

LAW COMMISSION OF INDIA

ONE HUNDRED EIGHTY EIGHTH REPORT

ON

PROPOSALS FOR CONSTITUTION OF HI-TECH
FAST – TRACK COMMERCIAL DIVISIONS IN HIGH
COURTS

DECEMBER, 2003

JUSTICE
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Dear Shri Arun Jaitley ji,

I have great pleasure in forwarding the 188th Report of the Law Commission on the 'Proposals for constitution of Hi-tech Fast-Track Commercial Divisions in High Courts'.

The Commission has taken up the subject suo motu, in view of the vast changes in the economic policies of our country from the year 1991, ushering in privatisation, liberalization and globalisation. It appears to the Commission that investors in India, both domestic and foreign, must be given a clear assurance that commercial suits of high pecuniary value, shall go directly before the Commercial Division of the High Court (rather than to a District Court or a Single Judge Bench of the High Court), that in the Commercial Division of the High Court the procedure will be 'fast track' with high-tech facilities of video-conferencing etc. as in the Commercial Court in New York or Singapore and that the suits will be disposed of normally within one year or at least within a maximum period of two years. Our recommendation is also that pending suits of such high value and pending appeals arising out of such high value suits should go before the Commercial Division. We are also recommending a statutory right of appeal to the Supreme Court against decrees in suits passed by the Commercial Division and also against orders of the Division falling within Order XLIII of the Code of Civil Procedure, 1908, but not in the case of appellate decrees or execution matters. The latter will be governed by Art. 136 of the Constitution of India. Enforcement of decrees should, in our opinion, be also by the Commercial Division of the High Court and not by the subordinate Courts so far as these high-value cases are concerned.

Once Commercial Division is established in each High Court, consisting of as many Division Benches as may be necessary, there will be a clear message that such high value commercial disputes will be disposed of quite fast in India. In this context, I may bring to your kind notice that there is a recent spate of judgments of the US and UK Commercial Courts declaring that the Indian Court system has "collapsed" because there are delays upto twenty years or more, and that, therefore Indian defendants can be sued in US and UK Commercial Courts, even if there is no cause of action in those countries, provided the Indian defendant has a branch or local representative in that country or is trading in the stock exchange of that country. This trend has to be immediately reversed by bringing in 'fast-track, high-tech Commercial Divisions' in all the High Courts. The Commission is of the view that the overall benefits that may accrue by way of increased investment in India, both from domestic and foreign investors, will be in hundreds of millions of dollars and the expense in constituting these fast-track, high-tech Divisions in High Courts will only be a very small fraction thereof.

The Commission has proposed a wide definition of 'commercial disputes' which will include not only disputes between tradesmen but also disputes relating to commercial property, movable or immovable. Of course, commercial disputes which have to be adjudicated by Courts

or Tribunals of exclusive jurisdiction will not go before the Commercial Division. The proposed 'definition' also permits the High Court to further notify specific 'commercial disputes' from time to time, for the purpose of decision by the Commercial Division. The Commission proposes that where the value of the subject matter is Rs. 1 crore (or such higher minimum as may be fixed by the High Court but where the minimum is not in excess of Rs. 5 crores), the commercial suits must go before the Commercial Division. This norm has been proposed in order to avoid too many matters above Rs. 1 crore clogging the work in Commercial Divisions in some States. If there are too many cases above Rs. 1 crore, the High Court can fix the minimum value at Rs. 5 crores for purpose of disposal by the Division.

The fast track procedure as detailed in the Report will be akin to the proposed 'fast track arbitration' referred to in the 176th Report on 'Arbitration and Conciliation (Amendment) Bill, 2002', subject to suitable modifications for purpose of fast-track procedure in a Civil Court.

The Commission has recommended high-tech facilities like video-conferencing, computerization etc. as in leading Commercial Courts abroad. The National Informatics has given a Report with an estimate of expenditure for each High Court and this is included in Chapter VIII.

The Commission, after an analysis of the Constitutional position on legislative powers, has stated in the Report that Parliament is competent to make the proposed legislation by virtue of its legislative powers read with the relevant Entries in List I and List III of the Seventh Schedule to the Constitution of India.

The Government and each of the High Courts must, as stated in the Report, ensure that the Commercial Division consists of as many Benches as are necessary and that there are always sufficient number of Judges in position to man these Benches. We have, for this purpose, suggested that apart from Judges appointed in the normal course, retired Judges may be appointed under Art. 224A of the Constitution of India, whether they have retired from the same High Court or from other High Courts. These Judges in the Commercial Division must be experienced in civil law and commercial laws. A programme of continuing education on commercial laws has also to be formulated for the benefit of the Judges and Lawyers who are the key figures in the Commercial Division.

We are sure that these recommendations will find support from the Bench and the Bar and above all, from the vast commercial community, both within India and abroad.

We place on record the valuable contribution of Sri S. Muralidhar, Part-time Member of our Commission in the preparation of this Report.

With regards,

Yours sincerely,

Sd./-
(M. Jagannadha Rao)

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Chapter I

Introductory

Need for fast-track, high-tech Commercial Courts in India

The last decade has brought about phenomenal changes in India leading to enormous growth in our commercial and industrial sectors. The policies of the Government have changed radically from 1991, the year in which our economy was opened up to foreign investment in a big way. Privatisation, liberalization and globalisation have resulted in giving a big boost to our economy. At the same time, world has become very much competitive.

With such rapid increase in commerce and trade, commercial disputes involving high stakes are likely to increase. Unless, there is a new and effective mechanism for resolving them speedily and efficiently, progress will be retarded. Foreign investors in India must be assured that the Indian Courts are as fast as the courts in the most developed countries of the world and that there are no longer any long delays in the judicial process.

With that in mind, the Law Commission thought it necessary to examine the feasibility of 'Commercial Divisions' in the High Courts in India on the model of the Commercial Division in the High Court in the United Kingdom and in US and other countries. In Chapter III of this Report, the manner in which the 'Commercial Divisions' have been set up in various countries and their functioning will be discussed. We may state

that in the United Kingdom, the Commercial Division was started more than a hundred years ago in 1895 and gave confidence to the business community and contributed enormously to the growth of commerce in London. In the United States, Commercial Divisions have been started only recently in or around the year 1993. Other countries too have or are following suit.

The purpose of this Report is to recommend the creation of “Commercial Division” with high-tech facilities like video-conferencing, on-line filing etc. in each of our High Courts so that they may handle ‘commercial cases’ of a high threshold value of (say) Rs.1 crore and above, or such higher limit as may be fixed by the High Court (but not in excess of Rs.5 crores) and fast-track basis. A fast-track procedure was indeed recommended in our Report on Amendments to the Indian Arbitration and Conciliation Act, 1996 for ‘fast-track’ arbitration. The objective is that a commercial case of such high value should be disposed of within a period of one year or at the most two years in all the States in India. A maximum period of two years is perfectly justified and is comparable to the period of pendency in most courts abroad and in particular in US and UK. The proposed Divisions should be manned by Judges of the High Court who are well-versed in civil law and in particular, in commercial laws. It is also proposed that High Court Judges should be given extensive exposure to the fast growing changes in commercial laws occurring globally and that their knowledge levels in respect of new branches should be updated constantly by a programme of continuing lectures. The commercial cases above the pecuniary limit of (say) Rs.1 crore or more as stated above must, in our view, be taken up on the original side of the High Court by a Division

Bench. Simultaneously, pending appeals before Division Benches in relation to commercial cases of the high pecuniary value abovementioned must also go to the Commercial Division straightway rather than stand in queue along with other civil appeals pending in the High Courts. Likewise, the execution of decrees passed by the Commercial Division in original suits as well as transferred matters must also be undertaken by the same Division.

Chapter II of this Report discusses another problem which has surfaced recently. There is a recent trend in the judgments of UK and US courts of selectively applying the principle of ‘forum non-conveniens’ and staying actions filed by aliens and refusing to apply the same norm when actions are filed in these countries against aliens. To explain, where a foreign entity is doing business in India with an Indian entity, the said foreign entity is today being permitted by Courts in New York and London to file claims in courts in New York or London, on the assumption that there are extraordinary delays in Indian Courts. This is being done even if no part of the cause of action has arisen in those countries. Where an Indian entity has a branch in US or UK, it is now held by the Courts in those countries that such entities are amenable to the jurisdiction of foreign courts though no part of the cause of action might have arisen in those countries. The Courts abroad have held that UK or American courts could, in cases filed against Indian entities in those countries, refuse stay of the cases on the broad generalization that, if the cases were filed in India, they would take at least “twenty-five years” for disposal. This unfortunate attitude of US and UK Courts in several cases is explained in Chapter II. We are referring to this aspect as an additional reason as to why we are proposing separate

Commercial Divisions in the High Courts. While we totally disagree with the generalized assumption of UK and US Courts that all cases in India take nearly two decades for disposal we, however, feel that the above-said recent trend in UK and US Courts will stop if our proposals are given legislative shape.

Therefore, a separate Division in each High Court is proposed to be constituted for dealing with high value commercial cases (say) above Rs. 1 crore, on the original side, as stated above. These Courts will have the benefit of on-line filing, computerization, video conferencing etc. and the cases are proposed to be disposed of within one year or at any rate within a period of two years. With the expertise we have in our judiciary and in our High Court Bar, it should not be difficult to establish these 'Commercial Divisions' at an early date.

It is proposed that commercial cases of such high value, which are referred to the Commercial Division, decided by one or more Division Benches of two Judges of the High Court on the original side should be subject to a statutory appeal to Supreme Court. Our proposal is also that in addition to sitting Judges, retired High Court Judges who have had a proven record of efficiency and who have adequate experience in civil and commercial laws must be appointed under Art. 224A of the Constitution of India to man these Courts. Under Art. 224A, such appointments can be made even if the High Court Judges had retired from other High Courts.

The further discussion on the subject in the other Chapters will lay down the foundation for the constitution and functioning of Commercial Division in each High Court.

In Chapter II, we shall be referring in detail to the recent problems of ‘forum non conveniens’ which have emanated in other countries like US and UK; in Chapter III, we shall deal with the establishment and functioning of prevailing Commercial Courts in UK, US and other countries. In Chapter IV, we shall deal with the meaning of the words ‘commercial cases’. In Chapter V we shall discuss whether Art. 225 and Entry 11A of List III of the 7th Schedule confer adequate power on Parliament to bring about a ‘Commercial Division’ within each High Court. Chapter VI will deal with the fast-track procedures. Chapter VII will deal with high-tech systems in other countries and Chapter VIII with our proposals for high-tech systems in our commercial Courts. Chapter IX will deal with the final proposals for constitution of Commercial Division in the High Court. Chapter X contains a summary of our recommendations.

Chapter II

Commercial cases arising in India being taken over by US, UK Courts on ground of 'Forum Non Conveniens'; reasons not acceptable

It has been pointed out in Chapter I that the Commission is of the firm view that there should be a 'Commercial Division' in each High Court to decide high value commercial cases between Indian parties and also between Indian parties and foreign parties for purposes of their speedier disposal on fast-track, with all high-tech facilities. In this Chapter, the Commission is giving an additional reason for recommending the constitution of the 'Commercial Division'. The additional reason is that it is now imperative that we have to negate the recent judgments of US and UK Courts taking up cases which should have been filed in India on the specious reason that, in India, almost all cases take twenty-five years for disposal, a general assumption for which there is, in our view, no real justification.

The Commission, with its overall view of the administration of justice in this country can assert that thousands of cases, particularly those relating to commercial disputes are, in fact, resolved by Indian courts much faster – some within even one year, and many in two or three years, and that therefore, the characterisation of the Indian justice system by the foreign courts as being in a 'deplorable' state or that it has 'collapsed' appear to us to be highly exaggerated. For example, in a heavy Court like the Delhi High Court, commercial cases involving realization of monies under Bank Guarantees or Letters of Credit are disposed of in one year or at the

most, in two years but yet recently when the question arose before the Supreme Court of New York, New York County in the year 2003, Shin-ETSU Chemical Co. Ltd vs. ICICI Bank (and State Bank of India), the Court took up the case on the assumption that in India even such cases would go on for fifteen years. That case related to a suit by a Japanese company against Indian Banks on the basis of Letters of Credit (where no cause of action arose, within US). An affidavit of an Indian expert was filed in the US Court stating that there are delays upto fifteen years in Delhi High Court. The action was filed in New York Commercial Court on the ground that Indian courts take twenty five years for disposal. The only nexus with US was that the Indian Bank had either branch in New York or was trading in the New York stock exchange. We are referring to this instance only to show that the US and UK courts have made rather very unjustifiable and broad generalizations on the basis of affidavit evidence of Indian experts, relying on one or two cases and generalizing that almost all cases take fifteen to twenty years in the Indian Courts. The criminal case concerning bombing of the *Kanishka* Aircraft of Air India of the year 1985 is still being tried in the Canadian Courts but on that basis we cannot generalize that all criminal cases in Canada take twenty years!

Anomalies in US & UK decisions where aliens are plaintiffs and where aliens are defendants:

Indeed, there are serious anomalies in the approach of US and UK Courts on the application of the principle of ‘forum non-conveniens’. A particular contrast in the approach of the foreign courts towards Indian plaintiffs as distinguished from foreign plaintiffs, needs to be referred to.

Mostly, if the defendants are aliens, then these foreign Courts take up the cases immediately on the ground of delay of Courts in the country of the alien. If the alien is the plaintiff, the same Courts relegate the plaintiff to the Courts in the country of the alien. These contrasts in the judgments of American and UK Courts have, in fact, been analysed and criticised by several jurists. (See in this context (A) ‘Forum Non Conveniens’ in America and England: “A Rather Fantastic Fiction’ by David W. Robertson, Professor of Law, Texas University: (1987) Vol 103 Law Quarterly Review p 398; (B) Bhopal, Bouganville and O.K. Tedi: Why Australia’s Non Conveniens approach is Better’ by Peter Prince Vol 47, International and Comparative Quarterly, 1998, page 573); and (C) ‘Trial in England and Abroad: The Underlying Policy Considerations, Vol. 9, Oxford Journal of Legal Affairs, p 205).

Robertson has, in fact, pointed out that where aliens come to US and file cases against residents of USA or where aliens sue aliens in USA, the US Courts tend to relegate the plaintiffs to their home country by specially glorifying the Court systems of the aliens’ home countries; but where US residents or foreigners sue aliens in US, the Courts apply the doctrine of ‘forum non conveniens’ and hold that the courts of the aliens’ country are not appropriate courts as they are dogged by enormous delays or that judges abroad do not have the same expertise as those in US. (p. 405). We shall refer to the typical cases which vividly expose this kind of an attitude.

(A) The Bhopal case is an example in point. Thousands of deaths occurred in India at Bhopal due to gas pollution by the US multinational Union Carbide’s plant at Bhopal. When claims were filed in US Courts by

or on behalf of Indian victims against Union Carbide in US, Judge Keenan of the US District Court, South District of New York, while dismissing the claims and relegating the victims to Indian Courts paid rich tributes to the Indian judicial system. (See In re Union Carbide Corpn Gas Plant Disaster at Bhopal)(1986) 634, F. Suppl 842 (S.D.N.Y). Judge Keenan observed:

“In the Court’s view, to retain the litigation in this forum, as plaintiff’s request, would be yet another example of imperialising another situation in which an established sovereign inflicted its rules, its standards and values on a developing nation. This Court declines to play such a role. The Union of India is a world power in 1986 and its courts have the proven capacity to mete out fair and equal justice. To deprive the Indian judiciary of this opportunity to stand tall before the world and to pass judgment on behalf of its own people, would be to revive a history of subservience and subjugation from which India has emerged. India and its people can and must vindicate their claims before the independent and legitimate judiciary created there since the Independence of 1947”.

Equally significant are the following other observations in that judgment of Keenan J:

“This Court is persuaded, by the example of the Bhopal Act itself and other cases where special measures to expedite were taken by the Indian judiciary, that the most significant, urgent and extensive litigation ever to arise from a single event could be handled through the judicial accommodation in India, if required.”

“To sum the discussion on this point, the Court determines that the Indian Legal System provides an adequate alternative forum for the Bhopal litigation. Far from exhibiting a tendency to be so ‘inadequate or unsatisfactory’ as to provide ‘no remedy at all’, the Courts of India appear to be well up the task of handling this case.... Differences between the two legal systems, even if they inure to plaintiff’s detriment, do not suggest that India is not an adequate alternative forum.”

The learned Judge also stated that continuation of the claims in US would add unnecessary administrative costs to the American judicial system and that taking up such claims in US would amount to unnecessary burden upon the time of US Courts. He said:

“In addition to the burden on the Court system, continuation of this litigation in the forum would tax the time and resources of citizens directly;clearly, the administrative costs of this litigation are astounding and significant.”

In the above case, Prof. Marc Galanter’s affidavit about delays in India and as to why US courts are more appropriate to decide the claims was rejected by Judge Keenan.

(B) Now let us compare the above eulogies of the Indian judicial system with what the 3rd Circuit Court of Appeals had to say in Bhatnagar vs. Surendra Overseas Ltd. (1995) 52 F.2.d. 1220(3rd Cir). (This case is now oft quoted in US Courts for the purpose of entertaining and continuing the

cases filed in US). Lewis J referred to the affidavit of Prof. Marc Galanter and of Mr. Shardul Shroff (a lawyer from India) both of whom made unfortunate generalizations that the “Indian Court system was in a State of virtual collapse.” Lewis J accepted the affidavits and affirmed the District Court’s reasoning for continuance of the case in US. He said:

“The district court found that the Indian legal system has a tremendous backlog of cases – so great that it could take upon a quarter of a century to resolve this litigation if it were filed in India.”

It is rather curious that in this very case the US Court relied upon the above-said affidavit of Prof. Marc Gallanter (and of Mr. Shardul Shroff of India) to continue the case in US, while in the Bhopal case, a similar affidavit of Prof. Marc Gallanter on the same lines was not accepted and the Court refused to entertain the case filed in US on behalf of Indian victim.

In Bhatnagar, referred to above, after quoting Piper Aircraft (1981) 454 US 235 to the effect that there are also delays in US courts and that in the view of the US Courts, delays upto two or two and half years could be reasonable, Lewis J said that if the ‘remedy becomes so temporarily remote that it is no remedy at all’, then it is not an appropriate remedy. We may also mention that the affidavit of Mr. Shardul Shroff in the above case, stated that according to the view of a former Chief Justice of India the Indian legal system was ‘almost on the verge of collapse’. In Bhatnagar, the District Court had rejected the application by the Indian defendant for stay of the case filed in the US on the ground that the case could take 15-20

years if relegated to the Calcutta High Court and then five more years in appeal. The 3rd Circuit affirmed this view.

More recently in Modi Enterprises vs. ESPN Inc (dt. 4.3.2003) Judge Ira Gammernan of the Supreme Court of the State of New York, New York County observed, while entertaining and retaining the suit filed in US against Indian parties:

“...but it is evident that there are backlogs in the Indian Courts, including the Delhi High Court in which this claim would be litigated that would be viewed as intolerable in New York Court, sometime involving decades. Such delay has been viewed a factor supporting denial of a forum non conveniens motion: see Bhatnagar vs. Surendra Overseas Ltd. 52 F 3d 1220 (30 cir, 1995)(India not an adequate forum due to lengthy backlogs).

Curiously, in order to justify retention of the case in US Courts, Judge Ira Gammernan refers to the Indian plaintiffs’ pleadings in the Bhopal case about delays in India in mass-tort claims but does not refer to the ultimate judgment in the Bhopal case where Keenan J of the US Court rejected the plea based on delays in India and had, in fact, praised the Indian judicial system. One would have expected the judge to go by the ultimate judgment of Keenan J of the US Court in the Bhopal case rather than rely on a plea therein which Judge Keenan did not accept!

One other reason given by the Judge Ira Gammernan in Modi Enterprises to retain the suit in the Court in US was that it was necessary to

protect New York as a world leader in commerce. The Judge said the case was being retained in New York with a view

“to protect the reputation of New York as a leader in international Commerce and to encourage other foreign entities to come to New York to do business without fear that the New York Courts will relegate their law suits against entities operating in New York, to delay-plagued courts of the foreign entity’s own home jurisdictions”.

If Courts in other countries too think that enlarging the Court jurisdictions would help growth of commerce in those countries, the principle of comity between Courts of different countries would soon become a dead letter.

More recently, in Shin-ETSU Chemical Co. Ltd. vs. ICICI Bank (dt. 5.8.03) already referred to, Judge Ira Gammernan of the Supreme Court of the State of New York, while retaining yet the case filed in the US by the Japanese company against the Indian bank, observed:

“In Bhatnagar (52 73d. 1220, 3rd Cir 1995), which is remarkably similar to this case, the Third Circuit upheld the District Court’s denial of the motion to dismiss the forum non conveniens grounds stating, “at some point, the prospective judicial remedy becomes so temporarily remote that it is no remedy at all and may render (an) alternative forum so ‘clearly unsatisfactory’ as to be inadequate”. Id. At 1228”

and continued as follows:

“Here, plaintiff’s expert stated that if the action were pursued in India, it would take between fifteen to twenty years to be resolved.

Thus, plaintiff could very well be deprived of its day in Court if required to litigate in India.”

What the US Court described as an appropriate remedy in Bhopal (viz. remedy in Indian Courts) was treated as ‘no remedy at all’ in Bhatnagar, Modi and Shin Etsu. The difference, it appears to us, was only that in Bhopal, the claimants were Indian victims while in these cases, the defendants were Indians.

At one time, US courts had indeed chauvinistically observed that to take up a case which ought to have been filed in another country would be ‘derogatory to foreign Courts’. It was applied in Bhopal. But later, ironically, the principle was given up and was not applied in Bhatnagar, Modi and in Shin ETSU.

This recent attitude of US courts has indeed come for serious criticism by other jurists too. Mr. Peter Prince (1998) (Vol. 47) (International & Comparative Law Quarterly, p 73 at p 576) notes that the US Courts speak differently on the basis of who is the plaintiff. He says, the principle of ‘forum non conveniens’

“...ironically specifically worked against foreign plaintiffs trying to recover damages from Americans or English defendants in the defendant’s home country”.

Mr. Peter Prince (ibid p 580) refers to the discrimination against foreign plaintiffs and says that the Bhopal case clearly shows the application of the ‘most suitable forum’ approach against the foreign plaintiff.

This chauvinism argument “as employed by real world players in the forum non conveniens arena.... is purely strategic”, says Robertson (‘The Federal Doctrine of Forum Non Conveniens’ ((1994) 29 Texas I.L.J. 353, at 372-373). He says further that “In the Bhopal hearings in the United States, Union Carbide unstintingly praised the Indian judicial system,” what is more, when the Bhopal case shifted to India, Union Carbide “wantonly assailed the dignity and authority of the (Indian) Supreme Court’.

Apart from the attitude of US Courts, the attitude of US multinationals has also come for serious criticism. Peter Prince (ibid 580) also rightly points his finger at the unreasonable attitude of US multinationals such as Union Carbide doing business outside US. He says:

“...it is not apparent why – as in the Bhopal case – an Indian plaintiff’s chances of obtaining damages from a US multinational company should be adversely affected by the ‘respect’ of the United States for the system of law in India. If ‘international respect’ is to be regarded as a legitimate factor in forum non conveniens cases, it would seem more respectful to other nations to ensure that multinational companies based in developed countries such as the Union Carbide are not allowed to escape the legal standards of their home country by virtue of an unnecessarily liberal forum non-conveniens doctrine’.

Mr. Joel R Paul too criticizes the attitudes of multinationals: (see ‘Country in International Law’: (1991) 32 Harv. I.L.J. 14)

“By refusing to exercise jurisdiction in a case like In re Union Carbide, a Court effectively allows a US manufacturer to avoid US tort liabilities and encourages other manufacturers to locate plants abroad.”

Such attitudes of US multinationals may ultimately damage US interests abroad. As pointed out by Miller (1991) 58 U.Chi L Rev 1369 (1386), “If other countries believe that the United States does not care if its corporators act abroad in a manner prohibited at home, that perception could strain diplomatic relations and create an unflattering repudiation for US Courts.”

Rankin also notes (see 1993, XVIII Boston College Int. & Com L Rev 221) that defence pleas by US multinationals in actions for environmental damage filed in foreign countries have done much harm to create the perception that the law of the United States allows its multinationals to avoid US legal standards when operating overseas.

The above assessment of several jurists shows that the approach of US Courts and US multinationals has not been fair to alien plaintiffs in US Courts.

U.K.

The position in England is generally no different. At one time, the theme was that English Courts should have regard for the Court in other countries which have a developed system of justice: (The El America. 1981 (2) Llyods Rep. 119: This was also the view also in Maharanees of Baroda vs. Wildenstein: 1972(2) QB 283.

But this view does not generally prevail in UK in most cases.

There have been significant recent judgments of UK Courts which like the US Courts, have generalized about delays in Indian Courts. In European Asian Bank vs. Punjab & Sind Bank: (1982)2 Lloyd's Rep. 356 (CA), it was stated that neither India nor Singapore were clearly appropriate for trial of actions than England. In that case, the plaintiff, a West German Bank brought an action in England against an Indian Bank by serving a writ on a branch office for payment under a Letter of Credit. The stay application filed by the defendant (defendant-alien-Bank) was rejected and the case was continued in the UK Court on the general assumption of long delays in Indian Courts.

A similar view was adopted in the Vishva Abha: (1990)((2) Llyod's Rep. 312. In Vishwas Ajay: 1989(2) Lloyd's Rep. 558, a generalized plea of 'inordinate delays' in India of the magnitude of ten years before actions come to trial, was accepted and it was assumed that there was denial of justice abroad. The matter was continued in the English Court, rejecting the application for stay filed by the defendant. In Jalakrishna: 1983(2) Lloyd's Rep 628, it was held that there are procedural advantages in UK which are relevant. (See also The Vishva Abha: 1979(2) Llyod' Rep 286).

The attitude of English Courts has also been adversely commented upon by Prof. J.J. Fawcett (“Trial in England and Abroad: The Underlying Policy Considerations) (Vol 9 Oxford Journal of Legal Affairs. P. 205 at 220) stating that in none of the cases in which the House of Lords has granted stay of English proceedings is the plaintiff English. It would be very difficult to show that there is clearly a more appropriate forum abroad if the plaintiff is English, he observes. Significantly, Prof. Fawcett says (ibid. p 221) that even though it is accepted that English Courts are crowded and there are delays up to three years in the commercial courts in England, still the above attitude has continued. He says:

“At the moment, the Commercial Court in London is facing quite serious problems of delay arising from the sheer number of cases being brought before it. It was said that if trial was sought in early 1987, it could not be fixed until 1990. (See Zakhlem Intl Construction Ltd. vs. Nippon Kokan K.K 1987(2) Lloyd’s Rep. 661). However, the English Courts have never used the fact that the Courts are already crowded as a reason for refusing to allow trial in England. Instead, it is pointed out that the delay here may still be less than that abroad.”

Conclusion

The above catalogue of cases does show an anomalous situation in US and UK courts in favour of staying actions filed by aliens in those courts on the ground that the Court systems in the countries of aliens are quite

good and fast, and at the same time, in not staying actions filed against aliens on the ground that there are extraordinary delays in court proceedings abroad. Only in a few exceptional and rare cases where expert evidence was filed in rebuttal referring to the speedy disposal of the specific type of case in question, that the presumption not been applied. To raise a general presumption as to delays in all cases in India and require a special rebuttal by the alien defendant in every case is wholly unjustified. In our view, the initial burden about delays abroad in that particular type of cases must always rest on the party who raises a plea of unreasonable delays in the Courts in the alien's country and there can be no general presumption of delays in all types of cases in India.

The Commission is of the view that on account of the additional reason referred to above, namely, the generalisations by US and UK Courts about long delays in India, the constitution of a separate division called the "Commercial Division" of the High Court for disposal of high-value commercial cases on fast track with high-tech facilities is necessary. Once that is done, there will no longer be any scope for foreign courts to make generalisations or assumptions about delays in Indian Courts.

Chapter III

“Commercial Courts” in UK, USA and Twelve other Countries

We shall refer to the classification of Courts as ‘Commercial Courts’ in UK, USA and other countries.

(I) U.K.:

It is interesting to trace the history of the origin of the ‘Commercial Courts’ in the United Kingdom. (See Mr. Lawrence, ‘The True Begetter of English Commercial Courts, (1994) Vol. 110, Law Quarterly Review, p.292) The credit for establishment of the commercial courts in England can be traced to what Lawrence J (humorously called ‘Long John’) did in Rose vs. Bank of Australia in 1891. The learned Judge had no grounding in commercial law and, in fact, his appointment to the High Court, which is said to have been made because of his leaning towards the Conservative Party, was a surprise to Lawrence himself. While he was expecting to become a County Court Judge, he was, it appears, “mistakenly” offered a High Court Judge’s position and the following account thereof by Gilchrist Gibb Mexander in ‘The Temple of the Nineties’ (1938) (pp 229-331) is very interesting. He states that doubts are

“even greater how (i.e. even greater than that of Mr. Darling’s appointment) his name had gone up when long John Lawrence was

appointed. It is said that he had modestly hoped for a County Court Judgeship and that when, by mistake, a High Court Judgeship was offered to him, he was so overwhelmed that he went to an old friend in the profession and asked his advice. ‘Take it by all means’ said his friend. ‘But – Can I do it?’.... ‘Do it’ answered his friend. In *Rowing Blue Language* he added, ‘Keep your ears open and your mouth shut and you will do all right’. “Long John” rigidly followed this advice”.

What Lawrence J did ultimately while deciding Rose is equally interesting. The case related to law of insurance concerning “general average contribution from cargo-owners” based on a complicated adjustment by adjusters in the city of London. Lawrence J was certainly no specialist in general average, neither at the bar nor on the bench. Rose was argued for 22 days in May 1891 and judgment was ‘reserved’ and delivered six months later on Nov. 12, 1891 after Counsel reminded the Judge about the non-delivery of the judgment. Scrutton L J had appeared as a lawyer in the case and he narrated before the Cambridge University Law Society in Nov. 1920, about the manner in which Lawrence J gave judgment in Rose: (see Scrutton, ‘The Works of the Commercial Courts’ (1923) C LJ 6 at p 14).

“Six months after the judgment was reserved, Counsel timidly took their courage in both hands, and went to ask whether his Lordship would be able to give the results of his consideration shortly. And he said he would. He came into Court, and he said this was a case raising questions of general average. ‘The first question was. ‘What

was the first question, Mr. Cohen?’ Mr. Cohen told him what the first question was. He said: ‘Yes, I agree with the average stater’. ‘And the second question, ‘Mr. Barnes, what exactly was it?’ And so with the third question, he said ‘I agree with the average stater; judgment for the plaintiff.’...The various businessmen concerned said: ‘What is this system you are offering us? Let us have Judges who understand our dispute. We have no desire to bring our case on as a means of educating people who have never heard of the matter involved before’.

When the case in Rose went in appeal to the Court of Appeal, Lord Esher stated:

“This has been a significantly troublesome case anyway. If any body ought to be paid commission, I think it is the Court’

and the judgment of Lawrence J was reversed. On further appeal (see 1894 A.C. 687) the House of Lords partly modified the judgment of the Court of Appeal.

The offshoot of Rose was a resolution of the Council of Judges on June 17, 1892, to the effect that there should be a ‘commercial court for London cases’ arising from the ordinary transactions of merchants and traders in the city of London. They were established in 1885 and the first commercial cause was argued before Mathew J as the Commercial Judge on March 1, 1895 concerning a claim for an account by a Flemish cloth manufacturer against their London agent. (1895) 1 Com Case IX. The establishment of

the commercial court was one of the most successful and enduring judicial experiments, implemented without legislation or government assistance, to the enormous benefit of the city of London and the international community (See also 'The Origin of the Commercial Court' (1944) *Law Quarterly Review*, 324).

As is the case with all reforms, objections were raised even in England in regard to the formation of a separate Commercial Division in the High Court. In fact, in the resolution of the English Judges dated 17th June, 1892, it is stated that five out of twenty Judges, namely Lord Justice Coleridge LCJ, Denman, Hawkins, Day and Grantham JJ dissented. At the late stage of his judicial career, Lord Coleridge, one of the dissenting Judges, was more than content, in the words of his obituarant, 'to let things slide, to take no great trouble, and to find more pleasure in his favourite authors than in the reports and benches of his Court'. (*The Times*, June 15, 1894).

The Commercial Court which came to be established in UK in the above manner in 1895 continues still to be part of the Queen's Bench Division in the High Court. In the beginning, it was so designated by a resolution of the Judges. However, in 1970, by statute the 'Commercial Court' was recognized as a Division of the High Court. This was done under the Administration of Justice Act, 1970 (see 3(1)). This Act is now replaced by the Administration of Justice Act, 1981.

The first Judge in the English Commercial Court, Mathew J envisaged the establishment of a special court with a simple procedure

which might be better to meet the requirement of the commercial community, and thus avoid unnecessary delay and inconvenience and the greater expense of the ordinary procedure (see Barry vs. Peruvian Corp. Ltd. (1896)(1)QB 208 (CA) per Lord Ester and an article in (1902) 46 Sol Jo 644).

The Commercial Court in UK sought to adapt its procedure to the continually changing needs of the commercial community. For this purpose, a Commercial Court Users Liaison Committee was formed to provide for a flow of information and suggestions between the Court and those who appear there, either as litigants or as their professional advisers. (see Practice Notice 1908 (1) All ER 399. This Committee has been replaced by the Commercial Court Committee, to which representations may be addressed through its Secretary at the Royal Courts of Justice. (see Halsbury's Laws of England, Vol. 37, Practice and Procedure, para 591, footnote 1).

Halsbury's Laws of England points out (para 591, Vol. 37) that under sec. 6 of the Administration of Justice Act, 1981, the Judges of the Commercial Court are such of the puisne Judges of the High Court as the Lord Chancellor may, from time to time, nominate, to be commercial Judges. The purpose of the Commercial Court is to provide for the mercantile community a simplified procedure with briefer pleadings and more expeditious hearings and trials before experienced Judges in commercial actions. Special provisions for commercial actions in the Queen's Bench Division was made in the rules of the Supreme Court (RSC Order 72) since replaced by the Civil Procedure Rules (CPR).

U.S.A.(A) New York:

In 1993, in the State of New York, the Supreme Court, Civil Branch, New York County established commercial courts in four Parts on an experimental basis. (see http://www.courts.state.ny.us/com.div/brief_history_of_CD.htm). The aim was to concentrate litigation in that Court in those Parts. The reaction of commercial practitioners was very favourable. In Jan., 1995, a task force of the Commercial and Federal Litigation Section of the New York State Bar Association recommended that these Commercial Parts be expanded. Specifically, it was proposed that a Commercial Division of the State Supreme Court be established in areas of the State in which commercial litigation was prosecuted.

Shortly thereafter, the Chief Judge, Judith S. Kaye, created the Commercial Courts Task Force, headed by Hon. E. Leo Milonas and Robert L. Haig, Esq., to examine the Report of the Commercial & Federal Section of the New York Bar Association and to make recommendations. The Task Force proposed that a Commercial Division be established in appropriate jurisdictions. The Task Force also made various recommendations regarding case management, technology and the like.

In Nov. 1995, the Commercial Division was established in Monroe County (Rochester) and also in the New York County, beginning with one Justice in the former and four in the latter.

The Commercial Division was intended as a vehicle for resolution of complicated disputes. Successful resolution of these disputes required particular expertise on the part of the Court across the broad and complex expanse of commercial law. Because disclosure in commercial cases could be difficult, protracted and expensive, the Division sought to bring to bear in each case, vigorous and efficient case management. Deadlines were set and enforced and discovery was managed as needed to protect the rights of the parties to fair disclosure while minimizing expense and delay. Motion practice, especially in the form of motions to dismiss or for summary judgment, became more common in commercial cases than in others. The case-load of the Division is thus particularly demanding, requiring of the Court scholarship, expense and wealth of energy.

The Commercial Division in New York had endeavoured to utilize technology to assist in handling its case-load effectively. The Division, for instance, contributed to the development of and pioneered implementation of case management soft-ware, now widely used in New York State. In Monroe County, the Division operates a calendar that can be answered electronically. In New York County, decisions of the Division Justices bearing the County Clerk's entry stamp are posted on the website promptly after their issuance. Decisions are posted on-line in other Counties as well.

A particularly noteworthy form of technology is the courtroom for the New Millennium in Supreme Court, New York County. This courtroom is equipped with state-of-the-art technology, such as flat-screen computer monitors in the jury box on the witness stand, and at the counsel-table; an electronic black-board; real time court reporting; an electronic projector, computer docking stations for counsel; video capability, and the like. Similar court-rooms are due to be introduced in the venues across the State.

An Alternative Dispute Resolution Programme (ADR) was established in New York County in early 1996. Pursuant to the rules of this programme, cases are referred by the Justices for mediation or any other form of ADR the parties might wish to undergo. Volunteer neutrals, of whom there are some 250, handle ADR proceedings. The Rules provide for deadlines for the process. A similar programme is in place in Westchester County and is being studied in other jurisdictions. Branches of the Division were established in Erie, Nassau and Westchester counties in 1999 and in Albany and Suffolk counties in 2002.

As to the commercial Parts, the Bar has responded favourably to the work of the Division, and so have leading representatives of the business community. For example, the Commercial and Federal Litigation Section described the Division as ‘a case study in successful judicial administration’. The Business counsel of New York State applauded the work of the Division, describing the Court in 2000 as “the envy of business in other States”. The American Corporate counsel Association has expressed its appreciation and support for the Division and urged other States to follow New York’s lead. The American Bar Association’s

Business Law Sections described the Division in 2000 as “a model of a specialized Court devoted to the resolution of business disputes”.

In general, the Commercial Division, Supreme Court, New York County entertains complex commercial and business disputes in which a party seeks compensatory damages totalling \$ 125,000 (exclusive of interest, costs and Attorney’s fees). Due to case load considerations, the Justices of the Division are empowered to transfer out of the Division cases which, in their judgment, do not fall within this category, notwithstanding that a party has described the case as ‘commercial’ on the request for judicial intervention.

Notwithstanding the foregoing limit of \$ 125,000 commercial cases in which compensatory damages of \$ 25,000 or more are sought, will not be transferred out of the Division, if filed in accordance with the procedures governing the Division’s ‘Filing by Electronic Means programme’. For this purpose, the words ‘commercial cases’ include commercial real property disputes and the types of matters identified, without regard to the monetary threshold of \$125,000, such as (1) suits to collect professional fees (2) cases seeking a declaratory judgment as to insurance coverage for a personal injury or property damage action, (3) proceedings to enforce a judgment regardless of nature of underlying case, (4) first-party insurance claims and actions by insurance claims and actions by insurers to collect premiums or rescind policies, (5) attorney malpractice-actions, (6) breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g. unfair competition), or statutory violation arising out of business dealings (e.g. sale of assets or securities, corporate structuring, partnership, shareholders,

joint ventures, and other business agreements, trade secrets and restrictive covenants; (7) transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cop. Units), (8) complicated transactions involving commercial real property, (9) commercial bank transactions, (10) internal affairs of business organizations or liability to third parties or officials thereof, (11) malpractice by accountants or actuaries, (12) complicated environmental insurance coverage litigation etc. (see http://www.nycourts.gov/comdiv/guidelines_for_assignment_of_casesnyc.htm).

In New York, 4 experienced Judges were assigned to staff the commercial Part which led to 35% increase in the disposition of business cases in 1993 as compared to 1992 (see Appendix B of Maryland Task Force Report, 2002). After 1995 Report of the ‘Commercial & Federal Litigation Section’ of the New York State Bar Association, recommending a ‘Commercial Court’, the ‘Commercial Division’ began hearing cases in New York County, with an additional commercial division judge designated in Monroe County (Rochester). By the end of 1996, the Chief Administrative Judge, New York County, reported that the business court resulted in a 29% reduction of the average time to dispose of cases assigned to it. Further there had been an 85% increase in the number of cases settled before trial, and a 20% decrease in the volume of pending cases. By 1998, the Court reported a 36% reduction in the average time to dispose of cases, reducing the average time which a case spends on the docket from 648 days to 412. These decreases in the number of cases on the docket allowed New York County to re-assign one of the business court judges to the general

docket as the amount of business cases formerly handled by 4 Judges could now be handled by 3. As a result, one full Judge's time became available to address and dispose of other cases on New York's civil and criminal docket creating judicial efficiency for all cases, not simply those pending before the business court.

New York's 'Commercial Division' has been widely acclaimed by business people throughout the country as a success. Robert Haig, Co-Chairperson of the Commercial Court Task Force in New York and advisor to 9 States and 5 counties on the establishment of specialized commercial courts to administer business litigation, testified before the Task Force that establishment of the Commercial Division has had a positive impact on New York's economy and that the business community is extremely enthusiastic about its continued operations.

The New York County branch of the Commercial Division includes a Court-annexed alternative dispute resolution programme, in which parties can obtain the services of a mediator from a roster of specially trained professionals experienced in Commercial matters. By Nov., 1999, the ADR programme had handled close to 1000 cases and achieved settlements in about 85% of cases. West Chester County of New York State also started ADR programme.

The NY Commercial Division takes advantage of technological advances such as Courtroom 2000, which uses computers, display monitors and multimedia equipment to increase the speed and effectiveness in which attorneys can try their cases. A digital evidence presentation system allows

instant retrieval and quick display of digitized documents. Real-time Court reporting allows parties to view the transcription of the proceedings as it is being created e.g. evidence. Trial time is shortened by 40%. Now the New York business division has extended the New York, Monroe, Nassau, West-Chester and Erie counties.

(B) Delaware:

Of the States which have some sort of a 'specialised Court' to hear complex business litigation, Delaware is the best-known, most highly respected and long-standing. Delaware's Court of Chancery has existed for over 200 years and has traditional equity justice. Its business specialization is not the result of a formal decision to specialize, but rather the incorporation of a large number of 'companies' in Delaware due to its favourable corporate statutes, and the applicability of principles of equity to many of the disputes in which these companies are involved.

The Court of Chancery in Delaware has five members who each handle approximately 200 to 225 cases per year. Each member of the Court is responsible for overseeing each case assigned to him until resolution. Members typically draft approximately 60 opinions each year, half of which are published. Business litigation makes up approximately 95% of the County's docket and the effectiveness of the Court, as well as of its national reputation which is brought about by a thorough understanding of corporate issues by the Court. Upon request, cases may be expedited with discovery and trial completed in as little as 3 months. Parties may also seek appeals to the Delaware Supreme Court.

(C) Philadelphia:

Philadelphia recently established 'business division' of its own. This division went into effect on January 2, 2000 and unlike the New York Commercial Division, it only accepts new filings (no pending cases were transferred). Over 100 new cases were filed in one year. The Division has 2 Judges and opinions are placed on a website for distribution to the public.

(D) Maryland:

(See Maryland Business and Technology Court, Task Force Report: created by House Bill 15. Chapter 10 of the Maryland Acts of 2000)

In Maryland, the Commercial Court is called the 'Business and Technology Court'. The Report of the Task Force recommended:

“establishing a statewide programme with specially trained judges and mediators to resolve substantial disputes affecting business entities, including the unique and specialized issues involving technology. The Task Force considered a separate court division within only certain counties, but concluded that creating local specialized courts was not needed or desired by many Judges and lawyers and would unfairly discriminate against business entities located in other areas of the State.

The Task Force reviewed different models of ‘business courts’ implemented in other jurisdictions. Recognizing the effectiveness of Maryland’s Differentiated Case Management (DCM) system, the Task Force concluded that a ‘programme’ based, in part, on different models of business courts in other states would best take advantage of the current DCM system, while providing a unique and specialized forum for handling business and technology disputes”. It said:

“...In the competitive national market for business, establishment of such a programme will serve to increase Maryland’s reputation as a place where disputes involving substantial business interest are effectively and efficiently resolved, thus increasing Maryland’s reputation as a favourable forum.”

The Task Force pointed out that in the light of significant advances brought about by not only the internet, but also the bioscience, aerospace, and information technology industries, to name a few, the business environment was changing at light speed. Business models that couldn’t have even been imagined a few years ago are now commonplace. These technological advancements have, however, created interesting dilemmas for all three branches of federal and state governments. It said:

“The role of the judiciary is even more problematic since its role is by design more re-active than pro-active. Judges will be confronted with new and unique issues never before seen as a result of emerging technology and new business models. Judicial decisions will have to look forward to the potential impact of technology, as well as back to

established legal precedent. The Judiciary can nevertheless take a leadership role in the development of new rules and establishments in its functions to adapt to these new challenges. Just as our judicial system created the statewide District Court system and the nationally regarded DCM system, the pressure to change offers the Judiciary an opportunity to forge its own adaptive institutions.”

Maryland’s General Assembly had passed House Bill 15 establishing the Task Force to consider the feasibility of the establishment of a specialized Court to function effectively and to efficiently administer business and technology disputes.

The Task Force recommended ADR programme, Electronic Filing, Case management and Expedited Appeal process – by way of special rules.

The findings of the Maryland Task Force are as follows:

- (1) Both the Maryland business and legal community desire an efficient, economical and hospitable forum for the administration of business and technology disputes in the circuit courts of Maryland State. The key to this forum is to assign Judges who can handle cases involving complex business and technology issues competently and in a timely manner, regardless of the geographic sites of the Court, the dispute, or even the parties.
- (2) The experience of other States that have created business courts initially began with a perception that such cases were not being handled satisfactorily by the general jurisdiction of courts in those

States. These deficiencies gave impetus to the creation of specialised business courts in those States which have taken various forms. These specialized courts have significantly improved the efficiency with which business cases have been disposed of in those States. None of these States, however, have created technology courts to specialize in the administration of disputes involving complex technology issues.

- (3) None of the States which have created specialized business courts had implemented a ‘differentiated case management’ (DCM) or other system similar to that already adopted in Maryland. Even the witnesses who testified before the Task Force from other States acknowledge the significance of Maryland’s DCM system in which complex cases, including business and technology cases, may be given increased attention.
- (4) Although there is no crisis in the handling of business and technology cases in the Circuit Courts of Maryland State, there are significant opportunities for improvement. The substance of that improvement is more important than the form it might take. There, the benefits that have been documented from the experience of those States and localities which have instituted ‘Business Courts’, ‘Business Division’ or ‘Business Case Management Programme’ were inventoried by the Task Force without reference to whether a division, as such, was required.
- (5) Potential Benefit of special procedures for the handling of substantive business and technology disputes include:
 - (a) Specialized training and education for those Judges with experience in business and technology issues, as well as the

application of specialized case management techniques and technology for the handling of these cases.

- (b) Greater efficiency resulting from the specialized training and education of Judges, clerks, and staff, as well as the application of the most modern technology, to the filing and processing of these cases.
- (c) More timely, rational, legally correct and perhaps most importantly predictable rulings from judges who are better trained and educated in the relevant subject-matter, and comfortable in handling these cases.
- (d) A higher rate of settlement of business and technology cases because of the increased correctness and predictability of an identifiable group of judges whose competency is certified by the requisite degree of judicial education and training and whose opinions are circulated on the Internet and other available media.
- (e) Greater efficiencies in the disposition of other types of cases within the jurisdiction of the Circuit Courts because of the increased time available for them as a result of the removal of time-consuming business and technology cases from the general court docket.
- (f) Instead of special Courts, it is sufficient to introduce a 'Business and Technology Management Programme'. There is an accelerated trend in the Bar towards specialization in commercial issues and if the cases they take up are before general trial Judges with neither the

knowledge nor the time to devote to these cases, it will result in a level which is not acceptable or tolerable.

- (g) The ‘Business and Technology Case Management Programme’ will be introduced by formulating (A) Organisation, (B) Assignment of cases to the Business & Technology Case Management Programme, (C) specifying actions not to be assigned to this Programme, (D) Case Management procedure.
- (h) Expedited appeals are part of the scheme.
- (i) ADR.
- (j) Electronic filing.
- (k) The Judicial Institute of Maryland, the entity charged with educating Judges in Maryland, in consultation with the Maryland State Bar Association, MICPEL, and the Universities of Maryland and Baltimore Law Schools, develop a programme for the training and continuing education of Judge, clerks and staff who will have duties assigned with the programme.
- (l) The Business and Technology Case Management Programme to be put on the website so as to receive wide publicity.

(E) Appendix B to the Report of Task Force (Maryland) refers to the ‘Experience of other States’ in US. It states that in US

1. Ten States have operational ‘business Court or ‘tracks’- Delaware, Illinois, Massachusetts, Wisconsin, Nevada, New Jersey, New York, North Carolina, Pennsylvania and Virginia.

2. Two States have established 'Complex Litigation Courts' which hear, among other types of cases, complex business litigation
 - California and Connecticut
3. Fourteen States have had some form of discussion about establishing a 'business court', with some states creating 'task forces' to study the feasibility-
Arizona, Colorado, Florida, Georgia, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, Ohio, Oklahoma and Texas.

(Twenty four States have no current plans).

France:

(http://216.239.39.104/translate_c?hl=en&u:http://www.justice.gouv.fr/publicity/tclod1807.htm)

A Bill was presented to the Council of Ministers on July 18, 2000 for 'carrying reform of the Commercial Courts'. The reform is now in the first phase, under the decree no. 94-659 of July 30, 1999, modifying the chart of these jurisdictions.

These changes in the commercial courts were envisaged to come into effect from January 1, 2002. The Bill provided for (1) the Constitution of mixed rooms in those jurisdictions, (2) capacities of the president of the commercial court and (3) the statute of the elected judges.

The proposal was that each commercial court should have mixed rooms of these jurisdictions and that they will consist of a magistrate and two elected judges as assessors. The magistrates are appointed for 3 years. The mixed rooms will apply collective procedures in relation to the whole of the litigations relating to the deed of commercial partnership or economic grouping of interest to the commercial object (constitution, operation, liquidation, etc.) of disputes relating to financial instruments defined by the law of July 2, 1996; and disputes relating to the application of the Ordinance of December 1, 1986 relating to the freedom of prices and competitions and Articles 81 and 82 of the treaty establishing the European Community.

As regards corrective procedures, “functions of Judge, police chief in whom economic dimension” is prevalent will remain exerted by an elected judge.

The court also exercises bankruptcy jurisdiction.

The Bill modifies the *1er* Title of Book IV of the Code of Legal Organisations. Article 2 of the Bill relating to the amendments states that the Commercial Courts are made up of jurisdictions of first authority magistrates of the seat pertaining to the legal body, the elected judges and of a clerk. The appeals are carried to the Court of Appeal. As per one of the clauses of Art 1, the commercial courts deal with

- (1) disputes relating to engagements between tradesmen and credit institutions;
- (2) disputes relating to commercial companies and

- (3) disputes arising out of commercial transactions between all people.

The Court also deals with disputes arising out of promissory notes.

However, parties can refer these disputes to referees.

Under Art 4, the judgments of commercial courts are given by the Judges sitting in an odd number, at least three. The Bill envisages a detailed procedure for disposal.

(IV) Ireland:

In Ireland, the Committee on Court Practice and Procedure, 2002 appointed by the Government, in its 27th Interim Report, considered the question of a commercial court at Dublin. (<http://www.courts.ie/press.nsf>).

The High Court of Ireland is the jurisdiction within which most important commercial cases proceed in Ireland. Such cases appear in a variety of court lists of that jurisdiction. Other jurisdictions also hear commercial cases.

The Committee observed that there was merit in establishing a more specialized approach to commercial cases. Under the directive of the President of the relevant jurisdiction, a division of that jurisdiction could be developed into a de facto commercial court. It would not involve the development of a stand-alone court. Rather, as is in fact done in certain areas already, judges with a particular experience may specialize in that area

of the jurisdiction. The High Court is the location for the larger and more important cases. Effectively, the High Court would include the commercial court. Specialisation would facilitate the public, the State, the major institutions, Irish companies, and multinational corporations. The convenience of the public and the efficient disposal of court cases would be more effectively secured by such a development.

The type of cases heard by the commercial court may expand. It may be wise to commence with a restricted list of cases, such as those relating to intellectual property, and/or applications under the Arbitration (International Commercial) Act, 1998. Consideration may be given to including applications under the Company Law Enforcement Act, 2001. However, if a pilot project was as extensive as to include a considerable volume of cases, the number of Judges nominated by the President of the High Court to such project, should reflect the estimated number and complexity of cases. As the project proceeds, it may be appropriate to review the classes of cases included. This would be for the President of the High Court to determine, or his nominee judges, with the assistance of the Courts Service, after the approximate consultation.

With the expansion of the jurisdiction of the Circuit Court, it may be that a specialized division of that Court might also be considered in the High Court.

The Committee stated that in order to facilitate a ‘Pilot Project Commercial Court’, it would be appropriate if a separate office was established by the Court Service to manage the administration of the

proposed Pilot Commercial Court. This would enable less cases to proceed with speed in accordance with any new directions, rules, or electronic practice and procedures. This could be done by establishing the ‘Commercial Court Service’.

In Ireland, financial and other benefits could accrue if a commercial court were established. Notwithstanding the past buoyancy of the Irish economy, the current realities of international trading, both for established domestic companies and enterprises, and the inward investment in the States demand an efficient and relevant legal system to enable the speedy resolution of commercial dispute procedures and/or arbitration.

The benefits of having a commercial court, the Committee stated, are substantial. They include, but are not limited to

- (1) the return to the State of new business attracted by the advantages of a jurisdiction with a functioning commercial court which offers a court system that accommodates modern business commercial needs.
- (2) the return to the State in existing businesses which benefit in the availability of the services of a commercial court.
- (3) the savings to business which will flow from using modern communication techniques in e-commerce dispute resolution before the Court.
- (4) maintaining the State’s desire to be a global leader and player in e-commerce through the provision of e-court services. The

attraction to other existing State initiatives that will benefit from the existence of a commercial court are indeed obvious.

The Committee observed that the relevant factors for a Pilot Commercial Court are:

- (a) The Pilot Commercial Court would require support from the relevant institutions.
- (b) The planning of courts in the four Court complexes should include planning to enable the development of a commercial court with e-court infrastructure.
- (c) Practice directions may be relevant.
- (d) Rules relating to a e-government legislation may be made in conjunction with the Department of Enterprise.
- (e) The President of the High Court may consider requesting some Judges to visit similar courts in other jurisdictions, such as Scotland and England.
- (f) The Courts Service may identify and train civil servants of the State in the Court Service to participate in such a project.
- (g) Appropriate resources should be made available and planned for such a project.

Recommendations

- (1) The Committee recommends continuing support and development of e-Courts in Ireland.

- (2) The Committee recommends a Pilot Project Commercial Court be developed in Dublin as a matter of urgency.
- (3) The management of such project may be under the direction of the President of the High Court and the Courts Service.
- (4) Matters which might be usefully considered in such a project include:
 - (i) The designation of specific judge to the Court by the President of the High Court and the availability of relevant judicial studies for the Judges.
 - (ii) The establishment of a separate office by the Courts Service to manage the administration of the Pilot Project Commercial Court and all pleadings and proceedings therein. The training of the nominated civil servant of the State.
 - (iii) The consideration at a later stage of implementing as part of the project, a Pilot e-court within the commercial court. This would require the establishment of an e-court room and the training of all relevant personnel and may be part of the Court's strategy to e-courts.
 - (iv) The consideration of altering, by legislation, rule or practice direction, the pleadings or proceedings in the pilot commercial court.
 - (v) The development of links to arbitration centers and the consideration of any necessary legislative or rule change. The consideration of the establishment of an arbitration centre to service the Commercial Court.

- (vi) The taking of any necessary steps to facilitate ease of access from Arbitration centers to the Commercial Court.

IV) Singapore:

Setting up of Special Commercial Courts in Singapore: (To start with the Admiralty Court.)

In line with recent national policy moves to restructure the Singapore economy, and in response to feedback from the legal programme, the Hon'ble the Chief Justice has adopted a recommendation to set up specialized commercial courts in the Supreme Court. This move emphasizes the Singapore judiciary's commitment to transform Singapore into a premier international commercial dispute resolution court in litigation, arbitration and mediation.

There has been growth in commercial dispute resolution and associated legal services in Singapore and around the world. The worldwide market for provision of such services is highly competitive. The introduction of specialist commercial courts is therefore an important move to position and promote Singapore as a leading jurisdiction of choice in both domestic and international commercial disputes.

The first specialist court to be introduced is the Admiralty Court. The establishment of this new Admiralty Court will reinforce Singapore's status as a leading shipping hub. Other special courts will be set up in due course.

(Ms. Thian Yee Sze, Asst. Regr., Supreme Court: E mail: Thian-Yee-Sze@Supcourt.gor.sg

(<http://www.supcourt.sg/news/sscmidiare123.pdj>)

(See <http://216.239.100/search?q=cag:>

QPGLOHRt1M.../SSC mediarel 127pdf +Commercial+Courts & ht=en&ie=UTF-) (4.2.2002).

(VI) Scotland:

(http://www.scotcourts.gov.uk/commercial/commercial_1.htm)

Scotland has been having a ‘Commercial Court’ at Edinburgh for a long time. The initial background is that the Court of Session has had special provisions for dealing with commercial actions for many years. The present much-revised arrangements have been operating since Sept. 1994.

In broad terms, their purpose is to enable specialist Judges to handle commercial cases quickly and flexibly. The relevant Rules and Practice Notes for commercial actions are available in the above mentioned website.

The definition of ‘commercial action’ is broad and so a wide range of cases may be dealt with under those arrangements. Broadly speaking, they include any transaction or dispute of a commercial or business nature. Examples are banking and insurance transactions, contracts for the sale or supply of goods or services (national or international) and commercial cases. The Court also deals with disputes about building contracts, partnership agreements and business property.

The Commercial Court at Edinburgh has three specialist Judges. The full time commercial Judge is Lord Mac Fadyen and there are two part time commercial judges, Lord Eassie and Lord Clarke.

The preliminary stage of a commercial case is as follows. The case is initially allocated to one of the three judges. In general, that judge will be responsible for overseeing the progress of the case and for deciding it at first instance. If a change has to be made, the case will be transferred to another commercial judge. Very soon after its allocation to the particular judge, the action will be brought before him for a preliminary hearing. The purpose of that hearing is to take stock of the dispute and to choose what appears to be the best means of resolving it. Sometimes, as a result of pre-litigation discussion or otherwise, the features of the dispute are already well-defined and, with only a little preliminary treatment, the case can be sent for adjudication where the dispute is on a point of law, such as the interpretation of a contract, and the Court may be able to decide it without hearing evidence. When there is a dispute on facts, the Court may quickly order a hearing of evidence. More commonly, it will be necessary to hold a number of preliminary or similar hearings before the issues are sufficiently focused to allow the case to be sent for debate or the hearing of evidence.

At all those preliminary stages, the Judge will take an active part in the discussion. His intervention may help parties to narrow the gap between them and lead to an early settlement. In other cases, some important issue or issues may be singled out from the rest and dealt with separately in the hope that, by resolving that point, the court will help to resolve the whole

dispute. The Court may ask a technical expert to decide, or express a view on some technical aspect of a case. For example, the Court might send a question of valuation in a building-contract dispute to a quantity surveyor for that purpose. Conversely, parties in an arbitration conducted by a non-legal arbitrator may ask a commercial judge to decide a legal point which has arisen.

The preliminary stages are essentially informal and have the character more of a chaired discussion than of a formal court hearing. Consistently with that, neither the Judge nor the parties' representatives wear formal court-dress at those hearings.

Pleading the case is the next stage. While written pleadings (summons and defences) remain the primary method by which parties set out their cases, the commercial judges encourage the use of alternative techniques. The key-note is flexibility. Where a case, or part of it, has been formulated in a pre-litigation document (such as in a claim document in a building dispute), the judge may be content to use it, with only a minimal amount of written pleading. Likewise, expert reports are commonly referred to without any requirement to translate them into "lawyer's language". Computer generated spreadsheets have been used successfully to set out complicated matters in detail, as in disputes between landlords and tenants over the state of repair of a building.

As to the stage of the decision, the commercial judges insist on frank and early disclosure of relevant (but only relevant) documents. This helps to identify the strengths and weaknesses of the respective positions and

facilitates settlements. When the case proceeds to a full hearing, that hearing is more formal. Detailed legal argument will be presented or evidence heard from witnesses. The emphasis, however, remains on efficient and expeditious disposal. Parties are encouraged to agree (on) matters which are non-contentious and to deal contentious matters without undue elaboration.

Information technology is an important feature of the arrangements for commercial actions. The judge's court-diaries are available on a computer in the courtroom. Accordingly, when it is necessary to fix a further hearing, the date and time of the hearing can be fixed there and then. The computer is also used in framing court orders and in other ways to improve the speed and quality of information available. Most documents required during the course of an action can be e-mailed to the commercial court using e-mail address commercial@scotcourts.gov.uk. Interlocutory orders, once signed, are e-mailed to the solicitors for the parties.

A Consultative Committee on commercial action is constituted consisting of commercial judges, representatives of the legal profession and representatives from commerce and industry. The court encourages the free flow of information also and of views between the Court and the business community about the practical operation of the commercial court.

(VII) Philippines (Manila):

(<http://www.manilatimes.net/national/2003/jun/26/business/20030626bus17.html>)

The Supreme Court at Manila, Philippines, has issued a resolution designating 65 lower courts in the country as Special Commercial Courts that will try and decide cases involving violation of Intellectual Property Rights (IPR) which will fall within their jurisdiction and those cases formerly cognizable by the Securities and Exchange Commission (SEC).

In a resolution dated June 17, 2003, the Supreme Court en banc also revoked the designation of Intellectual Property Rights in the light of its decision to put up special courts to handle IP cases.

The resolution noted that the Special Commercial Courts (SCC) shall have jurisdiction over cases arising within their respective territorial jurisdiction.

“Thus, cases shall be filed in the office of the Clerk of the Court in the official station of the designated SCC” the Supreme Court said.

Prior to the issuance of the new resolution, the Court, in its Nov. 2000 ruling, designated certain branches of the regional trial Courts (RTCs) to try and decide cases formerly covered by the SEC.

Pursuant to the same resolution, the Supreme Court designated 65 regional trial courts all over the country as SEC courts.

In an Arbitration Order No. 104-96 issued in Oct. 1996, the RTCs in the National Capital Region (NCR) and Regions 3,4,6,7,10 and 11, 27 Judges were designated to try and decide cases for IPR violations.

To ensure the speedy disposition of cases involving violations of the Intellectual Property Code, the SC, through a resolution on Feb. 19, 2002, designated the RTCs in Regions 1,2,5,8 and 12, with a total of seven judges, and the Manila RTC Branch 24 as Special IP Courts.

As of present, the special IP Courts have a total 503 pending cases. Out of this number, 434 IP cases are pending in NCR courts.

As of present, the special IP courts were established, 15 designated courts in various regions have not received IP cases and do not warrant their continued designation as IP courts. The SC resolved:

“To streamline the Court structure and to promote expediency and efficacy to handling such special cases, the jurisdiction to hear and decide IPC and SEC cases are best consolidated in one Court”.

The SC resolution took effect on July 1, 2003 (Joel R. San Juan, Reporter)

(VIII) Pakistan:

(<http://www.dawn.com/2000/02/24/ebr3.htm>) (24.2.2000)

One of the types of disputes which have been specially treated in Pakistan concern international commercial disputes between exporters and importers. They may, for example, involve short supply or inferior quality of goods or non-payment of commission, non-shipment of the ordered goods or cancellation of orders. Commercial courts have been

provided for in the Imports and Exports Control Act, 1950, which empowers the Federal Government to establish as many commercial courts as it considers necessary. In terms of powers vested in the Federal Government, two commercial courts, one each at Lahore and Karachi have been set up to adjudicate such trade disputes. These courts take cognizance of trade disputes on complaints in writing made by an officer of the Export Promotion Bureau. The decision of the Commercial Courts is final and cannot be questioned in any court of law.

(IX) United Arab Emirates:

(<http://www.ameinfo.com/rews/Detailed/17527.html>). (22.1.2003)

The proposal here was that there should be maritime or commercial courts in the United Arab Emirates, with properly trained judges. This was referred to by Mr. Mills, partner in the London based law firm Clyde & Co. He said, 'Part of the problem is that the judges who deal with petty squabbles between neighbours, etc. also deal with high value and complicated shipping, insurance and commercial cases. Many of the judges have had little or no experience of these cases and this can lead to misunderstanding. There we need to ensure speedy settlement of case in the region. For example, the consolidation of various claims against a particular ship would be helpful, to avoid inconsistency and delay. He also suggested that Courts should also have the power to order substantial legal costs to the successful plaintiff. Under the existing system, the winning parties are only entitled to recover court fees and a nominal sum for lawyer's fees, leaving them substantially out of pocket. (see also www.seatiade-middleeast.com).

(X) Poland:

(<http://www.prawo.org.pl/clcf/legal/courtprocedure.html>)

‘Commercial Courts’ examine the cases connected with commercial activity conducted in a professional way by economic entities. The commercial courts are also competent for company cases against economic entities concerning the scope of determining the environment and bringing them to the previous condition and repairing the damage connected with and relating to monopolistic policy.

‘The proceedings in commercial cases are built in a way to lessen antagonizement of the parties, since they often remain in cooperation. For that reason, the conciliation proceedings are obligatory. In general, the proceedings in commercial cases do not differ from ordinary proceedings, but are built in a way to accelerate the same.’

(XI) Russia:

(http://www.kcl.ac.uk/depsta/law/ugrad/study/course_mats/russian/ctsys.html)

It is an interesting characteristic of the Russian legal system that it has a separate system of effective commercial courts but there is no commercial code.

The High Arbitrazh Court at the top of the court system decides disputes between businesses. There are certain exceptions but bankruptcy

cases and shareholder suits against companies, even if they involve private citizens, currently are heard only by these courts. Appeals lie to the Supreme Court. Commercial cases can also go to the constitutional court, if they involve constitutional issues particularly where legality of taxation laws are involved.

(see <http://home.law.uiuc.edu/rpmaggs/concom.htm>.)

(XII) Romania:

(<http://www.bsus.umd.edu/ecom/murrel/romania/romlaw.html>)

(Peter Murrel's Website) Demand and supply in Romanian commercial courts – generating Information for Institutional Reform:

Institutional reform is much emphasized in transition countries, but the process of constructing workable institutions is not well-understood. One element of this process which is often reflected is the generation of empirical information that can aid in the process of institutional design.

Such information can be produced for one vital area of reform in the transition and developing economies and for commercial court reform. Estimates of the supply-demand model promote commercial court services in Romania. The model's construction suggests methodological problems in existing studies and the estimates quantify the possible biases, which would lead to erroneous conclusions on institutional design. The results show the simultaneous relation between congestion and caseload and the exogenous effects of resources, legal culture, options for appeal, and economic environment. Coincidentally, Romania recently implemented

reforms which are very pertinent. Some failures of institutional reform are due to lack of empirical input into institutional design.

In the Emergency Government Ordinance 138 (Sept. 14, 2000), the Romanian Government announced a set of procedural reforms affecting litigation of commercial cases in Romania.

A detailed statistical analysis of delay in these courts has been made by Prof. Peter Murrell (University of Maryland recently).

(XIII) Ukraine:

(<http://www.pwcglobal.com/servlet/printformat?url=http://pwcglobal.com/extweb/pw..>)

Effective from 5th July, 2001, Ukraine introduced major reforms to the judicial system by amending the “Law of Ukraine and quot”; “On Judicial System of Ukraine & quot”; here the new system of ‘commercial courts’ is described.

The new hierarchy of commercial courts consists of:

- (a) Local Commercial Courts (previously regional arbitration courts and the arbitration courts of Kyiv and Sevastopol);
- (b) Appeal Commercial Courts; and
- (c) The Supreme Commercial Court of Ukraine (previously the Supreme Arbitration Court).

Commercial Courts inherited the authority to consider disputes between legal entities, and between legal entities and state authority (including the tax authorities), as well as to settle bankruptcy cases.

The local Commercial Court is the Court of first instance considering any disputes (including disputes with the local tax authorities) in the territory of Ukraine's administrative regions. Disputes with the State Tax Administration of Ukraine and other national bodies fall under jurisdiction of the Commercial Court of Kyiv. Earlier, such disputes fell under jurisdiction of the Supreme Arbitrage Court of Ukraine. A division of a local Commercial Court shall come into force in ten days from the date of its approval.

Appeal Commercial Court is the Court of Appeals. There are 8 Appeal Courts, jurisdiction of which covers six specific territories. The appeal commercial court may review decisions taken by local commercial courts located in the territory over which the competence of an Appeal Court is extended and it can review its own decisions due to newly discovered circumstances.

The Supreme Commercial Court governs activities of local and Appeal Commercial Courts and reviews their decisions under cassation proceedings and it will also re-consider cases due to any newly discovered circumstances. The Supreme Commercial Court gives explanations regarding practice of enforcement of legislation regulating commercial activities. A cassation claim can be filed with the Supreme Commercial Court within one month from the date a decision is taken by the local

commercial court or the date when a resolution taken by the Appeal Commercial Court comes into force. A cassation claim shall be reviewed within two months since the date the claim is received.

Upon consideration of a claim, the Supreme Commercial Court takes a resolution, which shall become effective from the date of its issuance.

General prosecutor of Ukraine or the parties to a law suit may dispute a resolution taken by the Supreme Commercial Court with the Supreme Court, which is the highest judicial body of the courts of general jurisdiction. A cassation claim to the resolution of the Supreme Commercial Court may be submitted not later than a month from the date of its issuance. Proceedings on revision of the Supreme Commercial Court by the Supreme Court shall be commenced with the consent of at least five Judges and shall be considered within a month from the date of receiving a cassation claim. A resolution of the Supreme Court shall be final and shall not be subject to appeal.

A commercial court may review its own decision, which has come into force, due to newly discovered circumstances, which are substantial for the case and were not known to the claimant.

(XIV) Kenya:

(http://www.legalbrief.co.2a/view_1.php?artnum=8703)

Kenyan courts are cracking down in inefficiency and laxity. Head of the High Court's Commercial Division, Judge Tom Mbalute, has proposed

various steps, including the refusal to grant adjournments of cases set for hearing. Hearing of matters before the commercial courts could not be delayed unless lawyers for the parties are engaged in other matters in the Appeal Court, he said, and no adjournments would be permitted if the counsel were engaged before other judges or magistrates in the High Court or lower courts.

(XV) Ghana:

(http://www.pefghana.org/news/details_n.cfm?EmpID=824)

It has been felt that it is increasingly necessary for the establishment of special court to deal with commercial disputes to ensure transparency, efficiency and also speed up the process of dispute settlement between investors as well and promote viable trade and commerce. At a workshop organized on 30th April to May 2nd, 2003, it was opined that commercial courts, when established, would cater to the needs of the business community and would, in particular, encourage business development and investment growth by ensuring timely and efficient processing of commercial disputes. Some of the cases to be handled by the courts, as proposed, include:

- (a) the contractual relationship of a business or commercial organization,
- (b) the liability of a commercial or business organization,
- (c) the restructuring or payment of commercial debts by or to a business or commercial organization or person,
- (d) the winding up or bankruptcy of a commercial or business organization or person and

- (e) the enforcement of commercial court award.

Summing up:

It will be seen that several countries have introduced the concept of 'Commercial Division' in their judicial decision making process. There may be differences in certain details but what is important is the introduction of the very concept of Commercial Division. Mostly, these are not Courts outside the existing judicial system but of a new Division in the existing system. They deal with cases of high pecuniary value and are Courts at a higher level than where the actions would otherwise have been normally filed. These Courts in various countries are manned by Judges with special experience in commercial matters. The procedure is more fast. The Courts also have state-of-the-art high-tech systems.

CHAPTER IV

COMMERCIAL DIVISION – WHAT CASES HAVE BEEN ASSIGNED IN UK, USA AND DELHI HIGH COURT

The crucial question is: How is a ‘commercial case’ identified for allocation to the Commercial Division? There can be a variety of cases which can fall within the meaning of the word ‘commercial’ for purposes of allocation to the Commercial Division of the High Court. Further, if some of them are within the exclusive jurisdiction of some special Courts in our country, such cases, even if they are ‘commercial’, will have to be excluded. We shall initially refer to the mode of allotment of commercial cases in UK, USA to the Commercial Division and what cases are described as ‘commercial cases’ in Delhi High Court Rules. We shall also refer to the Delhi High Court rules which refer to disposal of ‘commercial cases’ and ‘commercial appeals’.

UK:

In UK, according to Rule 58.1(2) of the Civil Procedure Rules, a ‘commercial claim’ is defined as follows:

“Rule 58.1(2): In this Part and its practice direction, ‘commercial claim’ means any claim arising out of the transaction of trade and commerce and includes any claim relating to –

- (a) a business document or contract;
- (b) the export or import of goods;
- (c) the carriage of goods by land, sea, air or pipeline;

- (d) the exploitation of oil and gas reserves or other natural resources;
- (e) insurance and reinsurance;
- (f) banking and financial services;
- (g) the operation of markets and exchanges;
- (h) the purchase and sale of commodities;
- (i) the construction of ships;
- (j) business agency; and
- (k) arbitration.”

USA:

(I) Supreme Court, Monroe County, NY State: (Nov. 20, 2000) Guidelines applicable for assignment of cases to the Commercial Division, Supreme Court, Civil Bench, Monroe County in the State of New York, state that the said Division will entertain complex commercial and business disputes in which a party seeks compensatory damages totaling \$ 25,000 or more, exclusive of punitive damages, costs, and attorney fees; and exclusive of any non-commercial claims, non-commercial cross-claims, or non-commercial counter-claims. It states:

“(A) Such business and commercial disputes shall include the following types of cases:

CONTRACT

1. Breach of contract, fraud or misrepresentation actions involving:

- (a) Purchase or sale of securities.
- (b) Uniform Commercial Code transactions.
- (c) Purchase or sale of the assets of a business, or merger, consolidation or recapitalization of a business.
- (d) Providing of goods or services by or to a business entity.
- (e) Purchase or sale or lease of, or security interest in, commercial real property or personal property.
- (f) Partnership, shareholder or joint venture agreements.
- (g) Franchise, distribution or licensing agreements.

BUSINESS CORPORATION LAW

- 2. Shareholder derivative actions.
- 3. Dissolution or liquidation of corporations.
- 4. Actions involving liability and indemnity of corporate directors and officers.
- 5. Actions involving the internal affairs of corporations, such as voting and inspection rights of shareholders of directors, authorization of corporate acts or interpretations of articles or by-laws.

PARTNERSHIP LAW

6. Actions involving general and limited partners and partnerships.

UNIFORM COMMERCIAL CODE

7. Commercial loans (including failures to pay commercial loans), negotiable instruments, letters of credit and bank transactions.

8. Actions involving allegations of business torts, including unfair competition, interference with business advantage or contractual relations.

OTHER COMMERCIAL MATTERS

9. Actions involving employment agreements or employee incentive or retirement plans (not including qualified retirement plans) in which the business or commercial issues predominate.

10. Declaratory judgment actions and third party indemnification claims against insurance companies where the underlying cause of action is contractual in nature or would otherwise fall within the guidelines set forth herein. (Specifically not included are Declaratory Judgment Actions and third party claims relating to fire loss, motor vehicle actions and tort claims.)

11. Commercial class actions.

12. Opening of default judgments where the underlying cause of action is commercial in nature and would otherwise fall within the monetary and jurisdictional guidelines set forth herein.

13. Actions may involve individuals, and business entities, as long as all other criteria are met.

(B) Matters Not Included as Commercial Court Cases include the following:

Non-commercial landlord/tenant disputes

Matrimonial disputes; including the enforcement of Separation Agreements or Divorce Decrees

Foreclosures, even if they involve commercial buildings and commercial parties

Matters falling under the provisions of the real property actions and proceedings law

Proceedings to enforce a judgment, including applications for information subpoenas and contempt, without regard as to whether or not the underlying action is commercial in nature

Products liability claims, including merchantability and fitness for some particular purpose claims

Discharge, modification or foreclosure of mechanics' or other liens

Declaratory judgment actions involving indemnification claims under insurance policies relating to underlying actions which are NOT commercial in nature, including, but not limited to, underlying claims for fire loss, motor vehicle actions and tort claims

Opening/vacating or modifying default judgments on actions which are NOT commercial in nature, including all matters which do not fall within the monetary and jurisdictional guidelines set forth under Criteria

Actions by or against Medicare, Medicaid, or the Department of Social Services or enforcement of legal rights under law

Discrimination cases (age, sex etc.) except when they are part of or under the terms of a contract

Collection matters involving the collection for legal, medical, accounting, or architectural fees

Legal, medical or accounting malpractice actions even where a contract cause of action is also stated.”

II Maryland, Business and Technology Court (Task Force Report) Assignment of Cases to the Business and Technology Case Management Program

1. Cases subject to Business and Technology Case Management Program

The Task Force believes that any system for determining whether a case should be assigned to the Program must be flexible. It is recommended that the selection system be based upon a format that establishes that some cases be presumptively included, while others are presumptively excluded. As the legal and business worlds develop in the face of ever emerging technology, however, it is contemplated, and indeed expected, that such presumptions will be modified by judicial decision and/or rule.

If both parties agree to opt out of the Program, this should be permitted. In resolving presumptions, consideration should be given to the desire of both parties.

Assignment to the Program should be reserved for cases where there is a substantial amount in controversy. This will typically include significant monetary damages, but may also include consideration of potential future economic loss in cases where non-monetary relief is the primary relief being sought (*i.e.*, injunctive or declaratory relief).

The Program should be limited primarily to cases involving business

entities, including individual sole proprietorships or individual partners where the claim is against the partnership. Individuals, however, should be permitted to take advantage of the benefits of the Program if involved in a dispute appropriate for Program designation.

Cases should present commercial and/or technology issues of such a complex nature that specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles which may be applicable.

Thus, the Task Force recommends that notwithstanding anything to the contrary in any Differentiated Case Management program, cases shall be assigned to the Business and Technology Case Management Program based on the following criteria:

a. Only complaints seeking compensatory damages totaling \$50,000.00 or more, or complaints seeking primarily injunctive or other equitable relief, will be considered eligible for assignment to the Program if the other criteria identified below are met.

b. Actions in which the principal claims involve the following should presumptively be assigned to the Program.

(i) Disputes arising out of technology development, maintenance and consulting agreements including software,

network and Internet web site development and maintenance agreements.

(ii) Disputes arising out of the hosting of Internet web sites for business entities.

(iii) Disputes arising out of technology licensing agreements, including software and biotechnology licensing agreements or any agreement involving the licensing of any intellectual property rights, including patent rights.

(iv) Actions relating to the internal affairs of businesses (*i.e.*, corporations, general partnerships, limited liability partnerships, sole proprietorships, professional associations, real estate investment trusts, and joint ventures), including the rights or obligations between or among shareholders, partners and members or the liability or indemnity of officers, directors, managers, trustees, or partners.

(v) Actions claiming breach of contract, fraud, misrepresentation or statutory violations arising out of business dealings.

(vi) Shareholder derivative and commercial class actions.

(vii) Actions arising out of commercial bank transactions.

(viii) Declaratory judgment and indemnification claims brought by or against insurers where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be assigned to the Program.

(ix) Actions relating to trade secret, non-corporate, non-solicitation, and confidentiality agreements.

(x) Business tort actions, including claims for unfair competition or violations of Maryland's Trade Secret or Unfair and Deceptive Trade Practices Acts.

(xi) Commercial real property disputes other than landlord/tenant disputes.

(xii) Disputes involving Maryland's Uniform Computer Information Transactions Act, including alleged breaches of the warranty provisions provided in such Act.

(xiii) Professional malpractice claims in connection with the rendering of professional services to a business entity.

(xiv) Claims arising out of violations of Maryland's Anti-Trust Act.

(xv) Claims arising out of violations of Maryland's Securities Act.

c. Actions in which the principal claims involve the following shall be presumptively not assigned to the Business and Technology Case Management Program.

- (i) Personal injury, survival or wrongful death matters.
- (ii) Medical malpractice matters.
- (iii) Landlord/Tenant matters.
- (iv) Professional fee disputes.
- (v) Professional malpractice claims, other than those brought in connection with the rendering of professional services to a business enterprise.
- (vi) Employee/employer disputes, other than those relating to matters otherwise assigned to the Program.
- (vii) Administrative agency, tax, zoning and other appeals.
- (viii) Criminal matters, including computer-related crimes.
- (ix) Proceedings to enforce judgments of any type.

Delhi High Court Rules:

So far as the Delhi High Court is concerned, there appear to be Rules for designating certain type of cases as ‘commercial cases’. There are Rules applicable also to ‘Commercial Appeals’.

In Part V, Chapter III of the Rules relating to ‘jurisdiction’, there are four parts. Part A of Chapter III deals with ‘Rules Regulating the Practice of the High Court in the Hearing of Causes and Other Matters’. Part B of Chapter III deals with ‘jurisdiction of a single judge and the Benches of the Court’. Part C deals with ‘powers delegated to the Registrar for disposal of certain Judicial Matters’.

Appeals: Part D is relevant for our purpose and it bears the title, Appeals from decrees in Commercial Matters. It contains four Rules which read as follows:

- “1. “Commercial causes” include causes arising out of the ordinary transactions of merchants, bankers and traders, such as those relating to the construction of mercantile documents, export or import of merchandize, affreightment, carriage of goods by land, insurance, banking and mercantile documents, mercantile agency, mercantile usage and infringements of trade marks and passing off actions. Suits on ordinary loans and mortgages are not “Commercial causes.”
2. The Chief Justice shall, from time to time, nominate one of the Judges of the Court to hear “Commercial causes”.

3. (a) All cases under the Companies Act, 1956 and cases affecting the responsibility of a Railway Administration as carriers, will be treated as “Commercial causes”.

(b) The Honourable Judges may, however, mark any other case as a “Commercial cause” either at the request of the parties or suo motu, if satisfied that the said case is a “Commercial cause” as defined in Rule 1.

4. All appeals, which have been marked as “Commercial causes” by order of a Judge under Rule 3 shall be brought to a hearing as early as may be practicable, and shall, as far as possible, be set down before the Judge appointed from time to time by the Chief Justice to hear “Commercial causes”, or before a Bench of which such Judge is a member. Such causes shall be given priority on the day of hearing over all other appeals except part-heard appeals and cases frequently postponed.”

Original matters:

In Part VI of the Rules, we have the Delhi High Court (Original Side) Rules, 1967 made in exercise of powers conferred under sections 122 and 129 of the Code of Civil Procedure, 1908 and sec. 7 of the Delhi High Court Act, 1966 (Act 26 of 1966), with respect to the practice and procedure for the exercise of its ordinary original civil jurisdiction.

Chapter XVI refers to ‘Commercial Suits’. It contains two Rules:

“1. **Commercial cases defined** – Commercial suits include suit arising out of the ordinary transactions of merchants, bankers and traders; and amongst others those relating to the construction of mercantile documents, export or import of merchandise, affraightment, carriage of goods by land, sea or air insurance, banking and mercantile agency and mercantile usages.

2. **Plaint in such cases to be marked “Commercial” Suits** – Where a plaintiff, on the presentation of the plaint, applies that his suit may be dealt with as a commercial suit, the Registrar shall if satisfied that the suit is a commercial suit and has been brought without undue delay, cause the plaint to be marked with the words “Commercial Suit” in addition to the usual endorsements.

Explanation – A suit which has been brought within six months of the cause of action having arisen has been brought without undue delay.”

It will be seen that the Delhi High Court Rules require special classification of ‘commercial’ Appeals as well as ‘original side matters’. The Rules do define the word ‘commercial’.

Our proposals are that ‘Commercial Matters’ have to be dealt with by the ‘Commercial Division of the High Courts on the original side, consisting of matters which are above a minimum pecuniary value of (say) rupees one crore or more and there should be a ‘fast track’ procedure and subject to one appeal to the Supreme Court of India. Hence, it will be necessary to make substantial legislative changes applicable not only to the Delhi High Court but applicable to all the High Courts. These proposals will be stated in Chapter VIII.

Summary: The above discussion and classification of cases as ‘commercial’ for purposes of allotment to the Commercial Division in UK, USA and for classification of contractual case in the Delhi High Court give us a brief outline of the system. Broadly, we have to do the following:

- (a) We have initially to fix a monetary limit of (say), Rs.1 crore or more as the minimum pecuniary jurisdiction of cases which will be listed in the Commercial Division of the High Court.
- (b) We have next to list the type of cases which can be called ‘commercial’ and be allocated to the ‘Commercial Division’ of the High Court.
- (c) We may also exclude from the Commercial Division specified classes of cases which are not, on their face, commercial.
- (d) We may exclude from the Commercial Division, specified classes of cases which are commercial but in regard to which some other statute has specified a separate and exclusive Court, tribunal or authority to exercise jurisdiction (e.g. winding up of a commercial companies, TRAI and TDSAT, SEBI, MACT etc.).
- (e) We have to provide that all these cases will be dealt with on the original side of the High Court under a ‘fast track’ procedure with e-filing and other high-tech facilities and that there should be a statutory appeal to the Supreme Court of India.
- (f) It will be necessary to transfer pending appeals,- which have been filed in the High Court against decrees passed by the Courts subordinate to the High Court or decrees passed by learned single Judge of the High Court,- to the Commercial Division. In the case

of such appeals which are decided by the Commercial Division, it is not necessary to provide a statutory appeal.

- (g) Execution proceedings arising out of suits or appeals filed or transferred to the Commercial Division must also be dealt with by the Commercial Division.
- (h) There is no need to provide a statutory appeal to the Supreme Court except to the extent provided in Order 43 of the Code of Civil Procedure.

All these aspects will be dealt with in Chapter IX.

Chapter V

Allocation of Cases to Commercial Division of High Courts by Parliamentary Statute – Constitutionally permissible

As stated in the earlier chapters, Commercial cases of high pecuniary value deserve and require to be disposed of faster. The existing procedures in our trial courts have to be changed to deal with such high-value cases by providing a Commercial Division in the High Court, (Original side) consisting of Division Benches with fast track procedure, in a separate division. These judgments of the Commercial Division would be subject to a statutory appeal to Supreme Court. The Supreme Court rules may provide for appeals being listed for preliminary hearing as is done in all cases where a statutory appeal is available at present.

The more important question is whether Parliament can, by law create such a ‘Commercial Division’ in the High Court, in the context of the powers of the High Court as they exist today, in regard to formation of a Division and powers of the Chief Justice of the High Court to constitute Division Benches and nominate Judges to those Benches.

It is well known that it is the prerogative of the High Court to constitute a separate Division and the privilege of the Chief Justice of the High Court to constitute the required number of Benches and to assign judicial work to the Judges in those Benches of the High Court. As to whether particular types of cases have to be heard by a Single Judge or a Division Bench is generally contained in the High Court rules or is based on resolutions of the Full Court of the High Court.

In as much as it is proposed that each High Court should have a ‘Commercial Division’ within the High Court (and it is not our proposal that separate ‘Commercial Courts’ as such have to be created de-hors the High Court), it is necessary to take care to see that the constitutional provisions in this behalf are complied with in letter and spirit. As the power of creation of Divisions is the function of the High Court and as the power of allocation of judicial work is vested in the Chief Justice of the High Court, it is to be absolutely assured that the present proposals do not adversely impinge on that powers of the High Court or the powers of the Chief Justices of the High Courts. Our proposals are intended to advance these powers, by creation of a separate Commercial Division in the High Court, on the lines it has been done in UK and in USA. As will be seen, the Constitution of India permits Parliament to enact laws for constitution of the Commercial Division and for laying down its procedure and as regards appeals against decrees/orders passed by the Commercial Division.

It may be useful in this connection to refer to sec. 6 of the (UK) Supreme Court Act, 1981. Section 1 states that in UK, the Supreme Court consists of the Court of Appeal as well as the High Court with its specialist divisions and other Courts and the Crown Court headed by the Lord Chancellor; the constitution of the Court of Appeal is mentioned in sec. 2 and the Divisions of the Court of Appeal are set out in sec. 3. The Constitution of the High Court is referred to in sec. 4. The Divisions of the High Court are referred to in sec. 5, namely, the Chancery Division, the Queen’s Bench Division and the Family Division. Then comes sec. 6 which refers to the Patents, Admiralty and Commercial Courts. Subsection (2) of

sec. 6 refers to the power of the Lord Chancellor to nominate Judges of the High Court to the Commercial Division from time to time. It is worthwhile extracting sec. 6:

“The Patents, Admiralty and Commercial Courts

- Sec.6 (1) There shall be
- (a) as part of the Chancery Division, a Patents Court; and
 - (b) as part of the Queen’s Division, an Admiralty Court and a Commercial Court.
- (2) The Judges of the Patents Court, of the Admiralty Court and of the Commercial Court shall be such of the puisne Judges of the High Court as the Lord Chancellor may from time to time nominate to be Judges of the Patents Court, Admiralty Judges and Commercial Judges respectively.”

In India, as stated earlier, the classification of Divisions in the High Court is done by the Rules of the High Court framed by the Full Court or by resolutions of the Full Court. The power of assigning judicial work to different Judges of the High Court is vested in the Chief Justice of the High Court. In every High Court, Judges sit either single or in panels of two or more Judges, as per the roster prepared by the Chief Justice to hear and dispose of various types of cases. Some Judges are required by the Chief Justice of the High Court to sit in Writ Jurisdiction, some in Civil jurisdiction, others in Criminal jurisdiction and so on. In High Courts such as Delhi, Bombay, Calcutta and Madras, where the High Courts have regular original side jurisdiction where suits and other original civil

proceedings are tried, the Chief Justice nominates particular judge/judges on the original side jurisdiction, from time to time.

But, though we do not have a separate ‘Commercial Division’ in India as in UK, US and other countries, we find that the Rules of Delhi High Court in Chapter IV refer to cases being classified as ‘commercial cases’ for purposes of Appeal as also for purposes of decision on the original side. Such a classification is not available in all the High Courts. This system of commercial cases being decided separately, has to be introduced in all our High Courts. Our proposals are further for a “fast track” procedure on the original side of the High Court before a Bench of two Judges where the value of the subject-matter is (say) as high as Rs.1 crore, with a single statutory appeal to the Supreme Court. High Courts may fix a figure above Rs. 1 crore as being the minimum valuation for being dealt with by the Commercial Division. But, the High Court while fixing such a higher minimum limit should, in our view, not fix a figure in excess of rupees five crores.

Our proposals also are that Commercial cases pending before the High Court on the original side and also appeals which are pending in the High Court and are of a pecuniary value of Rs. 1 crore or more should also be disposed on ‘fast track’ by a Bench of two Judges. Execution proceedings arising therefrom, should also go before the Commercial Division.

However, the crucial question is whether by making a statutory provision to designate a Division of the High Court as a ‘Commercial

Division' to deal with commercial cases of value of (say) more than Rs.1 crore on the original side of the High Court, or in respect of pending appeals of that value, we would be interfering with any of the powers of the High Court or the powers vested in the Chief Justice of the High Court to constitute such a division and to assign different categories of judicial work to different Judges in a manner inconsistent with the provisions of the Constitution.

The Constitutional position: High Courts existing as on 26.1.50 and those constituted thereafter

High Courts as on 26.1.1950:

At the outset, we have to refer to Art. 225 of the Constitution of India, which in its turn takes us back to the previous operative provision of the law, namely, sec. 223 of the Government of India Act, 1935. That section, in its turn again takes us back much backwards to sections 106(1) and 108 of the Government of India Act, 1915. We shall presently refer to these provisions and to the decisions of the Supreme Court of India.

(a) Constitution of India

“Art 225: Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the

administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.”

(b) Government of India Act, 1935: In view of the words ‘shall be the same as immediately before the commencement of this Constitution’ used in Art. 225, we have to refer to section 223 of the Government of India Act, 1935. That reads as follows:

“Sec. 223: Subject to the provisions of this Part of this Act, to the provisions of any order in Council made under this or any other Act, to the provisions of any order made under the Indian Independence Act, 1947, and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in division courts, shall be the same as immediately before the establishment of the Dominion.”

(1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.”

(c) Government of India Act, 1915

“Sec.106(1): The several High Courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction, in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdictions, powers and authority as are vested in those courts respectively at the commencement of this Act.”

“Sec. 108: (1) Each high court may by its own rules provide, as it thinks fit, for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

(2) The Chief Justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.”

What is crucial here to note is the power vested by sec. 108(1) of the Government of India Act, 1915 in the High Court and by section 108(2) of that Act in Chief Justice of each High Court and these powers are continued under sec. 223 of the Government of India, Act, 1935 and further continued by Art. 225 of the Constitution.

This is so far as the existing High Courts (as on 26.1.1950) are concerned. On or after 1.11.56, other High Courts have been carved out of existing High Courts by reason of the State Re-organisation Act, 1956, the Bombay Re-organisation Act, 1960, the Punjab Re-organisation Act, 1966 and other State Re-organisation Acts enacted by Parliament from time to time. In the case of these new High Courts, the powers of the High Court and of Chief Justice as in the parent High Courts are continued under the respective States Re-organisation Acts.

New High Courts

Some High Courts have been separately constituted under exclusive enactments like the Delhi High Court Act, the Karnataka High Court Act, and the Kerala High Court Act etc. These Acts also contain like provisions as set out below.

For example, in the Delhi High Court Act, 1966, while sec. 4(d) states that the Art. 225 of the Constitution shall not apply, sec. 7 refers to and applies the 'practice and procedure' of the High Court of Punjab to the

Delhi High Court while sec. 10(2) deals with the powers of the Chief Justice as follows:

“Sec. 10(2): Subject to the provisions of sub section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judge and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi.”

That means that if sec. 108 of the Government of India Act, 1955 is applicable to Punjab High Court, that will also apply to the Delhi High Court.

It is also necessary here to refer to the provision in sec. 15 of the Delhi High Court Act which bears the heading ‘Savings’. That section reads as follows:

“Section 15: Savings – Save as provided in sec. 4, nothing in this Act shall affect the application to the High Court of Delhi of any provisions of the Constitution, and this Act shall have effect subject to any provision that may be made on or after the appointed day with respect to that High Court by any legislative or other authority having power to make such provision.”

The provisions of the Kerala High Court Act and the Karnataka High Court Act and other such Acts are similar to the above provisions and are therefore subject to subsequent legislation..

Summing up:

Thus so far as the existing High Courts as on 26.1.50 and those High Courts which have come into existence as off shoots of the existing High Courts under the provisions of the States Re-organisation Act, 1956 or the Punjab Re-organisation Act, or the Bombay Re-organisation Act or other re-organisation Acts, Art. 225 governs. Here the powers of the High Court and of the Chief Justice can be modified by the appropriate Legislature. So far as High Courts governed by special Acts like the Delhi High Court, Karnataka High Court or the Kerala High Court etc. are concerned, they contain provisions which permit the power of the High Court and of Chief Justice to be modified by any legislature or other authority having power to make such provision.

Legislative entries and entry relating to ‘administration of justice’.

It will next be necessary to refer to the provisions in the Constitution as to which legislature can deal with the present proposals.

We shall also be referring to the meaning of the words ‘administration of justice’ occurring in the legislative entries. We shall do so a little later when we deal with Entry 1 of List II of Government of India Act, 1935 and Entry 3 of List II of the Constitution (upto 3.1.1977) and

entry 11A of List III after 3.1.1977 as to which is the appropriate legislature that can make a provision for the designation of a Division of the High Court as a 'Commercial Division' of the High Court so as to enable the Chief Justice of the High Court to nominate Judges to the 'Commercial Division' from time to time.

We shall now refer to the relevant entries in the Lists in Schedule VII of the Constitution as on today:

Constitution of India (as amended w.e.f. 3.1.1977)

List I

(a) Entry 77: Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

(b) Entry 78: Constitution and Organisation (including vacations) of the High Courts except provisions as to officers and servants of the High Courts; persons entitled to practise before the High Court

(c) Entry 95: Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

List II

(a) Entry 3: Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all Courts except the Supreme Court.

(b) Entry 65: Jurisdiction and powers of all Courts, except the Supreme Court, with respect to matters in this List.

List III

(a) Entry 11A: Administration of Justice; Constitution and organization of all Courts, except the Supreme Court and High Courts.

(b) Entry 13: Civil Procedure Code, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitations and arbitration.

(c) Entry 46: Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this list.

(Earlier, 'Administration of Justice' was in Entry 3 of List II upto 3.1.1977).

Question is what are the relevant legislative powers of Parliament in this behalf? From the above Entries in the Constitution, it is clear that so far as the legislative powers of Parliament under List I and List III vis-à-vis the High Courts are concerned, the position is that:

- (a) Under List I Entry 78, Parliament can legislate on the subject of: 'Constitution and organization (including vacations) of the High Courts (except provisions as to officers and servant of the High Court); persons entitled to practise before the High Courts, under

Entry 95, Parliament can, in respect of any matter in List I, make laws as to the jurisdiction and powers of all Courts.

- (b) Under List III Entry 11A, Parliament can make laws concerning the ‘Administration of Justice’. (It has to be noted that the words in Entry 11A “except the Supreme Court and High Courts” which have the effect under that Entry, of debarring the Union and State Legislatures from dealing with the ‘Constitution and organization of the Supreme Court and High Court’ under List III do not affect Parliament’ powers inasmuch the power to deal with ‘constitution and organisation of High Court’ is already vested in Parliament under Entry 78 of List I. Therefore, the prohibition in List II is virtually confined to barring the State Legislature from dealing with ‘constitution and organization of Supreme Court or High Court’).

In addition, under Entry 13, Parliament can make laws in respect of the Civil Procedure Code (including all matters included in the Code of Civil Procedure at the commencement of the Constitution), Limitation and Arbitration.

Further, under Entry 95 of List I and Entry 46 of List III, Parliament can make laws relating to ‘jurisdiction and powers of High Court and subordinate courts with respect to any of the matters in List I and admiralty jurisdiction and List III. As to the meaning of those words in these two entries, the law is now well settled, as detailed below.

Thus, so far as Parliament's powers under List I and List III are concerned, if we combine Entry 78 of List I and Entry 11A and 13 of List III, it pertains to the following matters: Constitution and organization (including vacations) of the High Courts (except provisions as to officers and servants of the High Court); persons entitled to practise before High Courts; Administration of Justice; 'jurisdiction and powers of the High Court with respect to any of the matters in List I and Admiralty jurisdiction with respect to any of the matters in List III (including Entry 13 of List III Civil Procedure Code).

We shall make reference to some leading cases decided by the Supreme Court of India while interpreting these Entries in List I, II and III.

Here one important thing to note is the omission of certain words in Entry 3 of List II and insertion thereof in Entry 11A by the Constitution 42nd Amendment Act, 1976. Before the said 42nd Amendment (which came into force w.e.f. 3.1.1977) the words 'Administration of Justice, constitution and organization of all Courts, except the Supreme Court, and High Courts' were contained in the opening part of Entry 3 of List II. After the judgment of the Supreme Court in State of Bombay vs. Narootamdas (AIR 1951 S.C. 69) and Mohindroo O.N. vs. Bar Council of Delhi (AIR 1968 SC 888) Parliament felt that the above words 'Administration of Justice..... High Courts' must be transferred from Entry 3 of List II to the newly inserted Entry 11A of List III. Therefore, the judgments of the Supreme Court interpreting the words 'Administration of Justice, constitution and organization of all Courts' in Entry 3 of List I as contained therein before 3.1.77 must equally apply to the interpretation of the said words after they were transferred to Entry 11A of List III on or after 3.1.77.

The earliest of such judgments, in fact, deal with corresponding sections of the Government of India Act, 1935. The case in State of Bombay vs. Narootamdas (AIR 1951 SC 69) related to interpretation of corresponding entries in the Government of India Act, 1935. A Constitution Bench had to deal with the vires of the Bombay Civil Court Act, 1948 passed by the Bombay Legislature. The corresponding Entries in Entry 53 of List I, Entries 1, 2 of List II and Entry 15 of List III of Schedule VII in the Government of India Act, 1935 came up for consideration. Five Judges wrote separate concurring judgments upholding the legislation passed by the Bombay Legislature. The Entries in the 1935 Act were as follows:

- (a) Entry 53 of List I: Jurisdiction and powers of all Courts except the Federal Court with respect to any of the matters in this List.....
- (b)(i) Entry 1 of List II :the administration of justice, constitution and organization of all Courts except the Federal Court....
- (ii) Entry 2 of List II : Jurisdiction and powers of all Courts except the Federal Court with respect to any of the matters in this List.....
- (c) Entry 15 of List III : Jurisdiction and powers of all Court except the Federal Court, with respect to any of the matters in this List.

The facts in the above case were as follows:

The Bombay Act of 1948 purported to create an additional Civil Court for Greater Bombay having jurisdiction to try, receive and dispose of all suits and proceedings of a civil nature not exceeding a certain value, subject to certain exceptions. The case related to a suit based on promissory notes and the question was whether in respect of such suits, the pecuniary jurisdiction of the Courts could be enhanced from Rs. 10,000/- to Rs. 25,000/- by the State Legislature?

It was contended on behalf of respondent that the Act was ultra-vires the powers of the Legislature of the State of Bombay, because it conferred jurisdiction not only in respect of matters which the Provincial legislature was competent to legislate upon under List II, schedule 7 but also in regard to matters in respect of which only the Central or Federal Legislature can legislate under List I (as for instance, “promissory notes”, which was mentioned in Entry 28 of List I). Three issues arose in the case:

- (1) Whether the Bombay Act was ultra-vires of State Legislature?
- (2) Whether, in any event, sec. 4 of the Act was ultra vires of the State Legislature, and
- (3) Whether the Bombay High Court had jurisdiction to try the suit?

It may be noted that sec. 4 of that Act authorised the Provincial Government to enhance the jurisdiction of the City Civil Court upto the limit of Rs. 25,000/-. The existing jurisdiction was otherwise Rs. 10,000/-. It is this enhancement by the State Legislature that was questioned as ultra vires of the powers of the State Legislature.

The High Court held on issues 1 and 3 in favour of the State but on issue 2 it held that sec. 4 amounted to delegation of legislative powers and was void.

Entry II of List II of the Schedule in the Government of India Act used the words: “...administration of justice, constitution and organization of all Courts except the Federal Court”.

But reliance was placed by the respondent, for contending that the State Legislature had no powers, on Entry 53 of List I, which used the words “jurisdiction and powers of all Courts except the Federal Court with

respect to any matters in this List”. Argument was that promissory notes fell under Entry 28 of List I and hence in suits or promissory notes, only the federal legislation must legislate.

In the Supreme Court, Fazl Ali J, with whom the other four Judges agreed, held that the words ‘administration of justice’ and ‘constitution and organisation of Courts’ in Entry 1 of List II of the 1935 Act conferred very wide and general legislative powers on the State legislatures (these words are now shifted to Entry 11A of list III from 3.1.77) to ‘try suits and proceedings of a civil as well as criminal nature, irrespective of who the parties to the suit or proceedings or what its subject matter was’. These powers must necessarily include the ‘power of defining, enlarging, amending and diminishing the jurisdiction of the Courts and defining their jurisdiction territorially and pecuniarily’.

As far as Entry 53 of List I on which the respondent relied, Fazl Ali J observed further that it was not permissible to read the words “with respect to any of the matters in this List” found in Entry 53 of List I, (or in Entry 2 of List II and Entry 15 of List III), into Entry 1 of List II, and contend that the words ‘administration of justice’ in Entry 1 of List II, if it concerns (say) promissory notes falling under Entry 28 of List I, only Parliament could legislate. Such an interpretation, it was held, was not correct. The Entries are independent. Entry 1 of List II is wide as stated above. The purpose of Entry 53 of List I or (Entry 2 of List II or Entry 15 of List III) was different – they related to jurisdiction and powers of all Courts “with respect to any of the matters” in those Lists, thereby merely permitting to “add or bar” the jurisdiction of Courts, with regard to any of the subjects listed in those Lists. For example, in respect of Civil Courts, sec. 9 granted jurisdiction to all civil courts unless barred expressly or implicitly. Under Entry 53 of List

I or Entry 2 of List II or Entry 15 of List III, additional jurisdiction on various subject matters referred to in these Lists could be conferred on the Civil Courts or barred from the Civil Court.

It is necessary to refer to the observations of Fazl Ali J as to the meaning of the words ‘administration of justice, constitution and organization of all Courts’ in Entry 1 of List II. The learned Judge observed:

“The expression ‘administration of justice’ has a wide meaning and includes administration of civil as well as criminal justice, and in my opinion Entry 1 in List II which I have quoted, is a complete and self-contained entry. In this entry, no reference is made to the jurisdiction and powers of Courts, because the expression “administration of justice” and “Constitution and organization of Courts”, which have been used therein without any qualification or limitation, are wide enough to include the power and jurisdiction of Courts, for how can justice be administered if Court have no power and jurisdiction to administer it, and how can Courts function without any power or jurisdiction. Once the fact is closely grasped, it follows that by virtue of the words used in Entry 1 of List II, the Provincial Legislature can invest the Courts constituted by it with power and jurisdiction to try every case or matter that can be dealt with by a Court of Civil or Criminal jurisdiction and that the expression ‘administration of justice’ must necessarily include the power to try suits and proceedings of a civil as well as criminal nature, irrespective of who the parties to the suit or proceedings or what its subject-matter may be”.

It was held on that basis that the State Legislature could, under Entry 1 of List I (administration of justice; constitution and organization of Courts) raise the pecuniary limit to Rs. 25,000/- even in respect of promissory notes, even though promissory note' was covered by an entry in List I.

“This power (i.e. administration of justice) must necessarily include the power of defining, enlarging, altering, amending and diminishing the jurisdiction of the Courts and defining the jurisdiction territorially and pecuniarily.”

Fazl Ali J thus clarified that the purpose of Entry 53 of List I, Entry 2 of List II and Entry 15 of List III was merely to provide for special power either to enlarge the jurisdiction of the Courts or to bar it, with reference to the subject-matter of any of the Entries in Lists I, II and III and that the words in these entries cannot be read as controlling the general jurisdiction permitted to be created by Entry 1 of List II; ‘administration of justice: constitution and organization of the Courts’.

In O.N. Mohindroo vs. Bar Council, Delhi: AIR 1968 SC 888 the Supreme Court followed the above ruling as to the interpretation of the words ‘constitution and organization of Courts’ in Entries 77, 78 of List I and as to the meaning of the expression ‘jurisdiction and powers of Court’ in Entry 95 of List I or Entry 65 of List II or Entry 46 of List III. Incidentally, Entry 3 of List II which uses the words ‘Administration of justice; constitution and organization of all Courts, except the Supreme Court and the High Court – officers and servants of the High Court;

procedure in rent and revenue courts fees taken in all courts except Supreme Court, ‘were interpreted’.

In Indu Bhushan vs. State of West Bengal: AIR 1986 SC 1783, the pecuniary jurisdiction of the city Civil Court in Calcutta was raised by amendment from Rs. 10,000/- to Rs. 50,000/- and later to Rs. 1 lakh. The Supreme Court referred to Entry 77, 78 of List I, Entry 3 of List II, Entry 65 of List III and Entry 46 of List I. It referred to State of Bombay vs. Narootamdas AIR 1951 SC 69 and held that the legislation was intra-vires of the West Bengal legislature – because of Entry 3 of List II which used the words ‘Administration of justice, constitution and organization of all Courts except the Supreme Court and the High Court.

In State of T.N. vs. G.N. Venkataswamy AIR 1995 SC 21, the Amendment of 1972 to the T.N. Revenue Recovery Act came up for consideration. The case also dealt with the 1974 Amendment. Though Entry 11A of List III was referred to in the judgment incidentally, the case did not come under the Constitution (Forty-second Amendment) Act, 1976, which introduced Entry 11A in List III. The Amending Act of 1972, 1974 were governed by entries in List I, II, III as they stood before 1976. In this case too, the earlier judgment in State of Bombay vs. Narootamdas AIR 1951 SC 69 was followed. However Entry 11A was explained to be as wide as Entry 3 of List II before the Constitution (Forty-second Amendment) Act, 1976 and Entry 1 of List II of 1935 Act.

Interpretation of the words ‘administration of justice’ in Entry 3 of List II of the Constitution (upto 3.1.77) and in Entry 11A of List III w.e.f.

3.1.77, is to be based on the above interpretation of these words by the Supreme Court given in the context of Entry 1 of List II of Government of India Act, 1935.

The important change that came about under the Constitution (Forty-second Amendment) Act, 1976, with effect from 3.1.1977, as already stated, was that the above words in Entry 3 of List II ‘Administration of justice, constitution and organization of all Courts except the Supreme Court and the High Court’ were deleted and transferred as Entry 11A of List III.

The effect of this change by the Constitution (Forty-second Amendment) Act, 1976 (w.e.f. 3.1.77) is that the general words in Entry 3 of List II in Schedule VII of the Constitution, “administration of justice” dealing with the power to enlarge the jurisdiction of the Courts in respect of subject matter of all items in Lists I, II and III and in respect of territorial or pecuniary jurisdiction got shifted to the Concurrent List III by insertion of Entry 11A; the jurisdiction remains and may, however, be subjected to restriction or by way of addition in relation to matters in List I, II and III (under the entries which relate to ‘jurisdiction and powers’ of all Courts with respect to any of the matters in the respective Lists, Entry 95 of List I, Entry 65 of List II, Entry 46 of List III). (In Entry 11A of List III, the latter part which excludes the constitution and organization of High Court from List III, no doubt, precludes the Parliament and State Legislatures to legislate on that subject by virtue of List III but, as already stated, so far as the Parliament is concerned, the power to legislate on ‘constitution and

organization of High Courts' is already vested in it under Entry 78 of List I). As stated earlier, by combining Entry 78 of List I and Entry 11A of List III, Parliament can w.e.f. 3.1.77 legislate on

“administration of justice and constitution and organization of High Court”.

This situation is identical with what it was under Entry 1 of List II under the Government of India Act, 1935 which was interpreted by the Supreme Court in State of Bombay vs. Narootamdas: AIR 1951 SC 69 as conferring the widest powers on Parliament in relation to subject matter (be it in List I, II or III) and as to territorial and pecuniary jurisdiction. This general power and jurisdiction which is wide is now vested in Parliament under Entry 11A of List III (and the State Legislatures). The said legislatures can however add to or reduce or bar the same under the special legislative powers of the corresponding legislature, in regard to the entries in each of Lists I, II or III. (e.g. promissory notes by law made by Parliament under List I).

Thus, in view of the width of the words in Entry 11A of List III; ‘administration of justice’ read with Entry 78 of List I which deals with ‘constitution and organization of High Courts’, the specification of a separate division in the High Court for ‘commercial matters’ above a particular pecuniary level, (say) Rs. 1 crore can be stipulated by Parliament and a ‘fast track’ original side procedure can be introduced by Parliament. Simultaneously, so far as pending appeals in the High Court before a Single Judge or a Division Bench are concerned, Parliament can provide that these

can also be disposed of by the Commercial Division by ‘fast-track’ appellate procedures. This need not be done necessarily by the High Court Rules or by resolution of full Court. In as much as Art. 225 of the Constitution uses the words “subject to law by the appropriate legislature”, this can be done by Parliament. Likewise, the power of allocation of Judges to this Division by the Chief Justice can also be specified in the statute to be made by Parliament.

From more than one point of view, there is, in our view, no doubt that, constitutionally, Parliament can make a law under Entry 78 of List I read with Entry 11A of List III of the Seventh Schedule to the Constitution creating a separate division as ‘Commercial Division’ in the High Court and prescribe pecuniary limits for pending and new cases of (say) Rs.1 crore or above on the original side with ‘fast track’ procedure and also permit the separate Division Bench to deal with pending appeals in the High Court, belonging to the pecuniary jurisdiction of (say) Rs.1 crore (or such higher figure as may be fixed by the High Court) and to enable the Chief Justice of the High Court to nominate Judges of the High Court to that Division from time to time. It is also proposed that these Judges can also be Judges appointed under Art. 224A of the Constitution of India – that is to say, they can be High Court Judges who have retired from that High Court or any other High Court. If there are Judges who have retired and have exceptional knowledge of commercial laws, they can be appointed in the same or any other High Court and nominated to the ‘Commercial Division’. Other matters to be provided for have already been referred to the earlier Chapters and the actual constitution, jurisdiction and powers of Commercial Division will be dealt with in Chapter IX.

Chapter VI

Fast-track procedure for Commercial Divisions in UK and USA

It is proposed that we apply a ‘fast-track’ procedure for the ‘Commercial Division’ cases in the proposed Commercial Division of the High Courts. The Law Commission, in its 176th Report on Amendments to the Indian Arbitration and Conciliation Act, 1996 proposed a ‘fast-track’ procedure for arbitration in India, where parties opt for such a procedure. We shall keep that model as a guide for prescribing a ‘fast-track’ procedure in Commercial cases of pecuniary value as high as Rs.1 crore or more.

This chapter has to be read in conjunction with the next chapter, chapter VII which will deal with high-tech facilities, such as on-line filing, video-conferencing and etc.

Before we go into the actual formation of the special procedure, we shall refer to the special procedures in UK and USA.

UK: The (UK) Civil Procedure Rules supplemented by the ‘Commercial Court Guide’ deal with the procedure in the Commercial Courts.

Way back, England had the Commercial Court practice guided by Theobald Matthew’s Practice of the Commercial Court. (See Scrutton’s ‘The Work of the Commercial Courts’ (1923) 1 Cambridge Law Journal 6). There have been number of Practice Directions. The official ‘Commercial Court Guide’ (5th Ed) was published in 1999 and now we have the

‘Admiralty and Commercial Court Guide’ (6th Ed) (Feb. 2002). As stated in the ‘Introduction’, this edition of the Guide was published to coincide with the introduction of Parts 58, 61 and 62 of the Civil Procedure Rules dealing with commerce and Admiralty Proceedings and proceedings relating to Arbitrations respectively. Most of the provisions which had hitherto been contained in the practice directions made under Part 49 and the 5th edition of the Commercial Court Guide are now to be found in these new rules and their associate practice directions, although the Guide still contains a number of additional provisions which are necessary to ensure the efficient conduct of business in the Admiralty and Commercial Courts.

The Guide is published with the approval of the Lord Chief Justice.

The Guide is not intended to be a blueprint to which all litigation must unthinkingly conform. As in the past, it seeks to provide a modern and flexible framework within which litigation can be conducted efficiently and in the interests of justice. The Guide has still to be read in conjunction with the Civil Procedure Rules and Practice Directions.

The (UK) Civil Procedure Rules, 1999 came into force in April 1999 with the aim of streamlining the civil justice process and resolving as many cases as possible without resorting to court proceedings, by introducing new ‘protocols’ for the pre-issue stages of some forms of litigation. The Civil Procedure Rules, 1998 replace the Rules of the Supreme Court, 1965 and the County Court Rules, 1981.

Proceedings in the Commercial Court are governed by the Civil Procedure Rules, 1998 (CPR) and Practice Directions (PD); CPR, Part 58 and the associated PDs govern the procedure.

Civil Procedure Rules (UK) Part 58, Commercial Courts

Part 58 of the Civil Procedure Rules deal with 'Commercial Courts' and modifies the Civil Procedure Rules, 1998 in certain respects, insofar as Commercial Claims are concerned.

Rule 58.1, refers to the 'scope of this Part and its interpretation. Clause (2) of Rule 58(1) defines 'Commercial Claim' as meaning any claim arising out of the transactions of trade and commerce and includes any claim relating to –

- (a) a business document or contract;
- (b) the export or import of goods;
- (c) the carriage of goods by land, sea, air or pipeline;
- (d) the exploitation of oil and gas reserves or other natural resources;
- (e) insurance and re-insurance;
- (f) banking and financial services;
- (g) the operation of markets and exchanges;
- (h) the purchase and sale of commodities;
- (i) the construction of ships;
- (j) business agency; and
- (k) arbitration.

Rule 58.2 refers to the ‘specialist list’ which is a specialist list for claims proceeding in the Commercial Court. Clause (2) thereof says that one of the judges of the Commercial Court shall be in charge of the commercial list.

Rule 58.3 states that the Rules and the practice directions apply to claims in the commercial list unless this Part 58 or a practice direction provides otherwise.

Rule 58.4 read with Rule 30.5(3) provides that an application for the transfer of proceedings to or from a specialist list must be made to a judge dealing with claims in the commercial list and that a Commercial Court Judge may order a claim to be transferred to any other specialist list.

Rule 58.5 refers to the (pre-litigation stage) claim form and for service of particulars of claim within 28 days of service of claim form. In fact, Rule 58.5(1)(a) requires the defendant to inform – on receipt of the claim form – if he intends to defend the claim.

Rule 58.6 refers to ‘acknowledgement of service’ within particular number of days of service of claim form.

Special procedure is prescribed for service outside (local) jurisdiction or abroad.

Rule 58.7 refers to ‘Disputing the Courts’ Jurisdiction. It says that an application under Rule 11(1) must be filed by the plaintiff within 28 days

after filing an acknowledgement of service and if the defendant files an acknowledgement of service indicating an intention to dispute the courts' jurisdiction, the claimant need not serve particulars of claim before the hearing of the application.

Rule 58.8 refers to 'Default Judgment' if the defendant fails to file an acknowledgement of service and the claimant need not serve particulars of claim before he may obtain or apply for default judgment in accordance with Part 12 and Rule 12.6(1) applies with the modification that para (a) shall be read as if it referred to the 'claim form' instead of the 'particulars of claim'.

Rule 58.9 deals with 'Admissions'. It says that Rule 14.5 does not apply and that if the defendant admits part of a claim for a specified amount of money, the claimant may apply under Rule 14.3 for judgment on the admission. Rule 14.14(1) applies with the modification that para (a) shall be read as if it referred to the 'claim form' instead of the 'particulars of claim'.

Rule 58.10 refers to 'Defence and Reply' and refers to Rule 15 which requires defence to be filed within 14 days of service of particulars of claim. Rule 58.10 requires that the claimant must file any reply to the defence and serve all other parties within 21 days after service of the defence.

Rule 58.11 permits the Court to proceed with the claim in the commercial list without the filing or service of statements of case.

Rule 58.12 states that Part 8 (alternative procedure for claims) applies to claims in the commercial list, with the modification that a defendant to a Part 8 claim who wishes to rely on written evidence must file and serve it within 28 days after filing an acknowledgement of service.

‘Case-management’ in the Commercial Court is dealt with in Rule 58.13. Sub-clause (1) of Rule 58.13 states that all proceedings in the commercial list are treated as being allocated to the multi-track and Part 26 (Case-management) does not apply. (Multi-track is covered by Part 29).

Sub-clause (2) of Rule 58.13 states that in Part 29 only rule 29.3(2) (legal representative to attend case-management conferences and pre-trial reviews) and rule 29.5 (variation of case-management time-table) with the exception of rule 29.5(1)(c), apply.

Sub-clause (3) of Rule 58.13 states that, as soon as practicable, the Court will hold a case-management conference which must be fixed in accordance with the practice direction.

Sub-clause (4) of sec. 58.13 states that, at the case-management conference or at any hearing at which parties are represented, the Court may give such directions for the management of the case as it considers appropriate.

Rule 58.14 refers to ‘disclosure-ships papers’. Rule 58.15 refers to ‘judgments and orders’.

Commercial Courts' Guide, 2002 (UK)

The Guide consists of sections A to P and Appendices 1 to 16. Section A is preliminary.

Section B deals with Commencement, Transfer and Removal; Section C to Particulars of Claim, defence and reply; Section D to 'Case Management in the Commercial Court; Section E to Disclosure, Section F to Application, Section G to Alternative Dispute Resolution (ADR); Section H to Evidence for trial; Section J to trial; Section K to After Trial; Section L to Multi-party Disputes; Section M to 'Litigants in person'; Section N to 'Admiralty'; Section O to Arbitration and Section P to 'Miscellaneous'.

Section D is important as it deals with Case Management. The pre-trial dates for parties taking various steps are heard by a single judge on the commercial side. Section D prescribes ten key features of case management in the Commercial Court and clause D4.2 states that all applications in the case, except applications for interim payment, will be heard and the trial itself, will be headed by one or other of the designated judges.

Clause D5 states that, in order that the judge conducting case management conference may be informed of the general nature of the case and the issues which are expected to arise, after service of the defence and any reply (if any) by solicitors, counsel for each party shall draft an agreed case-memorandum which must contain (i) a short and uncontroversial

description of what the case is about and (ii) a very short and uncontroversial summary of the material preceding history of the case. The memorandum is only to help the judge understand the issues in the case broadly.

Under clause D6, parties shall try to produce an agreed list of issues. Under D7, case management bundle of various documents is to be prepared, including an agreement in writing made by the parties to disclose documents without making a list or any agreement in writing that disclosure (or inspection or both) shall take place in stages.

Clause D8 deals with Case Management Conference and application for that purpose. Under clause D8.7 at the Case Management Conference, the judge will

- (i) discuss the issues in the case and the requirement of the case, with the advocates in the case;
- (ii) fix the entire pre-trial time-table, or, if that is not practicable, fix as much of the trial time-table as possible; and
- (iii) in appropriate cases, make an ADR order.

Clause D8.8 states that Rules 3.1(2) and 58.13(4) which enable stay of proceedings while the parties try to settle the case by alternative means, apply. In appropriate cases, ADR order can be made without a stay of proceeding at the pre-trial stage.

Clause D8.9 states that the pre-trial time-table will normally include (i) a progress monitoring date and (ii) a direction that parties meet the Clerk to the Commercial Court, to obtain a fixed date of trial.

Under clause D8.10 parties by consent can vary these dates other than the date fixed for trial, to suit their convenience.

Under clause D10.10, Case Management Conference must take place normally within 6 weeks after service and the filing of defendant's evidence.

Under clause D11, it is said that the Court will continue to take an active role in the management of the case throughout its progress to trial.

Clause D12 refers to 'Progress Monitoring' for which a date will be fixed at the Case Management Conference.

Under clause D16, most cases will be given fixed trial dates immediately after the pre-trial time-table has been set at the Case Management Conference.

Clause D17 states that at the case management conference, an estimate will be made of the minimum and maximum lengths of trial. The estimate will appear in the pre-trial time-table and will be the basis on which a date for trial will be fixed. Clause D17.2 provides for revision if Advocates change but clause D17.3 requires a confirmed estimate of the

minimum and maximum lengths of the trial, signed by the advocates who are to appear at the trial, be attached to the pre-trial checklist.

Under clause D18.4, parties must attempt to agree upon a time-table for the trial, providing for oral submissions, witnesses of fact and expert evidence. Claimant has to file a draft time-table in this behalf.

Sec. G of the Guide which deals with ADR is also important. ADR is not confined to mediation or conciliation. Clause G1.2 states that ADR

- (i) significantly helps parties to save costs;
- (ii) saves parties the delay of litigation in reaching finality in disputes;
- (iii) enables parties to achieve settlement of their disputes while preserving their existing commercial relationships and market reputation;
- (iv) provides parties with a wider range of solutions than those offered by litigation; and
- (v) is likely to make a substantial contribution to the more efficient use of judicial resources.

As per clause G1.3, the Commercial Judge will, in appropriate cases, invite the parties to consider if that dispute or particular issues in it, could be resolved by ADR. This will be considered at the case management conference. Under G1.7, the judge may make appropriate orders.

Under G2.1, the Court will provide, without prejudice, non-binding, early neutral evaluation of a dispute or particular issues.

Under clause G2.4, the Judge in charge will nominate a judge to conduct such evaluation but the judge who is so nominated, will take no further part in the case, either for the purpose of hearing of applications or as the judge at trial, unless parties agree otherwise.

Section H deals with ‘Evidence at Trial’. Under H1.1, “the witnesses” statements in prescribed form have to be filed. This should be factual and must be in the witness’s own words, should not contain lengthy quotation from documents, should not be argumentative and must indicate which part of the statements are made from one’s own knowledge and which from other sources, giving details of source. It must contain a statement by the witness that he believes the matters stated in it are true; proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a witness statement without an honest belief in its truth (see Civil Procedure Rule 32.14(1)).

Clause H1.2 states it is improper to put pressure of any kind on a witness to give anything other than his own account of the matter. It is also improper to serve a witness statement which is known to be false or which it is known that the maker does not, in all respects, actually believe to be true.

Under cl. H1.5, witness statement is treated a chief examination unless the Court orders otherwise.

It also says that in an appropriate case, the trial judge may direct that the whole or any part of a witness's evidence in chief is to be given orally.

Under cl. H1.6(a), a witness who has given written statement can give oral evidence to amplify the same or give evidence in relation to new matters, subject to Court permission. A written witness statement may be allowed to be corrected by a supplemental statement, subject to court's permission.

Under cl. H3, evidence by video-link is permitted, with Court permission. In granting permission, the Court will be concerned in particular to balance any potential savings of costs against the inability to observe the witness at first hand when giving evidence.

Under cl. H4, evidence taken abroad may be given with Court permission (see Civil Procedure Rules, Part 34), such as by issue of letters of request.

Section I deals with 'Trial' and provides for mode of filing documents, skeletal arguments, case law, oral arguments etc, leading to judgment.

Clause J12 provides for Draft Judgment to be given to counsel with stamp as follows:

"Unapproved Judgment. No permission is granted to copy or use in Court"

and bearing the rubric

“Confidential to counsel and solicitors, but the substance may be communicated to clients not more than one hour before giving of judgment”

Draft Judgment is supplied to counsel one day in advance. Counsel can point out ‘typographical or other errors of a similar nature’ which the judge might wish to correct.

The requirement to treat the text as confidential must be strictly observed. Failure to do so amounts to contempt of Court.

Under J12.2, judgment is not treated as delivered till it is finally pronounced in open Court. Execution is contained in sec. K and states the decree will go to the master in the QB Division or to a district judge.

USA:

State of New York (Commercial Division)(Supreme Court, New York County):

Rules of the Justices of the Commercial Division, Supreme Court, New York County (see http://www.nycourts.gov/comdiv/consolidated_Rules.htm). For electronic filing, these Rules apply unless inconsistent with sec. 202.5-6 of the Uniform Rules for Trial Courts.

Part I deals with General Rules; Rule 1 refers to ‘Appearances by Counsel with knowledge and Authority’; Rule 2 to ‘Settlement and Discontinuances’; Rule 3 to ‘Cases Marked – Off Calendar’; Rule 4 states Division Justices do not accept pages of any sort by fax unless indicated otherwise by the Justice in a particular case; Rule 5 refers to ‘Information on cases’ and Rule 6 to ‘Special Part 27 Calendar Number’.

Part 2 refers to ‘Conferences’ and starts with Rule 7. Rule 7 deals with ‘Preliminary Conferences’. Such conferences have to be held within 45 days of assignment of a case to the Commercial Division, unless impracticable for other reasons. Rule 8 deals with ‘Consultation Among Counsel and with the Client, prior to Preliminary and Compliance Conferences’, when counsel will discuss about (i) resolution of the case, in whole or in part, and (ii) discovery and other issues. Rule 9 deals with ‘Familiarity with outstanding motions’, Rule 10 with ‘Submission of Information’, Rule 11 with ‘Discovery Schedule’, Rule 12 with ‘Stay of Discoveries’, Rule 13 with ‘Non-Appearance at Conference’, Rule 14 with ‘Adherence to Discovery Schedule’ and Rule 15 to ‘Disclosure Disputes’; Rule 16 deals with ‘Adjournment of Conferences’. It refers to the position before each of the particular judges for example, as follows:

“Contact Chambers by Conference Cell.

Freedman, Moskowitz, Romas JJ: No adjournment permitted.

Gammerman J: Adjournment permitted for good cause. Contact clerk of the Part.

Lowe J: One adjournment only permitted on a showing of good cause. The adjournment may not exceed 30 days

Part III deals with ‘Motions’ and starts with Rule 17, i.e. urgent motions. Rule 17 deals with Form of Motion Papers, Rule 18 with Length of Motion Papers, Rule 19 Sun-Reply and post-submission Papers.

Rule 19-a deals with ‘Statement of Material Facts on Motion for Summary Judgment’. This rule effective from 3.5.2002 reads as follows:

“Rule 19-a: Statement of Material Facts on Motion for Summary Judgment:

- (a) Upon any motion for summary judgment OTHER THAN A MOTION PURSUANT TO CPLR 3213, there shall be annexed to the notice of motion a separate, short and concise statement of the material fact as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement may constitute grounds for denial of the motion.
- (b) The papers opposing a motion for summary judgment OTHER THAN A MOTION PURSUANT TO CPLR 3213 shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.
- (c) All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted for purposes of the motion unless controverted by the statement required to be served by the opposing party.

- (d) Each statement of material fact by a movant or opponent must be followed by citations to evidence submitted in support of or in opposition to the motion”.

Rule 23 refers to ‘Oral argument’.

Part IV deals with regular ‘Trials’. Rule 26 states that once a trial date is set, counsel are immediately to determine the availability of witnesses. If, for any reason, Counsel are not prepared to proceed on the scheduled date, the Court is to be notified within 5 days of the date fixed, failing which they shall be deemed to have waived any request for adjournment of the trial.

Rule 27 states that failure of the counsel to attend the trial at the time and date scheduled will constitute waiver of the right of that attorney and his or her client to participate in the trial for the period of counsel’s absence.

Rule 28 states that estimated length of trial will have to be furnished by parties, after consulting their witnesses, at least 5 days before trial.

Rule 30 requires ‘Pre-marking of Exhibits’ by counsel on both sides, to the extent of documents not in dispute. A separate list of plaintiff’s and defendant’s undisputed documents will be prepared. Another list will contain disputed documents. Such lists have to be submitted 5 days before trial.

Rule 31 refers to ‘Identification of Deposition Testimony’ which is referable to those areas of evidence which can be offered without objection and to areas where evidence will be offered in the context of objections raised. This list should also be submitted 5 days in advance. The Court will rule upon the objections at the earliest possible time after consulting the Counsel.

Rule 32 refers to ‘Pre-trial’ Memorandum. It requires that, in complex cases, counsel should submit Pre-trial memorandum as it will facilitate efficient presentation of proof. It has to be submitted 5 days before trial and should not exceed 25 pages. No Memoranda in response shall be submitted.

Rule 33 deals with scheduling of witnesses. It says that 5 days before trial, each party shall inform the counsel and the opposite side as to the witnesses it wants to examine.

Rule 35 deals with ‘Pre-trial’ Conference.

Monroe County: Commercial Division, N.Y. State.

The rules are similar to the rules of New York County. Part I is ‘General’, part II deals with ‘Conferences’, Part III with ‘Motions’, Part IV with ‘Trials’.

India: We shall refer to our proposals for ‘fast track’ trials in India in Chapter IX.

Chapter VII

Commercial Division – are high-tech and follow on-line systems in other countries

In this Chapter, we shall refer to high-tech systems and on-line filing procedures, as are available in various countries – Singapore, US, UK, Northern Ireland, etc. We shall refer in Chapter VIII to certain proposals placed before us by the National Informatics, India (NIC), which has all along been installing computer and information systems in the superior and subordinate Courts in India for well over a decade.

Singapore:

Singapore's judicial system marked a milestone in July 1995 with the opening of Technology Court I, one of the first Courts in the world to have an integrated computer, multimedia and video-conferencing system to facilitate the conduct of Court proceedings.

Five years later, in the year 2000, the Technology Court II came into being. It is an improved version of Tech Court I and is housed in Court No. 3 of the Supreme Court of Singapore and cost about \$ 2 million. It had additional features such as 'Video-marker-system' and 'flat-screen LCD panels' instead of 21 inch CRT monitors.

Sing Tel Aeradio, the leading systems integrator in Singapore provides the audio-visual equipment and project management for the new technology Court. All the cameras, microphones, visualisers, projection screens and video-players are 'remote-controllable' using a colour touch-screen panel. The Court officer is able to control the audio and lighting level in the Court room, adjust the cameras and visualisers, preview the images before projection, and activate the playback recording as well as video-conferencing systems. The control panel also allows pre-sets to be programmed and saved, hence reducing set-up time in a trial continuing over several days. Court hearings can also be filmed for records.

Like its predecessor, Tech Court II has a video-conferencing system which allows witnesses outside Singapore to testify in a court case. This greatly reduces the hassles of flying them in for the hearings.

There is also a separate witness-room in Tech Court 2 for vulnerable witnesses such as children and rape-victims to give evidence 'away' from the Court room. "This saves these witnesses from any emotional trauma they may otherwise suffer from,- having to face the accused in open court."

Another enhanced feature of Tech Court 2 is the video-marker system, which allows the Judge, witness and examining counsel to annotate, each in a different colour, over any image displayed on the screen.

Instead of having to mark on all the copies, the witness just needs to mark on the screen for all to see. The markings captured on the screen can then be printed for distribution or recorded for future reference.

Singapore wants to develop a 'paperless' litigation system and to achieve a more efficient way of presenting cases in Court.

US: Court - room 2000 for the New Millennium:

New York: (http://www.courts.state.ny.us/supetmanh/courtroom_2000.htm). The Commercial Division of the State of New York operates a pioneering Court-room 2000 for the New Millennium containing the latest courtroom technology. This Courtroom has helped the Commercial Court to be placed in the forefront of technological innovations in the State Court systems of U.S.

The Courtroom

- (a) provides litigants with state-of-the-art technology, allowing cases to proceed in the most efficient and effective manner.
- (b) provides the Bar, Judges and Court-staff with the latest technological options for the litigation process.
- (c) serves as a technological laboratory for all Courts in the State.
- (d) provides a training ground for attorneys, Judges, court-staff, law students and court reporting students.

Courtroom 2000 features the following:

Real-time Court Reporting Facilities: Allows for instantaneous voice-to-text transcriptions, word indexing in transcripts, exhibit indexing and paperless-transfers.

Electronic Transcripts: By means of special soft-ware, transcripts can be delivered securely by e-mail with enhanced viewing, mouse-click searching and indexing capabilities.

Presentation of Electronic Evidence: Attorneys are able to present evidence to the Judge and Jury through a wireless communicator or in the form of digitized evidence on CD-ROM by video monitors conveniently placed around the Courtroom. A presenting attorney can 'zoom in' on a portion of an item of electronic evidence or screen. A 'Kill switch' on the Bench will permit the Judge to turn off monitors until a particular item of evidence is admitted or if the Judge determines that certain images should not be made available to the Jury. Digitized video deposition will be displayable along with synchronization to real time transcripts, greatly facilitating examination of prior deposition testimony and trial testimony.

An Interactive 'Whiteboard': This replaces the conventional black-board. Presentation of drawings or writings can be made in large formats or video monitors in the courtroom using a sophisticated touch-sensitive screen. An attorney or witness can highlight aspects of a document of particular interest by writing over or drawing on an image of it and can store the notations on a computer. The screen interacts with virtually any computer based material. Hard copies of the displayed items can be obtained from a colour-laser-printer.

Touch-screen-Monitor: Located at the witness box, this monitor and a connected light pen can be used by a witness to make pieces of evidence for illustrative purposes. An expert-witness, for instance, can mark drawings on a display to explain testimony clearly and dramatically for the Judge or Jury.

Animation: Computer-generated animation may be displayed on monitors for the Judge and Jury. Attorney can present animated explanations for events, functions and the like, to supplement the testimony of expert and fact witnesses. Such representations can have a powerful impact in helping findings of fact to understand complex events, processes and bodily functions.

Customized Integrated Electronic Podium: Replacing the traditional podium, the electronic podium serves the normal function of permitting attorneys to test papers during examination in the course of questioning but also does much more – it holds equipment used to present evidence electronically in the Courtroom; a light pen for annotation by Counsel on items of evidence displayed on monitors to the Judge and Jury; a flat monitor on which the attorney can see the item of evidence being displayed to the Judge or the Jury; a video cassette recorder, a wireless communicator that projects items of proof on monitors; and a visual image printer to capture any frame from a video or still source for preservation purposes.

Personal Computer Docking Stations: Located at counsel's table, the witness box, the bench and the podium, these connections permit the

presentation or analysis of evidence by witness or counsel. Attorneys will be able to receive real-time transcriptions and to communicate electronically with locations outside the court house, such as their law-offices, while the proceedings are taking place or during recesses.

Video-cassette Recorder: Connected to the evidence presentation system, the recorder facilitates presentation and playback of taped evidence.

Component-Computer: This computer is specifically designed to handle the processing of all information and to run software needed in the courtroom.

Other Equipment: The Courtroom is equipped with a portable acoustical system and an LED display system.

The Courtroom accommodates Commercial Division cases and cases outside the Division would also benefit from access to this equipment.

Manhattan Supreme Court, New York City – Courtroom 2000:
(<http://www.smarttech.com/profiles/supreme.asp>)

In room No. 228 of the N.Y. County Court house a groundbreaking innovation has taken place. Underneath the floor, wires connect computers located around the room, to monitor screen of antique wood paneling. Flat screen monitors are stationed at key locations, including the Judge-Bench, jury box, attorney's tables and clerks' desks, for use in displaying photographs, documents and other presentations. The Court is also

equipped with PC docking stations, VCR, real-time transcription capabilities – and a SMART BOARD which is an interactive whiteboard.

Unveiled in 1997 as a test project in Manhattan’s Supreme Court, (Commercial Division), Court 2000 is a state-of-the-art facility that harnesses the power to modern-day technology to increase efficiency of the judicial process. Typically, several commercial trials and many mock-trials run by students and law associations are conducted each year. The first of its kind in the State, it is Courtroom of the future, housed in a Courtroom of the past.

The SMART BOARD interactive white board is used as an electronic blackboard. It enables users to electronically display information to multiple viewers, accent important points with colour, saves files and print multiple copies. A witness can come upto the board, pick up a pen from the SMART Pen Tray and write directly on the SMART BOARD’S interactive whiteboard’s surface. These notes are then saved for future use.

A Courtroom is a fast-face, high-tension setting. Because facts and figures appear and disappear quickly, the evidence needs to remain available for review after it is presented. Before the introduction of the SMART Board interactive blackboard, “preservation of information was a problem, as sometimes mistakenly erased from the blackboard”. Now, with the SMART Broad interactive whiteboard, “reproduction of the information presented during sessions is much easier”, because anything written on the touch-sensitive whiteboard is saved and then printed out for the Judge, juries and others for reference at anytime. The single great advantage of the

SMART Board interactive whiteboard is the ability to display and preserve information. Once again, the evidence presents a strong case for using the SMART Board interactive whiteboard in the courtroom.

Mississippi: Hinds County Courtroom 2000, Jackson, Mississippi.
(<http://www.cohinds.ms.us/pgs/circuit/factsheetgreen-asp>)

The electronic courtroom is a trial presentation system installed with cutting-edge, easy-to-use technology for civil and criminal trials.

The heart of the system is a high-speed network that links television monitors and peripheral devices.

The nerve centre is the 'Power Podium' which replaces the traditional lectern with a high-tech electronic presentation platform that is networked to large monitors located in front of the jury and smaller monitors for each counsel's table, the witness and the court reporter.

The system is controlled from the Judge's Bench by a touch screen monitor.

The Court equipment is as follows:

VCR

ELMO

Pointmaker (TM)

Videophone

Computer Input

400 MHZ Pentium™ Computer
Professionally Integrated Routing Equipmen
Hi Fidelity Auto-mixer and Speakers
Annotating Capability
Judges Kill Switch
Judges Touch Screen Control Panel
Wireless Lapel Microphone
S. Video VHS Video Player
Overhead Video Projector
Annotation Light Pen
Video Conference – Hook-up
PC or Mac
Sony™ Digital Color Printer
Elmo™ Document Camera
Marantz™ Audio Cassette
LCD Data Projector
View-Sonic™ Flat Panel Monitors
72” x 96” Parabolic Screen

In the Hinds County Atticus Courtroom 2000, (see http://www.co.hinds.us/pgs/circuit/court_2000.irene.usp) the “Atticus” is a portable multimedia and presentation unit featuring the latest in courtroom technology. It is designed to make trials easier and quicker for Judges, attorneys and most importantly, the jury. “It is pretty well-known fact that juries retain more information when they are shown something. This makes it far easier on everyone when it comes to decision time”, says Gary Lee,

Courtroom Technology Manager at RSI (Kansas City, MO), the makers of Atticus.

Judge James E. Graves, Jr. spearheaded the campaign to bring Atticus to the Hinds County Courthouse. He had the support of the Hinds County Law Library Committee, the Hinds County Bar Association and the Hinds County Board of Supervisors. “I felt strongly about this project and I’m proud of the fact that we did not have to use tax payer’s money”, he said. Judge Graves and Judge Green are the only Judges in Hinds County who utilize Atticus Courtroom 2000.

RSI company has built the Hinds County Atticus to meet the vision of Judge Green’s courtroom 2000. It features a 72” x 96” parabolic screen for outstanding viewing capabilities. In addition, attorneys are able to display documents and annotate them with a Light pen, utilize a digital colour printer that prints video stills in the fly and play 3-D animation, video and audio chips using state-of-the-art equipment.

RSI maintains an electronic courtroom in Jackson County Missouri. In addition, Atticus has been installed in several courtrooms throughout the County including US Attorneys in Charlotte, North Caroline and Salt Lake City, Utah, and two bankruptcy courts in Nevada. RSI is an applied information management company providing an integrated approach to high quality efficient products and services for legal and corporate clients nationwide.

So far as the high-tech systems in the Commercial Courts in India are concerned, we shall refer to them in the next Chapter, i.e. Chapter VIII.

Chapter VIII

Proposals by the National Informatics for establishing E-Courts in India:

In this Chapter we shall refer to the high-tech systems for the Commercial Courts which will be E-Courts, as per the scheme prepared by the National Informatics Centre (NIC).

E-COURTS

The E.Courts systems proposed by NIC are meant for all the Courts. It can be started as a Pilot Project for the proposed Commercial Courts.

Introduction

The advent of Information Technology has necessitated many organisations to re-look into their business processes. The Courts are not an exception to ignore the ever-changing technological developments. The already implemented Management Information Systems (MIS) have given a clue to the Courts to consider the concept of E-Courts. Though the E-Court word is familiar to most of the stakeholders of the judiciary, the concept need to be discussed in detail for better clarity.

E-Courts can be defined as the Courts, which take the assistance of the Information Technology and Communication (ITC) Tools for conducting their routine functions more efficiently .

Objectives

The basic objectives of E-Courts concept are: -

- a. To help in conducting the court proceedings efficiently
- b. To enable the advocates to argue their cases from remote locations
- c. To record the witness's statement from remote locations
- d. To establish Electronic Filing (E-Filing) facility
- e. To make the courts as paperless as possible

Functional Components

Following are the functional components of an E-Court to achieve the above-mentioned objectives :-

Video Conferencing

The minimum required components at each endpoint of a videoconference are a microphone, a camera, a Coder/Decoder (codec), a monitor and a speaker. The camera and microphone capture the image and sound, the codec converts the video and audio into a digital signal, encodes it and sends it out. The

codec at the other end decodes the signal and distributes the video and audio to the monitor and speaker.

A video conference can run on almost any type of digital network. ISDN is currently the most common network. However, IP is quickly becoming widespread. As a general rule, the higher the bandwidth used to connect the systems, the better the audio and video quality. The people are easy to see and hear and the picture is sharp.

Video conferencing system can be used to interact with anyone who has a standards-based video conferencing system or a telephone. Videoconferencing is increasingly being seen as a mission critical technology and it can be an integral part of functioning of a court on real time basis.

Security

Using encryption, a feature available with all video conferencing systems, the video calls will have a high level of security. The encryption process occurs automatically at the start of a video conference without the caller having to make any adjustments to the system. It would be advisable to go for standards-based equipment to ensure that the VC systems are interoperable regardless of manufacturer, that they are equipped with the latest technology, and that the investment continues to pay off in the long run.

Connecting several sites at the same time is one of the greatest values of videoconferencing. One can connect up to 4 video sites and 1 audio site in a single call with the simple touch of a button. With much sophisticated system one can connect up to 16 video and 16 audio sites.

Utility of Video Conferencing (VC) System in E-Court

The VC facility in the E-Courts can be used for the following purposes: -

- (a) For recording Statements of witnesses from a remote location;
- (b) To establish a Virtual Court at remote location;
- (c) For routine interactions between two branches of the High Court and the Supreme Court.

VC for Witness Statement Recording

The VC facility can also be used for recording the statements of witnesses who, for some reason, are not in a position to attend to the Court for recording statements. The witness being at the remote location on a similar VC System can get recorded his/her statement. The same facility can also be used for judicial remand extension of under-trials lodged in jails, if applicable.

Virtual Court

The Video Conferencing (VC) facility in the E-Court will get connected to another VC unit, which may be at remote location. In these remote courts the practicing advocates will appear and argue their cases, as if they are in the High Court, while the judges are sitting at the High Court.

For this, the rules of the High Court need to be changed for arguing/hearing cases from remote locations.

Functioning of VC

In each E-Court, there will be a VC System with two cameras, one facing the Judges and the other facing the advocates. There will be two plasma screens in the Court, which can be viewed by the Judges and the Advocates. There will also be a Document camera for projecting paper documents on the Plasma screens, a good Public Addressing system with wireless microphones, two 29 inch TV sets, DVD recorder for recording the VC proceedings and a computer system with Internet connectivity.

This VC System will be connected to a remote VC System installed either within or outside the country. These two locations can be connected using three pairs of ISDN lines, providing 384 kpbs connectivity. With this capacity of connectivity, though the pictures will not be of the quality of usual TV pictures, but it will provide comfortable viewing of people on the screen. If the remote VC Unit with which the EC

Court's VC is connected is not in the same city, then STD rates of that city will be applicable as call charges, during the period of VC Conference. As the VC facility is easy to operate, with little training to the Court staff it can be operated by themselves without any difficulty.

E-Filing

The concept of Electronic Filing envisages, filing of cases in the court by the advocates sitting at his or her office or home. The essential format in which the advocates need to file his/her case will be pre-defined for eliminating any possible filing defects. As soon as a case is electronically filed, the case will automatically get registered when the filed case complies with the requisite format. The registration in the first instance will be provisional and it will be final only when formal scrutiny takes place. The person electronically filing a case will also get a receipt with the digital signature of the court authority. E-filing should be mandatory for all cases coming before the E-courts.

Adequate security features will have to be provided to the process of electronic filing. The electronic filing process will ensure that the person filing the case by electronic means will be entitled to receive the proceedings of the court electronically on his computer system. This practically eliminates the person concerned to go around the registry to collect the required

information such as case nos., copies of notices, copies of orders/judgments, etc. The process of electronic filing may require certain changes/amendments to the existing rules and regulations of filing process. For this the court needs to take appropriate action.

E-mail based Communication

The E-court will have communication from the Registry of the High court to litigants/advocates through E-mail communication. Communication such as Issuing of Notices, Filing defects and any other correspondence that needs to be sent to the litigants can be through the electronic communication. This will ensure speedy and ensured delivery with almost no cost and less manpower requirement.

For implementing the above concept, the High Court may need to change its rules for allowing the Registry to have alternate communication methods with the litigants. In addition to this the Filing Proforma also need to be changed for inclusion of E-mail address of litigants and advocates. E-mail addresses will have to be mandatory for the litigants to mention while filing their cases electronically.

E-Advocacy

The Information Technology based advocacy enables the advocates to explain their point of view more clearly to the

judges with the help of Multi-Media based presentations in the court rooms. This process will help the judges in following the arguments put forward by the advocates more easily. With the introduction of the IT Advocacy while arguing a case, an advocate can either include a reference to the precedents in his/her IT based presentation or by accessing Internet he/she can get it displayed on the large screen installed in the court. It will avoid advocates carrying big bundles of law reference books to the courtrooms. For achieving IT based advocacy in the courts, the advocates and to some extent the judges, need to have basic knowledge of computers. This can be achieved by conducting special training programs for the judges and the advocates.

The 'Presentation Display' that is coming on the big screen if required, will also be made simultaneously visible on all the computer systems available in the courtroom. The judges can watch the display on the computer monitors installed in front of them on the dais. The advocates can watch the display either on the monitors installed near to them or on the big screen.

To achieve the objective of E-Courts concept, each courtroom will be equipped with enough computer systems. For example: there will be two Multi-media systems on the dais for the judges (one for each judge), two systems for the advocates and two systems for the court masters. In all there will be six computer systems in each E-court. In addition to these systems,

the E-court room will also be equipped with Audio-visual equipment such as projector, Plasma screens etc. These IT based tools will provide a better way of presenting complex cases involving voluminous documents, which are often difficult to manage and present.

While passing orders the judges can directly dictate to the computer systems through voice dictation software such as 'Dragon Naturally Speaking' or 'Via-voice' dictation software. As the technology of any dictation Software is not highly developed, the dictated order will have to be edited by the Court Masters sitting in the Courtrooms. This will be possible only when all the computer systems in the courtroom are interconnected. This interconnection will enable the court masters to access the orders dictated by the judges on their computer systems.

Facilitation Centre

As the court is going to be fully networked, the information that has public relevance can be provided at any centralized place, within the court complex. For this purpose it is proposed to create a Facilitation Centre for the benefit of litigants & Advocates. At the Facilitation Centre the following information can be provided: -

- ◆ Pending cases information CASE-STATUS
- ◆ Judgments

- ◆ Orders/Proceedings Copy
- ◆ Filing defects
- ◆ High Court Rules
- ◆ File tracing information

In the Facilitation center there will be 3-4 Information Kiosks with touch screen facility connected to High Court's Network. These Computer systems will have soft touch key display keyboards without attached keyboards so as to avoid mishandling and pilferage of computer peripherals. Some of the facilities available at the Facilitation Centre will also be made available on Internet for the benefit of a wide-range of users

Orders & Judgments on Internet

After the enactment of the Information and Technology Act, 2000, digital signatures are valid. It needs to be ensured that Certified copies are issued to the litigants on Internet under the court's Digital Signature Certificates. This will immensely help the litigant public in obtaining Certified copies without physically coming to the Court.

Visual presentation of the functioning of E-Courts in other countries will enable lawyers, Judges and Court staff to easily understand the new E-Court procedures and systems.

E-Courts Hardware & Software requirement

Sl.no	Item	Qty.	Unit price (In Rs.)	Total
I.	Hardware			
1.	Server System	One	300,000	300,000
2.	Desktop Clients	Seven	40,000	280,000
3.	Laser Printers	Two	40,000	80,000
4.	Multi-Media Projector	One	200,000	200,000
II	Video-Conferencing Equipment			
1.	Video-Conferencing System	One	600,000	600,000
2.	Plasma Screen 42 Inch	Two	500,000	1000,000
3.	Extra Camera	One	100,000	100,000
4.	Document camera	One	200,000	200,000
5.	Public Address system	One	100,000	100,000
6.	Television sets 29 Inch With trolley	Two	50,000	100,000
7.	Cordless Micro Phone	Four	10,000	40,000
8.	DVD Recorder + Player	One	20,000	20,000
III	Software			
1.	Windows 2000 Advance Server	One	55000	55,000
	SQL server Enterprise	One	200000	200,000
2.	Visual Studio .NET	One	50000	50,000
3.	Dictation Software	Two	30,000	60,000
	Technical manpower	Thirty Six Man months	10,000	360000
IV	Network			
1.	<u>Local Area Network</u>			
2.	<u>ISDN Lines</u>			300,000

	<u>Grand Total</u>			40,45,000

Chapter IX

Fast Track in the Commercial Division in High Courts in India

Towards the end of Chapter VI which dealt with ‘Fast Track procedure for Commercial Division in UK and USA’, we stated that the ‘fast-track’ procedure for India would be dealt with in Chapter IX. We shall, accordingly, elaborate our proposals for ‘fast track’ procedure in the proposed Commercial Division in High Courts in our country in this Chapter. It is recommended that the Bench will be of two High Court Judges and there can be more than one such Bench in each High Court depending upon the need.

The purpose of the proposals in this Chapter is to expedite commercial cases of high pecuniary value and create confidence in the commercial circles, within India and outside, that our Courts are quite fast, if not faster than Courts elsewhere.

The proposed Commercial Division will deal with high value matters and shall be a Court of original jurisdiction. It shall also be an appellate Court but only in regard to appeals pending in the High Courts as on the date of the commencement of the proposed enactment. It shall also deal with the execution proceedings arising out of the above said classes of cases.

The 'fast track' procedure must, in our view, apply to all types of cases referred to above.

It must apply to new commercial cases of a minimum value of Rs.1 crore or above, as may be determined and ratified by the High Court. (This minimum may be fixed by a High Court, at a figure between Rs. 1 crore upto Rs. 5 crores). It will also apply to pending commercial suits of a minimum threshold value of Rs.1 crore or more (or such high pecuniary value as may be determined by the High Court). Some of these pending suits of this value may be suits filed in the Courts of unlimited jurisdiction being Courts subordinate to the High Court. These have to be transferred to the High Court and to be allocated to the Commercial Division. Some may be suits pending on the original side of the Delhi, Bombay, Calcutta and Madras High Courts or such other High Court having such original jurisdiction and these have to be allocated to the Commercial Division.

Other matters pending in the High Court which have to be allocated to the proposed Commercial Division of the High Court are the pending appeals from decree of courts subordinate to the High Court and pending appeals to Division Benches from judgments of learned single Judges on the original side of the High Court. Here too, the cases must be of the pecuniary value stated above.

There may also be appeals in the High Court against interlocutory orders filed under Order LXIII of the Code of Civil Procedure, 1908 or applications under section 115 of the Code of Civil Procedure, 1908 or filed

under articles 226/227 of the Constitution questioning interlocutory orders passed by the courts subordinate to the High Court or there may be Letters Patent Appeals (or similar appeals permitted by High Court Acts) questioning the validity of interlocutory orders passed by learned single Judges of the High Court on the original side. We are referring to these types of matters arising out of suits of the above said pecuniary value which are pending. These have also to be allocated to the proposed Commercial Division.

The proposed enactment will contain a provision fixing the minimum pecuniary value at Rs.1 crore (or more as may be determined by the High Court) for purposes of transfer and/or allocation of the above cases to the Commercial Division. There will be a specific provision enabling the High Court to increase the minimum pecuniary value above Rs.1 crore. This minimum cannot, in our view, be fixed at any amount in excess of Rs. 5 crores. We are proposing delegation of the power of fixing the pecuniary limit as stated above, inasmuch as in some States like Maharashtra, Delhi, West Bengal and Tamil Nadu, where property or contract values are high, it may be necessary to fix a higher threshold value so that the proposed Commercial Division may not be overburdened at the threshold itself. The High Court may fix a minimum value higher than Rs.1 crore (but not exceeding a minimum of Rs. 5 crores) and at a later point of time, may even bring it down but not below Rs.1 crore.

Counter claims filed along with written statements, even if they are not of the prescribed value, will have to go before the Commercial Division.

As stated above, the proposed Commercial Division shall, notwithstanding anything in the Code of Civil Procedure, 1908, be the executing Court not only for original matters filed before it or transferred to it but also in respect of suits where the regular appeals against decrees in suits of the prescribed high pecuniary value which are transferred to the Commercial Division as stated above.

Next, it becomes necessary to define what is meant by the words 'commercial cases'. In Chapter IV of this Report we have referred to the pattern of cases which are treated as 'commercial' in UK and USA. Incidentally, in that chapter, we have also referred to certain Rules framed by the Delhi High Court providing for certain class of cases being treated as 'commercial'. As stated in Chapter IV, it is not merely sufficient to define what we mean by the word 'commercial' but we should also exclude a class of 'commercial cases' from the purview of the proposed Commercial Division if they are liable to be adjudicated by Courts or tribunals of exclusive jurisdiction – e.g. insolvency matters or winding up proceedings or such commercial cases falling within the domain of bodies/authorities constituted under the Telecom Regulatory Authority of India Act, 1997 or ; Securities Exchange Board of India Act, 1993, Debt Recovery Tribunals dealing with debts due to Banks and Financial Institutions, Rent Tribunals, Motor Accident Claims Tribunals and other Courts or Tribunals dealing with a specific subjects. However, it may be noted that some Acts such as the Consumer (Protection) Act, 1986 provide that the said enactment is intended to provide remedies in addition to the normal remedies in civil courts. For example, section 3 of that Act states that the 'provisions shall in addition to and not in derogation of the provisions of any other law for the

time being in force’. In fact, in several cases, the National Consumer Commission has refused to entertain cases for justifiable reasons such as for example, where serious issues of fraud, cheating or conspiracy are involved. Such cases can still be filed in the High Court and brought before the proposed Commercial Division.

So far as actions for which exclusive courts or tribunals have been constituted by statute, there can, as already stated, be a general provision in the above definition that the ‘commercial disputes’ which are of the minimum pecuniary value stated above and which may be decided by the Commercial Division, they will not include cases where the jurisdiction of the Civil Court is barred either expressly or by implication by any Central or State law.

Cases cognizable by a criminal court cannot obviously be filed in the proposed Commercial Division because the Court is proposed to deal with civil cases.

‘Commercial Dispute Cases’

We shall, initially, refer to the classification of ‘commercial cases’ by the Delhi High Court in its Rules. We have extracted the Rules in Chapter VI already but we again extract that definition:

“Commercial cases” include cases arising out of the ordinary transactions of merchants, bankers and traders, such as those relating to the construction of mercantile documents, export or import of

merchandize, affreightment, carriage of goods by land, insurance, banking and mercantile documents, mercantile agency, mercantile usage and infringements of trade marks and passing off actions. Suits on ordinary loans and mortgages are not “Commercial cases”.”

The above definition is wide and, in fact, has to be widely construed. However, we propose to modify it and add certain Explanations to cover some specific type of cases referred to below.

Can disputes concerning ‘commercial property’ be brought before the Commercial Division if they involve ‘immovable property’, such as where, for example, it is partnership property or where there is a mortgage or charge or lien created on immovable property as collateral security for performance of obligations under a commercial contract? Take a case where the partnership deed treats immovable property as partnership property or where an equitable mortgage is created in respect of immovable property as collateral security by one businessman in favour of another businessman or a commercial firm or company? In our view, these cases must also come before the Commercial Division, provided the main transaction is a commercial one.

Though it is obvious that cases of eviction from commercial property like a premises falling within the purview of rent-control legislation, cannot be filed before the High Court and be brought before the Commercial Division, cases of suits for eviction from immovable property covered by the Transfer of Property Act, can be brought before the Commercial Division if the value of the subject matters is of Rs.1 crore or more. For

example, in Delhi, tenants paying rent upto Rs. 3500 p.m. have the protection of the Delhi Rent Control Act. In some States, after expiry of ten years from date of construction, the building comes under the rent control law for eviction cases to be filed after the expiry of such period. Obviously, such eviction matters cannot be dealt with by the Civil Court nor by the proposed Commercial Division. In some States, where the tenants have protection under rent control legislation, the proceedings are indeed filed in a Civil Court as a civil suit (and not before rent control tribunals) but the Civil Court will deal with the matter under the rent control legislation and not as a Civil Court dealing with a normal eviction suits relating to immovable property governed by the Transfer of Property Act. Obviously, such suits cannot come before the proposed Commercial Division, even if the property is used for commercial purposes.

In the case of commercial premises not governed by the rent control legislation, the tenant may be a businessman but the landlord may not necessarily be a businessman. Still, the matter has to go to the Commercial Division if the value of the property is of the minimum prescribed value stated above.

Take then the cases which arise out of insurance policies – life insurance or general insurance, where the claim is Rs.1 crore or more (or such higher figure as may be fixed by the High Court). These cases can be included in the definition, though the policy holder is or is not a businessman. In the case of general insurance covering fire or marine insurance, the case involves indemnity for damage or injury on account of torts or due to natural causes like flood, earthquake or cyclone etc.

Question is whether such disputes should also go before the Commercial Division? In our view, yes, even though the policy holder is not a businessman. So far as motor accident cases are concerned, the Motor Accident Claims Tribunal is a tribunal of exclusive jurisdiction and those cases, even if they are of the prescribed high commercial value and contain claims against insurance companies, they cannot obviously go before the Commercial Division.

So far trademark disputes are concerned, sec. 83 of the Trade Marks Act, 1999 has constituted an Appellate Board. Section 91(1) provides for an appeal to the Board by aggrieved parties against orders of the Registrar and sec. 93 bars the jurisdiction of Civil Courts 'in relation to the matters referred to in subsection (1) of section 91'. That would still mean that suits for injunction and damages in matters relating to passing off and infringement can still go before Civil Courts and are not barred. Likewise, the other commercial disputes arising under the Patents Act, 1970, the Copyright Act, 1957 and Designs Act, 2000 can go before the Commercial Division except to the extent that any specific class of disputes are ousted from the jurisdiction of Civil Courts.

We have also considered whether matters falling within the admiralty jurisdiction of the High Court should go before the Commercial Division. In fact, there may be other subjects of a commercial nature which according to the High Court, may go before the Commercial Division. For this purpose, we recommend that a residuary clause may be introduced in the definition enabling the High Court to notify other disputes to be included in the definition of 'commercial disputes'.

After due deliberation, we are inclined to adopt the definition of 'Commercial Cause' as stated in Rule 1 of Part D of Chapter III (Part V) of the Delhi High Court Rules, with modifications, as follows:

'Commercial disputes' mean

disputes arising out of transactions of trade or commerce and, in particular, disputes arising out of ordinary transactions of merchants, bankers and traders such as those relating to: enforcement and interpretation of mercantile documents, export or import of merchandise, affreightment, carriage of goods, franchising, distribution and licensing agreements, mercantile agency and mercantile usage, partnership, technology development, maintenance and consultancy agreements, software, hardware, networks, internet, website and intellectual property such as trademark, copyright, patent, design, domain names and brands, and such other commercial disputes which the High Court may notify.

Explanation I: A dispute which is commercial shall not cease to be a commercial dispute merely because it also involves action: for recovery of immovable property or for realization of monies out of immovable property given as security or for taking other action against immovable property.

Explanation II: A dispute which is not a commercial dispute shall be deemed to be a commercial dispute if the immovable property involved in the dispute is used in trade or put to commercial use.

Valuation:

The valuation of the subject matter of dispute for purposes of fixing the jurisdiction of the Commercial Division must, in our view, be simple. We have looked into the principles of valuation governing the filing of civil suits in Courts under the Suits Valuation Act, 1887 and the State Amendments thereto and the various legislations made by the State Legislatures of Andhra Pradesh, Karnataka, Kerala etc. In those Acts, the methods of valuation are quite complicated and we do not want to adopt them. On the other hand, we want to adopt a single method of valuation. So far as money suits or suits relating to immovable property are concerned, there is not much difficulty. Even here, we are of the view that if the suit affects movable property, whether it be one for recovery of the movable property or not, it should be valued on the basis of the market value of the entire movable property on date of suit. Likewise, when we deal with suits affecting immovable property or even rights therein, the value of the dispute must be computed on the basis of the market value of the whole of the immovable property. In the case of appeals in the High Court which are to be allocated to the Commercial Division, the value will be the value of subject matter in dispute, as computed in the above manner as on the date of suit.

Fast track procedure in Suits and Case Management:

So far as fresh suits that may be filed after the commencement of the proposed Act, those will be dealt with keeping in mind the 'fast track'

procedure indicated for ‘fast track’ arbitration in the 176th Report on “Arbitration and Conciliation Bill, 2002” with suitable modifications, to suit the procedure in Courts. The recommendations in that behalf are contained in Schedule IV of the Bill as annexed to the said Report of the Law Commission. Case management can be entrusted to a Single Judge in the Commercial Division.

We may, however, refer to the fast track procedure for the Commercial Division in a broad manner and should be on the basis of the following guidelines.

In the Commercial Division, the plaintiff must file along with the plaint, the relevant documents on which the plaintiff proposes to rely and the statement of the witnesses in chief examination by way of an affidavit and the draft issues that are likely to arise. Copies of these have to be sent to the opposite parties on the same date on which the plaint is filed; list of interrogatories, if any, application for discovery and production, if any, mentioning their relevancy, must also be sent likewise on the above said date itself. Plaintiff must also furnish the full address, including e-mail or fax, telephone numbers, if any, of all claimants and of all the parties, to the extent known to plaintiff, for the purpose of expediting communication and correspondence. A list of draft issues has also to be filed on the same date.

Within one month from the date of receipt of the copy of the plaint and other annexures as stated above, the defendant must file his written statement in the Commercial Division along with all the relevant documents, affidavit evidence in chief and applications referred to above as

in the case of the plaintiff. He must also send copies thereof to the plaintiff. Simultaneously, if there is a counter-claim, he must file the claim along with the written statement coupled with the various documents referred to above. He must also file a draft of the issues that are likely to arise and send a copy thereof to the plaintiff.

In case the plaintiff wants to file a rejoinder, leave of Court will be necessary and he must apply within fifteen days of service of the written statement for this purpose and if permitted, must file rejoinder within one month of the order of the Commercial Division granting such permission.

The procedure for filing various documents and applications which applies to plaints will apply to counter-claims.

In case discovery or production of documents is allowed, the parties shall be permitted to file supplementary statements, within a period to be specified by the Commercial Division and they will be served on the opposite party, along with copies of documents and relevant affidavit evidence, if any.

In commercial suits pending in Courts subordinate to the High Court or on the original side of the High Court where the value of the subject matter is of the prescribed high value (i.e. Rs.1 crore or above), which shall stand transferred to the Commercial Division of the High Court, if pleadings had not been completed or evidence had not been recorded in these matters, the procedure indicated above which is applicable to fresh suits should also

apply to the extent applicable, having regard to the stage at which the case is transferred or allocated to the Commercial Division.

In our view, single Judge in the Commercial Division should hold one or more ‘Case Management Conferences’ and fix a time schedule for finalisation of the issues and for cross-examination, if any, of witnesses, and also for filing written submissions and for oral submissions thereafter. Any conditional orders for these purposes fixing time limits, if they are likely to result in an ex parte order or order in default, should however be passed by the Bench of two learned Judges. The Commercial Division may apply the provisions of sec. 89 of the Code of Civil Procedure, 1908 for considering resolution of dispute by ADR methods.

It is also proposed that evidence in cross-examination or re-examination can be recorded by a learned single Judge in the Commercial Division and objections as to admissibility can be recorded by him but may be decided by the Bench of two learned Judges.

We also propose that the single Judge may appoint an Advocate Commissioner of not less than 25 years standing or a retired judicial officer of the rank of a District Judge or a retired senior Civil Judge, for recording such evidence in cross-examination or re-examination.

We may also point out that normally in such high value commercial cases, the evidence will be generally documentary and there will be very little or no oral evidence.

As pointed in the previous chapter, the Commercial Division will be equipped with all high tech systems referred to in the Chapter VIII, such as audio and video facilities, including video-conferencing. But, the installation of high-tech facilities need not be a requirement for the implementation of our proposals for constitution of the Commercial Division.

Party or counsel must file written submissions before oral submissions; and at the Case-Management Conference, all time limits including those for oral submissions must be fixed in advance.

Judgment of the Commercial Division has to be pronounced within thirty days of the conclusion of arguments and simultaneously copies thereof must be issued to all the parties through e-mail or otherwise.

The fast track procedure in the Commercial Division must be based on these broad guidelines.

Statutory appeals to Supreme Court:

It is recommended that there shall be a statutory right of appeal to the Supreme Court of India against decrees passed by the Commercial Division and against orders passed by that Division of the specific category referred to in Order XLIII of the Code of Civil Procedure subject to such rules as may be made by the Supreme Court including rules for listing the appeals for preliminary hearing. We are proposing these statutory appeals because it is axiomatic that there should at least be one appeal against a decree in the

suit both on questions of fact and law, particularly when the stakes are so high as in commercial cases. Further, appeals against interlocutory orders available in suits where the value of the subject matter is below Rs. 1 crore, should also be available in the case of interlocutory matter passed by the Commercial Division in original suits of the high pecuniary value proposed. But, as is normally the case in all such first appeals to the Supreme Court, the Supreme Court Rules generally require the matter to be listed for preliminary hearing. These proposals for statutory appeal are however subject to some exceptions.

We do not statutory appeal where appeals against original decrees or appeals/revision applications against orders are disposed of by the Commercial Division. We do not propose to provide a statutory appeal against interlocutory orders or orders passed by the Commercial Division in execution but we leave such orders to be challenged only under Art. 136 of the Constitution of India.

Procedure in pending appeals:

In the pending appeals against decrees or orders passed by learned single Judges in the High Court, where notices have not been served on the respondents, the following procedure which is followed in some of High Courts (e.g. Andhra Pradesh, Tamil Nadu, Kerala and Karnataka) should be followed. If parties have been represented by counsel before the single Judge, his name will be printed automatically in the cause-list and he must appear. He shall be given time to obtain necessary instructions from the parties concerned. This procedure saves a lot of time. Further, if the main

suit is pending and the same lawyer is representing the parties in the main suit and if he has appeared in the interlocutory matters before the learned single Judge, notice must be served on the same counsel. (In fact, vakalat forms in the above High Courts contain a clause that the vakalat filed in the High Court for appearance before a learned single Judge will enure for the purpose of an appeal against the decree or order before a Division Bench). This procedure is confined to pending appeals in the High Court. So far as the future is concerned, inasmuch as the pending appeals are to be dealt with in the High Court by a Division Bench, this problem does not arise.

In pending appeals/revisions transferred to the Division, necessary paper books must be filed within the period proposed to be fixed, say, three months. Written submissions must be filed soon thereafter before oral submissions. Time limits for oral submissions must also be fixed in Case-Management Conferences, in advance.

Time limits for the Commercial Division to dispose of matters:

As regards the time limits for disposal by the Commercial Division, fresh suits filed after the commencement of the proposed Act, must be disposed of within two years from date of completion of service on opposite party. Existing suits transferred from lower Courts to the High Court and allocated to the Commercial Division must also be disposed of within two years but if they have been already pending for two years or more, they must be disposed of within one year of allocation to the Commercial Division, where opposite parties have already been served by the date of commencement of the proposed Act. Where the transferred suit is still at

the stage of service, it should be disposed of within two years of completion of service on the opposite party.

Interlocutory Appeals transferred to the Division must be decided within three months from date of completion of service or allocation to the Commercial Division.

Execution Matters and Fast track Procedures:

As stated earlier, execution proceedings cannot be allowed to delay the realization of fruits of the decree in such high value suits that may come before the Commercial Division in fresh suits that may be filed before it, or in pending suits which are either transferred to it from subordinate Courts or allocated to it from the original side of the High Court. All these execution matters must be dealt with only by the Commercial Division.

Then we have execution in the transferred matters, namely, in the pending regular first appeals against decrees passed by Courts subordinate to the High Courts transferred to the Commercial Division and the pending regular first appeals against decrees passed by learned single Judges on the original side which are allocated to the Commercial Division. In these matters, we recommend that the principle that the Court of first instance should be the executing Court be departed from and that in all such regular first appeals which are pending in the High Court and transferred or allocated to the Commercial Division, execution proceedings shall be initiated and concluded in the Commercial Division.

The execution proceedings will, no doubt, be governed by the provision of Order XXI of the Code of Civil Procedure, but the matters must be disposed of within six months of the passing of the decree.

Parties must file their written submissions one month in advance of the date of hearing of the main execution application.

Special budgetary support needed to establish the Commercial Division and the overall market friendly change in investment in business scenario

We may also state that the Central and State Governments must provide the necessary funds to meet the expenditure involved for the establishment of the Commercial Division. This includes the expense involved in appointing extra Judges in the High Court, providing supporting staff and other infrastructure. It also includes the expense involved in establishing the high-tech systems referred to in Chapter VIII.

The benefits that may accrue to the economy of the country as a whole by the Constitution and establishment of Commercial Division will be enormous in view of the expected investment by foreign and Indian commercial entities running into several hundreds of crores. Investment in India, both domestic and foreign is bound to increase tremendously if it becomes known that the Commercial Division in the High Courts in India will dispose of the matters within a maximum period of two years which is comparable to the period of pendency in USA or UK. The expense involved in establishing the Commercial Division with high-tech infrastructure will, in our view, be a small fraction of the overall benefits

that will accrue to the economy of the country. There will be sufficient assurance that they need not fear about delays in Courts any longer.

High Courts Judges strength in Commercial Division to be maintained (including Judges under Art. 224A):

It may be that in several High Courts, the number of suits transferred or appeals transferred along with fresh suits and appeals of the value of Rs.1 crore or above that may be filed in future may be considerable. Having regard to the average rate of disposal of suits/appeals and the number of cases which fall to the Commercial Division, in our view, the Chief Justice of the High Court must see that there are in position as many number of Judges to man the Division Benches as may be necessary for a fair and speedy disposal of commercial cases in the Division. Under Art. 224A, the Chief Justice of the High Court with the previous consent of the President, appoint from among retired Judges of the same or other High Courts, to function as Judges of the High Court. These Judges appointed under Art. 224A Judges can dispose of commercial cases along with other regular Judges of the High Court. Once the arrears have come down to a tolerable level, the High Court may consider whether it will be able to manage with its regular cadre of Judges. In our view, the Chief Justice must ensure that whatever be the number of retirements in his High Court, the number of Judges who are required to be on the Commercial Division is maintained throughout.

We do not deny that other subjects jurisdictions in the High Court too require Judges, e.g. for criminal work or writ jurisdiction and so on. But in

a total of more than 600 Judges in the High Courts in the country, the fact remains that, at any given point of time, there are always more than hundred or hundred and fifty vacancies. It is unfortunate that though it is required that Chief Justices should send recommendations for appointment of High Court Judges six months in advance of a vacancy falling, this is normally not done. Mostly the process of consultation with the collegium within the High Court level is started long after the occurrence of several vacancies. With the existing depleted strength of Judges, the huge backlog in most High Courts cannot be cleared unless such delays in sending recommendations are eliminated. There was some thinking that when regular or additional vacancies are available in the High Court, the Chief Justice of the High Court should not normally resort to Art. 224A appointments. But, things have changed. Speedy disposal of commercial cases is today as important as speedy disposal of a criminal appeals. The Commission is of the view that in the interests of clearing arrears in the High Courts in various types of cases including criminal matters, a combination of regular newly appointed High Court Judges from the Bar and subordinate judiciary on the one hand and appointments under Art. 224A on the other, is the grave need of the hour.

We may make some passing observations. There are some High Courts where criminal appeals are pending for more than twenty years. Bails are automatically granted as a matter of practice, if a criminal appeal is pending for more than five years in the High Court. This is a sorry state of affairs. The backlog on the criminal side can be cleared easily by appointing a good number of retired High Court Judges under Art. 224A who have adequate expertise in criminal law. We must reach a stage

where criminal appeals are brought for disposal within three years from date of their filing in the High Court. Similarly, large number of appeals relating to family disputes matters are pending in the High Courts, need to be speedily disposed of and this can be achieved by appointing more Judges or Judges under Art. 224A.

We are referring to this aspect of the matter because the proposals for establishment of a Commercial Division in the High Court in as many Benches as may be necessary, will remain a dead letter if the Commercial Division does not have the full strength of Judges required for that Division. Inasmuch as other jurisdictions, such as criminal, writs also require Judges, then the only solution is to undertake the following steps urgently:

- (a) to make recommendations for fresh appointments to the High Court from the Bar and subordinate judiciary, six months in advance before any vacancy occurs and
- (b) to urgently appoint Judges under Art. 224A of the Constitution to first clear the heavy backlog and bring the arrears within manageable proportions in all jurisdictions, including criminal, commercial and family matters.

Chapter X

Summary of Recommendations

Our important conclusions and recommendations in this report are summarised below:-

1. Purpose to expedite commercial cases of high pecuniary value

The purpose of the proposals in this report is to expedite commercial cases of high pecuniary value and create confidence in the commercial circles, within India and outside, that our Courts are quite fast, if not faster than Courts elsewhere.

The last decade has brought about phenomenal changes leading to enormous growth in the commerce and industrial sector of India. The policies of the Government have changed radically from 1991, the year in which our economy was opened up to foreign investment in a big way. Privatisation, liberalization and globalisation have resulted in giving a big boost to our economy. At the same time, world has become very much competitive.

With such rapid increase in commerce and trade, commercial disputes involving high stakes are likely to increase. Unless, there is new and effective mechanism for resolving them speedily and efficiently, progress will be retarded.

The overall benefits that may accrue to the economy of the country as a whole by the establishment of the Commercial Division will, in our opinion, be in several hundreds of crores of Rupees. In view of the present era of globalisation and liberalization, investment in India, both domestic and foreign is bound to increase tremendously once the investors of the world know with certainty and assurance that the Commercial Division in the High Courts in India will dispose of the matters within a maximum period of two years which is comparable to the period of pendency in USA or UK. The expense involved in establishment of the Commercial Division will, in our view, be a small fraction of the overall benefits that will accrue to the economy of the country. Investors will make freely investment in business ventures without fear of blocking their substantial business capital in undue prolonged litigation in courts. The proposed changes are likely to render the overall market friendly change in investment in business scenario.

2. Method of expeditious disposal of “Commercial cases” of high pecuniary value in NUTSHELL :

We recommend the creation of “Commercial Division’ in each of our High Courts so that these may handle ‘commercial cases’ of a high threshold

value of (say) Rs. 1 crore and above, or such higher limit as may be fixed by the High Court and on fast-track basis. Such a procedure was recommended in our Report on Amendments to the Indian Arbitration and Conciliation Act, 1996 for 'fast-track' arbitration. The objective is that a commercial case of such high value should be disposed of within a period of one year or at the most two years in all the States in India. A maximum period of two years is perfectly justified and is comparable to the period of pendency in most courts abroad and in particular in US and UK. The proposed Divisions should be manned by Judges of the High Court who are well-versed in civil law and in particular, commercial laws. It is also proposed that High Court Judges should be given extensive exposure to the fast growing changes in commerce occurring globally and that their knowledge levels in respect of new branches of commercial law should be updated constantly by a programme of continuing lectures. The commercial cases above the pecuniary limit of (say) Rs. 1 crore or more as stated above must, in our view, be taken up on the original side of the High Court and to be allocated to the Commercial Division. Simultaneously, pending appeals before the High Court in relation to commercial cases of the high pecuniary value abovementioned must also to be allocated to the Commercial Division straightway rather than stand in queue along with other civil appeals pending in the High Courts. Likewise, the execution of decrees passed by the Commercial Division must also be undertaken by the same Division.

3. Creation of Commercial Division in High Courts

We recommend the creation of “Commercial Division’ in each of our High Courts. The Bench will comprise of two High Court Judges and there can be more than one such Bench in each High Court depending upon the need.

4. Jurisdiction of Commercial Division in regard to original matters.

(1) Jurisdiction regarding the subject matter:-

In order to set out the subject matter jurisdiction of the Commercial Division, we adopt the definition of ‘Commercial Cause’ as stated in Rule 1 of Part D of Chapter III (Part V) of the Delhi High Court Rules, with slight modification as discussed below:-

The classification of “commercial cases” in the said rules lays down:

“Commercial cases” include cases arising out of the ordinary transactions of merchants, bankers and traders, such as those relating to the construction of mercantile documents, export or import of merchandize, affreightment, carriage of goods by land, insurance, banking and mercantile documents, mercantile agency, mercantile usage and infringements of trade marks and passing off actions. Suits on ordinary loans and mortgages are not “Commercial cases”.”

The above definition is wide and, in fact, has to be widely construed. In the light of our discussion in Chapter IX, we recommend that ‘commercial disputes’ should be defined as follows:

‘Commercial disputes’ mean

disputes arising out of transactions of trade or commerce and, in particular, disputes arising out of ordinary transactions of merchants, bankers and traders such as those relating to: enforcement and interpretation of mercantile documents, export or import of merchandise, affreightment, carriage of goods, franchising, distribution and licensing agreements, mercantile agency and mercantile usage, partnership, technology development, maintenance and consultancy agreements, software, hardware, networks, internet, website and intellectual property such as trademark, copyright, patent, design, domain names and brands, and such other commercial disputes which the High Court may notify.

Explanation I: A dispute which is commercial shall not cease to be a commercial dispute merely because it also involves action: for recovery of immovable property or for realization of monies out of immovable property given as security or for taking other action against immovable property.

Explanation II: A dispute which is not a commercial dispute shall be deemed to be a commercial dispute if the immovable property involved in the dispute is used in trade or put to commercial use.

(2) Pecuniary and other jurisdictions

The Commercial Division will deal with high value matters and shall be a Court of original jurisdiction. It shall also be an appellate Court but only in regard to appeals pending in the High Court as on the date of the proposed enactment. It shall also deal with the execution proceedings arising out of the above said classes of cases.

The valuation of the subject matter of dispute for purposes of fixing the jurisdiction of the Commercial Division must, in our view, be simple. We have looked into the principles of valuation governing the filing of civil suits in Courts under the Suits Valuation Act, 1887 and the State Amendments thereto and the various legislations made by the State Legislatures of Andhra Pradesh, Karnataka, Kerala etc. In those Acts, the methods of valuation are quite complicated and we do not want to adopt them. On the other hand, we want to adopt a single method of valuation. So far as money suits or suits relating to immovable property are concerned, there is not much difficulty. Even here, we are of the view that if the suit affects movable property, whether it be one for recovery of the movable property or not, it should be valued on the basis of the market value of the entire movable property on date of suit. Likewise, when we deal with suits

affecting immovable property or even rights therein, the value of the dispute must be computed on the basis of the market value of the whole of the immovable property. In the case of appeals in the High Court which are to be allocated to the Commercial Division, the value will be the value of subject matter in dispute, as computed in the above manner as on the date of suit.

It must apply to new commercial cases of a minimum value of Rs. one crore or above, as may be determined by the High Court. It will also apply to pending commercial suits of a minimum threshold value of Rs.1 crore or more (or such high pecuniary value as may be determined by the High Court). Some of these pending suits may be suits filed in the Courts of unlimited jurisdiction being Courts subordinate to the High Court and some may be suits pending on the original side of the Delhi, Bombay, Calcutta and Madras High Courts.

The proposed Act will contain a provision fixing the minimum pecuniary value at Rs.1 crore or more (as may be determined by the High Court) for purposes of transfer and/or allocation of the above cases to the Commercial Division. There will be a specific provision enabling the High Court to increase the minimum pecuniary value above Rs.1 crore but the minimum shall not be excess of Rs.5 crores. We are proposing this procedure inasmuch as in some States like Maharashtra, Delhi, West Bengal and Tamil Nadu, where transaction values in several big cities are high, it may be necessary to fix a higher threshold value so that the Commercial Division may not be overburdened at the threshold itself. The High Court

may fix a minimum value higher than Rs.1 crore (but not higher than 5 crores) and at a later point of time, may even bring it down but not below Rs.1 crore.

5. Nature of matters, pending in High Court, which have to be allocated to the Commercial Division.

Pending matters in the High Court which have to be allocated to the Commercial Division are as under :-

- (a) appeals from decrees passed by Courts subordinate to the High Court or further appeals to Division Benches from judgments of learned single Judges on the original side of the High Court. Here too, the cases must be of the pecuniary value as proposed in para 4 (2) above.
- (b) appeals against interlocutory orders filed under Order LXIII of the Code of Civil Procedure, 1908, or applications filed under section 115 of the Code of Civil Procedure, 1908 or application filed under articles 226 or 227 of the Constitution questioning the validity of interlocutory orders passed by the courts subordinate to the High Court or Letters Patent Appeals (or similar appeals permitted by High Court Acts) questioning the validity of interlocutory

orders passed by learned single Judges of the High Court on the original side, in pending suits of the pecuniary value as proposed in para 4(2) above are proposed to be allocated to the Commercial Division of the High Court.

6. Fast track procedure

6.1 With regard to fresh suits:

Fresh suits that may be filed after the establishment of the Commercial Division of High Court would have to be dealt with on the lines of the 'fast track' procedure indicated for 'fast track arbitration' subject to such modifications as may be necessary to suit the procedure of a Civil Court. So far as the 'fast track' procedure for arbitration is concerned, it is contained in Schedule IV of the Bill annexed to the 176th Report on the 'Arbitration and Conciliation (Amendment) Bill, 2002'.

6.2 The following are broad guidelines for fast-track procedure.

(i) Pleadings and issues

The plaintiff must file in the Commercial Division, along with the plaint, the relevant documents on which the plaintiff proposes to rely and the statement of the witnesses in chief examination by way of an affidavit and the draft issues that are likely to arise. Copies of these have to be sent to the opposite parties on the same date on which the plaint is filed; list of

interrogatories, if any, application for discovery and production, if any, mentioning their relevancy, must also be sent likewise on the above said date itself. Plaintiff must also furnish the full address, including e-mail or fax, telephone numbers, if any, of all claimants and of all the parties, to the extent known to plaintiff, for the purpose of expediting communication and correspondence. A list of draft issues has also to be filed on the same date.

Within one month from the date of receipt of the copy of the plaint and other annexures as stated above, the defendant must file his written statement in the Commercial Division along with all the relevant documents, affidavit of evidence in chief and applications referred to above as in the case of the plaintiff. He must also send copies thereof to the plaintiff. Simultaneously, if there is a counter-claim, he must file the claim along with the written statement coupled with the various documents referred to above. He must also file a draft of the issues that are likely to arise and send a copy thereof to the plaintiff.

In case the plaintiff wants to file a rejoinder, leave of Court will be necessary and he must apply within fifteen days of service of the written statement for this purpose and if permitted, must file rejoinder within one month of the order of the Commercial Division granting such permission.

The procedure for filing various documents and applications which applies to plaints will also apply to counter-claims.

In case discovery or production of documents is allowed, the parties shall be permitted to file supplementary statements, within a period to be specified by the Commercial Division and a notice would be served on the opposite party, along with copies of documents and relevant affidavit evidence, if any.

(ii) Holding of ‘Case Management Conferences’

A single Judge in the Commercial Division shall hold one or more ‘Case Management Conferences’ and fix a time schedule for finalisation of the issues and for cross-examination, if any, of witnesses, and also for filing written submissions and for oral submissions thereafter. Any conditional orders for these purposes fixing time limits, if they are likely to result in an ex parte order or order in default, should however be passed by the Bench of two learned Judges.

Party or counsel must file written submissions before oral submissions; and at the Case-Management Conference, all time limits including those for oral submissions must be fixed in advance.

(iii) Resort to ADR methods

The Commercial Division may apply the provisions of section 89 of the Code of Civil Procedure, 1908 for considering resolution of dispute by Alternate Disputes Resolution methods.

(iv) Manner of recording evidence

It is also proposed that evidence in cross-examination or re-examination can be recorded by a learned single Judge in the Commercial Division and objections as to admissibility can be recorded by him but may be decided by the Bench of two learned Judges.

We also recommend that the single Judge may appoint an Advocate Commissioner of not less than 25 years standing or a retired judicial officer of the rank of a District Judge or a retired senior Civil Judge, for recording such evidence in cross-examination or re-examination.

We may also point out that normally in such high value commercial cases, the evidence will be mostly documentary and there will be very little or no oral evidence.

(v) Commercial Division equipped with all hi-tech systems and on-line filing system

The Commercial Division will be equipped with all hi-tech systems referred to in the Chapter VIII, such as audio and video facilities, including video-conferencing. There should be on-line filing. The installation of hi-tech system need not delay the constitution of the Commercial Division or its function.

(vi) Time-limit for pronouncement of judgments

Judgment of the Commercial Division has to be pronounced within thirty days of the conclusion of arguments and simultaneously copies thereof must be issued to all the parties through e-mail or otherwise.

(B) Fast track procedure with regard to pending Commercial suits transferred or allocated to Commercial Division:

In commercial suits pending in Courts subordinate to the High Court or on the original side of the High Court where the value of the subject matter is of the prescribed high value (i.e. Rs.1 crore or above), which shall stand transferred to the Commercial Division of the High Court, if pleadings had not been completed or evidence had not been recorded in these matters, the procedure indicated above which is applicable to fresh suits should also apply to the extent applicable, having regard to the stage at which the case is transferred or allocated to the Commercial Division.

(C) Dispensing with individual service of notice to respondents in pending appeals against decrees or orders passed by learned single Judges in the High Court

In the pending appeals against decrees or orders passed by learned single Judges in the High Court, where notices have not been served on the respondents, the following procedure which is followed in some of High Courts (e.g. Andhra Pradesh, Tamil Nadu, Kerala and Karnataka) should be

followed. If parties have been represented by counsel before the single Judge, his name will be printed automatically in the cause-list and he must appear. He shall be given time to obtain necessary instructions from the parties concerned. This procedure saves a lot of time. Further, if the main suit is pending and the same lawyer is representing the parties in the main suit and if he has appeared in the interlocutory matters before the learned single Judge, notice must be served on the same counsel. (In fact, vakalat forms in the above High Courts contain a clause that the vakalat filed in the High Court for appearance before a learned single Judge will enure for the purpose of an appeal against the decree or order before a Division Bench). This procedure is confined to pending appeals in the High Court. So far as the future is concerned, inasmuch as the pending appeals are to be dealt with in the High Court by a Division Bench, this problem does not arise.

(D) Filing of paper books, written submissions and adherence to time limits

In pending appeals/revisions allocated to the Division, necessary paper books must be filed within the time proposed to be fixed, say, three months. Written submissions must be filed soon thereafter before oral submissions. Time limits for oral submissions must also be fixed in Case-Management Conferences, in advance.

(E) Time limits for the Commercial Division to dispose of matters:

As regards the time limits for disposal by the Commercial Division, fresh suits filed after the commencement of the proposed Act, must be

disposed of within two years from date of completion of service on opposite party. Existing suits transferred from lower Courts to the High Court and allocated to the Commercial Division must also be disposed of within two years but if they have been already pending for two years or more, they must be disposed of within one year of allocation to the Commercial Division, where opposite parties have already been served by the date of commencement of the proposed Act. Where the transferred suit is still at the stage of service, it should be disposed of within two years of completion of service on the opposite party.

Interlocutory Appeals transferred to the Division must be decided within three months from the date of completion of service or allocation to the Commercial Division.

Execution proceedings must be disposed of by the Commercial Division within six months of the passing of the decree. Parties must file their written submissions one month in advance of the date of hearing of the main execution application.

7. Statutory right of appeal to the Supreme Court of India against decrees and certain orders of the Commercial Division

There shall be a statutory right of appeal to the Supreme Court of India subject to such rules as may be made by the Supreme Court including rules for listing them for preliminary hearing against decrees or final orders of Commercial Division. Statutory appeals to the Supreme Court shall also lie against interlocutory orders passed by the Commercial Division of the

specific categories referred to in Order XLIII of the Code of Civil Procedure, 1908.

However, a statutory appeal will not be available against other interlocutory orders or orders in execution but such orders can be challenged only under Art. 136 of the Constitution of India.

8. Commercial Division to be the Execution court for certain cases

Execution cannot be allowed to delay the realization of fruits of the decree in such high value suits that may come before the Commercial Division in fresh suits that may be filed before it, or in pending suits which are either transferred to it from subordinate Courts or allocated to it from the original side of the High Court. All these execution matters must be dealt with only by the Commercial Division.

As regards the execution matters which are transferred matters, namely, in the pending regular first appeals against decrees passed by Courts subordinate to the High Courts transferred to the Commercial Division and the pending regular first appeals against decrees passed by learned single Judges on the original side which are allocated to the Commercial Division, we recommend that the principle that the Court of first instance should be the executing Court be departed from and that in all such regular first appeals which are pending in the High Court and transferred or allocated to the Commercial Division, execution proceedings shall be initiated and concluded in the Commercial Division.

9. Special budgetary support needed to establish the Commercial Division

We recommend that the Central and State Governments must provide the necessary funds to meet the expenditure involved for the establishment of the Commercial Division. This includes the expense involved in appointing extra Judges in the High Court, providing supporting staff and other infrastructure. It also includes the expense involved in establishing the high-tech systems referred to in Chapter VIII.

10. High Courts Judges strength in Commercial Division to be maintained consistently(including Judges appointed under article 224A of the Constitution:

It may be that in several High Courts, the number of suits transferred or appeals transferred along with fresh suits and appeals of the value of Rs.1 crore or above that may be filed in future, may be considerable in number. Having regard to the average rate of disposal of suits/appeals and the number of cases which are allocated to the Commercial Division, in our view, the Chief Justice of the High Court must ensure that there are in position as many number of Judges to man the Division Benches as may be necessary for a fair and speedy disposal of commercial cases in the Division.

Resort to appointments under article 224A of the Constitution necessary.

Under article 224A, the Chief Justice of the High Court with the previous consent of the President, appoint from among retired Judges of the same or other High Courts, to function as Judges of the High Court. These Judges appointed under article 224A of the Constitution can dispose of commercial cases along with other regular Judges of the High Court. Once the arrears have come down to a tolerable level, the High Court may consider whether it will be able to manage with its regular cadre of Judges. In our view, the Chief Justice must ensure that whatever be the number of retirements in his High Court, the number of Judges who are required to be on the Commercial Division is maintained throughout.

We do not deny that other subject jurisdictions in the High Court too require Judges, e.g. for criminal work or writ jurisdiction and so on. But in a total of more than 600 Judges in the High Courts in the country, the fact remains that, at any given point of time, there are always more than hundred or hundred and fifty vacancies. It is quintessential that Chief Justices should send recommendations six months in advance of a vacancy falling so that delay in disposal of cases may not arise on account of non-filling of vacancies. With the existing depleted strength of Judges, the huge backlog in most High Courts cannot be cleared unless such delays in sending recommendations are eliminated. There was some thinking that when regular or additional vacancies are available in the High Court, the Chief Justice of the High Court should not normally resort to appointments under article 224A of the Constitution. But, things have changed. Speedy disposal of commercial cases is today as important as speedy disposal of a criminal appeals. The Commission recommends that in the interests of clearing arrears in the High Courts in various types of cases including

criminal matters, a combination of regular newly appointed High Court Judges from the Bar and subordinate judiciary on the one hand and appointments under article 224A on the other, is the grave need of the hour.

Backlog of criminal appeals, appeals relating to family disputes pending in High Courts need to be similarly tackled

Similarly, backlog of criminal appeals pending (even pending for more than twenty years) in some High Courts, require to be disposed off within three years from date of their filing in the High Court. The backlog on the criminal side can be cleared easily by appointing a good number of retired High Court Judges under article 224A who have adequate expertise in criminal law.

Similarly, large number of appeals relating to family disputes matters pending in the High Courts, need to be speedily disposed off through this measure lest litigants may not loose faith in the protracted system.

We are referring to this aspect of the matter because the proposal for establishment of a Commercial Division in the High Court will remain a dead letter if the Commercial Division does not have the full strength of Judges required for that Division. Inasmuch as other jurisdictions, such as criminal, writs also require Judges, then the only solution is to undertake the following steps on priority:

- (c) to make recommendations for fresh appointments to the High Court from the Bar and subordinate judiciary, six months in advance before any vacancy occurs ; and

(d) to urgently appoint Judges under article 224A of the Constitution to first clear the heavy backlog and bring the arrears within manageable proportions in all jurisdictions, including criminal, commercial and family matters.

We acknowledge the extensive contribution made by Dr. S. Muralidhar, Part time Member, in preparation of this Report.

We recommend accordingly.

Sd./-

(Justice M. Jagannadha Rao)

Chairman

Sd./-

(Dr. N.M. Ghatate)

Vice-Chairman

Sd./-

(Dr. K.N. Chaturvedi)

Member – Secretary

Dated: 15.12.2003