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OF
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Court-fees in Supreme Court *vis-à-vis* Corporate Litigation

Report No. 236

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D.O. No.6(3)/75/2009-LC(LS) Dated : December 27, 2010

Dear Dr. M. Veerappa Moily,

Sub: Court-fees in Supreme Court *vis-à-vis* Corporate Litigation.

I am forwarding herewith the 236th Report of the Law Commission of India on the above subject.

Pursuant to the observations made by the Department - Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 28th Report on the Supreme Court (Number of Judges) Amendment Bill, 2008, the Department of Justice requested the Law Commission of India to consider levying higher court-fees on the corporate sector. It was felt that in spite of high stakes involved and the long time taken by the court in disposing of cases filed by the companies, very little court-fee is realized from them. Therefore, the Parliamentary Standing Committee suggested amendment of Supreme Court Rules framed under Article 145, for levying *ad valorem* court- fees on corporate litigants.

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As the observations of the Parliamentary Standing Committee were specially with reference to the corporate litigation in the Supreme Court, we have examined primarily that issue in detail. It may be mentioned that the Parliament is competent to levy court-fee only in respect of litigation in the Supreme Court and Union Territories.

The Commission has taken the view that it would not be legally permissible nor practicable to levy higher court-fee only on the companies / corporates. The solution offered by the Commission is to increase *ad valorem* court-fee payable in respect of the appeals (Civil) to the Supreme Court subject to a maximum of Rs. one lakh or so. Presently, the maximum stands at Rs. 2,000/- and this maximum fee was prescribed by the Supreme Court Rules of 1950, retained in the rules of 1966 and it remains unchanged till now. Hence, the Commission felt that there is a need to increase the maximum fee so that the high value appeals which are mainly filed by the Companies, Firms, Trusts and AOPs under special Acts etc. would attract higher fee. The Commission has also suggested upward revision of minimum fee of Rs. 250/- as well as the fixed court fee which again remains the same since the inception of the Supreme Court. At the same time it would be reasonable to charge only fixed court- fee (as enhanced) in respect of appeals that arise from High Court's Judgments in Civil matters where court fee would have been already paid on *ad valorem* basis both at the trial and appellate stage. Finally, the Commission has suggested that instead of Parliament enacting any legislation straightway superseding the rules framed by the Supreme Court, it would be proper to address the Supreme Court for revision of court-fees as it has remained static for nearly 60 years by now. The Supreme Court may then constitute a Committee and go into the question of revision.

It has been made clear in the Report that the Court-fee should not be viewed as chief source of revenue to run the courts and further in the case of *ad valorem* court-fee, the principle of prescribing a ceiling limit should be adhered to. The Commission has also emphasized that the agenda of extending qualitative legal aid to the common people and providing easier

access to the Court has to be accomplished without linking it up with the quantum of court fee. The legal aid mechanisms in force in the Supreme Court and other courts have been referred to.

Two earlier reports of Law Commission, namely, 189th report and 220th report, have been referred to at the appropriate places.

In regard to Union Territories, a brief supplemental report will be sent after the requisite information is received from High courts.

With regards,

Yours sincerely

(P. V. REDDI)

Dr. M. Veerappa Moily,
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I. REFERENCE

1.1.1 Based on the comments made by the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 28th Report[1] while considering the Supreme Court (Number of Judges) Amendment Bill, 2008, the Department of Justice requested the Law Commission of India[2] to consider the issue of treating the Corporates separately in the matter of payment of court-fee so that higher court-fee may be demanded from the corporate sector on ad valorem basis.

1.1.2 The Parliamentary Standing Committee was in favour of levy of differential court-fee for the corporate sector and accordingly, recommended[3] that amendments be carried out in the relevant rules in terms of Article 145 of the Constitution. Article 145 provides that subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating

[1] 28th Report of the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the Supreme Court (Number of Judges) Amendment Bill, 2008" presented to the Hon'ble Chairman, Rajya Sabha on 4th August, 2008.
[2] Department of Justice's Letter No. L-11018/1/2002-Jus dated 17.7.2009. The said letter inadvertently refers to 21st Report of the Parliamentary Standing Committee on the 'Judges (Inquiry) Bill, 2006'.
[3] Paragraphs 7.4 and 7.5 of the 28th Report of the Parliamentary Standing Committee

generally the practice and procedure of the Court, including various matters specified in sub-clauses (a) to (j). The Committee observed that the corporate and statutory bodies have to pay only maximum court-fee of Rs.2,000/- for going to Supreme Court, and such entities make use of the judicial infrastructure at the minimum expense and considerable time is spent by the Supreme Court on the litigation by such corporate bodies. The Committee further observed that the corporate/commercial bodies have huge financial resources at their disposal and invariably their disputes are worth crores of rupees and, therefore, it would be reasonable if they are required to pay court-fees on ad valorem basis ranging between 1% and 5% of the total value of the dispute. The Standing Committee further made specific reference to some of the fiscal and other enactments viz. Customs Act, Central Excise Act, Income-tax Act, Consumer Protection Act, MRTP Act, Telecom Regulatory Authority of India Act, SEBI Act, under which the companies can file appeals to the Supreme Court by paying the maximum fee of Rs.2,000/- which is grossly inadequate. The Committee pointed out that the additional revenue generated by charging higher fee on corporate bodies could be used by the State for fulfilling the directives laid down in Article 39A of the constitution. The Committee felt that by increasing the court-fees on ad valorem basis, the Supreme Court can add to its revenue manifold and the resultant revenue

could flow back to the judiciary in the form of higher grants. Further, it was observed that whereas the corporate/statutory bodies are able to approach the Supreme Court by paying the minimum amount of fee, the poor and ordinary citizens are handicapped in having access to justice.

1.2 The Table of court-fees (Parts I & II of Third Schedule) appended to the Supreme Court Rules, 1966 is enclosed to this Report (as Appendix).

II - EARLIER REPORTS

2.1 At the outset, it may be stated that the Law Commission of India in its 189th Report (2004)[4] recommended that having regard to the devaluation of rupee and increase in inflation, the rates of fixed court-fees as prescribed in Schedule 2 of the Court-fees Act 1870 need to be appropriately revised. It was also observed that ad valorem court-fees need not be revised in as much as the fee will be paid in proportion to the value of the claim which in any event would reflect the enhanced value of the claim after inflation. That means, those cases involving high stakes will attract higher court-fees as a consequence of ad valorem court-fee. The recommendation was that in so far as the Union territories not covered by their respective Acts are concerned, it will be sufficient if the rates of court-fee as prescribed in the Court-fees Act 1870 be enhanced keeping in mind the devaluation of rupee over the years. The present Commission while reiterating the said views suggests that the maximum court-fee wherever prescribed should also be reasonably increased in view of long passage of time and the change of circumstances.

[4] Law Commission of India, 189th Report on "Revision of Court Fees Structure" (2004), pages 96, 112-113

2.2 The Law Commission in its 220th Report (2009)[5] stressed on the need to fix the maximum for the court-fees chargeable. In this context, it may be mentioned that in Delhi and in Chandigarh, there is no maximum prescribed.

2.3 Before proceeding to address the crucial issue, we may briefly recapitulate the position relating to the legislative powers of the Parliament and the State Legislatures vis-à-vis court-fees. The 189th Report has elaborately discussed this aspect and we would like to quote the excerpts therefrom:

> "From the above entries, it is evident that the subject of Court-fees, so far it relates to Supreme Court, falls under Entry 77 of List I (Union List). Court-fees in High Courts and other Subordinate Courts, falls under Entry 3 of List II (State List).
>
> Entry 96 of List I, Entry 66 of List II and Entry 47 of List III also deal with 'fees', but 'fees taken in any Court' is specifically excluded in these specific entries.
>
> (a) Law on Court-fees payable in the High Court and subordinate Courts: It is necessary to mention here that the entry relating to the 'administration of justice', was

[5] Law Commission of India, 220th Report on "Need to fix Maximum Chargeable Court-fees in Subordinate Civil Courts" (2009), paragraph 3 "RECOMMENDATION".

originally in Entry 3 of List II. But by virtue of the Constitution (Forty-Second) Amendment Act, 1976, the said entry has been shifted to List III with effect from 3.1.1977. Though administration of justice now falls under Entry 11A of List III, the subject of 'fees taken in any court', which may be said to be related to administration of justice, does not fall under List III in view of the explicit bar under Entry 47 of List III mentioned above. The effect of this Constitutional amendment still remains the same i.e. the power to legislate on matters of court-fees remains in the competence of the State Legislatures, so far as the High Courts and Courts subordinate thereto are concerned.

Thus, as far as Parliament is concerned, under Art.246 (1) read with Entry 77 of List I, it can enact a law relating to Court-fees which is payable in Supreme Court, and under Art.246(4) read with Entry 3 of List II, it can enact a law for Court-fees payable in other Courts situated in any Union Territory. But, for High courts and other subordinate Courts exercising jurisdiction in any State, laws relating to Court-fees can only be made by the Legislature of a State as per Art.246(3) read with Entry 3 of List II."

III - EXAMINATION OF ISSUE FROM THE CONSTITUTIONAL ANGLE (ARTICLE 14)

3.1 Now, we shall address the question whether it is constitutionally permissible to prescribe a different and higher court-fee for the corporations. The fundamental right to equality guaranteed by Article 14 of the Constitution does not rule out reasonable classification. There need not be and ought not to be uniform rates of taxation (or fee) applicable to all classes of persons and to all the objects of taxation. In fact, it is a well - settled principle reiterated in a series of decisions of the Supreme Court of India as well as the Constitutional Courts of other countries that in matters of taxation, the Legislature enjoys greater freedom of classification and its range of choice is much wider. We may in this context refer to the decision of the Supreme Court in P.M. Ashwathanarayana Setty and Ors. Vs. State of Karnataka and Ors. (AIR 1989 SC 100) in which the constitutional validity of the court-fees enactments of three States came up for consideration. The Supreme Court observed thus:

> "….Though other legislative measures dealing with economic regulation are not outside Art. 14, it is well recognized that the State enjoys the widest latitude where measures of economic regulation are concerned. These

measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those special and economic policies. In view of the inherent complexity of these fiscal adjustments, Courts give a larger discretion to the Legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustments of an economic measure are available, the Legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there were better ways of adjusting the competing interests and claims. The legislature possesses the greatest freedom in such areas. The analogy of principles of the burden of tax may not also be inapposite in dealing with the validity of the distribution of the burden of a 'fee' as well." (para 30)

After quoting the principles laid down in earlier cases, it was observed:

"….The complexity of economic matters and the pragmatic solutions to be found for them defy and go beyond conceptual mental models. Social and economic problems of a policy do not accord with preconceived stereotypes so as to be amenable to pre-determined solutions." (para 31)

Then, at para 32, it was pointed out that "the question whether the measure of a tax or a fee should be ad valorem or ad quantum is again a matter of fiscal policy."

3.2 In the case of Income-tax Officer, Shillong vs. N. Takin Roy Rymbai (AIR 1976 SC 670) it was observed:

"….Nor the mere fact that a tax falls more heavily on some in the same category, is by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14." (para 24)

3.3 In Ashwathanarayana Setty's case, the Supreme Court upheld the constitutional validity of the Rajasthan and Karnataka

Court-fees and Suits Valuation Acts. However, a particular provision in Bombay Court-fees Act was struck down as unconstitutional. The reason was that the Court-fees on proceedings for grant of probate and letters of administration ad valorem without the upper limit prescribed as in the case of other proceedings was discriminatory. The Supreme Court agreed with the view of the High court that there was no intelligible or rational differentia between the two classes of litigations having rational nexus to the objective. The Supreme Court noticed that the party who was plaintiff in a probate proceeding was called upon to pay a court-fees of Rs.6.14 lacs whereas if it were a civil suit much less would have been payable in view of the ceiling prescribed for the court-fees in the suits. The Supreme Court approved of the following observations of the High Court:

> "There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Art. 14 of the Constitution. On this ground also, item 10 cannot be sustained." (para 36)

3.4 The Supreme Court also made an observation that the prescription of high rates of court-fees even in small claims as also without an upper limit in larger claims is "perilously close to arbitrariness, an unconstitutionality".

3.5 Classification for the purpose of taxation based on the financial capacity has been held to be permissible classification by the Supreme Court in certain other cases arising under the Sales Tax and other tax laws.

3.6 The Commission is, therefore, of the view that the prescription of higher court-fees for corporate sector or any other category of litigants will not per se offend any constitutional principle, provided that there is reasonable justification to treat them on a different footing. There must be intelligible differentia to support the classification. The Commission is clarifying this point because in an earlier report (220th Report),[6] there was a passing observation that there should be some measure of uniformity of court-fees and there is no justification for differential treatment of different suitors. The issue in the present form has not been considered by the Law Commission.

3.7 However, the question would then arise as to why the corporations should alone be subjected to higher rates of court-

[6] *Supra* Note 5

fees leaving out affluent individuals and associations of individuals. If capacity to pay more is the criterion, why should there be a distinction between the corporations and equally if not more prosperous other litigants? In fact, this is one of the considerations which weighed with the Law Ministers as far back as 1984. The issue of rationalization of court-fee was examined by the Committee of Law Ministers in Oct. 1984 and the suggestion of differential court-fees for corporate sector was turned down by the Committee with the following note:

> "The Advocates General of Kerala and West Bengal were of the view that there was no justification for extending concessions proposed in the matter of court-fees to the companies. They further said that differential rates of court-fees could be prescribed for payment by individuals and corporate bodies/companies. They felt that there might not be any constitutional bar in doing so.(para 8.15)
>
> Whether the suit is filed by an individual or a company, the service rendered by the court is the same. It may be argued that companies/corporate bodies are in a position to pay. But so may be the case with several individuals. How could then a differential rate of court-fee be justified? Also, among companies, there may be strong

and weak ones. There may be differences in size, financial viability, etc. Again, if a differential rate is accepted, Government undertakings will also be covered." (para 8.16)

3.8 Another aspect that should be taken into account if the companies as a class are to be chosen for special treatment is the need to provide lesser court-fee for companies which have no substantial assets or do not make profits. It would be unjust if all the companies which litigate in the courts are treated at par irrespective of their financial position. If so, there must be sub-classification of companies and two sets of fee made applicable to them. This would make the court-fee structure complex.

IV - CERTAIN DETAILS RELATING TO CORPORATE LITIGATION

4.1 Before proceeding to discuss the alternative option available, the Commission would like to place on record certain data/statistics relating to the Court-fee revenue and the corporate cases filed in the Supreme Court. The overall revenue from the court-fees for the years 2007-08, 2008-09 and 2009-10 is Rs. 119 lakhs, 128 lakhs and 133 lakhs, respectively. The total budgetary allocation to the Supreme Court during the preceding year (2009) was above Rs. 100 crores. The Commission, after making some efforts, could obtain the details of cases filed in two months, i.e., January and February 2010 in order to identify distinctly the civil appeals (including those relating to taxation and other special Acts) instituted by the companies/corporations. The appeals attract the maximum fee of Rs.2,000/-

4.2 The Special Leave Petitions (SLPs-Civil) registered in the month of January 2010 were 2507 and those in February were 2187. Out of them, 123 SLPs-Civil in January and 185 in February relate to private sector companies. During the same period, as many as 449 and 235 SLPs (Civil) were those filed by public sector companies/undertakings. Thus, as far as Companies other than PSUs are concerned, the average number of SLPs (Civil) filed in a month works out to about 150 cases.

Most of the cases filed by the companies including PSUs are taxation matters and appeals under special enactments relating to Telecom Disputes, Electricity Regulation, Consumer Disputes etc. For the SLPs, a nominal fixed fee is charged as in the case of Writ petitions in the High Courts. When the SLPs are admitted after hearing, those SLPs will be converted into civil appeals and for civil appeals, the maximum fee presently chargeable is Rs.2,000/. About 50% or more SLPs are generally rejected at admission stage. Thus, assuming about 70 or 80 cases of private sector companies are numbered as civil appeals, the court-fees revenue presently being fetched from the companies whose appeals are so entertained is to the tune of about 1.60 lakhs per month (about 19 lakhs per year).

4.3 We shall notice the pattern of institution fee payable for the appeals filed under various special Acts to the statutory Tribunals such as CEGAT, ITAT, TDSAT, Electricity Appellate Tribunal, Consumer Disputes Appellate Tribunal. The maximum fee is Rs.10,000/-. However, for the appeals to Securities Appellate Tribunal[7] and Competition Appellate Tribunal[8], the maximum fee payable ranges between Rs.1.5 lakhs and Rs.3 lakhs, respectively with a minimum of Rs. 500 and Rs. 1000. Very few appeals under the said two Acts are presently pending in the Supreme Court. For appeals to

[7] Rule 9(2) of the SecuritiesContracts (Regulation) (Appeal to Securities Appellate Tribunal)Rules, 2000
[8] GSR No. 387(E), Rule 4(2) of the Competition Appellate Tribunal (Form and Fee for filing an appeal and fee for filing compensation applications) Rules, 2009

the High Court arising out of ITAT's orders (under the Income-tax Act) and other taxation statutes, the fee charged by the High Courts including the Delhi High Court is nominal. At the stage of appeal to the Tribunal also, the fee paid is quite small, as noted earlier. In no State or Union territory, the ad valorem court-fee is charged in respect of appeals/references arising under taxation and other fiscal enactments. Normally, the appeals arising under the said enactments involve heavy stakes and they are mostly filed by companies, trusts, firms and societies. The other category of appeals which involve heavy stakes filed by companies and firms are those under the Arbitration and Conciliation Act, 1996. As per the information received from the Supreme Court Registry number of cases registered up to October in the year 2010 under the said Act is 478.

4.4.1 That there should be an upper limit or ceiling to the court-fees charged is a generally accepted norm and that principle is adopted in almost all the court-fees Acts including the Court-fees Act of 1870. The absence of such ceiling, the Supreme Court pointed out in Ashwathanarayana Setty's case, would be "perilously close to arbitrariness". The appeals filed by the companies in the Supreme Court should also be governed by the said principle and it would not be proper and rational to

dispense with that principle in respect of any category of civil appeals filed by the companies or others.

4.4.2 Interestingly, the case of Central Coal Fields Ltd. Vs. Jaiswal Coal Co. (AIR 1980 SC 2125) illustrates how the high quantum of court-fee without maximum limit caused problems to a PSU to file an appeal. The Supreme Court observed, "if the Central Government or its agent discovered that the court-fee was disastrously back-breaking, one should have expected it, as the promoter of inexpensive justice for the people, to undertake uniform legislation reducing the scale of court-fees consistently with economic justice and civilized processual jurisprudence..." (para 3)

4.5 The Commission would like to restate the well-settled principle that court-fee should not be viewed as the chief source of revenue to run the courts. It is trite that the cost of administration of justice, being a sovereign function essential to the democratic system of governance cannot be evaluated in terms of the court-fees generated. Secondly, court-fee ought not to be viewed as a means to check vexatious litigation. Even if a part of the litigation is vexatious, an abnormal increase in the quantum of court-fee would cause hardship to genuine litigants. In this context, the Commission would like to mention that it is undertaking a separate study on the subject of

costs and appropriate amendments to Code of Civil Procedure so that the court will be in a position to impose heavy costs on frivolous and vexatious litigation.

V. POSITION IN FOREIGN COUNTRIES

5 The Commission has noticed that no separate court fee has been prescribed for the corporates in most of the foreign countries including SAARC countries, United Kingdom, Canada, etc. However, in Australia[9] and New South Wales, corporates are liable to pay double the amount of court-fee payable by other suitors in respect of certain matters.

[9] Federal Magistrates Regulations 2000, Statutory Rules 2000 No. 102 as amended ,prepared by the Office of Legislative Drafting and Publishing, Attorney-General's Department, Canberra (Schedule 1)

VI. EASIER ACCESS TO COURTS AND COURT-FEE

6.1 Before formulating the recommendations, the Commission would like to take note of the thinking of Parliamentary Standing Committee that the poor and indigent litigants should have the access to Courts with least cost. In this context, the Commission adds that irrespective of realization of additional court-fee revenue from the corporate-appellants and ploughing back that meagre revenue for the purpose of extending assistance to the have-nots, there must be focus on revisiting and refining the systems already in force to achieve the desired objective of minimizing the cost to the poor litigants and improving the quality of legal aid. Establishing cost-effective and hassle-free access to justice should be a continuous endeavour on the part of the Government as well as the judiciary. Providing better and easier access to the courts – from the lowest to the highest, and extending qualitative legal aid to the common people who cannot afford the cost is a goal to be achieved without linking it up with the quantum of court-fee. This laudable agenda has to be tackled independently.

6.2 We shall briefly advert to the relevant provisions of law and mechanisms in place to extend legal aid and assistance to the poor and economically handicapped persons and others. In the Code of Civil Procedure, 1908 Order XXXIII enables an

indigent person to file a suit without payment of court-fee or any fee for service or process. An indigent person is defined as one who is not possessed of sufficient means (other than property exempt from attachment) to pay the prescribed court-fee. Enquiry into the means of an indigent person has been simplified by conferring that power in the first instance on the chief ministerial officer of the court. Further, the court can assign a pleader to an unrepresented indigent person in accordance with the rules made by the High Court in this regard. In regard to appeals, a similar provision is there in Order XLIV of the Code of Civil Procedure, 1908 enabling an indigent person to file the appeal without payment of court-fee. Where a party was allowed to sue or appeal as an indigent person in the court from whose decree the appeal is preferred, no further enquiry in respect of the question whether or not he is an indigent person shall be necessary, if the party files an affidavit stating that he has not ceased to be an indigent person since the date of the decree.

6.3 The Legal Services Authorities Act, 1987 has amplified the scope of legal aid to the poor and needy persons and created statutory fora to extend the legal aid and services to the eligible parties. There is a National Legal Services Authority at the apex level with the Chief Justice of India as patron-in-chief and a senior Judge of the Supreme Court as the executive Chairman.

The Supreme Court Legal Services Committee headed by another senior Judge consists of ten members including the Attorney General, the officials of the concerned Ministries / Departments of Government of India and Advocates practising in the Supreme Court. The functions of the central authority (NALSA) are specified in section 4 of the said Act. The Act also provides for the constitution of State Legal Services Authority, High Court Legal Services Committee, District Legal Services Authority and Taluk Legal Services Committees. Each authority is required to establish Legal Aid Fund. The major component of such funds are the grants given by the NALSA and State Governments. Further, considerable amounts are received by these bodies by reason of the orders of the courts directing remittance of costs to the credit of Legal Service Authority.
The Legal Service Authorities in a majority of States have sufficient funds at their disposal, but, infrastructure is lacking in many States. With the allocation of substantial amounts to Legal Service Authorities pursuant to the recommendations of Thirteenth Finance Commission, the infrastructural facilities are bound to improve.

6.4.1 The persons entitled for legal services are specified in section 12 of Legal Services Authorities Act, 1987. Under section 12, every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is-

(a) a member of a Scheduled Caste or Scheduled Tribe; (b) a victim of trafficking in human beings; (c) a woman or a child; (d) a person with a disability; (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, violence, natural calamities etc; (f) an industrial workman; (g) a person in custody, including custody in a protective home or a juvenile home or psychiatric hospital; and (h) in receipt of annual income less than rupees 50,000/-.

6.4.2 As per section 13, these persons are entitled to legal services provided that the concerned authority is satisfied that such a person has a prima facie case to prosecute or defend.

6.5 The expression 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter. The Supreme Court Legal Services Committee as well as the other Committees at the High Court and District levels maintain a panel of lawyers who are required to give legal assistance to eligible persons specified in section 12. Some of the matters pertaining to the parties who approach the Legal Services Authority/Committee are referred to Lok

Adalats also in order to ensure speedy justice. The NALSA has recently framed a Scheme for Free and Competent Legal Services, 2010. The procedure for approaching the Supreme Court Legal Services Committee by the persons entitled to legal aid is by and large hassle-free. Lok Adalats are held regularly under the auspices of Legal Service Authorities and Committees at various levels.

6.6 As said earlier,extending legal aid and legal services has not been and ought not to be made dependent on the court-fee revenue raised. Broadly speaking, the deterrent is not Court fee. The real problem for any litigant especially an average person who is not eligible for legal aid is the high cost of legal fee and other expenses charged at the lawyers' offices. To some extent, this problem is taken care of by the provisions of the Legal Services Authorities Act, 1987. At the same time, there are some problem areas which may have to be tackled by the concerned Authorities/Committees under the Legal Services Authorities Act, 1987 to realize the goal set out in Article 39A of the Constitution. The Law Commission is intending to take up the subject of legal aid and services in order to make recommendations for further improving the existing systems after consulting the Judges/officials connected with NALSA and Supreme Court Legal Services Committee. The Commission would also like to mention that in the Supreme Court, the e-

filing of cases has been introduced which would obviate the need of personal presence of the appellant/petitioner at the time of filing the cases. Moreover, the Supreme Court can exercise its power under Order XLVII Rule 6 of the Supreme Court Rules, 1966 to dispense with the payment of court-fee in appropriate cases (though it is not specifically stated so in the rules). We have only referred to these aspects in order to highlight that the legal aid and assistance to the poor, needy and vulnerable sections of the society is being extended by the Supreme Court and other Courts without linking it up with the quantum of court-fee and the same policy is being adopted by the Government in sanctioning funds for legal aid.

VII. SUMMARY AND RECOMMENDATIONS

7.1 In the light of the legal and factual position discussed above, the Commission is inclined to take the view that companies/corporations alone cannot be fastened with the liability to pay higher court-fee, leaving apart similarly situated category of litigants who do business. At the same time, there can be classification based on the financial capacity to bear the burden of court-fee. The financial capacity is broadly deducible from the stakes involved or the value of subject matter of appeal. The value or the stake of appeal can be broadly correlated to the capacity of litigant. The appellants in high value appeals, mostly under the special Acts are companies, firms, trusts or association of persons or even individuals who can all afford to pay higher court-fee without any difficulty. It is, therefore, desirable that the upward revision of court-fee should be undertaken not merely with reference to appellants who fall strictly within the description of companies/corporations but also other categories of suitors depending on the value of the subject matter involved in the appeal. This can be achieved by prescribing ad valorem court-fee subject to the prescription of ceiling at a reasonable level. That means the higher the stake, the more the litigant has to pay within the maximum limit. In the case of ad valorem court-fee, the fee will be paid in proportion to the value of the claim. In fact, the Supreme Court

Rules adopt the ad valorem classification, but, in view of the paltry ceiling limit of Rs.2,000/-, there is no possibility of collecting higher court-fee from those litigants including corporations who can afford to pay higher court-fee. The Supreme Court Rules prescribe the court-fee of Rs.250 if the "amount of value of the subject matter in dispute" is Rs.20,000, or below. For every Rs.1,000 in excess of Rs.20,000 the court-fee payable is Rs.5 which works out to half percent. So far, there is no problem. But, it stops at the ceiling of Rs.2,000 which was prescribed 60 years back i.e. from the inception of the Supreme Court[10]. The maximum court-fee has not been revised so far. It may also be noted that where it is not possible to estimate the subject matter in dispute at a money value or in other words, the appeal is incapable of valuation, the fee remains at Rs.250 only. There is every need to increase this limit also. As stated earlier, the ceiling on ad valorem court-fee prescribed decades back has to be enhanced manifold so that the litigants who can afford to pay can bear more court-fee depending on the value of the subject matter of appeal. Such litigants are mostly companies or other legal business entities. Thus, what is needed is an across the board increase of ad valorem court fee subject to a cap at a reasonable level.

7.2 The Commission is, therefore of the view that a re-look at the present rules governing the court-fee in respect of appeals

[10] The Supreme Court Rules, 1950 and 1966,, Third Schedule, Part II. Appellate Jurisdiction

(Civil) filed in the Supreme court is highly desirable in view of the long passage of time and the economic realities of the day. While the half per cent rate over and above Rs.20,000 can remain (or it can be increased to one percent), it would be reasonable to enhance the maximum court-fee at least to Rs.1 lakh. That is to say, for the figure Rs.2,000 occurring in clause (1) of the proviso to Sl. No. 2 of Part-II of the Supreme Court Rules, Rs. 1 lakh (or more) needs to be substituted. This is broadly our suggestion and we must state that the Commission has not done any specific exercise to determine the exact quantum as the Commission feels that the Supreme Court Committee would appropriately delve into those details. Further, the figure of Rs.250 which is the minimum payable as well as the fee of Rs.250 specified in appeals incapable of valuation should be suitably increased. There is also every justification for increasing the fee for special leave petitions, which is presently a small sum of Rs.250. The net result will be that most of the appeals filed by the corporate and other business entities against tax / fee demands and other fiscal liabilities and arbitration awards will come within the net of enhanced court-fee regime. At the same time, it would be rational and reasonable to charge only fixed court-fee (as enhanced) in respect of appeals that arise out of High Courts' judgments in civil matters, where court- fee would have already been paid on ad valorem basis both at the trial stage and at the

appellate stage. We may also mention that in case of individual hardship, the appellant concerned can always approach the Supreme Court for exemption of court-fee.

7.3 The Commission, on taking a holistic view has recorded its broad suggestions for the enhancement of the ceiling prescribed in the Supreme Court Rules in relation to ad valorem fee as well as fixed court-fee. The proper and expedient course would be to address the Supreme Court for suitable upward revision of the prevailing court-fee keeping in view the long passage of time and the heavy stake cases that are coming up before the Supreme Court in relation to matters arising under fiscal and other special enactments. The Supreme Court may perhaps constitute a Committee of Judges and consult the Supreme Court Bar Association, if necessary. As the rules framed by the Supreme Court in regard to court-fee have been in operation for more than half a century, it would be in the fitness of things to leave the decision to enhance court-fee to the Supreme Court in the first instance. It is desirable and proper that the Parliament does not straightway proceed to supersede the Supreme Court Rules and prescribe the scales of fee by itself through legislation. The

Commission is of the opinion that it would be proper to address the Supreme Court indicating the tentative views of the Parliamentary Standing Committee and of the Law Commission and suggesting an upward revision of maximum as well as fixed court-fee in Part-II and in respect of such other items in the III Schedule as the Court may consider appropriate.

Union Territories

8. In regard to major Union Territories i.e., Chandigarh and NCT of Delhi, the information sought from the High Courts as regards the applicable schedule of court-fees for suits, appeals, etc. is awaited. A brief supplemental report will be submitted by the Commission shortly, so far as the UTs are concerned.

[JUSTICE P.V. REDDI]

CHAIRMAN

[JUSTICE SHIV KUMAR SHARMA]
MEMBER

[AMARJIT SINGH]
MEMBER

[DR. BRAHM A. AGRAWAL]
MEMBER-SECRETARY

New Delhi-110 001

Dated: 27.12.2010

Appendix

TABLE OF COURT FEE (SUPREME COURT)

PART I

ORIGINAL JURISDICTION

1. Filing and registering plaint 250.00
2. Filing and registering written statement 50.00
3. Filing and registering set-off or counter-claim 50.00
4. Reply to a counter claim 50.00
5. Examining and comparing document with the original, for each folio 0.50
6. Reducing into writing or, where taken down in shorthand, transcribing the deposition of witnesses, for each folio. 0.62
7. Typed copies of transcript of depositions of witnesses for any Party-First copy, per folio 0.50
   Carbon copies, per folio. 0.12
8. Petitions under Article 32 of the Constitution other than petitions for habeas corpus and petitions arising out of criminal proceedings. 50.00

PART II

APPELLATE JURISDICTION

1. Petition for special leave to appeal 250.00

[1(a) Consolidated process fee for intimating contesting respondents 10.00

2. Lodging and registering petition of appeal – where the amount of value of the subject-matter in dispute is Rs. 20,000 or below that sum 250.00

For every Rs. 1,000 in excess of Rs. 20,000 5.00

for every thousand rupees or part thereof

In case, where it is not possible to estimate at a money value the subject matter in dispute

Provided -

(1) that the maximum fee payable in any case shall not exceed Rs. 2,000 and

(2) that where an appeal is brought by special leave granted by the court credit shall be given to the appellant for the amount of court fee paid by him on the petition for special leave to appeal.]

[3. Lodging of statement of case of caveat] 20.00

4. Application for review of judgement or order of court the same fee as was paid on the original proceedings

[5.petiton of Appeal under Consumer Protection Act, 1986

250.00