accepted as a model .....: the

scheme will be very effective and must be made obligatory in all courts .... the scheme must apply to all suits of civil nature coming before civil courts" (see paragraphs 3.27 and 3.28). In its 131st Report on Role of the Legal Profession in Administration of Justice, the Law Commission once again adverted to the Conciliation Court Scheme devised and implemented by the Himachal Pradesh High Court and recommended its adoption as an alternative mode of resolution of disputes in all urban areas (see paragraph 3.21 of Chapter III of the Report).

Chief Justices' Conference, 1987—Scheme Recommended

8.81 The Chief Justices' Conference held in 1987 passed the following resolution:

> "The pattern of Conciliation Courts as existing in Himachal Pradesh is recommended to be adopted with such modifications as may be required by circumstances prevailing in each State."

The Scheme

8.82 The scheme, briefly speaking, applies to 23 categories or classes of cases. The designated trial courts and appellate courts and the Motor Accidents Claims Tribunals function as Conciliation Courts. All suits or proceeding falling within the said categories or classification are transferred to the Conciliation Courts after pleadings have been filed. The Conciliation Court, in order to form an alternative formula for an amicable settlement, goes through the case papers, verifies the facts from counsel as well as from parties and endeavours to evolve a fair and just formula acceptable to both parties for an amicable settlement of issues in dispute. The approach of the court is uninhibited by the provisions of Code of Civil Procedure and informality permeates the proceedings so as to help the parties to eschew hostile attitude and to narrow down the differences and to ultimately resolve the dispute. If the parties agree to a compromise, the same is recorded as required by Order XXIII of the Code of Civil Procedure and decree/award follows. The litigation ends there. In the event of failure of conciliation, the suit or proceeding is returned either as a whole or in part in case disputes have been narrowed down, for adjudication by the regular court.

Conciliation Courts—Disposals Data

8.83 The statements in Appendix VII to this Report gives details of the results achieved by the Conciliation Courts in Himachal Pradesh. Between 1.9.1984 and 31.5.1990, 29,549 cases of different categories and classes were disposed of by those courts. Between 1.1.1986 and 30.6.1988, the total disposal of cases by *all* the courts *including* Conciliation Courts in Himachal Pradesh was 1,44,633. Out of this, Conciliation Courts disposed of 18,864 cases. The percentage of conciliation disposal to the total disposal works out to 13.04 per cent. Be it stated that the scheme was applied gradually to the different districts comprising the State between 1.9.1984 and 1.1.1987 and that the figures hereinabove given relate to the average duration of the conciliation project in the whole State which works out to about two years and four months. Amongst the different categories and classes of cases disposed of are included 8385 civil suits, 877 rent cases, 405 matrimonial cases, 511 motor accidents claims cases, 1045 petitions under section 125 of the Code of Criminal Procedure, 839 executions and 2497 criminal cases of compoundable nature. At the appellate stage 734 civil appeals and 167 criminal appeals/revisions were disposed of by conciliation. Between 1.1.1986 and 31.5.1990 (1.8.1986 being the date of extension of the conciliation scheme to the Motor Accidents Claim Tribunals) 493 motor accident claim cases were disposed of by conciliation and a sum of Rs.1,18,61,624 was awarded out of which Rs.1,02,21,676 was deposited for making payment to the claimants.

Lok Adalat Gujarat Experiment

8.84 The Lok Adalats are gaining ground and are being held practically all over the country. Gujarat is the pioneer State so far as this movement is concerned. The first Lok Adalat in Gujarat was held sometime in 1981-82. Recently, on 28th and 29th July, 1990, 400th Lok Adalat was held in Ahmedabad (Rural) District. In 395 Lok Adalats held in different parts of the State, more than 84,800 cases were taken up for settlement out of which 57,900 cases were disposed of. So far as motor accident claims cases are concerned, Special Lok Adalats are being organised since 1985 and by now 128 have been held. 12,000 cases were taken up for disposal in such Adalats and the total amount of compensation awarded exceeded Rs.27 crores.

Comparative Study—Gujarat and Himachal Pradesh Experiments

8.85 From a comparative study of the results achieved in Himachal Pradesh through Conciliation Courts and in Gujarat through the Lok Adalats, the picture which emerges is fairly comparable, keeping in view the duration of both the projects, the size and population of the two States and the extent of litigative activity.

Conciliation Courts—Special Features and Advantages

8.86 The following are the special features and advantages of the Conciliation Courts operating in Himachal Pradesh:

(a) They are within the existing justice administration system.

(b) They have sanction of law and of the judicial process.

(c) They are operative at all stages, Pre-trial, In-trial and Post-trial and at all hierarchical levels, namely, Trial Court, District Court and High Court and also in MACTs and covers a wide range of cases.

(d) The facility available on a permanent footing and not spasmodically.

(e) They involve mediation by a Judge with his knowledge, acumen, experience, maturity and the trust of litigants and lawyers and ensure just settlement.

(f) There is active participation of lawyers and litigants.

(g) There is finality or end to the disputes without any loophole or scope for future litigation.

(h) It involves no extra cost.

(i) It instills a new sense of direction and philosophy in Judges and Lawyers which helps them to understand problems of litigants and thus makes justice more realistic and humane even when adjudication is involved—job satisfaction.

(j) It enhances peoples' faith in the existing judicial system which is otherwise under strain and facing loss or credibility.

(k) It is immune from any outside influence which may tend to affect rendering of justice in other modes of participatory justice.

(l) It provides real and substantial justice as against justice simply according to law.

(m) There is participation and cooperation of outside agencies chosen by the Judge in certain categories of disputes legally permissible and possible—See Order 32-A, Rule 4 CPC and Section 23(3) of Hindu Marriage Act.

8.87 The modality, features and results of the Conciliation Project in Himachal Pradesh can be judged from what is stated above and from what is contained in Appendices VI and VII. The project, as observed by the Law Commission, is very effective and requires to be made obligatory in all courts all over the country. The Chief Justices' Conference has also recommended the adoption of the Scheme with necessary modification in each State.

Law Commission—Proposed Amendment to CPC

8.88 The Law Commission has suggested the following two amendments in the Code of Civil Procedure to make the Conciliation Scheme effective:

> "The following may be added as sub-clause (c) immediately after sub-clause (b), clause (l) of rule 2 of Order X of the Code of Civil Procedure:
>
> 'may require the attendance of any party to the suit or proceedings, to appear in person with a

view to arriving at an amicable settlement of the dispute between the parties and make an attempt to settle the dispute between the parties amicably.'

The following may be added as clause (3) immediately below clause (2) of Rule 4 of Order X of the Code of Civil Procedure:

'Where a party ordered to appear before the court in person with a view to arriving at an amicable settlement of the dispute between the parties, fails to appear in person before the court without lawful excuse on the date so appointed, the court may pronounce judgment against him or make such order in relation to the suit as it thinks fit."

The Law Commission has also recommended that the provisions of Rule 5-B of Order XXVII should be suitably amended so as to make the procedure set out therein applicable so all types of suits.

Committee's Recommendations

8.89 This Committee agreeing with the Law Commission recommends that Conciliation Courts should be established all over the country with power, authority and jurisdiction to initiate conciliation proceedings in all types of cases at all levels and that the amendment suggested by the Law Commission should be carried out to enable the Scheme to function effectively. The conciliation procedure should also be made applicable to the Motor Accident Claims Tribunal.

Lok Adalats—Another Alternative Forum

8.90 One more alternative forum for resolution of disputes is the institution of Lok Adalats. The movement of Lok Adalats has gained momentum throughout the country and has produced effective results. It started initially as a voluntary organisation for informal resolution of disputes and is mostly manned by retired members of the judicial fraternity associated with others. It has now received the statutory recognition in the Legal Services Authorities Act, 1987. In the 126th Report on Government and Public Sector Undertaking Litigation—Policies and Strategies, the Law Commission has offered its comments on the working of Lok Adalats in para 5.21 of Chapter V. It has found that simple disputes where an approach of give and take, which is likely to result in settlement, may be resolved in the said forum and that its utility in resolving disputes between Government and citizen, Public Undertakings *inter se* and between local authorities and other instrumentalities of the State is limited. Depsite the limitations, Lok Adalats on the whole have been successful in settling many disputes in the field of Motor Accidents Claims and disputes relating to family and matrimonial matters. Once the Lok Adalats are institutionalised through the machinery of law, they may produce better and more effective results.

8.91 The Committee is of the view that if congestion of cases in courts is to be relieved, the recommendations hereinabove made should be implemented without further loss of time. It is hoped that the authorities concerned will move swiftly in the matter so that the problem of arrears is attacked from a different angle.

CHAPTER IX

'SUMMARY OF RECOMMENDATIONS

VOLUME I

"INTRODUCTION"—CAUSES FOR THE ACCUMULATION OF ARREARS IN THE HIGH COURTS:

Factors which contribute to accumulation of arrears have been indentified in the Introductory Chapter. The factors are:

1. Litigation explosion.
2. Radical change in the pattern of litigation.
3. Increase in Legislative activity.
4. Additional burden on account of Election Petitions.
5. Accumulation of First Appeals.
6. Continuance of the ordinary original civil jurisdiction in some High Courts.
7. Inadequacy of judge strength.
8. Delays in filling up vacancies in the High Courts.
9. Unsatisfactory appointment of judges.
10. Inadequacy of staff attached to the High Courts.
11. Inadequacy of accommodation.
12. Failure to provide adequate forums of appeal against quasi judicial orders.
13. Inordinate concentration of work in the hands of some members of the Bar.
14. Lack of punctuality amongst judges.
15. Civil Revisions—indiscriminate exercise of jurisdiction.
16. Second Appeals—ignoring the limitations on exercise of jurisdiction.
17. Long arguments and prolix judgments.

18. Lack of priority for disposal of old cases.

19. Failure to utilise grouping of cases and those covered by rulings.

20. Granting of unnecessary adjournments.

21. Unsatisfactory selection of Government Counsel.

22. Lawyers not appearing in courts due to strikes, etc.

23. Population explosion.

24. Hasty and imperfect legislation.

25. Plurality of appeals and hearing by Division Benches.

26. Inordinate delay in the supply of certified copies of judgments/orders.

27. Indiscriminate resort to writ jurisdiction.

28. Letters Patent Appeals.

29. Inadequacy in classification and grouping of cases.

30. Constitution of Benches and their frequent changes.

31. Indiscriminate closure of courts.

32. Appointment of sitting Judges as Commissions of Inquiry.

33. Printing of Papers Book in Criminal matters.

Urgent attention is required to be paid to the resolution of the problem of arrears by taking appropriate remedial measures before the situation deteriorates beyond repair and the system collapses under its weight.

CHAPTER I: ORDINARY AND EXTRAORDINARY ORIGINAL CIVIL JURISDICTION OF HIGH COURTS

1. Six High Courts in the country exercise Ordinary Original Civil Jurisdiction: High Courts of Calcutta, Bombay, Madras, Delhi, Jammu & Kashmir and Himachal Pradesh.

2. Ordinary Original Jurisdiction of the High Courts of Calcutta, Bombay and Madras should be abolished and the City Civil Courts in the three Metropolitan Cities be vested with unlimited civil pecuniary jurisdiction with prospective effect. But pending cases shall not be transferred.

3. The law abolishing Ordinary Civil Jurisdiction of the High Courts of Delhi, Jammu & Kashmir, and Himachal Pradesh and vesting such jurisdiction on the civil courts of competent jurisdiction be also made prospective in operation. Pending cases shall not be transferred.

4. Simultaneously, the strength of the Judges in the Courts of competent jurisdiction should be suitably augmented to cope up with the inflow of new work. Additional accommodation and staff required should be simultaneously sanctioned. Until provision therefor is made in consultation with the High Court, the proposed statutory amendments in the existing laws should not be brought into force.

5. There is no justification for the retention of Ordinary Original Civil Jurisdiction of the High Court at Calcutta in respect of suits and proceedings relating to or arising out of carriage by air.

6. High Court at Calcutta will continue to have Ordinary Original Civil Jurisdiction exceeding Rupees One lakh in value,—(i) relating to or arising out of import or export merchandize, or (ii) relating to or arising out of stock exchange transactions or future markets, or (iii) relating to or arising out of documents of title to goods as defined in the Indian Sale of Goods Act, 1930, or (iv) arising out of transactions of merchants and traders relating to the buying or the selling of goods or relating to the construction of mercantile documents, or (v) relating to or arising out of transactions of mercantile agents as defined in the Indian Sale of Goods Act, 1930, and (vi) relating to or arising out of bills of exchange, hundis or other negotiable securities for money, letters of credit or letters of advice, but not Suits and Proceedings relating to or arising out of cheques, promissory notes or currency notes.

7. Special care should be taken while introducing suitable amendments to the City Civil Courts Act, 1953 (Calcutta) to incorporate the changes suggested so that the Ordinary Original Civil Jurisdiction of the High Court remains confined to Suits and Proceedings of the above nature only and none other.

8. Suitable amendments be carried out in the Bombay City Civil Court Act, 1948 and the Madras City Civil Court Act, 1892 or in the Letters Patent of those High Courts or a new law may be enacted to implement the recommendations.

9. So far as the suits and proceedings triable by the High Courts under any Special Acts other than Letters Patent are concerned, recommendations made by the High Courts Arrears Committee and endorsed by the Law Commission of India in its 79th Report and by the Satish Chandra Committee be implemented forthwith; a Committee(s) of Experts be appointed to make an indepth examination of the question of desirability of continuing the jurisdiction to try suits and proceedings arising under other Special Acts not covered by the recommendations of the Law Commission of India and the said two Committees and to suggest whether the jurisdiction in that regard should be continued to be exercised by the High Courts and if so, to what extent. After inviting public debate on the report of the proposed Committees appropriate amendments should be effected to the relevant Special Acts to implement such of the suggestions as are found acceptable.

CHAPTER II: LETTERS PATENT APPEALS/APPEALS AGAINST JUDGMENTS OF SINGLE JUDGES.

10. Appeals against the appellate decision of a Single Judge of a High Court to a Division Bench of the same High Court be abolished by suitably amending section 100A of the Code of Civil Procedure.

11. Suitable legislation should be enacted by the appropriate legislature for abolition of appeals from the judgment or order of a Single Judge of the High Court arising out of a suit or proceeding under specified local laws in exercise of the appellate jurisdiction.

12. There shall be no appeal against the decision or order of a Single Judge of the High Court rendered in the exercise of the Writ Jurisdiction. It can still be ensured that cases of complexity and importance are heard by a Division Bench either by providing for appeals in such cases or by referring them to a Division Bench.

13. Certain categories of cases may be identified which deserve to be heard by a Division Bench. The identification is to be left to the discretion of each High Court, which may make suitable provisions in its Rules and Orders. Applications for issue of writ of Habeas Corpus and issue of appropriate writs in externment and deportation cases, cases arising under fiscal Acts, Labour Legislations and Public Interest Litigations, deserve to be heard by a Division Bench.

14. For achieving uniformity, Parliament should enact a law providing for:

(i) abolition of an appeal against a decision by a Single Judge to a Division Bench in respect of proceedings under Articles 226 or 227 of the Constitution; and

(ii) conferment of power on the High Court to decide which category of cases under Articles 226 or 227 of the Constitution should be heard by a Single Bench or a Division Bench.

as per the text suggested by the Committee.

CHAPTER III: FIRST APPEALS

15. The recommendation of the Satish Chandra Committee that District Judges be empowered to entertain First Appeals irrespective of the value of the original suit or where such value does not exceed Rupees Five lakhs is not favoured.

16. First appellate jurisdiction of the District Courts should be enhanced so as to cover a decree of a Subordinate Judge passed in a suit the value whereof for the purpose of jurisdiction does not exceed Rupees Two lakhs and that this should be done by a Central Legislation in order to achieve uniformity. There should be a review at the interval of every five years so that such jurisdiction may be enlarged circumstances justifying. Before any such step is taken, a proper assessment of additional requirement of Judges and staff at the District Court level and of more Court rooms and residential accommodation must be made. The legislation in this behalf should be undertaken only after the respective State Governments have agreed to the aforesaid requirements being provided.

17. The recommendation of the Satish Chandra Committee that appeals valued at rupees fifty thousand and above should be heard by District Judge personally is not favoured as District Judge has the power to distribute work amongst his colleagues and he is expected to exercise the same with due discretion and High Court has the power to issue special or general directions in the matter of distribution of work amongst Judges of the District Courts.

18. The recommendation of the Satish Chandra Committee that the legislation conferring enlarged first appellate jurisdiction on the District Courts should apply to regular First Appeals arising out of decrees passed in all original suits, whether instituted before or after the legislation and that a clear provision should be made that all appeals which may be pending in the High Court on the day of enforcement of such legislation should stand transferred to the respective District Courts, unless the hearing of the appeals has actually commenced, is agreed to.

19. Legislation should be made empowering High Courts to fix by a judicial order a date for appearance of the parties before the concerned District Courts on transfer of the appeals to the District Courts.

20. Suitable direction should be issued to the transferee District Courts to take the age of the transferred appeals into account, on the basis of the date of their presentation in the High Court for listing them according to priority for final hearing.

21. Regular First Appeals arising out of decrees passed in suits, where the value of the subject-matter is below Rupees Three lacs, should be heard and disposed of by a Single Judge and others by a Division Bench.

22. Regular First Appeals should be listed for preliminary hearing and the question of fixing a day for the final hearing will arise only if the appeal is not summarily dismissed. However, an appeal which raises triable issues should not be dismissed in limine. Brief reasons should be given for dismissal of the appeal in limine at the preliminary stage.

23. Although uniformity in regard to the forum of appeal may be advisable and the provision of internal appeals within the City Civil Courts in matters of small value may tend to lessen the burden on High Courts, the matter may be left to be decided locally having regard to the varied structure and composition of different City Civil Courts.

24. Appeals under special statutes should lie to the District Courts where the orders under appeal are not passed by District Courts or by Tribunals presided over by judicial officers. Appropriate amendments be made in those special statutes providing for appeal to the District Court in cases where the trial is held by a court inferior to the District Court or by any other authority with a further provision that the decision in such appeal shall be final.

25. Requirement of annexing a copy of the decree to the Memorandum of Appeal be dispensed with and Sections 96,100, Order XX Rule 6A and Order XLI Rule 1 of the Code of Civil Procedure and section 12 and article 116 of the Limitation Act be suitably amended. Requirement of annexing certified copy of the judgment to the Memorandum of Appeal showing names, descriptions and registered addresses of all the parties to the suit and particulars of the claim including the valuation for the purpose of jurisdiction and court fees should be made mandatory.

26. Section 17 of the Indian Divorce Act which requires confirmation of the decree of divorce passed by District Judge by a special Bench consisting of three Judges should be deleted and instead a right of appeal be provided to a Single Judge of the High Court.

CHAPTER IV: SECOND APPEALS

27. Pecuniary limit upto which no second appeal shall lie be enhanced to Rupees ten thousand irrespective of the nature of the suit by suitably amending section 102 of the Code of Civil Procedure.

28. Limited retrospectivity should be given to the said amendment so as to make it applicable to all original suits pending on the day on which such amendment takes effect, leaving unaffected the pending first and second appeals.

29. The provisions of Order XLI Rule 11 of the Code of Civil Procedure should be strictly followed in second appeals in conformity with the spirit of section 100 and filing of caveat by respondent should be adopted and encouraged to enable the Court to hear the party before admission of such appeal. A prior circulation for study of second appeals and entrustment of admission of those appeals to experienced Judges are recommended. Proper formulation of substantial question of law under a separate heading in the Memorandum of Appeal and requiring counsel to confine his argument to the question so formulated should be insisted upon.

30 Appropriate amendments should be made in the relevant rules or statutes so that second appeals can be heard only by a Single Judge.

31. The requirement of annexing a certified copy of the decree to the Memorandum of Appeal should be dispensed with in second appeals also.

CHAPTER V: REVISIONS

32. Conferment of revisional powers on the District Courts either under Section 115 of the Code of Civil Procedure or under Section 25 of the Provincial Small Causes Courts Act is not favoured.

33. Revisional jurisdiction in respect of an interlocutory order passed in an appeal, trial or other proceedings should be curtailed by deleting clause (b) to the proviso to sub-section (1) of Section 115 of the Code of Civil Procedure. The amendment that is required to be made is to substitute the following for the existing proviso to sub-section (1):

> "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

34. The Committee is not in favour of enacting a provision similar to Order XLI Rule 5 of the Code of Civil Procedure in regard to revisional jurisdiction.

35. Calling for records in revisional cases should be restricted by adding the following to section 115 of the Code of Civil Procedure as sub-section (3):

> In a revisional proceeding under this section against interlocutory decisions, the subordinate court shall not send its records unless the High Court expressly so directs.

CHAPTER VI: REMEDIAL MEASURES FOR ARREARS ON CRIMINAL SIDE.

36. Criminal appeals involving sentence of death or imprisonment for life and appeals against acquittals in cases which are likely to result in the imposition of the sentence of death or imprisonment for life should alone be heard by a Bench of two Judges. The relevant rules or statutory provisions applicable to different High Courts should be suitably amended.

37. The Court of Session should have exclusive power of revision against orders of criminal courts subordinate thereto. High Court should have power of revision only against the orders of the Court of Session/Special Courts other than those passed in exercise of their revisional jurisdiction. Section 397 of the Code of Criminal Procedure be suitably amended.

38. Power of granting anticipatory bail under section 438 of the Code of Criminal Procedure should be restricted to the Court of Session by effecting suitable amendment.

39. State Governments may set up proper machinery to carefully and objectively scrutinise proposals for preferring appeals against orders/judgments of acquittals to prevent frivolous appeals being filed by the State against such decisions.

40. State Governments should appoint not less than two Additional Public Prosecutors for each Criminal Court. Adequate attention must be paid to appoint competent lawyers as Public Prosecutors.

41. No paper books need be prepared in criminal appeals which are required to be heard by a Single Judge.

42. The statutory rules or provisions which require printing of paper books/records in criminal cases involving sentence of death to be suitably modified providing for typed or cyclostyled paper books.

43. Every criminal court should be provided with at least one photocopying machine to speed up preparation of paper books and furnishing of copies under section 207 of the Code of Criminal Procedure.

44. Adequate number of police constables should be attached to each police station exclusively to attend to the work of each court as per its direction.

45. Appropriate provision should be made for effecting services on medical officers, expert witness and even investigating officers through their respective Heads of Departments.

46. Respective State Governments should take immediate steps for providing presiding officers to man all the criminal courts.

47. All State Governments should promptly provide adequate staff, funds and stationery for all the criminal courts within their respective States.

CHAPTER VII: ELECTION PETITIONS

48. There is no justification to take away the jurisdiction of the High Courts to try election petitions.

CHAPTER VIII: PRACTICE AND PROCEDURE—CLASSIFICATION, GROUPING, AND LISTING OF CASES

49. A broad classification of cases should be made subject-wise. Writ proceedings may be classified depending upon the subjects such as labour, service, rent control, land acquisitioning and requisitioning. Cases against interlocutory orders may be classified separately. Cases which do not come under a specified category will be classified as miscellaneous. Categorisation of cases so made should be published in the form of a rule or circular.

50. The particular category under which a case falls should be indicated on the docket or the first page. The Registry should check the classification stated. In case of doubt the same should be got decided by placing the matter before court.

51. If the registry or the Judges come across cases which could be classified under a new or a separate category, the suggestion should be placed before the Chief Justice. The Chief Justice should take into consideration this broad categorisation in allocating the work.

52. Steps should be taken for grouping similar cases involving substantially the same question of law or cases covered by the decisions of the Supreme Court or the binding decisions of the same High Court or cases which have become infructuous to enable such groups of cases being posted for convenient and expeditious disposal.

53. Actual work of grouping of cases should be assigned to competent and specified officials of the High Court.

54. Judges dealing with different types of cases may make suggestions for proper classification or grouping of cases. Cases similar in nature should be posted before the same Bench. Officials should seek orders of the Chief Justice in regard to the posting of such groups of cases.

55. Matters which require prompt attention such as criminal cases in which the accused are in jail, matrimonial cases, maintenance cases, cases relating to admission to educational courses and cases against interlocutory orders should be listed for hearing on a priority basis.

56. Older cases should be given preference and they should be posted for hearing before judges who are not burdened with admission or other miscellaneous work.

57. Frequent changes in the allocation of work among judges should be avoided. Before the term of the Bench expires, care should be taken not to leave any case part-heard.

58. Hearing of matters in Chambers should be avoided.

59. Second Appeals and Civil Revision Petitions need be heard only by Single Judges. If there are any High Courts where such cases are required to be heard by a Division Bench, the relevant rules/orders should be amended suitably.

60. Appeals involving subject-matter of the value of Rupees Three lakhs and above should be heard only by a Division Bench. Relevant rules/orders of the High Court should be amended suitably.

61. In writ petitions, First Appeals, Second Appeals, Civil Revision Petitions etc. the party should be required to file a brief list of points formulated for arguments (except second appeals) with a list of authorities to be cited in respect of each point after serving the same on counsel for the opposite party. A list of all relevant dates concerning the case, arranged chronologically, should also be furnished.

62. Provisions of Order XIX of the Code of Civil Procedure are adequate enough to deal with the proper and prompt recording of evidence. Those provisions should be more freely made use of so that examination of witnesses in Court could be avoided wherever possible to ensure saving of Court's time.

63. Witnesses summoned should, as far as possible, be examined on the same date either by the judge himself or if it is not possible, by the Commissioner or Officer of the Court appointed for the purpose. Lawyers should not be appointed as Commissioners for such work. Judicial officers of the cadre of District Judges or retired District Judges should be appointed for the purpose. They should form part of the staff of the High Court. Decisions of such Commissioners regarding admissibility of evidence should, however, be subjected to the final decision by the Court only at the time of final hearing and not at the interlocutory stage.

64. Provisions of Order XVIII of the Code of Civil Procedure are adequate as regards the method of recording evidence, and rules, if any, of the High Courts which are at variance with this Order should be suitably amended.

65. Copies of the depositions should be furnished to the parties the same day. Sufficient number of photo-copying machines should be made available to all the courts immediately.

66. Earnest efforts should be made by the judges to ensure that the court proceedings are not protracted.

67. A convention should be established to the effect that no adjournment of listed cases shall be allowed except in exceptional circumstances.

68. The Bench and the Bar ought to recognise the urgent need to adhere to proper norms of conduct and rectitude.

69. While dismissing Second Appeals and Civil Revision Applications under section 115 of the Code of Civil Procedure and Criminal Revision Applications under section 397 of the Code of Criminal Procedure, it is enough to state the points raised and the judge's view that the case does not attract the provisions of section 100 or 115 of the Code of Civil Procedure or section 397 of the Code of Criminal Procedure as the case may be. When such cases are disposed of after final hearing, even when they are being dismissed affirming the judgments of the court below, the court should do so by rendering a brief judgment.

70. There is no justification for discouraging the practice of dictating judgments in open court. Dictation of judgments in open court will certainly ensure quicker disposal of cases.

71. The practice of pronouncing only the operative portion of the order, while reserving the judgment for being pronounced later, is disapproved. Reasons and decision should be given simultaneously. This should be ensured, if necessary, by making suitable provision in the rules of the High Courts.

72. Reserved judgments should ordinarily be pronounced within six weeks of the conclusion of the arguments. In the event of the judgments not being pronounced within three months of the conclusion of the arguments, the Chief Justice may either post the case for delivering judgment in open court or withdraw the case and post it for disposal before an appropriate Bench. Appropriate rule or statutory provision should be made for this purpose.

73. In case of reserved judgments only the operative portion need be read.

74. To avoid inordinate delay in furnishing certified copies of judgments and final orders etc. a copy of the judgment/order should be taken and authenticated immediately after its pronouncement and preserved in the copying section for the purpose of issuing certified copies whenever necessary.

75. Sufficient number of photocopying machines should be supplied to the copying section for prompt issue of certified copies. Photostat copies should be authenticated and certified as true copies.

76. To avoid all possible delays in the issue of certified copies, the incorporation of a rule on the following

lines should be made in the rules of each High Court:

"(i) Applications should be scrutinised and the requisite fee/stamp papers should be determined and made known to the party/advocate by notifying on the Notice Board of the Copying Section within 48 hours of the receipt of the application.

(ii) The exact amount of fees or number of stamp papers should be supplied by the party/advocate within 48 hours of its being notified as aforesaid, failing which the application should be rejected by the authorised officer."

77. Furnishing of certified copies free of cost to all the parties to the case, who are not *ex parte* or their advocates, at the time of the pronouncement of the judgment or final order or within a specified period from the date of pronouncement of the judgment or order, is recommended. For implementing this laudable policy, the Government should provide adequate staff, photocopying machines and gadgets and make provision for special grant of funds to meet this extra burden.

CHAPTER IX: GENERAL RECOMMENDATIONS

78. There is no justification to amend Article 139 A of the Constitution.

79. Judges must sit in Court punctually and for at least five hours on every working day to obtain maximum turn-over.

80. Utmost care should be taken to ensure that judicial time is not wasted. Casual absence for more than 14 days a year, not sitting in court throughout court hours, absenting from court without prior intimation, court days being lost on account of strike or abstention from court by lawyers, keeping cases part-heard for unduly long time and inordinate delay in pronouncing judgments are matters for introspection and self correction by judges.

81. If an Advocate appearing for a party is absent without reasonable cause and if the Judge disposes of the case after recording a finding in this behalf against the lawyer such a finding should be deemed to amount to misconduct. Copy of it should be forwarded to the Bar Council for appropriate action being taken.

82. If the lawyer is absent without justifiable cause and the case is decided in his absence, the lawyer should be directed to personally deposit in the registry a statutorily fixed amount as compensation. The party should be informed of the lawyer's absence and the order by the Court. Suitable statutory provision should be made in this behalf.

83. A convention be established that once counsel has commenced the arguments, no other counsel shall be allowed to take over and that the engagement of another counsel shall not be a ground for adjournment of the case.

84. Efforts should be made to discourage negative practice adopted for avoiding the Benches.

85. The sitting hours of each High Court may be increased by half an hour each day or the total number of working days of the High Courts increased by 21 days. As to which of the two alternatives should be preferred may be left to the High Courts to decide taking into consideration the views of the Bar.

86. No counsel should be appointed by the State, the statutory authorities and public sector undertakings without the concurrence of the Chief Justice of the High Court. Provisions should be made in this regard in the relevant statutes. This requires immediate attention at the highest level.

87. Ordinarily High Courts be closed as a mark of respect on the demise of the following dignitories only:

1. President;

2. Prime Minister;

3. Governor;

4. Chief Minister;

5. Sitting Chief Justice and Judge of the Supreme Court or of the High Court.

No unilateral decision to abstain from work should be taken by the Bar without prior consultation with the Chief Justice. If the Chief Justice accedes to the request of the Bar, the shortfall in the working day should be made good by the Court working on any of the closed Saturdays.

88. For continued and effective administration of justice in the State, the Chief Justice should be offered the fullest support and co-operation by every puisne Judge of the Court.

89. The services of retired judges should be utilised for appointment of Commissions rather than of sitting Judges of the High Court. Appointment of sitting Judges should be made only under exceptional circumstances. Commissions of Inquiry Act should be suitably amended to the effect that every Commission under the Act should be appointed only with the consent or concurrence of the Chief Justice.

90. A convention should be adopted that every High Court should work out its distinctive norms in regard to the work turnover for different sections of the registry and determine the strength of the staff. The Chief Justice may then proceed to appoint the additional staff based on those norms and give intimation to the State Government in that behalf for inclusion of provision in the budget as a charged item.

91. Computers should be used both on the administrative and judicial sides.

92. The Courts should be furnished with modern equipments like Xerox Copiers, Telex machines, Word Processors, Electronic Typewriters, Calculators and Dictaphones.

93. Micro-filming equipments could be used for preservation of records and once this is done, the rule requiring destruction of records only after the prescribed time may be reviewed.

94. State Governments or the Central Government should allot necessary funds for the purchase of the above equipments.

95. The Government of India should, as a special measure, make ad hoc grants for each State for the next five years towards the additional expenditure required to be incurred for implementing these recommendations made to reduce arrears.

96. Any proposed legislation, unless it is of a routine nature, should invariably be preceded, *inter alia*, by adequate investigative exercise on the part of the executive in order to ascertain whether there is real need for the enactment of such law and if so, whether the form in which it is proposed to be enacted would subserve the end.

97. The task of legislative drafting should be entrusted to highly specialised experts. Suitable measures should be taken to provide academic training of a high order in the field of draftsmanship and only such persons who qualify in such training should be appointed as draftsmen.

98. If a Bill introduced in the legislature covers a field of considerable importance, and affects a class or section of the public, such Bill should be referred to the Select Committee for an indepth examination. Similar exercise with suitable modifications should be taken in regard to rules, orders, byelaws and regulations.

99. No person should be appointed to any responsible position which clothes him with important statutory powers without imparting training in regard to the exercise of those powers. A training programme should be properly planned with the help of legal experts.

100. Ways and means must be found to provide alternative machinery for redressel of grievances by providing for statutory appeals, setting up of quasi-judicial forums and grievance cells or agencies with adequate remedial powers and creation of authorities to oversee the implementation of legislative and executive action.

VOLUME II

CHAPTER I: HISTORICAL BACKGROUND

101. A continuing imbalance in the proper operation of the constitutional system ranging over a long period of time by reason of one of its primary organs remaining ill-equipped to discharge its essential responsibilities cannot but be viewed with grave concern.

CHAPTER II: INADEQUACY OF JUDGE STRENGTH

102. The existing constitutional mechanism for determining judge strength requires to be reviewed. The power to determine the judge strength of each High Court should be entrusted to the Chief Justice of India. He shall exercise the same in consultation with the Chief Justice of the State concerned to enable the President to appoint the requisite number of judges in accordance with such determination.

103. Permanent judge strength of each High Court should be determined with reference to the norm of disposal and average number of main cases instituted during the preceding three years. The permanent strength required for each Court worked out on the aforesaid formula should be sanctioned without any delay. The position should be reviewed regularly at an interval of not less than three years to ensure that the requisite judge strength is available to deal with fresh institutions in each High Court.

104. Permanent judge strength of the Court should be increased evn for clearing the arrears. Arrears should be cleared in five years. After the arrears are cleared and there is no accretion to the pendency, new appointments be deferred.

105. As stated in the 120th Report of the Law Commission, there is need for manpower planning in the judiciary, on the basis of certain percentage of population or on the basis of litigation and pendency of cases bearing in mind the need and requirement for the next 20 years.

106. Provision should be made also for court buildings, additional staff, equipment etc.

107. Data furnished in the 121st Report of the Law Commission shows that the expenditure on State Judiciary is only a negligible portion of the tax receipts. There should therefore be no grudge or hesitation to lay out more expenditure for efficient management of the Judiciary. Financial constraints shall not be an excuse not to meet the needs of the judicial organ.

108. Expenditure on administration of justice should be made plan expenditure.

109. In the light of the shortcomings which have manifested in the working of Article 216 of the Constitution, the article requires to be amended on the following lines:

> "216. Every High Court shall consist of a Chief Justice and such number of other Judges as the President deems it necessary to appoint from time to time;
>
> Provided that the number of Judges required for each High Court shall be determined from time to time by the Chief Justice of India in consultation with the Chief Justice of the High Court concerned."

110. Article 224 of the Constitution providing for appointment of additional Judges needs to be deleted. It is preferable to appoint permanent Judges to deal with arrears of cases than to appoint additional Judges. The temporary need that may arise in exceptional circumstances can be met by resorting to the provisions of Article 224-A by requesting retired Judges to sit on the Bench as ad hoc or acting Judges.

CHAPTER III: NORMS AND CLASSIFICATION OF CASES FOR DETERMINING JUDGE STRENGTH

111. As recommended by the Committee of five Chief Justices, five miscellaneous cases should be treated as equivalent to one main case.

112. There is no justification for giving weightage to the category of main cases including references and criminal cases that are required to be heard and decided by a Division Bench or cases to be heard and decided by a Bench of three or more Judges.

113. Weightage of six times should be given for original suits, by whatever name they are called, and for election petitions.

114. A uniform norm for determining the judge strength of the High Courts in the country should be evolved.

115. The rate of per judge disposal per year fixed by the Chief Justices' Conference as 650 main cases requires upward revision. Having regard to the trend of increase in per judge disposal per year and the weightage recommended for disposal of miscellaneous cases, original suits by whatever name called and election petitions, enhancement of the rate of per judge disposal per year from 650 to 800 is recommended.

116. The judge strength of each High Court should be determined on the basis of the working norms of disposal of 800 main cases per judge per year or the actual national average rate of disposal per judge per year over the preceding three years, whichever is higher.

117. Government of India should prepare a proper proforma to be used by all the High Courts for furnishing information in regard to institution, disposal, pendency and weightage, so that accurate information becomes available for satisfactory determination of judge strength of each High Court.

118. Judge strength of the High Courts should be suitably increased to compensate for the time taken by the Judges when they function as members of the Advisory Boards, Commissions of Inquiry etc.

CHAPTER IV: DELAY IN FILLING UP VACANCIES IN THE HIGH COURTS

119. Malady of delay in appointment is now a matter which stands acknowledged in the statement of Objects and Reasons annexed to the Constitution (Sixty-seventh Amendment) Bill, 1990. It is high time that steps were initiated to overhaul the entire procedure for the appointment of judges with the end in view of securing expeditious appointment. It is essential that these deficiencies and maladies are remedied by an appropriate statutory enactment, and, in the event of the Constitution (Sixty-seventh Amendment) Bill, 1990 being made into a law, by an appropriate provision therein.

CHAPTER V: UNSATISFACTORY APPOINTMENT TO HIGH COURT BENCHES

120. Unsatisfactory appointments have contributed very much to the accumulation of arrears and to the deterioration of the quality of justice. To ensure that the judicial system functions effectively and to maintain both the quality and quantity of judicial work as well as the faith and confidence of the public, the appointments be made only on considerations of merit, suitability, integrity and capability and not on political expediency or regional or communal sentiments. It is fundamental for the preservation of the independence of the judiciary that it be free from threats and pressures from any quarter. It is the duty of the State to ensure that the judiciary occupies, and is seen to occupy such position in the polity that it can effectively perform the functions entrusted to it by the Constitution and that can be done only if the process of appointment is left unpolluted.

121. The bio-data of the person recommended for appointment should be furnished in the form given in Appendix IV. The Chief Justice would assess the suitability of the person on the basis of the factors contained in Appendix V. The recommendation should reflect the opinion he has formed about the person recommended as to the factors enumerated in the said Appendix. Before making the recommendation the Chief Justice should consult such of the Judges of the High Court as he deems necessary as that would undoubtedly assist him in making proper selection.

122. If the procedure, as aforesaid, is followed and appointments are made in accordance with the recommendation of the Chief Justice of the High Court, concurred in by the Chief Justice of India, it would prevent unsatisfactory appointments being made to the High Courts.

CHAPTER VI: EXISTING SCHEME FOR APPOINTMENT AND TRANSFER OF JUDGES

123. The present system of appointment of Judges to the High Courts has been in vogue for about four decades. It functioned satisfactorily as long as the well-established conventions were honoured and followed. The gradual, but systematic violation and virtual annihillation of the conventions over the past two decades or so is essentially responsible for the present unfortunate situation. It is apparent that the system has not failed, but all those concerned with operating the system have failed it by allowing it to be perverted.

124. The role of the executive in the matter of appointment of Judges should be diluted and that the cause for most of the ills in the functioning of the present system could be traced back to the veto power of the executive. This, indeed, is capable of being remedied by making certain amendments to Article 217 providing for concurrence of the Chief Justice of India, instead of consultation with him, in the matter of appointment of Judges of the High Courts.

125. Clause (1) of Article 217 of the Constitution of India be amended as follows:

> "217(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Governor of the State, and, in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of the High Court and with the concurrence of the Chief Justice of India and shall hold office until he attains the age of sixty-two years.
>
> Provided that the Chief Justice of India shall give concurrence after consultation with such of the Judges of the Supreme Court as he deems necessary and the Chief Justice of the High Court concerned."

126. In the existing proviso to clause (1) of Article 217, the word "further" be added in between the words "provided" and "that".

127. The Government of India adopted a policy of having Chief Justices of all High Courts from outside. Arbitrary departure from the said policy has been increasing. The haphazard and arbitrary manner of implementation has adversely affected the authority, initiative and leadership of Chief Justices.

128. The provision of official residence befitting the status of the Chief Justice should be a pre-requisite for his transfer.

129. To prevent arbitrariness on the part of the executive in the matter of effecting transfers and, at the same time, to give protection to transfers made in public interest, under compelling circumstances, Article 222(1) of the Constitution should be substituted by the following article:

> "222(1) The President may, with the concurrence of the Chief Justice of India, transfer a Judge from one High Court to another High Court.
>
> Provided that any transfer made in the public interest, with the concurrence of the Chief Justice of India, shall not be deemed to be punitive."

130. The Committee is of the view that the present constitutional scheme which was framed by the founding fathers after great deliberation and much reflection is intrinsically sound and that it worked in the true spirit it does not require any radical change. In order to guard against and obviate the perversion revealed in the operation of the scheme, the Committee has made suitable recommendations. The Committee believes that if these recommendations are given effect to, there would not be any need to substitute it by a different mechanism.

CHAPTER VII: CONSTITUTION (SIXTY-SEVENTH AMENDMENT) BILL 1990—NATIONAL JUDICIAL COMMISSION.

131. There is no valid reason as to why the Commission constituted for appointment of Supreme Court Judges, Chief Justice of a High Court and transfer of High Court Judges cannot be entrusted with the task of appointment of High Court Judges also.

132. Keeping in view of the Objects and Reasons for the constitution of the Commission, there is no justification for the executive through the Chief Minister to be on the Commission.

133. As the Chief Minister is not to be associated as a member of the Commission, the Chief Justice need not also be a member of the Commission.

134. Though there cannot be any objection in principle to two other seniormost Judges of the Supreme court being members of the Commission under Article 307(3) (a), the Committee is of the opinion, having regard to practical considerations that another composition may be thought of. In a given situation, the tenure of office of one or both the seniormost Judges may be so short as to make it inexpedient to associate them in the process of selection. By reason of this provision, situation may arise when the Commission may consist of all or majority of its members coming from the same State. It is preferable to make the Commission as broad based as possible and to ensure continuance of the Members of the Commission for a reasonable term. Having regard to these considerations, the Committee is of the opinion that the other two Members of the Commission should be appointed by the President from amongst the Judges of the Supreme Court on the recommendation of the Chief Justice of India.

135. An appropriate provision should be made empowering the President to appoint on the recommendation of the Chief Justice of India any other Judge of the Supreme Court to perform the duties of a Member to meet the contingency of one or more of its Members being not available by reason of absence, disability or otherwise.

136. The procedure to be followed by the Commission in the transaction of its business should be prescribed along with the enactment of Article 307 and other articles, and the same should be annexed as a schedule to the Constitution. That would also ensure that the prescribed procedure then cannot be amended by a simple majority and the possibility of tinkering with it is minimised. Such procedure should *inter alia* provide for full and formal record of the deliberations of the Commission being maintained which alone would constitute the official record of the transaction of the business of the Commission.

137. The power of appointment and control over the staff of the Commission should vest in the Chief Justice of India and an appropriate provision similar to Article 146 of the Constitution be incorporated in Article 307(5).

138. The reasons recorded for not accepting the recommendation of the Commission regarding appointment of a Judge of the Supreme Court shall be communicated to the Commission to enable it to reconsider the matter in the light of such recorded reasons.

139. In case the Commission on reconsideration affirms its earlier recommendation, it shall be made obligatory on the President to make the appointment in accordance with such recommendation.

140. Reasons should also be required to be recorded in case the appointment is proposed to be made by varying the order in which the names are recommended by the Commission; such reasons should be communicated to the Commission to enable it to reconsider the matter and in case the Commission, after reconsideration reaffirms the order in which the recommendations had been made, the appointments shall be made in that order.

141. A reasonable time limit shall be fixed within which the President should take a decision on the recommendation of the Commission.

142. Second proviso to Article 124(2) be deleted and an appropriate proviso be substituted to the effect that the seniormost Judge of the Supreme Court shall ordinarily be appointed as the Chief Justice of India. If he is not

proposed to be appointed as the Chief Justice of India, reasons therefor shall be recorded in writing and the appointment shall then be made in consultation with the seven Judges next in order of seniority to the seniormost Judge, after communicating to them the recorded reasons. Amendments similar to Article 124(2) recommended by the Committee be made in Article 217(1) also.

143. To achieve the object of the proposed amendment, an appropriate method or procedure should be devised. It is necessary to make a suitable provision that the proposal for the appointment shall emanate only from Chief Justice and not from the Chief Minister. The role of the Chief Minister should be limited to offering his views in regard to the character, integrity antecedents, local position, affiliation and social philosophy of the person recommended by the Chief Justice. The Chief Minister should forward the recommendation within six weeks of the date of receipt of the recommendation. If he does not do so, it should be presumed that the recommendation is concurred in. A reasonable time limit should be prescribed within which the Commission should complete the processing of the proposal and forward its recommendation to the President. If the Commission does not accept the recommendation made by the Chief Justice, it should communicate the reasons to the Chief Justice and the Chief Minister. Appropriate provisions incorporating all the aforesaid suggestions should be made part of the procedure and included in the said schedule. Such amendment as may be necessary for implementing this recommendation may also be enacted in Article 217(1).

144. The proviso which lays down that where the recommendation of the Commission is not accepted, the reasons therefor shall be recorded in writing, is not by itself sufficient to obviate the arbitrariness on the part of the executive. The recommendation of the Commission for the transfer of a Judge should be considered binding as they would be the best authority to know whether a Judge is required to be transferred in the public interest. A transfer so effected should not be considered as punitive.

145. Reasons recorded for not accepting the recommendation of the Commission regarding transfer of a Judge of the High Court shall be communicated to the Commission to enable it to reconsider the matter in the light of such recorded reasons.

146. In case the Commission on reconsideration affirms its earlier communication, it shall be made obligatory on the President to make the transfer in accordance with such recommendation.

147. A reasonable time limit shall be fixed within which the President may take a decision on the recommendation of the Commission.

148. An explanation providing that nothing in the proviso to Article 222(1) shall be construed as empowering the President to transfer a High Court Judge unless a recommendation is made by the Commission, be added.

149. The safeguards provided in the transfer policy formulated by the Government of India should be strictly adhered to. No second transfer of a Chief justice or a Judge should be made except on his own request or with his consent.

150. Having regard to the recommendations made by the Committee, amendment to Article 231 is unnecessary. In case the amendment is made, the scope for executive arbitrariness will increase. Along with the aforesaid amendments, the other amendment recommended by the Committee to Article 216 and deletion of Article 224 be also carried out.

151. The Committee reiterates that the present constitutional scheme is sound and if worked in the true spirit, it would not require any radical change and that in order to guard against and obviate the perversions revealed in the operation of the scheme, suitable amendments should be made as suggested in Chapter VI. If those amendments are given effect to, then, there would not be any need to substitute the present system by the machinery contemplated by the Constitution (Sixty-seventh Amendment) Bill, 1990, that is, the National Judicial Commission.

CHAPTER VIII: ALTERNATIVE MODES AND FOURMS FOR DISPUTE RESOLUTION

152. The tribunalisation of justice to the exclusion of all courts except the Supreme Court is a constitutionally recognised concept has been translated into reality with the setting up of the Administrative Tribunals.

153. It is not possible to assuredly conclude that the time is ripe for establishing Gram Nyayalayas with much wider powers exercisable in more wider areas than Nyaya Panchayats. The time is not yet ripe to launch such an experiment.

154. The Central Tax Court, as proposed, is not intended to be a Tribunal within the meaning of Article 323-B of the Constitution, but a Court of appeal with jurisdiction to examine the constitutional validity of taxing statutes or a rule or regulation made thereunder and, therefore, although the law establishing such court may take away the reference jurisdiction of the High Court, it would not be able to bar the writ jurisdiction unless articles 226 and 227 are suitably amended. The Committee is not in favour of amendment of these two Articles.

155. The Committee agrees with the view of the High Courts Arrears Committee, 1972 endorsed in the 58th and 79th Reports of the Law Commission that there is no need to establish a separate Central Tax Court and that the existing mechanism with suitable adaptations and modifications would prove more economic and advantageous.

156. The different views expressed converge on the central idea that the existing system which promotes protracted litigation and leads to divergent approaches and inconsistent decisions has failed and that there is a need for an exclusive forum at the National and State levels (Industrial Relations Commission) having original and appellate jurisdiction to deal with disputes arising under the Labour Laws.

157. Since the abolition of Labour Appellate Tribunal there is a vacuum at the higher level which needs to be filled not only to secure the final resolution of industrial disputes in a specialised forum but also to relieve the High Courts and the Supreme Court of the heavy burden of cases in this field.

158. To provide expertise and experience and intimate knowledge of the conditions obtaining in the field of employer-employee relationship, the Commissions should be so composed that both the labour and the management have representation on them as members drawn from the following sources:

(i) directly recruited from amongst legal practitioner ordinarily practising before the Labour Courts, Industrial Tribunals/Courts and the National Industrial Tribunal;

(ii) consultants and executives having law degree and possessing requisite experience in this field;

(iii) persons with legal qualification and training who have had experience in trade union movement;

(iv) by promotion of the Presiding Officers of the Labour and Industrial Tribunals/Courts, who have gained experience at the grass root level, so far as the State Level Industrial Relations Commission is concerned; and

(v) by promotion of the members of the State Level Industrial Relations Commissions in so far as the Central Level Industrial Relations Commission is concerned.

159. The Committee endorses the recommendations made in the 122nd Report of the Law Commission that an Industrial Relations Commission should be set up at the State and Central levels with power, authority and jurisdiction, as suggested in the said Report, by a law passed under Article 323-B of the Constitution, simultaneously excluding the writ jurisdiction of the High Courts against the decisions of such Commissions and providing no appeal to the Supreme Court under the statute but leaving it open to an aggrieved party to take special leave to appeal under Article 136 of the Constitution from the Supreme Court. The composition of such Commission or Tribunals should not, however, be on a participatory model suggested by the Law Commission, but as recommended by the Committee.

160. The legislative exercise in our country is confined to the setting up of domestic Disciplinary Tribunals for resolving disputes in disciplinary jurisdiction between the University and the members of its staff, teaching and non-teaching, and between the teachers and other employees of the affiliated colleges on the one hand and the management of the colleges and the University on the other. None of these tribunals is known to have jurisdiction over disputes concerning students, admissions, examination malpractices, educational programmes, affiliation and de-affiliation of colleges, election to University bodies, etc., or a dispute between the University and the State Government.

161. The existing laws already provide exclusive forums for the resolution of disputes relating to discipline and service conditions of a class of employees in the field of education. The Industrial Disputes Act, 1947 is one of such laws to which resort can be had by a person who is covered by the expression "workman". The Administrative Tribunals Act, 1985 and the Administrative Tribunals thereunder could provide yet another exclusive remedy in service matters to the teaching and non-teaching employees of the University, provided the appropriate Government issues a notification applying the relevant provisions of Section 14 or Section 15, as the case may be, to the Universities.

162. Disputes of other nature involving Universities and other centres of higher education do not require specialised attention. The Committee does not agree with the view that these matters cannot be satisfactorily dealt with for want of requisite expertise or otherwise in regular forums. The law establishing a separate forum to deal with all disputes involving Universities and other centres of higher education would not be able to provide for the exclusion of the writ jurisdiction. Article 323-A cannot be invoked except in respect of service matters. Article 323-B cannot also be resorted to because it does not authorise the appropriate legislature by law to provide for adjudication of any dispute concerning education or involving educational institutions. Unless Articles 226 and 227 are amended, the writ jurisdiction cannot be excluded. The Committee is not in favour of such amendment.

163. The establishment of the three tier machinery recommended in the 122nd Report of the Law Commission may, at best, enable the flow of writ petitions being checked by insistence on the requirement of exhaustion of the alternative remedy.

164. The Committee agrees with the recommendation made in the 126th Report of the Law Commission that the Central Government should issue a binding direction to the public sector undertakings regarding reference of disputes *inter se* between them or between them on the one hand and the Government on the other, to arbitration. The Committee also agrees that arbitration should be made compulsory for the resolution of disputes of other parties with the Government and public sector undertakings by suitably amending the Arbitration Act, 1940.

165. The introduction of conciliation procedure in writ matters as recommended by the Commission is worth giving a trial.

166. The establishment of a Grievances Cell, Federal Legal Cell and a Parliamentary Committee on Litigation as recommended in the Report is favoured.

167. The Committee agrees with the recommendations made in the 124th and the 129th Reports of the Law Commission that the lacuna arising out of want of power in the courts to compel the parties to private litigation to resort to arbitration or mediation requires to be filled up by necessary amendment to the law.

168. The recommendation made in the 129th Report of the Law Commission regarding establishment of Nagar Nyayalaya is not acceptable. However, the idea of setting up of Neighbourhood Justice Centres and giving them a statutory status is favoured. The function of such centres should, however, be confined to resolving disputes by reconciliation. The recommendation that disputes arising under the Rent Acts should be resolved through the machinery of the Conciliation Courts is also favoured.

169. The recommendation regarding hearing of rent control cases by a Bench of two Judges, with no

intra-Court appeal but only an appeal to the High Court finds favour with the Committee

170. The Committee agrees with the recommendation regarding re-introduction of the system of appointing Honorary magistrates drawn from the rank of retired members of the Judiciary and empowering them to do the work of stipendiary Magistrates.

171. The decisions of the State Administrative Tribunals being not appealable except under Article 136 of the Constitution, there is a virtual denial of right of appeal on account of the heavy cost and the remoteness of the forum.

172. The Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be no less efficacious than the High Court. Such a Tribunal must inspire public esteem and confidence that it is a highly competent and expert mechanism with judicial approach and objectivity.

173. The overall picture regarding the tribunalisation of justice in our country is not satisfactory and encouraging. There is a need for a fresh look and review and a serious consideration before the experiment is extended to new areas or fields, especially if the constitutional jurisdiction of the High Courts is to be simultaneously ousted. Not many tribunals satisfying the aforesaid tests can possibly be established.

174. If a suitable provision could be made in Article 216 of the Constitution requiring the High Courts to consist of several divisions such as Civil, Criminal, Constitutional, Exchequer, Family, etc. as in England and assignment of Judges to those divisions who have specialist knowledge and experience in the subjects, the objective of providing specialist justice in an expeditious manner at a lesser cost could be achieved.

175. The Committee is of the view that these experiments can be safely carried out in the first instance in the Chartered High Courts.

176. The establishment of domestic adjudicatory forums for adjudication of commercial disputes between members *inter se* and between members and non-members who have dealings with the members of trading and manufacturers Associations is favoured by the Committee. The Committee recommends that a law be enacted giving legal sanction to such machinery and making resort thereto compulsory.

177. The Committee agrees with the recommendation of the Law Commission that conciliation courts should be established on the model of the scheme evolved by the Himachal Pradesh High Court, all over the country, with power, authority and jurisdiction to initiate conciliation proceedings in all types of cases at all levels. Appropriate amendments should be made to the provisions contained in Order X Rule 2(1)(b); Order X Rule 4(2) and Order XXVII Rule 5B of the Code of Civil Procedure, to make the scheme function more effectively. The Committee further recommends that the aforesaid conciliation procedure should also be made applicable to proceedings before Motor Accidents Claims Tribunals.

(V.S. MALIMATH)
CHIEF JUSTICE, KERALA HIGH COURT,
CHAIRMAN

(P.D. DESAI)
CHIEF JUSTICE, CALCUTTA HIGH COURT
MEMBER

NEW DELHI
AUGUST 5, 1990.

(Dr. A.S. ANAND)
CHIEF JUSTICE, MADRAS HIGH COURT
MEMBER

(iii) To give such other suggestions as may be useful in this connection."

4. The norms of disposal of cases per Judge and the norms of fixing the Judge-strength in High Courts were considered in the successive Conferences of Chief Justices held in 1960, 1963, 1965 and 1967. The cummulative effect of the resolutions passed therein is as follows:

(i) the average disposal of cases per Judge per annum should be 650 Main cases; and

(ii) the number of additional Judges required for each High Court should be determined on that basis.

However, the above norms were not regarded as inflexible. Election cases and original suits were recognised as calling for a different treatment in view of such cases occupying more Judge-time. Secondly, it was recognised that High Courts with small Judge-strength, had to be necessarily placed on a different footing.

5. The Union Ministry of Law & Justice had, in its letter No. 36/3/1978-Jus(M) dated 29.5.1978, sought for information from High Courts as to the classification prevailing in them regarding Main cases and Miscellaneous cases. The information received from the High Courts had been compiled by the Ministry and has been made available to this Committee. The Committee felt that such classification made by several High courts, needed considerable modification in view of far-reaching changes in several laws and in the pattern of litigation that has been taking place subsequent to such classification.

6. At its first meeting held on the 23rd and 24th December, 1981, the Committee made a revised tentative classification of cases coming up before High Courts into Main cases and Miscellaneous cases. The Committee sent such revised tentative classification to all the High Courts in India and requested them to send their views on such tentative classification. The High Courts were told that if any types of cases coming up before them, had not been covered by such tentative classification, they (the High Courts) might intimate the Committee such types of cases and to indicate which of them should be classified as Main cases and which, as Miscellaneous cases. Only some of the High Courts sent their replies, but many other High Courts did not send any reply. The information furnished and suggestions made by the former, were very useful.

7. As the compilation of classification of cases prevailing in High Courts, sent by the Union Ministry of Law & Justice, did not contain the classification of cases on the original side of High Courts, the Committee requested the High Courts having Original Civil and/or Criminal jurisdiction to state their views as to what categories of cases on the Original Side should be treated as Main cases and what categories of cases, as Miscellaneous cases.

8. The Committee deputed its Secretary, Sri C.M. Basavarya, to the High Courts of Maharashtra, and Calcutta (which have extensive Original Jurisdiction) to study the working of the Original Side in those High Courts. Accordingly, he went to those High Courts and with the permission of the respective Chief Justices, made an indepth study of working of the Original Jurisdiction of High Courts and followed this up by discussion with the Chief Justices, some of the Judges and Registrars as also senior Officers of those High Courts and on the basis of such study and discussion, he (the Secretary) submitted his report to the Committee.

9. The second meeting of the Committee was held at Simla on the 1st and the 2nd May, 1982. Chief Justice Satish Chandra could not be present on account of his indisposition. The Committee considered the comments and suggestions sent by some of the High Courts with reference to the tentative classification of cases made by the Committee and the report of the Secretary of the Committee as to the working of the Original Side of the High Courts of Maharashtra and Calcutta. The High Courts which had sent their replies had, by and large, agreed with the tentative classification of cases made by the Committee and had suggested a few modifications. In the Light of such suggestions and the report of the Secretary of the Committee, the Committee has made several modifications in the tentative classification made earlier.

10. The Committee agreed with the suggestion of the High Court of Kerala regarding the classification of cases under the Travancore-Cochin Hindu Religious Institutions Act, 1950, in that High Court. In the tentative classification made by the Committee, reference had been made to the provisions of the Code of Criminal Procedure, 1973. But, the High Court of Jammu & Kashmir has pointed out that the provisions of the Code of Criminal Procedure, 1898, are still extant in Jammu & Kashmir. Taking note of this, the Committee has made the necessary modification in the classifications so as to meet effectively the special position in that State.

11. The Committee considered the suggestion of the High Court of Maharashtra that certain types of cases

APPENDIX I

REPORT OF THE COMMITTEE OF FIVE CHIEF JUSTICES CONSTITUTED BY THE GOVERNMENT OF INDIA TO SUGGEST A UNIFORM PATTERN OF CLASSIFICATION OF CASES THAT SHOULD BE CATEGORISED AS MAIN CASES FOR DETERMINING THE JUDGE-STRENGTH IN HIGH COURTS.

The Government of India, on the advice of the Chief Justice of India, set up this Committee consisting of Justices D.M. Chandrashekhar, Satish Chandra, V.D. Misra, Ranganath Misra and M.P. Thakkar, Chief Justices of Karnataka, Uttar Pradesh, Himachal Pradesh, Orissa and Gujarat respectively, to suggest a uniform pattern of classification of cases instituted in the High Courts and to specify the types of cases that should be categorised as Main cases for determining the Judge-strength in the High Courts. Justice D.M. Chandrashekhar, Chief Justice of Karnataka, was made the Member-Convener of the Committee. The decision of the Government of India to set up this Committee, was communicated in Letter No. 36/3/78-Jus(M) dated 28.11.1981. The Committee was to make its report within 3 months. Subsequently time has been extended upto the end of July, 1982.

2. The first meeting of the Committee was held at Bangalore on the 23rd and 24th December, 1981. The Committee nominated Shri C.M. Basavarya, Registrar of the High Court of Karnataka, as the Secretary of the Committee.

3. Prior to the Constitution of the Committee, the Government of India had addressed letter No. 36/3/78-Jus(M) dated 17.9.1980 to the Chief Justices of Karnataka, Uttar Pradesh, Himachal Pradesh, Orissa and Gujarat. In the introductory portion of that letter, the circumstances leading to the constitution of the Committee, have been stated thus:

> "As you are aware, the Government are anxious for expeditious disposal of cases pending in High Courts. In order to review pendency of the cases and also norms of disposal, it is necessary to consider the existing system of classification of various cases. In this context, it would be recalled that in the Conference of Chief Justices held in 1963, it was decided that the norms of disposal would be 650 Main cases per annum per Judge. This norm is used for sanctioning posts of Judges in the High Courts.The Conference did not spell out what cases were to be considered as 'main cases'. The half-yearly and annual analyses are also based on figures of main cases. It is, therefore, necessary to have a broad degree of uniformity about the classification of cases into main cases and miscellaneous cases so that a uniform yardstick may be prescribed for sanctioning posts of Judges in the High Courts. While a measure of uniformity is being observed in respect of certain categories of cases, practices vary from High Court to High Court in respect of some other categories of cases which are treated by some High Courts as Main cases and by some others as Miscellaneous cases.
>
> When this matter was referred to the Chief Justice of India, he advised that a Committee of 5 Chief Justices of the High Courts drawn from different parts of the country may be appointed to suggest a uniform pattern for classification of cases. It is then only that it will be possible to determine the proper Judge-strength of each High Court."

The draft terms of reference were also indicated as under:

> "(i) To suggest a uniform pattern for classification of cases instituted in the High Courts;
>
> (ii) To specify the types of cases to which the norms of disposal of 650 main cases per annum per Judge should be applied for the purpose of determining the proper Judge-strength required in High Courts; and

should be classified as Main cases if they are contested, and as Miscellaneous cases if they are uncontested. After careful consideration of this suggestion, the Committee took note of the fact that it would not be possible for the Registry of a High Court to know before-hand which cases would be contested and which cases would not be contested. As the Judge-strength of High Courts will be determined on the basis of institution and pendency of cases, the Committee is of the view that it is not practicable to make the classification of cases on the basis of such cases being contested or uncontested.

12. After perusing the elaborate classification of cases on the Original Side, made by the High Courts of Calcutta and Maharashtra, the Committe felt that it would be sufficient to incorporate such classification in the classifiction already made by the Committee, without making any distinction between the Original Side and the Appellate Side of a High Court.

13. The classification of cases into Main cases and Miscellaneous cases, is set out in Annexure-I to this report.

14. As the hearing and deciding of cases which are classified as Miscellaneous cases, will also occupy not insignificant time of Judges, the Committee is of the view that Miscellaneous cases also should count for evolving the norms for determining the Judge-strength of High Courts. In the opinion of the Committee, 5 Miscellaneous cases may be regarded as being equivalent to one Main case.

15. The Committee recommends that the Judge-strength of High Courts may be suitably increased to compensate for the time of Judges taken when they function as Members of Advisory Boards and Commissions of Enquiry.

16. The High Court of Maharashtra strongly urged that weightage or loading should be assigned to certain categories of Main cases as they generally occupy much more time of Judges than other categories of Main cases do and that any classification of cases without giving such weightage or loading would diminish the utility of such classification for determining the Judge-strength of High Courts.

17. There was no unanimity among the members of the Committee as to whether the Committee should recommend weightage or loading being assigned to different categories of Main cases. Some members opined that the question of such weightage or loading, though not expressly stated, was implied in the terms of reference to the Committee. They were of the view that such weightage or loading should be recommended, while other members of the Committee were of the view that the Committee should confine its recommendations to the classification of cases only.

18. Even among those members of the Committee who were of the view that the recommendations of the Committee should include assignment of weightage or loading for certain categories of Main cases, there was no unanimity as to what such categories of Main cases were and what should be the quantum of such weightage or loading. The three tables in Annexure II set out the three different views of members of the Committee as to the weightage or loading to be assigned to different categories of Main cases.

19. Some of the members of the Committee felt that the revised classification of Main cases recommended by the Committee, may lead to an inference that the Judge-strength of each High Court calls for substantial increase, often twice or thrice the present number, if the present yardstick of 650 Main cases per Judge per annum, is applied. The Committee suggests that the Judge-strength of each High Court may be determined on practical considerations taking into account the peculiar conditions prevailing in each High Court.

20. The Committee acknowledges with thanks the Union Ministry of Law & Justice for sending its compilation of the prevailing classification of cases in High Courts and the Chief Justices and other Judges of High Courts, Registrars and senior Officers of High Courts for their valuable opinions and co-operation.

21. The Committee places on record its appreciation of the able assistance rendered by its Secretary, Sri C.M. Basavarya.

Sd/- (D.M. Chandrashekhar, Satish Chandra, V.D. Misra)

Sd/-(Ranganath Misra, M.P. Thakkar)

Bangalore
August 16, 1982

ANNEXURE I

CLASSIFICATION OF CASES AS MAIN CASES AND MISCELLANEOUS CASES MADE BY THE COMMITTEE OF FIVE CHIEF JUSTICES CONSTITUTED BY THE GOVERNMENT OF INDIA

CIVIL

MAIN CASES	MISCELLANEOUS CASES
1. Civil Suits	
2. Testamentary and Intestate Suits	
3. Insolvency Cases	
4. Liquidation Cases	
5. Writ Petitions	
6. Writ Appeals	
	7. Miscellaneous Applications in pending Writ Petitions
	8. Miscellaneous Applications in pending Writ Appeals
9. Banking Regulation	
10. Execution, transferred and Interlocutory Applications under Section 45(c) of the Companies Act	
	11. Applications in Civil Suits
	12. Applications in Insolvency Cases
	13. Applications in Liquidation Cases
	14. Testamentary and Instestate Miscellaneous Applications
15. Company Cases: (1) Petitions (2) Applications in Petitions (3) Applications in Liquidation Proceedings (4) Applications in Company Appeals (5) (6) (7) Matters transferred under Section 446(3) of the Companies Act	15. Company Cases: (1) Applications for stay matters (8) Miscellaneous Cases
16. Income Tax Reference	
17. Income Tax Applications (for direction for a reference)	

MAIN CASES	MISCELLANEOUS CASES
18. Sales Tax References	
19. Sales Tax Applications	
20. Gift Tax, Wealth Tax and Estate Duty References	
21. Gift Tax, Wealth Tax and Estate Duty Applications	
22. Other Tax Revision Cases	
23. Other Tax References	
24. Other Tax Applications	
25.	25. Tax Cases Miscellaneous Petitions
26. Petitions under Arbitration Act	
27.	27. Petitions under Section 28 of the Arbitration Act
28. Insurance Act References	
29. Insurance Act Applications	
30. Matrimonial Suits/Cases	
31. Matrimonial References	
32. Petitions under Section 24 of the Hindu Marriage Act	
33. Admiralty Suits	
34. Probate Civil Petitions	
35. Petitions under the Guardians and Wards Act	
36.	36. Petitions for appointment of Guardian ad-litem
37. Election Petitions	
38.	
39. Applications in Election Cases	
40. Land Acquisition References	
41. Special Jurisdiction Cases	
42. Contempt of Court (Civil) Petitions	
43.	43. Petitions under sections 5 and 14 of the Limitation Act
44.	44. Other Miscellaneous Judicial Cases
45. Motion for Sanction of Prosecution	
46. Motion for setting aside fraudulent transfers	
47. Motion for annulment of adjudication orders	
48. Motion for setting aside the Insolvency Notice	
49. City Civil Court Appeals	

MAIN CASES	MISCELLANEOUS CASES
50. Letters Patent Appeals	
51.	51. Applications for Leave to Appeal under Letters Patent Appeals
52. First Appeal from Original Side	
53. First Appeal from Judgment	
54. First Appeal from Orders	
55. Miscellaneous First Appeals from Original Side	
56. Miscellaneous First Appeals from Judgments	
57. Miscellaneous First Appeals from Orders	
58.	
59. Second Appeals from Judgments	
60.	
61.	
62. Miscellaneous Second Appeals from Judgments	
63. Miscellaneous Second Appeals from Orders	
64.	64. Applications in First and Second Appeals
65. Revision Petitions	
66.	66. Applications in Revision Petitions
67. Review of Judgments	
68.	68. Compromise Petitions
69.	69. Stay Petitions
70. Compensation Appeals	
71. Claims Appeals	
72. Special Appeals	
73. Special Tribunal Appeals	
74. Original Civil Jurisdiction Appeals	
75. Execution First Appeals	
76.	
77. Execution Applications on the Original side	
77. (A)	77. (A) Applications in Execution Matters
78. Civil References	
79.	79. Applications for Interlocutory Orders
80.	80. Chamber Summons
81. Summons for Judgment	
82.	82. Adjourned Chamber Matters

MAIN CASES	MISCELLANEOUS CASES
83.	83. Ex-Parte Application in Chambers
84.	84. Petitions for leave to appeal to Supreme Court
85. Applications for leave to sue as an Indigent person	
85.(A)	85.(A) Applications under Order 44 of Civil Procedure Code
86.	86. Transfer Application (Under Section 24 of CPC)
87.	87. Restoration Applications
88. Cross Objections	
89.	89. Counter Affidavits
90.	90. Supplementary Affidavits
91.	91. Miscellaneous Summons
92.	92. References for sale
93.	93. References to take accounts, etc., before Registrar
94.	94. References to Registrar in Insolvency
95.	95. Reference to Master and Official Referee
96.	96. Receiver's Accounts
97.	97. Trustee's Accounts
98.	98. Guardian's Accounts
99.	99. Lawazima Matters
100.	100. Interim Orders
101. Civil Miscellaneous Petitions under Article 227 of the Constitution.	
102. Petition/Application for: (1). (2) Injunction in Original Proceedings (3) (4) (5) (6) Appointment of Receivers in Original Proceedings (7) (8) (9)	102. Petition/Application for: (1) Vacating Stay Order (2) Injunction in Appeal or Revision (3) Vacating Injunctions (4) Substitution (5) Addition to Parties (6) Appointment of Receivers in Appeal or Revision (7) Transportation of Parties (8) Change or Appointment of Guardian (9) Amendment of Plaint in First Appeals
103.	103. Civil Miscellaneous Petitions under Civil Procedure Code: (1) Under Section 141 (2) Under Section 149 (3) Under Section 151 (4) Under Section 152 (5) Under Section 153 (6) Order VII (7) Rule 9 of Order IX

MAIN CASES	MISCELLANEOUS CASES
	(8) Rule 1 of Order X
	(9) Rules 1, 2, 3, 4 and 6 of Order XII
	(10) Rule 5 of Order XX
	(11) Rules 1, 2, 3 and 4 of Order XXII
	(12) Order XXXII
	(13) Rule 1 of Order XXXII
	(14) Rules 1, 2 and 4 of Order XXXIX
	(15) Rules 1, 5 and 27 of Order XL
	(16) Rules 1, 2, 3, 4, 5 and 10 of Order XLI
	(17) Rule 1 of Order XLIV
104. Proceedings arising out of reports filed by the Travancore Devaswom Board in response to the objections by the Auditors	
105. Suits (inclusive of Original Suits, Matrimonial Suits under Section 20 of the Arbitration Act, and Suits under Testamentary and Intestate Matter)	
106. Notice of motion for stay under Section 34 of the Arbitration Act or Section 10 of Contempt of Courts Act and for appointment of receiver and Injunctions	
107. Special Cases under Order XXXVI of Civil Procedure Code of 1908	
108. Applications under Court Fees Act regarding Valuation of Estates	
109. Petitions under Foreign Awards (Recognition and Enforcement Act, 1961)	

CLASSIFICATION OF CASES (CRIMINAL)

1. High Court Sessions	
2. Confirmation Cases (Under Section 366 Criminal Procedure Code or under any corresponding provision)	
3. Criminal Appeals	
4. Criminal References	
5. Special Criminal Applications for writs under the Constitution and under Section 491 of the Code of Criminal Procedure of 1898.	
6. Criminal Revisions.	
7.	7. Applications in Criminal Revisions
8.	8. Criminal Reviews
9. Criminal Contempt under the Contempt of Courts Act	
10.	

MAIN CASES	MISCELLANEOUS CASES
11. Leave to Appeal under Section 378 of the Code of Criminal Procedure of 1973 or under any other corresponding provision	
12.	
13. Writ Petitions relating to Investigation or Trial of Criminal Cases.	13. Criminal Miscellaneous (S.C.A.)
14.	
15. Habeas Corpus Petitions	
16. Refererred Trial Cases	
17. Fresh Bail Applications pending Investigation/Trial	
18. Bail, including Anticipatory Bail	
19.	19. Jail Applications for Bail
20.	
21. Applications under Section 482 of Criminal Procedure Code of 1973 or under any other corresponding provision	
22.	22. Bail Petitions filed in Criminal Appeals and Revisions
23.	23. Applications for Stay Orders
24.	24. Applications for Transfer
25.	25. Criminal Miscellaneous Petitions under: (1) Section 378(1) of Criminal Procedure Code of 1973 or under any other corresponding provision (2) Section 389 of Criminal Procedure Code of 1973 or under any other corresponding provision
26.	
27.	27. Applications arising out of Criminal Cases pending in the High Courts
28.	
29.	29. Applications for modifying sentences, when no appeal or revision or applications challenging convictions have been filed.

ANNEXURE II

WEIGHTAGE OR LOADING FOR DIFFERENT CATEGORIES OF MAIN CASE

TABLE A

Sl. No.	Categories of cases	Weightage or Loading
1.	Original Suits by whatever name called	6 times
2.	All Main Cases (including References) other than Criminal Cases to be heard and decided by Division Benches	2 times
3.	Election Petitions	6 times
4.	Cases to be heard and decided by Benches of three or more Judges	3 times

TABLE B

1.	Original Suits by whatever name called	4 times
2.	All Main Cases (including References) to be heard and decided by Division Benches	2 times
3.	Election Petitions	6 times
4.	Cases to be heard and decided by Benches of three or more Judges	3 times

TABLE C

1.	Original Suits by whatever name called	4 times
2.	Election Petitions	6 times
3.	Cases to be heard and decided by Benches of three or more Judges	3 times

ANNEXURE III

AVERAGE RATE OF DISPOSAL IN THE HIGH COURTS DURING THE YEAR 1986 & 1987 ON THE BASIS OF DISPOSAL OF MAIN CASES ONLY

Average Rate of Disposal

Name of the High Court	1986	1987
1. Allahabad	465.3	665.2
2. Andhra Pradesh	1607.2	1959.2
3. Bombay	711.5	761.2
4. Calcutta	586.7	826.7
5. Delhi	487.8	548.0
6. Guwahati	344.1	205.9*
7. Gujarat	984.8	957.5
8. Himachal Pradesh	772.4	1039.4
9. Jammu and Kashmir	827.7	1087.3
10. Karnataka	3379.3	1541.0
11. Kerala	1343.8	1545.6
12. Madhya Pradesh	968.6	327.9*
13. Madras	975.7	1179.0
14. Orissa	601.0	832.2
15. Patna	1049.8	745.7
16. Punjab and Haryana	1345.7	1424.8
17. Rajasthan	993.5	860.4
18. Sikkim	43.0	32.5
Average for all the High Courts:	972.7	998.0+

* For the half year ending 30.6.87

\+ Average does not include the figures of Guwahati and Madhya Pradesh High Courts.

APPENDIX II

Allahabad High Court

Year	*Pendency as on 1st January*	*Vacancies which remained unfilled as on 1st January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	2,03,705	16	973	15,568
1987	2,39,111	11	998	10,978
1988	2,76,001	7	727	5,089
1989	3,13,247	11	676	7,436
1990	3,42,283	28	...	...

1.	Actual pendency as on 1-1-1990	:	3,42,283
2.	Actual pendency as on 1-1-1986	:	2,03,705
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	1,38,578
4.	Total No. of cases which could have been disposed of as per column (5)	:	39,071
5.	Addition, if any, to arrears had the vacancies been filled up	:	99,507
6.	Possible pendency at the beginning of 1990 (1—4)	:	3,03,212

APPENDIX II(a)

Andhra Pradesh High Court

Year	*Pendency as on 1st January*	*Vacancies which remained unfilled as on 1st January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	72,890	8	973	7,784
1987	71,653	3	998	2,994
1988	62,509	5	2,128	10,640
1989	56,810	6	2,177	13,062
1990	57,232	19	...	...

1.	Actual pendency as on 1-1-1990	:	57,232
2.	Actual pendency as on 1-1-1986	:	72,890
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	Nil
4.	Total No. of cases which could have been disposed of as per column (5)	:	34,480
5.	Addition, if any, to arrears had the vacancies been filled up	:	Nil
6.	Possible pendency at the beginning of 1990 (1—4)	:	22,752

APPENDIX II(b)

Bombay High Court

Year	*Pendency as on 1st January*	*Vacancies which remained unfilled as on 1st January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	83,197	14	973	13,622
1987	1,00,215	4	998	3,992
1988	1,10,010	2	925	1,850
1989	1,18,152	6	799	4,794
1990	1,27,512	13	...	...

1.	Actual pendency as on 1-1-1990	:	1,27,512
2.	Actual pendency as on 1-1-1986	:	83,197
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	44,315
4.	Total No. of cases which could have been disposed of as per column (5)	:	24,258
5.	Addition, if any, to arrears had the vacancies been filled up	:	20,057
6.	Possible pendency at the beginning of 1990 (1—4)	:	1,03,254

APPENDIX II(c)

Calcutta High Court

Year	*Pendency as on 1st January*	*Vacancies which remained unfilled as on 1st January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	1,45,476	14	973	13,622
1987	1,56,497	9	998	8,982
1988	1,67,561	9	440	3,960
1989	1,86,265	6	1,101	6,606
1990	1,97,780	9	...	...

1.	Actual pendency as on 1-1-1990	:	1,97,780
2.	Actual pendency as on 1-1-1986	:	1,45,476
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	52,304
4.	Total No. of cases which could have been disposed of as per column (5)	:	33,170
5.	Addition, if any, to arrears had the vacancies been filled up	:	19,134
6.	Possible pendency at the beginning of 1990 (1—4)	:	1,64,610

APPENDIX II(d)

Delhi High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on 1st January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	37,003	4	973	3,892
1987	45,151	6	998	5,998
1988	48,875	5	443	2,215
1989	59,295	5	656	3,280
1990	79,010	12	...	...

1.	Actual pendency as on 1-1-1990	:	79,010
2.	Actual pendency as on 1-1-1986	:	37,003
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	42,007
4.	Total No. of cases which could have been disposed of as per column (5)	:	15,375
5.	Addition, if any, to arrears had the vacancies been filled up	:	26,375
6.	Possible pendency at the beginning of 1990 (1—4)	:	63,635

APPENDIX II(e)

APPENDIX II(e)

Gauhati High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on Ist January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	6,765	1	973	973
1987	14,948	2	998	1,996
1988	16,516	2	399	798
1989	17,870	—	595	...
1990	17,668	6	...	...

1.	Actual pendency as on 1-1-1990	:	17,668
2.	Actual pendency as on 1-1-1986	:	6,765
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	10,903
4.	Total No. of cases which could have been disposed of as per column (5)	:	3,767
5.	Addition, if any, to arrears had the vacancies been filled up	:	7,136
6.	Possible pendency at the beginning of 1990 (1—4)	:	13,901

APPENDIX II(f)

Gujarat High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on Ist January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	38,436	13	973	12,649
1987	48,328	14	998	13,972
1988	59,067	13	1,346	17,498
1989	66,737	16	1,399	222,384
1990	73,465	17	...	...

1.	Actual pendency as on 1-1-1990	:	73,465
2.	Actual pendency as on 1-1-1986	:	38,436
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	35,029
4.	Total No. of cases which could have been disposed of as per column (5)	:	66,503
5.	Addition, if any, to arrears had the vacancies been filled up	:	Nil
6.	Possible pendency at the beginning of 1990 (1—4)	:	6,962

APPENDIX II(g)

Himachal Pradesh High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on Ist January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	2,468	3	973	973
1987	7,358	2	998	1,996
1988	8,095	3	667	2,001
1989	9,595	3	1,277	3,831
1990	10,972	3	...	...

1.	Actual pendency as on 1-1-1990	:	10,972
2.	Actual pendency as on 1-1-1986	:	2,468
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	8,504
4.	Total No. of cases which could have been disposed of as per column (5)	:	8,501
5.	Addition, if any, to arrears had the vacancies been filled up	:	Nil
6.	Possible pendency at the beginning of 1990 (1—4)	:	2,171

APPENDIX II(h)

Jammu & Kashmir High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on Ist January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	17,806	1	973	973
1987	18,348	–	998	...
1988	18,542	–	1,102	...
1989	19,685	–	1,434	...
1990	20,294	6	...	...

1.	Actual pendency as on 1-1-1990	:	20,294
2.	Actual pendency as on 1-1-1986	:	17,806
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	2,488
4.	Total No. of cases which could have been disposed of as per column (5)	:	973
5.	Addition, if any, to arrears had the vacancies been filled up	:	1,515
6.	Possible pendency at the beginning of 1990 (1—4)	:	19,321

APPENDIX II(i)

Karnataka High Court

Year	*Pendency as on 1st January*	*Vacancies which remained unfilled as on 1st January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	81,835	9	973	8,757
1987	66,045	9	998	8,982
1988	71,762	9	1,959	13,713
1989	67,895	9	1,682	15,138
1990	79,492	11	...	...

1.	Actual pendency as on 1-1-1990	:	79,492
2.	Actual pendency as on 1-1-1986	:	81,835
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	Nil
4.	Total No. of cases which could have been disposed of as per column (5)	:	46,590
5.	Addition, if any, to arrears had the vacancies been filled up	:	Nil
6.	Possible pendency at the beginning of 1990 (1—4)	:	32,902

APPENDIX II(j)

Kerala High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on Ist January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	49,593	7	973	6,811
1987	52,935	7	998	6,986
1988	44,411	8	1,383	11,064
1989	42,727	8	2,193	17,544
1990	34,541	4	...	...

1.	Actual pendency as on 1-1-1990	:	34,541
2.	Actual pendency as on 1-1-1986	:	49,593
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	Nil
4.	Total No. of cases which could have been disposed of as per column (5)	:	42,405
5.	Addition, if any, to arrears had the vacancies been filled up	:	Nil
6.	Possible pendency at the beginning of 1990 (1—4)	:	Nil

APPENDIX II(k)

Madhya Pradesh High Court

Year	*Pendency as on 1st January*	*Vacancies which remained unfilled as on 1st January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	37,336	4	973	3,892
1987	38,455	3	998	2,994
1988	40,922	4	824	3,296
1989	43,363	5	974	4,870
1990	45,552	13	...	...

1.	Actual pendency as on 1-1-1990	:	45,552
2.	Actual pendency as on 1-1-1986	:	37,336
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	8,216
4.	Total No. of cases which could have been disposed of as per column (5)	:	15,052
5.	Addition, if any, to arrears had the vacancies been filled up	:	Nil
6.	Possible pendency at the beginning of 1990 (1—4)	:	30,500

APPENDIX II(I)

Madras High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on Ist January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	86,926	4	973	3,892
1987	1,00,319	6	998	5,988
1988	1,09,960	7	879	6,153
1989	1,23,816	11	1,674	18,414
1990	1,23,939	13	...	...

1. Actual pendency as on 1-1-1990 : 1,23,939
2. Actual pendency as on 1-1-1986 : 86,926
3. Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2) : 37,013
4. Total No. of cases which could have been disposed of as per column (5) : 34,447
5. Addition, if any, to arrears had the vacancies been filled up : 2,566
6. Possible pendency at the beginning of 1990 (1—4) : 89,492

APPENDIX II(m)

Orissa High Court

Year	*Pendency as on 1st January*	*Vacancies which remained unfilled as on 1st January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	21,442	1	973	973
1987	23,324	3	998	2,994
1988	23,940	3	765	2,295
1989	24,805	2	636	1,272
1990	25,844	1	...	...

1.	Actual pendency as on 1-1-1990	:	25,844
2.	Actual pendency as on 1-1-1986	:	21,442
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	4,402
4.	Total No. of cases which could have been disposed of as per column (5)	:	7,534
5.	Addition, if any, to arrears had the vacancies been filled up	:	Nil
6.	Possible pendency at the beginning of 1990 (1—4)	:	18,310

APPENDIX II(n)

Patna High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on Ist January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	46,255	7	973	6,811
1987	45,389	9	998	8,982
1988	54,496	9	974	8,523
1989	60,042	10	1,134	11,340
1990	59,593	11	...	...

1.	Actual pendency as on 1-1-1990	:	59,593
2.	Actual pendency as on 1-1-1986	:	46,255
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	13,338
4.	Total No. of cases which could have been disposed of as per column (5)	:	35,656
5.	Addition, if any, to arrears had the vacancies been filled up	:	Nil
6.	Possible pendency at the beginning of 1990 (1—4)	:	23,937

APPENDIX II(o)

Punjab & Haryana High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on Ist January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	36,895	9	973	8,757
1987	45,423	9	998	8,982
1988	54,520	9	1,236	11,124
1989	62,019	4	1,689	6,756
1990	77,189	8	...	...

1.	Actual pendency as on 1-1-1990	:	77,189
2.	Actual pendency as on 1-1-1986	:	36,895
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	40,294
4.	Total No. of cases which could have been disposed of as per column (5)	:	35,619
5.	Addition, if any, to arrears had the vacancies been filled up	:	4,675
6.	Possible pendency at the beginning of 1990 (1—4)	:	41,570

APPENDIX II(p)

Rajasthan High Court

Year	*Pendency as on Ist January*	*Vacancies which remained unfilled as on Ist January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	36,404	1	973	973
1987	37,888	6	998	5,988
1988	40,971	–	815	...
1989	44,549	5	901	4,505
1990	49,182	9	...	...

1.	Actual pendency as on 1-1-1990	:	49,182
2.	Actual pendency as on 1-1-1986	:	36,404
3.	Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2)	:	12,778
4.	Total No. of cases which could have been disposed of as per column (5)	:	11,466
5.	Addition, if any, to arrears had the vacancies been filled up	:	1,312
6.	Possible pendency at the beginning of 1990 (1—4)	:	37,716

Sikkim High Court

APPENDIX II(q)

Year	*Pendency as on 1st January*	*Vacancies which remained unfilled as on 1st January*	*Average disposal per judge*	*No. of additional cases that could have been disposed of had the vacancies has been filled up*
(1)	(2)	(3)	(4)	(5)
1986	51	1	973	
1987	31	1	998	
1988	47	1	21	
1989	57	1	41	
1990	41	2	...	

1. Actual pendency as on 1-1-1990 : 41
2. Actual pendency as on 1-1-1986 : 51
3. Accumulation of arrears between 1-1-1986 and 1-1-1990 (1—2) : Nil
4. Total No. of cases which could have been disposed of as per column (5) :
5. Addition, if any, to arrears had the vacancies been filled up :
6. Possible pendency at the beginning of 1990 (1—4) :

APPENDIX IV

1. Full Name :
2. Sex :
3. Date of birth :
4. Family background :
5. Marital status :
6. Educational qualifications
   (Mention award of prize, scholarship, fellowship or any other distinction) :
7. Practice:
   (a) Date of enrolment :
   (b) Actual number of years of practice. :
   (c) Places and/or the courts before whom practised and the period :
   (d) Nature of practice—
   Civil, Criminal Constitutional, Taxation, Labour, Company, Service etc. :
   (e) The field of specialisation, if any. :
   (f) Extent of practice
   (Give approximate number of cases handled during the last three years) :
   (g) Professional income for the last three years—gross and taxable :
8. Property, if any, owned or in which holds a share and its approximate market value :
   (a) Immovable property :
   (b) Shares :
   (c) Securities :
   (d) Bank/Company deposits :
   (e) Jewellery :
   (f) Bank balances :
9. Association, if any, with any political party :
   (a) Name of the party :
   (b) Period of association :
   (c) Whether held any organisational office and, if so, period. :
   (d) Whether held elective office in any legislature or local authority and, if so, the period :
10. Whether held any position in the Bar Council and the Bar Association(s) and the period :
11. Whether member of any club or educational, cultural or social organisations? If so, give particulars. :
12. Whether held any office as Advocate-General, Government Advocate or Standing Counsel for the State or Union or any statutory authority or public undertakings? (Give particulars) :
13. Whether any relation is practising in High Court? (Give relationship) :
14. Whether related to any sitting Judge of High Court/Supreme Court? If so, state relationship :
15. Whether party to any civil, criminal or other litigation? If so, the nature of involvement :
16. Whether employed at any time either on part-time or full-time basis? If so, give status and period and the reasons for leaving. :
17. Name of the High Courts (other than this High Court) for which there is preference for appointment. :

APPENDIX V

1. Age
2. Academic attainments
3. Standing and experience
4. Specialisation, if any
5. Income
6. *Competence:*
   (a) Equipment in law
   (b) perception
   (c) Ability to deal with complex legal problems
   (d) Grasping capacity

   (May be rated as:
   Excellent; Very Good; Good; Average)
7. *Judicial Potential*:
   (a) Maturity
   (b) Poise and equanimity of temperament
   (c) Does he subscribe to the Constitutional values
   (d) Capacity to persuade and to be persuaded
   (e) Patience
   (f) Team Spirit
   (g) Objectivity
   (h) Analytical mind
   (i) Fairness

   (May be rated as: Excellent; Very Good; Good; Average)
8. Integrity and character
   (a) Reputation
   (i) In legal fraternity
   (ii) In society
   (b) Antecedents
   (c) Any affiliation/association which renders him unsuitable for the office of a Judge
   (d) Any habits or aberrations which render him unsuitable for the office of a Judge
9. Need of the court of a Judge in any specialised branch against the background of the present composition
10. Need to maintain the conventional ratio between Bar and Service Judges and Appellate and Original side Judges
11. Any other matter to be borne in mind having regard to the peculiar circumstances of the court/person under consideration

APPENDIX VI

PRE-TRIAL, IN-TRIAL AND POST-TRIAL CONCILIATION PROJECT IN THE SUBORDINATE COURTS IN HIMACHAL PRADESH

Object, Purpose & Background of the Scheme

The main challenge with which the Judiciary in our country is faced is the huge arrears of cases pending at different levels in the Courts. The adversary system, procedural wrangles and multiplicity of appeals/revisions are some of the factors which leave a litigant a bitter and frustrated man while waiting for justice for years. With a view to providing a solution to this problem, the High Court of Himachal Pradesh has evolved a Pre-trial, In-trial and Post-trial Conciliation Project in the State on an experimental basis.

Rule 5-B of Order XXVII and Rule 3 of Order XXIII-A of the Code of Civil Procedure, 1908 (as amended by the Act No. 104 of 1976) contain special provisions enjoining a duty upon the Court to make efforts and to assist the parties in arriving at a settlement in certain categories of suits/proceedings such as litigation by or against the Government or Public officers in their official capacity and litigation relating to matters concerning the family, such as suits/proceedings for matrimonial relief, guardianship and custody, maintenance, adoption, succession etc. Similar provisions are also found in Section 23, sub-sections (2) and (3) of the Hindu Marriage Act, 1955. These provisions reflect the new legislative policy and indicate that the classical view of the Judicial role, namely, that Judges are not supposed to have an involvement or interest in the controversies they adjudicate to enable them to decide cases fairly and impartially, has been, to some extent, departed from. The procedure for conciliation laid down in the aforesaid provisions, indeed, casts a duty on the courts to take an active interest in the cases of specified categories posted for trial before them, at an appropriate stage, so as to bring about reconciliation between the parties by taking such steps as may seem just and prudent having regard to the nature and the circumstances of the case. These various provisions have been enacted with the end in view of amicably solving the dispute between the parties with the aid and assistance of the court and ensuring a just, fair, and lasting solution of the controversy on an expeditious basis. The provisions are also designed to put an end to avoidable litigation and thus to reduce the burden of the courts by cutting short a litigation which might otherwise become a protracted affair.

In light of the aforesaid new legislative policy and with a view to minimising the pendency of old cases and ensuring that the litigation comes to an end by way of an amicable settlement of the dispute, the Conciliation Courts are entrusted with certain categories of cases in which there is a reasonable possibility of settlement so as to assist the parties in arriving at a reconciliation, whether the cases are at the preliminary stage, or ripe for hearing, or at the execution stage.

Identification and Transfer of cases to the Conciliation Courts:

The following cases have been classified as cases in which conciliation procedure is to be adopted:

(a) Applications to sue as indigent persons;

(b) Applications seeking interim relief;

(c) Execution applications;

(d) Suits/proceedings relating to matters concerning the family as defined in Order XXXII-A, Rule 1, sub-rule (2) of the Code of Civil Procedure;

(e) Petitions under Sections 125 and 127 of the Code of Criminal Procedure;

(f) Partition suits;

(g) Cases under the Himachal Pradesh Urban Rent Control Act;

(h) Pre-emption suits;

(i) Money suits on Instruments;

(j) Suits for rendition of accounts;

(k) Applications u/s 110-A of the Motor Vehicles Act;

(l) Suit or proceeding to which the Government or a public officer acting in his official capacity is a party;

(m) Application for restoration of a suit dismissed for default;

(n) Application to set aside an ex parte decree;

(o) Application to set aside abatement and/or to condone delay in bringing LRs. on record;

(p) All suits/cases arising out of boundary dispute including encroachments;

(q) All suits on the basis of rights of easement;

(r) Criminal cases of compoundable nature;

(s) Suits for possession of urban property governed by the Transfer of Property Act;

(t) Suits for specific performance of contracts;

(u) Suits for permanent prohibitory injunction;

(v) Suits in which relief of permanent prohibitory injunction is claimed as consequential relief;

(w) Any other case which the court considers fit for conciliation.

All cases earmarked for conciliation are assigned for conciliation/trial to the Conciliation Court which attends to the work so assigned throughout the week or, for the specified number of days in a week, and does not ordinarily take any other work on those days except cases which may have remained part-heard and cases which are exclusively triable by the Senior Sub Judge-cum-Chief Judicial Magistrate.

Where the Conciliation Court is also the principal court of original jurisdiction for the purpose of institution of some of the cases falling under the categories specified hereinabove, such Court in such cases initiates pre-trial conciliation proceedings before assigning such cases to some other Sub Judge-cum-Judicial Magistrate.

With a view to identifying and transferring such cases to the Conciliation Court, the Subordinate Judges are provided guidance by the District and Sessions Judge or Additional District and Sessions Judge, as the case may be, each Subordinate Judge examines the files of cases pending in his Court and indentifies the case referable to the Conciliation Court and sorts out, in the first instance, oldest cases of such categories. Oldest cases for the purpose of these directions are defined as "those cases which have been instituted earliest in point of time and

arranged chronologically". Each of such cases is required to be discussed with the Senior Judicial officer, that is, the District or Additional District and Sessions Judge, and if both the officers are satisfied, *prima facie*, that an attempt at re-conciliation might prove fruitful, such cases are placed before the District and Sessions Judge for transfer to the Conciliation Court.

At the stage of transfer, the District and Sessions Judge may, if possible, consult the counsel of the parties and ascertain whether issuance of a notice to the parties requiring them to remain present before the Conciliation Court on a fixed day would accelerate the process of conciliation and may take appropriate consequential action.

The District and Sessions Judge/Additional District and Sessions Judge also function as Conciliation Courts in regard to the cases of the specified categories for which they have original jurisdiction for trial or in appeals arising out of such cases. All the directions applicable to the Conciliation Courts, so far as may be, apply to them. The District and Sessions Judge/Additional District and Sessions Judge ordinarily work as a Conciliation Court once in a week.

Procedure Before the Conciliation Court

The Conciliation Court, in order to form an opinion about the alternative formulae for an amicable settlement, goes through the case papers of the cases and also verifies the facts from the counsel as well as from the parties to the extent necessary and endeavours to evolve a fair and just formula, acceptable to both the parties, for an amicable settlement of the issues in dispute. The Conciliation Court is advised to bear in mind that it has been entrusted with the special responsibility to effectuate a laudable object and to execute a special project designed to help litigants awaiting justice and that it is expected to discharge its functions and duties to the best of his/her ability by putting in concentrated efforts. The Conciliation Court is also guided, in the experimental stages, by the superior Judicial Officers, since the success of the Project and the consequential continuation thereof, depends largely upon the initial success which the Conciliation Court achieves in its work by sincere and sustained efforts. At the same time it is also advised that an impression should not be created in the minds of the litigating public and lawyers that the Court uses the judicial process to compel settlement.

The senior members of the Bar, amongst others, are invited for personal discussion by the District Judge, Additional District Judge and Conciliation Court with a view to impressing upon them that the project is undertaken on a trial basis with legitimate expectation of their co-operation to cut down the proverbial delay in disposal of cases. With their willing participation, the settlement may come forth in many matters which will result in saving of their time, sparing them of the trouble of calling witnesses and subjecting them to longdrawn examination, cross-examination and arguments. It is impressed upon them that the success of the project depends upon the co-operation which they may extend and that the experiment is undertaken in the best interest of the litigating public and the society as a whole.

The Conciliation Court in cases referred to it, may itself frame issues and even try such cases on merit, or dismiss in default, or proceed ex-parte in appropriate cases, but with a note of caution that the said powers of dismissal for default or proceeding ex-parte are sparingly used only with the limited end in view of securing the presence of the parties and their counsel in order to facilitate the conciliation work. They are advised that an impression should not be created that the powers are used to *compel* conciliation and that great care should be taken in this behalf and such orders may be revoked liberally as a rule so that ends of substantial justice do not suffer detriment.

The Conciliation Courts are advised that at the time of withdrawal of suits/proceedings or the recording of compromise and/or the passing of the final orders/decrees, the relevant provisions of Order XXIII and Order XXXII of the Code of Civil Procedure, 1908 should be borne in mind. Besides, strict compliance thereof should be ensured so that no occasion for a future litigation between the parties arises. If necessary, the settlement should be recorded in such a manner that the agreement is coupled with undertaking given to the Conciliation Court by the parties to abide by such agreement.

If a suit/appeal/proceeding, which is capable of being taken in conciliation is stayed by any higher court, necessary action is taken to take up the matter in conciliation at the appellate stage, if the appeal is pending in the District Court, and if the appeal or revision is pending in the High Court, reference is made to the High Court for appropriate orders including vacation of the stay order.

The Conciliation Court is directed to arrange its cause list in such a manner as to be conducive to the expeditious and satisfactory disposal of cases. It is required to consider the setting apart of one sitting for a particular type of work/categories of cases, if the same is likely to better serve the purpose. In order that the judicial time of the Conciliation Court is not wasted in the event of Conciliation work being not adequate/ sufficient on a day which it has set apart for such work directions are issued for listing in the cause list for that day certain cases for regular hearing, that is for arguments or for preliminary work such as making orders for filing of pleadings, settlement of issues, etc. but not for recording evidence.

FORUMS

The Conciliation Courts function at two levels. The trial court and the appellate courts are both designated as Conciliation Courts in respect of cases falling within their respective jurisdictions. The appellate courts function as Conciliation Courts in respect of cases over which they have original jurisdiction and also in respect of appellate matters arising out of cases which the Conciliation Courts at the trial level are authorised to deal with.

SUPERVISION AND SUPERINTENDENCE BY HIGH COURTS

All the Conciliation Courts are required to submit monthly reports to the High Court in regard to the work done by them in the prescribed form. The non-conciliation Courts are also required to submit monthly returns to the High Court in regard to the cases indentified by them for conciliation in the prescribed form. The Vigilance Cell of the Registry monitors the progress under the supervision of the Chief Justice and issues instructions from time to time whenever required.

The Courts, which are working as Conciliation Courts, besides being assessed for their judicial work as regular Courts, are being assessed separately for the conciliation work. The norms/standards for such assessment are contained in Annexure 'A'

EXTENSION OF THE PROJECT TO MAC CASES

The Project has also been extended to the cases for recovering the compensation by victims of motor accidents pending against the Insurance Companies in all the Motor Accident Claim Tribunals in the State except the MACT, Mandi. It was initially started in Shimla and Hamirpur Sessions Divisions in the month of July, 1986 and was extended to the Sessions Divisions of Solan, Une and Kangra in the month of August, 1986. Under the scheme, the following procedure is adopted for disposing of MAC cases by conciliation.

A. The cases are sorted out in the following categories:

(a) The cases which are ready for hearing agruments;

(b) Cases in which all the material evidence has been recorded;

(c) Cases in which part evidence has been recorded;

(d) Cases in which no evidence has been led.

B. (i) The cases pending against Insurance Companies are identified and a list is sent to the Insurance Company.

(ii) The files of such cases are inspected by the authorised Officer of the concerned Insurance Company in the first week to get an idea of the dispute involved in each case.

(iii) In the second week, the Company intimates to the Tribunal through its counsel the cases which can be taken up for conciliation and the amount which the Company offers.

(iv) On receipt of the offer of the Company the Tribunal fixes the dates in the following week for such cases by

issuing notices to the claimants and their counsel for conciliation. The Tribunal considers the offer of the Company and after hearing the parties, the Tribunal also makes a suggestion, if any, for enhancement in the amount of offer if it is not satisfied with the offer of the Company being just.

(v) Thereafter the dates are fixed in such cases in the next week for actual settlement of the claims in the cases which are ready for being disposed of by amicable settlement. The cases against one Insurance Company are fixed on one day so that the authorised Officer of the Company can remain present before the Tribunal to finally settle the claim(s) and to sign the compromise on behalf of the Insurance Company. The Tribunal immediately thereafter proceeds to make an award in terms of the compromise/settlement and certified copy of the award is made available to the representative of the Company on the same day on which the award is announced on the application being filed for the purpose with requisite Court fee.

(vi) The amount of the award is required to be deposited by the Company within a week from the date of the award.

(vii) In the cases in which evidence has not been led, with the consent of the parties, the claimants in such cases are asked to lead evidence on affidavit(s) and the Insurance Company, if they are not satisfied with the evidence brought on the record by way of affidavit evidence, is at liberty to apply to the Tribunal for summoning the deponents for cross-examination. Such cases are taken up in the last stage and the steps as indicated above are taken seriatim within the same time limits in regard to such cases.

(viii) The following material is brought on the record in such cases by way of affidavit evidence:

(A) *In case of Fatal Accident:*

(i) Post-Mortem Report and/or Death Certificate showing the cause of death of deceased;

(ii) Salary/Wages Certificate from the Employer of the deceased; Income Tax Returns or other evidence regarding income in case of self-employed person.

(iii) Age certificate of the deceased;

(iv) Names of Dependents/(Legal Heirs and their ages and proof of dependency and relationship with the deceased).

(v) Particulars of expenses incurred, if any, and the documentary evidence in support thereof, if any;

(vi) Any other material the Tribunal may require.

(B) *In case of personal injury:*

(i) Hospital Records and/or Medical Certificates of the Hospital/Medical Practitioners who treated the injured showing the nature of injury sustained and the date of admission and discharge from the Hospital; in cases none of these is available, the affidavit by the claimant giving the above particulars;

(ii) Permanent/partial disability certificate, if any;

(iii) Salary/Wages Certificate from the Employer of the injured; Whether the employment has continued and if so, in the same or similar post and on similar terms and conditions.

(iv) True copy of the F.I.R. and the Panchanama, if any;

(v) Particulars of expenses incurred, if any, alongwith copies of the vouchers/Cash Memos thereof.

ANNEXURE—'A'

ORDER LAYING DOWN THE NORMS & STANDARDS

1. It has been desired by the Hon'ble Chief Justice that the Judicial Officers working as Conciliation Courts, apart from working on regular side, should be separately assessed for such work. In order to make such separate assessment, it has been ordered that the following standards & norms should be applied:

(i) The actual working days spent in conciliation work, hereafter referred to as "the actual conciliation working days", will be deducted out of the total actual working days and the regular monthly assessment will be made on the basis of the remainder actual working days.

(ii) The actual conciliation working day will be taken to be of six hours. The total hours spent by a Judicial Officer for conciliation work during all the days assigned by the High Court or the District & Sessions Judge for such work will be aggregated for the purpose of working out the actual conciliation working days. To illustrate, if an officer has been assigned four days for conciliation work in a month and he has worked only for twenty-one hours during such four days for conciliation work, in that case, the actual conciliation working days will be reckoned as 3-1/2 and 3-1/2 days will be deducted from the total actual working days. Marginal shortfall/increase upto two hours will be ignored. For example, if the officer has worked for twenty two hours in the illustration given above, then, the actual conciliation working days will be reckoned at 4 and he will be entitled to deduction of 4 actual conciliation working days. Similarly, if an officer has worked for 19 hours, he will get deduction of only 3 days.

(iii) The time spent for conciliation in each case on each occasion will be recorded in the daily Zimni order and the total time taken for disposing of the case by conciliation will be aggregated and given in the monthly return in the appropriate column.

(iv) An officer of the Judicial Service will be required to earn 20 units per month consisting of four conciliation days;

(v) An officer of the Higher Judicial Service will be required to earn 12 units per month consisting of 4 conciliation days.

(vi) In case the conciliation days are more than 4 per month, the requirement of units will be 5 units and 3 units per additional day for Judicial Service and Higher Judicial Service Officers respectively:

(vii) The following formula will be adopted for the purpose of monthly assessment of conciliation works:

(a) If the officer has earned the prescribed units and, in addition, earned 25 per cent or more of such units, he will be graded as "Grade-A".

(b) If the officer has earned full units as per the above norms, he would be graded as "Grade-B".

(c) If the officer has earned upto 85 per cent or above but below 100 per cent units, he would be graded as "Grade-C".

(d) If the officer has earned upto 70 per cent or above but below 85 per cent units, he would be graded as "Grade-D".

(e) If the officer has earned upto 50 per cent or above but below 70 per cent units, he would be graded as "Grade-E".

(f) If the officer has earned below 50 per cent units, he would be graded as "Grade-F".

2. It is clarified that the maximum number of actual conciliation working days to be excluded for the purpose of monthly regular assessment will not exceed the number fixed for conciliation work by the High Court or the District & Sessions Judge.

3. Such Judicial Officers shall enclose a statement in the prescribed proforma Enclosure—A to the monthly civil and criminal work disposal statement.

4. The assessment of the Conciliation work will be done in the prescribed form Enclosure-B every month. If the total time spent for conciliation work during all the days assigned for such work does not exceed four (4) hours, however, no monthly assessment will be made.

5. The standards and norms as aforesaid have been prescribed keeping in mind the factor that during the initial period the output of the Conciliation Court may not be upto the desired level. The standards and norms will, therefore, govern the assessment *only* for the first *six months* during which the Judicial Officer works as Conciliation Court. The assessment for the period beyond six months will be made on the basis of standards and norms which will be separately notified later.

6. During the aforesaid initial period of *six* months, two quarterly assessments will also be made on the basis of the norms and standards indicated above. Such quarterly assessments, *inter alia*, will be taken into consideration for judging the devotion, commitment, industry and efficiency of the officer who has been entrusted with the special responsibility of making conciliation project a success and will be taken into account while recording his ACR. For the existing Conciliation Courts, the first quarterly assessment will be made for the period upto 30.9.1985 and the second quarterly assessment would be made for the period ending 31.12.1985.

7. The above orders came into force with effect from August 1, 1985.

By order of the Hon'ble Chief Justice.

Sd/-
(Surendra Prakash)
Registrar (Vigilance),
29.7.85

ENCLOSURE 'A'

MONTHLY STATEMENT OF CONCILIATION WORK IN RESPECT OF ———————
FOR THE MONTH OF ————198

Total No. of cases disposed of	*Total Units earned.*	*Total time/days spent for such work*	*Time/days allowed by the High Court/ Distt. & Sessions Judge during the month for such work.*	*Remarks*
1	*2*	*3*	*4*	*5*

ENCLOSURE—'B'

MONTHLY ASSESSMENT OF CONCILIATION WORK IN RESPECT OF SHRI ———————
FOR THE MONTH OF ————198

Total actual conciliation working days	*Total Units Earned*	*Assessment*	*Remarks, if any*
		Grade—A Grade—B Grade—C Grade—D Grade—E Grade—F	

APPENDIX VII

DISPOSAL OF CASES BY CONCILIATION COURTS IN HIMACHAL PRADESH.

Period	*No. of cases disposed of*
1.9.1984 to 31.12.1984	176
1.1.1985 to 31.12.1985	1890
1.1.1986 to 31.12.1986	4897
1.1.1987 to 31.12.1987	8544
1.1.1988 to 31.12.1988	7002
1.1.1989 to 31.12.1989	4868
1.1.1990 to 31.5.1990	2172
Total	29549

COMPARATIVE STATEMENT OF DISPOSAL OF CASES BY CONCILIATION COURTS/TRIBUNALS IN H.P. ON REGULAR AND CONCILIATION SIDE.

S.No.	*Period*	*Total disposal (Regular and Conciliation)*	*Disposal by Conciliation*	*Percentage of conciliation disposal to total disposal*
1.	1985	22089	1890	8.55%
2.	1986	43654	4897	11.21%
3.	1987	52677	8544	16.21%
4.	1988 (upto 30.6.1988)	26213	3533	13.47%
Grand Total:		144633	18864	13.04%

Note: Average duration of conciliation Project: 2 Years 4 Months.

STATEMENT SHOWING CATEGORY-WISE TOTAL DISPOSAL OF CASES BY WAY OF CONCILIATION BY THE SUBORDINATE COURTS IN HIMACHAL PRADESH w.e.f. 1.9.1984 to 30.6.1988

Civil Suits	*Rent Cases*	*Civil Appeals*	*H.M.A. Cases*	*M.A.C. Cases*	*I.A.C. Cases*	*Police Challans*	*Petition u/s. 125 Cr. P.C.*	*Criminal Appeals/ Revisions*	*Executions*	*Others Civil & Criminal Misc. Cases*	*Total*
1	2	3	4	5	6	7	8	9	10	11	12
8385	877	734	405	511	39	2497	1045	167	839	3541	19040