

LAW COMMISSION OF INDIA

ONE HUNDRED TWENTY-EIGHTH REPORT
ON
COST OF LITIGATION

1988

CHAPTER I
INTRODUCTION

1.1. Of the numerous ills with which judicial system as in vogue in this country is suffering, the one which has attracted the attention of all those concerned with courts and interested in its functioning is high cost of litigation in Indian courts. So, when the Government of India decided to set up a Judicial Reforms Commission and later on assigned that task to the present Law Commission, one of the terms of reference was:

"8. The cost of litigation with a view to lessening the burden on the litigants".

That litigation has become a luxury for the rich is a self-evident proposition. It is a trite saying that if the cost benefit ratio is applied to court litigation, more often the cost far outweighs the benefit flowing from the litigation. If a survey is made of those who have causes to be taken to the court for redressal of grievances but the prohibitive cost of litigation thwarted them from undertaking that exercise, the outcome of the survey would be revealing. Occasionally, litigation is undertaken not

with a view to vindicate the wrong or injustice suffered but as an egocentric activity to heap as much harm on the other side as possible. In this situation, cost of litigation acquires a secondary position. But excluding this class of cases, cost of litigation is an important factor in evaluating the approach of the litigant while deciding to initiate the litigation. The problem has also to be viewed from the point of view of the defendant who is dragged to the court as to what burden of costs will be heaped upon him in defending his right. Cost of litigation has multiple dimensions: (1) cost to the State in setting up and maintaining justice system; (2) cost to the litigant; and (3) cost to the society. In this report, Law Commission is primarily concerned with cost of litigation with a view to lessening the burden on the litigants.

1.2. The burden on the Exchequer for setting up and maintaining adequate and efficient justice system has been examined by the Law Commission.¹ The cost borne by the society for providing effective and efficient justice system requires analysis and in-depth

examination. That is outside the purview of this report. The entire emphasis in this report is on the cost of litigation borne by the litigants.

1.3. What are the road-blocks in access to justice? They are numerous and diverse. One of the impediments in access to justice has been identified as the economic barrier which, in simple terms, means high cost of litigation. It has become so counter-productive that numerous litigants, it is apprehended, may, for want of wherewithal, suffer injustice, giving up the idea to approach the court because of the prohibitive costs. This is not an idle fantasy. Even in an affluent country like America, 'it is the millions of disputes and millions of disputants effectively excluded because of the delayiveness of the process that are the major casualties. Litigation in the formal courts is an expensive proposition both for taxpayers and for litigants'.² 'The high cost of litigation through the courts may irritate many litigants. But for some it constitutes a total bar. No matter how meritorious the claim or how worthy the

defence, a low income person (as well as many in the middle class) will be unable to litigate most cases'.³ There is a movement afoot in America for reform that will reduce the cost of litigation. The search for reform has exposed the fact that a number of disputes remain unresolved which is not conducive to the health and well being of a society. The reform movement aims at rendering justice more accessible by making it less expensive.

1.4. It is agreed on all hands that Indian situation is worse compared to American situation because India is a developing country with large population living below poverty line. To alleviate poverty, numerous programmes have been undertaken by the State. These programmes create rights. The awareness of these rights has percolated down to the beneficiaries. But the existence of right or its awareness hardly brings any relief. It is the enforcement of the right to enjoy the benefit flowing from the right which is important. The moment you come to enforcement, the courts come in, and with it the costs. The inability to bear the costs

makes any attempt at enforcing the right not worth its while. The programme and the rights created therein remain a teasing illusion.

1.5. This disturbing phenomena of rising cost of litigation attracted the attention of the Parliament. While Constitution mandated that the State shall secure and protect, as effectively as it may, a social order in which justice shall inform all the institutions of national life, there was no effective provision in the Constitution for translating this promise into reality. Article 39A was introduced in the Constitution in the year 1976. It provided that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. In introducing this article, Parliament showed its awareness that by numerous statutes, rights, privileges and

oncessions have been conferred on the economically and socially disadvantaged sections of the society but they themselves are not in a position by their own effort to enforce these rights or enjoy the privileges and concessions. And till that is done, it cannot be said that the legal system promotes justice because justice system is an integral part of the legal system of the country. No one who has a right must be denied the benefit of it. There must be a forum for enforcement and vindication of this right. Access to forum must be unimpeded either by geographical, physical or economic barriers. The justice system must be easily accessible to each and every one from whatever strata of society he comes. Economic or any other disability should not become a barrier to access to justice. Economic incapacity for enforcing rights must be remedied. It can be done in two ways: (i) considerably reduce the cost of litigation; and (ii) extend help by legal aid scheme wherever it is possible.

1.6. In the days of laissez faire it was assumed that if the State establishes courts, the State has performed its duty. The procedure for civil litigation reflected the essentially individualistic philosophy of rights then prevailing. A right of access to judicial protection meant essentially the aggrieved individual's formal right to litigate or defend a claim. Inability to resort to court to enforce the right was not taken to be the concern of the State. The State remained passive with respect to such problems as ability to initiate action or to defend the action adequately. Such an approach is inconsistent with the philosophy of a welfare State. Therefore, article 39A provided for setting up free legal aid schemes to at least deal with one component of the cost of litigation, namely, lawyer's fees. But there are numerous components of cost of litigation and each will have to be adequately and scientifically examined to demarcate areas where there is enough leeway for reducing the cost of litigation. The approach has to be in contrast with the 19th century approach. Relieving 'legal poverty' - the incapacity of many people to make full

use of the law and its institutions - was not the concern of the State. Justice, like other commodities in the laissez faire system, was available only to those who could afford its cost. Formal, not effective justice - formal, not effective equality - was all that was sought. This approach has to be eschewed.

1.7. A constitutional democracy founded on rule of law must provide a body for resolution of the disputes arising in the society. The disputes may be individual in character or the disputes may arise out of conflict of interests between groups. In either situation, there must be an easily accessible forum for resolution of disputes. Simmering perpetual disputes would retard the development and growth of the society. Expeditious resolution of disputes by an easily accessible forum would certainly tend to help development and growth of the society. The courts are institutions for formal resolution of disputes amongst individuals and groups. This forum, in order to be effective, useful, efficient and action-oriented, must be easily accessible to the lowest amongst the lowliest without the

worry of finding wherewithal for access to justice. And the forum must be able to expeditiously resolve the disputes so that the disputes do not continue to simmer in the society and the disputants may invest their time in more productive and creative effort rather than in fighting fruitless litigation. Therefore, a justice system worth its name must be easily accessible, least formal, non-expensive and ready to resolve the disputes in a reasonably short time. In its search for judicial reforms, the Law Commission has dealt with providing forum which can expeditiously dispose of cases within a reasonable time. The present report deals with removal of economic barriers in access to the forum.

1.8. Incidentally, the report also deals with a reference received from the Department of Justice in the the Ministry of Law and Justice. It appears that the Conference of Law Ministers of States and Union territories held in June 1982 at New Delhi set up a Committee to go into the question of rationalisation of court fee. This Committee prepared a report on rationalisation of court fee. This report was placed as an annexure

to the agenda item on 'abolition of court fee' in the joint Conference of Chief Justices, Chief Ministers and Law Ministers held at New Delhi on 31st August and 1st September, 1985. It is stated that due to paucity of time, the subject was not discussed in the Conference. As stated earlier amongst the terms of reference drawn up for a Commission which was to be set up to study and recommend reforms in the justice system, one of the terms was: 'the cost of litigation with a view to lessening the burden on the litigants'. Later on, Government of India decided to assign the task of studying reforms in judicial administration and to make recommendations thereon to the present Law Commission. Consequently, it was decided by the Minister of Law and Justice, Government of India, to refer the report of the Committee of Law Ministers on 'Rationalisation of Court Fee' to the Law Commission for its study and recommendations. This report would also dispose of the reference as set out in D.O. No. 25/4/80/Jus of Additional Secretary, Ministry of Law and Justice, dated 28/29 April, 1986.

CHAPTER II

COMPONENTS OF COST OF LITIGATION

2.1. Before attempting to ascertain the areas where the expenses are incurred by litigants in initiating or prosecuting or defending litigation, it would be worthwhile to recall the broad heads under which the litigants have to bear expenditure in prosecuting or defending litigation. They may be broadly grouped as under:-

- (1) advocates' fees, including the fees for serving notice wherever it is necessary;
- (2) court fees and process fees;
- (3) travelling expenses, etc., of litigants and witnesses;
- (4) costs for obtaining copies of documents, typing and other miscellaneous expenses;
- (5) costs on account of adjournments;
and
- (6) costs payable by the vanquished party to the successful party.

2.2. Each head may be separately analysed with a view to spotting areas where the costs borne by the litigants may be either wholly

eliminated or at least considerably reduced. The Law Commission is not concerned with all litigants. Its recommendations are relevant for those litigants who can ill-afford the prevalent costs of litigation and who may be forced, in the language of article 39A, to give up securing justice, resulting in denial of justice by reason of economic barrier. It is this class of marginal litigants that the Law Commission has kept in focus while examining the heavy burden of costs of litigation. The Law Commission is aware that there is a class of litigants to whom the quantum of costs is not at all a relevant factor in pursuing litigation. In fact when the opponent is from an economically impoverished class, the well-to-do opponent, irrespective of the cost of litigation, will pursue it relentlessly either to tire out the impoverished litigant or to impose upon him an unfair and unjust compromise. It is for this class of litigants coming from the impoverished segment of society and designated as economically disadvantaged class of litigants, for whose benefit rights have been created or privileges and concessions have been conferred by statutory

and executive orders but who are denied the same and are unable to enforce the same through justice system on account of economic barrier, that the Law Commission is concerned. Those who have cushion and want to spend on litigation as a luxury are not the concern of the Law Commission. This report may be understood and appreciated by keeping in focus those litigants from impoverished segments of our society, styled as economically disadvantaged class of people.

Advocates' Fees

2.3. In assigning the top place to advocates' fees as a component of cost of litigation, the Law Commission is influenced by the fact that members of the top echelons of legal profession charge fees for services rendered by them which is not available on a comparative basis in any other profession. In the corridors of Bar Association, it is freely whispered, and without the identity being disclosed, the Law Commission was informed, that the top members of the legal fraternity in the Supreme Court charge more often at the rate of Rs.1,00,000 per day of

four and half working hours. A fee varying from Rs.5,000 to Rs.15,000 for appearing in a matter set down for admission has become common place; and senior advocates coming from the top echelons of the Bar are known to be appearing in 5 to 10 admission matters per day on an average. And this fee, either for final hearing per day or per admission matter does not include conference fee. The minimum fee for giving written opinion varies from Rs.5,000 per opinion to a conference fee of Rs.5,000 per hour. Ordinarily, big industrial and commercial houses and corporations and companies have been paying and are willing to pay the fees on this scale. Then it slowly tapers down to a level where the competition is fierce and the charges are the lowest.

2.4. Payment in the higher bracket is further encouraged by a peculiar provision in the Income-tax Act. Section 37(1) of the Act provides that any expenditure [not being expenditure of the nature in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of society] laid out or expended wholly and exclusively

for the purposes of the business or profession shall be allowed in computing the income chargeable under the head 'profits and gains of business or profession'. This provision has come in for interpretation on numerous occasions before the Privy Council, Supreme Court, various High Courts and Income Tax Appellate Tribunal, and expenses on litigation have been put under the heading 'permissible deduction' in computing the profits and gains of business or profession. The cases are a legion to be mentioned here but a ready reckoner is available.¹ But practically every class of litigation concerning the business or profession of the assessee has enjoyed the benefit of exemption and without a ceiling. This provision has pushed up lawyers' fees in cases where corporations/ companies are involved in litigation and it has almost become the corporations'/companies' largesse distribution method. And the largesse is enjoyed at the cost of the State by reducing the taxable profit and enhancing the litigation. There was also section 80VV, which has been deleted with effect from 1-4-1986 by the Finance Act of 1985, which permitted deduction of

expenses incurred on litigation under the Act with a ceiling at Rs.5,000. . . Shorn of verbiage, the provision means that one can fight tax authorities at State's own cost inasmuch as even if the assessee were to lose the litigation up to the Supreme Court of India, the expenses subject to ceiling are deductible while computing the total income of the assessee. Such litigants litigating at State cost have clogged the courts' dockets. Their ability to pay high fees has so adversely affected the market of legal services and culture of legal profession that others who can ill-afford to pay fees at the high rates are compelled by the environment to follow the suit and suffer in the process. Therefore, the question of costs of litigation may be examined only from the point of view of the impoverished class of litigants who suffer double jeopardy in that they cannot afford to enforce rights by initiating the litigation for want of wherewithal and, in the process, suffer further injustice, namely, denial of rights, privileges and concessions.

2.5. Petty litigation of simple variety emanates from rural areas inhabited largely by impoverished class of rural poor. To them, more than the court fees, the advocates' fees/lawyers' charges which have to be paid in advance set up a formidable barrier in access to justice. For this class of litigants, there must be a two-pronged drive to reduce the cost of litigation under the head "lawyers' charges":

- (1) The State must prescribe floor and ceiling within which only lawyers' fees can be charged; and
- (2) Legal aid schemes which must ensure availability of legal aid at State cost.

Both the approaches may be separately examined.

2.6. The Advocates Act, 1961, has been enacted in exercise of the powers conferred by entry 26 in the Concurrent List of Seventh Schedule to the Constitution. The Act provides for a monopoly in the sense that only those persons whose names have been enrolled in the State rolls of advocates maintained by the Bar Council of the State

shall be entitled as of right to practise throughout the territories to which the Act extends, as provided in section 30. Undoubtedly section 32 confers power on the court to permit any person not enrolled as an advocate under the Act to appear before it in any particular case. Both these sections find their place in Chapter IV which appears not to have been brought into operation as yet. If thus the Act confers a monopoly, since naturally the monopoly has an inbuilt tendency to abuse its monopolistic character, the State must have regulatory control over a monopoly. And such regulatory control may extend to prescribing the floor and ceiling in the matter of lawyer's fees. Now if by the Act of Parliament, the profession enjoys a monopoly, indisputably the Parliament will have power for regulating the conduct of the members of the monopolistic profession and, in exercise of this power, the Parliament can prescribe the floor and ceiling in respect of fees chargeable by lawyers. Today sky is the limit. In a welfare State, the State must, in discharge of its trust to its impoverished sections of society, protect them against a highly intelligent monopolistic profession. And now that the legal charges or fees of

lawyers have sky-rocketted, it is time for the State to intervene and regulate the profession by prescribing the floor and ceiling. Between the floor and ceiling, it would be open to the lawyer to negotiate his fees. But if the litigant were to deposit the fees at the level of ceiling in an account to be maintained by the Bar Association of which the lawyer is a member, it shall be the duty of the lawyer to appear for the litigant without any further negotiation about fees. He may decline to undertake the assignment if either there is a conflict of interest or his hands are full. The lawyers describe their legal profession as a noble profession. As a characteristic of nobility, this sacrifice is expected.

2.7. There is an additional reason why the State must enforce a regulatory measure. Recently, by the Resolution No. F.8(14)/82-I.C, dated 4th July, 1985, of the Department of Legal Affairs, Ministry of Law and Justice, a Committee was set up under the Chairmanship of Justice Baharul Islam, former Judge of the Supreme Court of India, to make recommendations to provide social security measures to members of the legal profession.

The Committee was of a representative character in as much as there were four Members of Rajya Sabha and four Members of Lok Sabha as Members of the Committee over and above the Attorney General of India, Chairman of the Bar Council of India, a senior advocate of the Supreme Court, Chairman of the Bar Council of Delhi and a journalist. This Committee was required to study in depth all the aspects relating to the measures of social security to be provided to the members of legal profession and submit a report together with its recommendations within the period prescribed. The Committee issued a questionnaire to which there was a widespread response. After the internal deliberations, the Committee recommended to provide financial assistance to the extent of Rs.500 to junior advocates for 5 years from the date of enrolment and to those who have not completed 35 years of age. Special provision was recommended for the advocates belonging to Scheduled Castes and Scheduled Tribes and women lawyers. The Committee also submitted a draft bill annexed to its report. The funding programme is evident from the draft Bill. It provides for

a levy of membership fee as also levy of a stamp duty on every vakalatnama that a lawyer files in any litigation of such denomination as may be prescribed. The amount collected by the sale of such stamps will form part of the fund. In effect, members of the legal profession have to be provided financial assistance by levy of tax in the form of stamp duty. If the profession can call upon the Government to exercise its taxing power for raising a fund to be exclusively used for the benefit of the members of the legal profession, ipso facto the State can enforce a regulatory measure providing the floor and ceiling in the matter of charging of fees. To a considerable extent, if this recommendation is implemented, the quantum of lawyer's charges will go down and it will have the desired effect of equitable distribution of legal work amongst various members of the profession and to reduce concentration of legal work in the hands of few members of the profession to the detriment of a large number of them. These twin objects can be easily achieved by prescribing the floor and ceiling in the matter of lawyer's charges and once the litigant is willing to pay, he is entitled to

the services of a lawyer as desired by him within the meaning of article 22 of the Constitution.

2.8. Even where floor and ceiling in matter of lawyer's charges are prescribed and enforced, yet, in a poverty ridden society like ours, there will still be a large segment of potential litigants in search of its entitlements who would not be able to afford even the prescribed charges. For their benefit, the provision of article 39A has to be fully made operational. Article 39A prescribes a duty of the State to secure that it shall provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The State is aware of its duty as mandated by article 39A of the Constitution. In order to translate the mandate of article 39A into a functioning scheme to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other

disabilities, Parliament has enacted the Legal Services Authorities Act, 1987 [Act No. 39 of 1987], which received the assent of the President on October 11, 1987. Nearly eight months have rolled by since the Act has been put on the statute book but, unfortunately, it has not been brought into operation. The reasons for this delay are difficult to discern. However, it must be stated in favour of the State and the powers that be that a legal aid scheme under an executive order is at present functioning. It is a skeletal scheme. The scheme has to be all comprehensive so that anyone in any part of India who has suffered injustice by denial of entitlements or deprivation of his rights must be able without the slightest worry about his economic wherewithal, to initiate legal action for enforcement of his rights or to procure his entitlements. The National Legal Services Authority to be set up under section 3 of the Act is under a statutory obligation to lay down policies and principles for making legal services available under the provisions of the Act; frame the most effective and economical schemes for the purpose of making legal

services available under the provisions of the Act; utilise the funds at its disposal and make appropriate allocation of funds to State authorities and district authorities; and to take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or other matter of special concern to the weaker sections of the society and, for this purpose, to give training to social workers in legal skills. When the scheme is made operational, even the poorest among the poor would be able to secure legal aid without the worry of finding the wherewithal for acquiring his entitlements and to vindicate his rights. In fact, expecting the members of the impoverished class of litigants to go in search of legal aid is itself a tall order. The Law Commission, being aware of the fact that the rural poor find it difficult even to procure legal aid by approaching appropriate authorities, has taken one more step to make the scheme, whatever that may be, operational.

2.9. The largest sections of the economically and socially disadvantaged classes of people reside in rural areas. For their benefit, a participatory model of justice has already been recommended by the Law Commission in August 1986.² The report recommends setting up of a Gram Nyayalaya to be manned by a legally trained Judge and two lay Judges. Apart from anything else, the Gram Nyayalaya has not to wait for people to come to it in search of justice but whenever a dispute is reported, to assemble at the site of the dispute and to resolve the same. Ours being a society founded on rule of law coupled with an adversary system, presence of lawyer in the process of assisting resolution of dispute is generally considered indispensable. Now if the Gram Nyayalaya is to settle at the situs of dispute, how could litigants coming from the rural poor class bring their lawyers to the place where the dispute has occurred? The Law Commission being aware of this situation has recommended that to every such Gram Nyayalaya, the District Authority, to be set up under the Legal Services Authority Act, 1987, shall assign two lawyers whose services would be

available to either side in need of lawyer's services without obligation to make any payment. If the rural poor are not to pay court fees in their disputes before the Gram Nyayalaya³ and will have services of lawyers assigned by District Authority under the aforementioned Act without obligation to pay,⁴ one can confidently say that the two major components of cost of litigation will be totally eliminated and the cost of litigation will perceptibly go down to an extent where it will become wholly bearable.

Court Fees and Process Fees

2.10. Court fee has acquired high visibility profile as a component of cost of litigation borne by the litigants in view of the vociferous advocacy for its abolition by the then Law Minister, Mr. Jagannath Kaushal. It is a complex subject and is, therefore, separately dealt with in the next chapter. As regards process fees, the simple answer that the Law Commission would give, in view of its formulations in the succeeding chapter, is that those who fall in the exemption limit shall not pay process fee and those who will

be liable to pay court fees shall pay process fee at the rate to be prescribed by the High Courts.

Travelling Expenses, etc., of
Litigants and Witnesses

2.11. The present situation is that the courts of lowest jurisdiction are generally stationed at the headquarters of Taluka or Tehsil depending upon the inflow of work. Occasionally, a court of lowest jurisdiction is set up with jurisdiction over 2 to 3 Talukas/Tehsils and the litigants, even from the area within the jurisdiction of such court in search of justice, will have to travel to the headquarters where the court is set up. Not only the litigants will have to travel to the court very often but, when the suit reaches the stage of recording evidence, witnesses have to be taken from the village to the court and transported back also to be provided some snack and food. This would entail heavy cost. Experience shows that after the suit reaches the stage of hearing and the witnesses are brought, the suit is adjourned on numerous occasions entailing the liability to bring witnesses repeatedly to the court. Not only that but even after the

cross-examination of the witnesses has started, it is not completed by continuous hearing of the suit but the suit may be adjourned with the obligation of the witness under cross-examination to appear as many times in the court as the court would expect his presence or till such time as it is recorded that the examination is complete. There is one notorious case in the court at Ahmedabad where the adjourned cross-examination covered a period of a decade. Unless the witness is summoned and the amount for procuring his presence is deposited, as required by rule 3 of Order 16, the expenses incurred in bringing witnesses to the court would not be included in the taxed costs. Rule 1A of Order 16 permits the party to keep witnesses present without obtaining the assistance of the court for procuring their presence and if they are kept present, the court is under an obligation to examine them unless it is said that the evidence of the witness is irrelevant or the exercise is for vexation or delay.⁵ And there is a peculiar tendency among litigants in our country to bring a number of witnesses even where parol evidence has little or no relevance and this

invisible component of cost of litigation is sometimes back-breaking. There is some scope for reducing cost under this head.

2.12. Parol evidence has its relevance where parties are at variance on a fact situation which cannot be established by documentary evidence, such as suits based on easement. Whether a particular passage was in existence and used, or a passage for water was in existence and used over the statutory period would entail examination of witnesses who would have intimate knowledge of the existence of passage or water passage, as the case may be. Cases are not unknown where a large number of witnesses on either side are called and examined. Though the Evidence Act does not prescribe numerical strength of witnesses to prove a certain fact, yet, in the case of proof of execution of a document required by law to be attested, it shall be obligatory upon the person offering the document in evidence to at least examine one attesting witness for the purpose of proof of execution.⁶ The proviso to section 68 would make it incumbent upon a person offering to prove a will to examine at least one

attesting witness to prove the same but in all other cases if the document is registered according to the provisions of the Indian Registration Act, the rigour of section 68 would be lessened in that the examination of an attesting witness will not be incumbent upon the person offering such document in evidence. The tendency, therefore, to examine a large number of witnesses to prove a given fact requires to be curbed but till that is done, there is a way out to reduce cost of litigation under this head. Where once the witness is called, his examination must be completed on the same day. This can be achieved by two simple methods.

2.13. If the court has set down number of suits for recording evidence on a given day and the court finds itself unable to deal with all witnesses, the court should appoint a lawyer as a Commissioner directing him to record evidence of witnesses of those who are present in the court. This practice is followed in the subordinate courts in the State of Madhya Pradesh. This practice requires to be universally followed. Once the witness has come in and the evidence is recorded, he/she may not be called in again

and any further investment on procuring witnesses will be saved. Needless to say that in the circumstances herein mentioned, the costs of Commissioner shall be borne by the State.

2.14. Law Commission has, however, another alternative suggestion which it has already made in this behalf. If Gram Nyayalayas are set up as recommended by it, it is incumbent upon such Gram Nyayalayas to visit the site of dispute which by itself would offer a solution. In a number of cases emanating from rural areas and reaching the courts, the dispute centres round a road or passage to the house or field to be used by men, cart and cattle. These disputes are embroiled in technical rules and complex legal formulations involving foreign decisions which have modulated the law. To avoid all this complicated and complex approach to a simple dispute, a Gram Nyayalaya, on receipt of a dispute of this nature, would assemble, on a date to be notified in advance, at the site of dispute; witnesses will be from the same locality; they will be present; they can be briefly examined, and the dispute can be resolved as per the decision of the Gram

Nyayalaya. This would totally eliminate expenses on transport and snack charges for witnesses. It will be a saving in time and money both. ⁷ When it comes to urban litigation, the problem is not so complex because the courts are in the city and the witnesses are in the city and they can be kept present without much investment. Therefore, if these two suggestions herein made are implemented, expenses on transport and snacks of witnesses as a component of cost of litigation will be either wholly eliminated or reduced to such a level as to become bearable.

2.15. In this context, attention must be drawn to Order 17 of the Code of Civil Procedure, 1976, which empowers the court not to grant frivolous adjournments and in any case on the ground of the convenience of lawyer. Provision of Order 17 should be scrupulously followed and this would further entail reduction in cost under this head.

Costs for Obtaining Copies of Documents,
Typing and Other Miscellaneous Expenses

2.16. Documents which are compulsorily registerable under the provisions of the

Indian Registration Act, 1908, are registered by Registry set up under the Act. Copies of such documents can be obtained on payment of certain charges. So far, the wisdom of the levy may not be seriously questioned because the Registry renders public service by making available copies of documents after any length of time. But after the copy is obtained, when the document is produced in a suit or other proceeding, court fee is leviable. This should be totally eliminated. Any fee must be a one point programme. Once fee is paid for obtaining copies of documents which are shown to have been registered and copies of which are furnished by the Registry, the production of a certified copy of such document need not be subjected to a further levy of court fee. Therefore, any such levy must be totally removed.

Costs on Account of Adjournments

2.17. While dealing with the question of cost incurred in paying travelling expenses to witnesses, attention has been drawn to Order 17 of the Code of Civil Procedure. Therefore, it is not necessary here to further dilate on the subject save and except

saying that Order 17 must be scrupulously followed.

Costs payable by the Vanquished Party
to the Successful Party.

2.16. To some extent, this method of compensating the successful litigant may operate as a check on an utterly frivolous litigation. But it is equally true that sometimes a genuine claim may fail because of non-availability of reliable evidence, or occasionally by lapse on procedural front. To wit, if, in a pending suit, the defendant, or one of the defendants where there are more than one, dies and his heirs are not brought on record within the prescribed time, the suit abates.⁸ In such a situation, the claim may be genuine but gets rejected for failure on procedural front. Cases are not unknown where a successful litigant up to the Supreme Court lost the case when in a pending appeal the heirs were not brought on record within the prescribed time and the court declined to condone delay on the ground that sufficient cause was not shown for failure to implead the heirs or the legal representatives of the deceased party within the prescribed time.

Even when on account of this technical failure a suitor is non-suited, costs are awarded to the other side. To deny costs to a successful litigant may appear to be unjust. But this should not detain the Commission any more because while taxing costs, it would have to be ascertained whether the other side has spent anything on court fees and if the litigant is in the exemption limit, nothing will be taxed under the head "court fees". Similarly, if legal aid has been obtained, nothing would be taxed under the head "lawyer's charges". The remaining expenses would be negligible. Therefore, the practice of awarding costs to successful litigant may continue save and except where the matter should be left to the discretion of the court when the successful litigant is from the affluent section of the society and the vanquished party may belong to impoverished section of the society. In such a situation, the costs should not be awarded to the affluent successful party. But if, on the other hand, the successful litigant is one coming from impoverished section of society, full costs should be awarded to him against the affluent litigant on the other side. To tilt the balance in

favour of justice in such a situation, even compensatory costs can be awarded under section 35 of the Code of Civil Procedure, 1976.

CHAPTER III

COURT FEE AS A COMPONENT OF COST OF LITIGATION AND ITS RATIONALISATION

3.1. Entry 3 in State List reads:

"Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court."

'Court fee' thus is a subject within the jurisdiction of the State. Article 145 of the Constitution confers power on the Supreme Court, subject to the provisions of any law made by Parliament in exercise of the powers conferred by entry 77 of the Union List, to make rules for regulating generally the practice and procedure of the Court with the approval of the President. This rule-making power inter alia includes the power to make rules as 'to the fees to be charged in respect of proceedings therein'.¹ Armed with this power under entry 3 of the State List, by now 10 States, namely, Andhra Pradesh, Gujarat, Jammu and Kashmir, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Rajasthan, Tamil Nadu and West Bengal, and the Union territory of Pondicherry have enacted their own laws on court fee. The Commission has come to know that State of Haryana has enacted its own Court Fee Act.² In other States and Union territories, the Central Court

Fees Act of 1870, as amended from time to time, is in force.

3.2. Court fee has always been a very controversial subject. At the one end of the spectrum, there are those who assert that it is a tax on justice and is incongruous in a constitutional democracy. At the other end of the spectrum, there are those who assert that as far as the administration of civil justice is concerned, court fee is a fee levied for service rendered and it may inhere the concept of quid pro quo. As extreme proposition at both ends of spectrum, there is an error in both but when properly analysed, each proposition has an element of truth in it. Both the points of view may be briefly examined.

3.3. Law Commission to which work of recommending reforms in justice system was assigned by the Government of India undertook a comprehensive examination of justice system in vogue with a view to recommending reforms in judicial administration so as to remove some of its ugly and undesirable features. Mounting cost of litigation was considered an undesirable feature of justice system because it became a barrier in access to justice. The situation in this behalf was analysed. Court fee was considered the most

important component of the cost of litigation. The question whether the levy of court fee was justified or not engaged the attention of the first Law Commission. 'India is, so far as we know, the only country under a modern system of Government which deters a person who has been deprived of his property or whose legal rights have been infringed from seeking redress by imposing a tax on the remedy he seeks. Our States provide hospitals which give free treatment to persons who are physically (mentally) afflicted. But if a person is injured in the matter of his fundamental or other legal rights, we bar his approach to the courts except on payment of a heavy fee. The fee which we charge is so excessive that a civil litigant seeking to enforce his legal right pays not only the entire cost of administration of civil justice but also the cost incurred by the State in prosecuting and punishing criminals for crimes with which the civil litigant has no concern.'³ This summed up the approach to court fee in 1958.

3.4. Till the advent of the British rule in India, levy of court fee was unknown. It was the British rule that brought in its wake the regulations which imposed court fees. Court fees appear to have been levied in the 18th century by

Madras Regulation III of 1782, Bengal Regulation XXXVIII of 1795 and Bombay Regulation of 1802. Since then it has become a regular feature of the administration of justice

3.5. The Preamble to the Bengal Regulation justified the imposition of court fees on the ground that it would prevent the institution of frivolous litigation. It stated that the 'imposition of these fees on the institution and trial of suits and petitions presented to the court is considered as the best mode of putting a stop to its abuse without obstructing the bringing forward of just claims.' Macaulay considered this statement as indefensible and described it, 'the most eminently absurd Preamble that was ever drawn'. In his minute dated 25th June, 1835, Macaulay recorded: 'If what the courts administer be injustice, these taxes are defensible or are objectionable only as being far too low. They ought to be raised till they amount to a prohibitory duty or rather the courts ought to be shut up and the whole expense of our judicial establishment saved to the State. But, if what the courts administer be justice, is justice a thing which the Government ought to grudge to the people?'

3.6. Subject to Macaulay's caveat, court fee was conceived as a restraint on frivolous litigation. However, the States have practically considered it a source of revenue.⁵ The ever daunting resource crunch has often provoked upward revision of court fees, simultaneously pointing a finger to the ever rising cost of administration of justice as justification for the upward revision. The Law Commission, therefore, was constrained to observe, 'the fee is no longer a fee, it is a heavy tax'.⁶ In reaching this conclusion, the Commission was impressed by the fact deduced from analysis of certain decrees selected at random that court fees formed the highest component of taxed costs. The Commission, after observing that 'it is the primary duty of the State to provide the machinery for the administration of justice and on principle it is not proper for the State to charge fees from suitors in courts', proceeded to recommend that 'even if court fees are charged, the revenue derived from them should not exceed the costs of administration of civil justice because the making of a profit by the State from the administration of justice is not justified'.⁷

3.7. The Taxation Enquiry Commission, after collecting data for the year 1954, reached a

conclusion that expenditure on administration of justice is higher than the receipt from court fees in Part A States and the same was the situation in Part B States too. Therefore, while in 1954-55 receipt from court fees in Part A and Part B States was not sufficient to meet the expenditure on administration of justice,⁸ yet in 1958 the Law Commission found that receipt from the court fees was higher when compared to expenditure on administration of justice and therefore it partakes the character of tax and not fee.

3.8. The Consultative Committee attached to the Ministry of Law and Justice, at its meeting in June 1960, set up a Sub-Committee to go into the question of court fees in trial courts. The Sub-Committee in its report recommended abolition of court fees. The recommendation of the Sub-Committee was forwarded to the State Governments for consideration and necessary action in the matter. Some States opposed abolition of court fees. Some State Governments did not oppose abolition as such, but desired that the Government of India should compensate the State Governments at least to the extent of 50% of loss of revenue.⁹

3.9. The exercise was again undertaken by a Sub-Committee set up by the Conference of Law Ministers which submitted its report in October

1984. This Sub-Committee did not recommend abolition of court fees but recommended rationalisation in the structure of court fee, broadly through reduction in ad valorem fee, exemption of certain categories of litigants and certain categories of cases from payment/levy of court fee and refund of court fee under certain circumstances. Another important recommendation of the Committee is that the court fee on first as well as second appeals should be 50% of the fee leviable on the original suit, whether the appeal is by the plaintiff or by the defendant in the original suit. The Committee further recommended that the litigants having an annual income up to Rs.5,000 may be exempted from payment of court fee. If a State Government is in a position to exempt litigants having income higher than Rs.6,000, it may do so keeping in view the overall impact such an exemption may have. As regards proof of income, an affidavit by the plaintiff may be accepted. It also recommended that if a State Government finds it feasible to exempt members of Scheduled Castes and Scheduled Tribes as a class from payment of court fee, it may do so. According to the recommendation of the Committee, women may be exempted from payment of court fee in matrimonial cases and children may be exempted

from payment of court fees on suits for maintenance. Referring to the rate of court fee on writ petitions under article 226 of the Constitution, it recommended that on a writ petition complaining of violation of fundamental right other than habeas corpus, the fee leviable should be Rs.100 and in tax matters Rs.500 and in miscellaneous matters Rs.250. It did not recommend any change in the levy of process fees as such.

3.10. Is the levy of court fee a tax on justice? The question as posed does not admit of a specific straight answer. Administration of justice has two broad wings: (1) civil justice; and (2) criminal justice. The obligations of the State in respect of both materially differ.

3.11. A society governed by rule of law with a written Constitution and an ingrained bill of rights must have regulatory measures called Statutes or delegated legislation adopted by authorities having the power to do so. Violation of regulation or regulatory measures is generally made punishable. A political society, in order to grow and develop, must have internal peace and security against external aggression. The internal peace can be ensured by laws properly enforced and, when violated, by imposition of

punishment. To determine whether law is violated or a contravention has taken place, a forum has to

not a service rendered by the State but it is performance of sovereign function of the State and in enforcement of its duty to provide internal peace conducive to growth and development.

3.12. When it comes to civil justice, the approach has to undergo a change. Civil disputes include disputes between an individual and individual, between individual and groups of individuals, between group of individuals on one hand and group of individuals on the other hand and between individuals and group of individuals on one hand and State on the other. A written Constitution with an inbuilt chapter on fundamental rights and division of powers amongst Federation and States provide a fruitful ground for disputes coming into existence. These disputes have to be resolved because a continuous simmering dispute is not conducive to growth and development of society. However, when the disputes are between two individuals, say an employer and an employee, a husband and a wife, or between members of the same family, it is open to them to choose their own forum to get the dispute resolved. An arbitrator appointed by the parties for resolution of dispute partakes the character of the court because parties agree to treat its decision binding. The costs of such arbitrator

has to be met by the parties who agree to refer

'fees' in a particular case depends on the subject-matter in relation to which fees are imposed. In this case we are concerned with the administration of civil justice in a State. The fees must have relation to the administration of civil justice. While levying fees the appropriate Legislature is competent to take into account all relevant factors, the value of the subject-matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost of the upkeep of courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Article 14. But one thing the Legislature is not competent to do, and that is to make litigants contribute to the increase of general public revenue. In other words it cannot tax litigation, and make litigations pay, say for roadbuilding or education or other beneficial schemes that a State may have. There must be a broad correlation with the fees collected and the cost of administration of civil justice."¹⁰

Elaborating this position, a Full Bench of the Gujarat High Court, while examining the constitutional validity of article 15 in the First Schedule of the Bombay Court Fees Act, 1959 in its application to the State of Gujarat, observed that it is for the State to establish that what has been levied is court fees properly so called and if there is any enhancement, the State must justify the enhancement. Upholding the validity of the levy, the court examined the broad relationship between the levy of court fee and the cost of administration of civil justice in order to determine whether it is a fee or a pretence and not a fee in reality. The ratio of the case is that the court fee can be validly levied as the fee is levied for service rendered. The only thing to be examined is whether there is a broad relationship between the levy of court fee and the cost of administration of civil justice. It unquestionably follows that by setting up forum for rendering civil justice, the State renders service and is entitled to charge fee for rendering the service. Therefore, levy of court fees in civil justice system cannot be dubbed as tax on justice.

3.13. In a peculiar set of circumstances, the

Supreme Court of India had occasion to pronounce on the wisdom and rationality of levy of court fee. 'It even took upon itself some day in future to decide the constitutionality of price for access to court justice as being either just or legal. Without expressly stating so, the court possibly gave vent to its feeling by stating that when court fee becomes a barrier in access to justice, the constitutionality of the levy is open to question. But while giving vent to its feeling, it did not finally pronounce on the subject.¹¹ The difference between tax and fee has come into sharp focus by a catena of decisions. It was once believed that to justify a levy as fee for service rendered, there must be an element of quid pro quo and that, when challenged, the Legislature must justify the levy by pointing out the receipt and the quantum of service rendered. Translating this dictum into administration of civil justice, it must be shown that the expenditure on service rendered by administration of civil justice must bear close relationship with the receipt from the court fees. However, this element of quid pro quo has recently undergone a change. Undoubtedly, though a fee must have relation to services rendered or the advantage conferred, such relation need not be direct; a mere causal relation may be enough. Further,

neither the incidence of the fee nor the service rendered need be uniform. Quid pro quo in the strict sense is not the one and the only true index of a fee; nor is it necessarily absent in a tax.¹² It would, therefore, be inappropriate to compare by statistics the receipt under the head 'court fee' with the quantum of service rendered evaluated by expenditure incurred in establishing and maintaining administration of civil justice. However, there must be some broad relationship between the two.

3.14. Those who advocate abolition of court fee appear to be unaware of the fact that there is a huge lay out on administration of civil justice. A developing country like India, continuously suffering the resource crunch, cannot afford to reach the ideal of abolition of court fee in administration of civil justice. Nor its total abolition can ever be appreciated. At the time of the 14th report of the Law Commission, it was found that the receipt under the head 'court fees' exceeded the expense on administration of justice, though a contrary picture emerges from statistics obtained from the report of the Taxation Enquiry Commission, 1953-54.¹³ The situation today is entirely different. Even the expenditure incurred

on administration of civil justice with the services available as of today is not reimbursed from the dreaded levy of court fees. What the emerging scenario would be, would shock anyone out of his wits if and when the recommendation of the present Law Commission to increase the present ratio of 10.5 Judges per million of Indian population to at least 50 Judges per million of Indian population is implemented.¹⁴ Once that recommendation is implemented, which of necessity must have to be done because at present the service from administration of civil justice due to heavy backlog of cases is virtually of no use to the litigant. Infra-structural services in administration of justice will have to be enlarged sufficiently making a further demand on the Exchequer.¹⁵ Therefore, the question of total abolition of court fees though it may be ideal according to protagonists of abolition as such does not merit consideration.

3.15. The whole approach, however, on court fees requires a radical change. Emphasis up till now has been on levying court fees on the value of the subject matter in dispute or, what is called, ad valorem court fee. The man behind the litigation is of no consequence in determining what ought to be the measure of court fees, nor even the social

evaluation of the subject matter of court dispute. The easy and facile approach is: look at the value of the subject matter in dispute and a graded percentage of it should be the court fees. This approach bristles with a market economy concept. It means that if A wants so much relief, he must pay so much court fees irrespective of whether A comes from the poorest strata of society or middle level strata or from the affluent class. In determining court fees, A is never in the picture. It is the value of the subject matter in dispute which is the sole guiding criterion, something akin to sale and purchase of goods. This approach - ignoring the litigant and emphasizing the value of the subject matter in dispute - has presented a distorted view of civil litigation. To illustrate, for a poor man the subject matter of the dispute in terms of money value may be very small, yet may be a question of life and death for him. On the other hand, a person in affluent circumstances may have no consideration for the value of the subject matter in dispute because he can afford to pay any amount of court fees and that subject matter of the dispute itself may be of little or no importance. But in both the cases the present approach of looking at the value of the subject matter in dispute, ignoring the man

behind the subject matter, has been the gravamen

dispute. The benefit of total exemption from court fees may be granted in the following manner:-

(i) No court fee shall be levied in the proceedings before the Gram Nyayalaya;¹⁷
and

(ii) Marginal farmers, farm labourers, unemployed industrial workers and those whose annual income does not exceed Rs.12,000 per annum shall be exempt from payment of court fees.

The Committee recommended that litigants having annual income up to Rs.6,000 may be exempted from payment of court fee. It further recommended that if a State Government is in a position to exempt litigants having income higher than Rs.6,000, it may do so keeping in view the overall impact such an exemption may have. As regards proof of income, an affidavit by the plaintiff may be accepted. Its further recommendation was that if a State Government finds it feasible to exempt -

(i) Scheduled Castes or Scheduled Tribes litigants who have income higher than Rs.6000 a year;

(ii) Scheduled Castes or Scheduled Tribes as a class,

3.18. The exemption from payment of court fees granted to litigants having an annual income of

court fee, would form two distinct and independent classes. To ignore the difference between an individual and a corporate body is to ignore the realities of the situation. Obviously,¹⁸ in the case of companies/corporate bodies, the court fee must be levied at a higher rate than in the case of an individual. However, there must be a uniform rate of ad valorem court fees in all the States for the simple reason that justice should not cost more in one State and less in another State, the service being identical. The rate structure of ad valorem court fee on money suits may be worked out depending upon the cost of administration of civil justice and the court fees payable by those who have the cushion to pay the same, meaning thereby those who do not belong to the exempted class.

3.20. It is a sad experience that corporations and persons belonging to affluent strata of society use courts for their petty quarrels. In fact, there is a body of opinion that the maximum advantage of the writ jurisdiction has been taken by those trying to evade payment of tax - both direct and indirect, corporate and industrial magnates and members belonging to the affluent strata of society. And unfortunately, they have been treated on par in the matter of payment of

court fees with the poorest amongst the poor when there was no exemption and only the relief from payment of court fees can be obtained after declaring oneself an indigent person under Order 33, rule 1 of the Code of Civil Procedure, 1976. Now when exemption limit has been raised and when it is recommended that no court fee is payable in any proceeding before the Gram Nyayalaya, the shortfall in income to meet the expenditure on administration of civil justice must be made good by levy of higher court fees on companies, corporate bodies, those seeking relief from payment of tax and members belonging to affluent sections of society, that is, those who are in higher income bracket. What ought to be the court fees and other charges recoverable from them has been fully worked out by the Law Commission and it would be idle to repeat the same here.¹⁹ That recommendation may be treated as part of this report.

3.21. The Committee recommended rate of court fee on writ petitions under article 226 of the Constitution as under:-

- | | |
|----------------------------|---------|
| (i) <u>Habeas corpus</u> | No fee. |
| (ii) Fundamental rights | Rs.100. |
| (iii) Tax matters | Rs.500. |
| (iv) Miscellaneous matters | Rs.250. |

Undoubtedly the Committee was fully justified in recommending no court fee on a petition for a writ of habeas corpus. And the Law Commission accords its full support to that recommendation.

3.22. But the Law Commission finds it difficult to appreciate a levy of court fee of Rs.100 only when a petition complaining of denial of fundamental rights is filed. Amongst the fundamental rights, the citizen has a right to practice any profession or to carry on any occupation, trade or business.²⁰ People who are in any profession or are carrying on business would be able to pay higher court fees for vindication of their fundamental right, especially the right to carry on profession. Who generally invokes this right may be illustrated by reference to some cases? Excel Wear, a registered partnership firm, had set up a factory at Bombay where it manufactured garments for export employing about 400 workmen. The firm served a notice on the Government of Maharashtra for its approval of the intended closure of the undertaking in accordance with section 25-O(1) of the Industrial Disputes Act, 1947. The State Government declined to accord the approval which led to the filing of the writ petition in the Supreme Court of India. Should such a concern

involved in export business and likely to render 400 workmen jobless by its unilateral action be permitted to file a writ petition on a court fee stamp of Rs.50 only which now the Committee seeks to revise to Rs.100?²¹ Similarly, Lohia Machines Ltd.,²² a very flourishing concern, filed a writ petition in the Supreme Court, probably paying the same amount of court fee, questioning the validity of rule 19A of the Income-tax Rules, 1962 which, in the event of success, would have benefited the company to the tune of crores of rupees. And yet the court fee paid was the infinitesimally small amount of Rs.50 which, under its recommendation, could now be raised to Rs.100. The Law Commission is of the opinion that it is too much of an inducement to litigants who can afford to pay adequately for the service they obtain from court. When the Supreme Court of India took the view that a statutory corporation or a company registered under the Companies Act, 1956 is not a citizen and, therefore, cannot seek to enforce fundamental right granted to the citizen by filing a writ petition, a device was resorted to to make the company/corporation a petitioner along with one of its directors. And this device has succeeded.²³ And the giant corporation pays negligible fees. Therefore, the Law Commission would recommend that

when a company/corporation/statutory corporation/a body composed of individuals but excluding trade unions seek to enforce any fundamental right, the court fee payable by it must not be less than Rs.1,000.

3.23. Similarly, where a tax demand is raised and questioned by way of a reference under the Income-tax Act or by way of a writ petition, the court fee leviable shall be not less than 10% of the value of the demand involved in the dispute. The approach of the Law Commission in this behalf is not to treat unequals as equals in the matter of court fees. A classification to be valid must be founded on intelligible differentia and it must have nexus with the objects sought to be achieved.²⁴ Those who use the court service can be divided into two classes namely: (i) those who have cushion and who can afford to pay and enjoy the service of civil justice administration, can be classified separately from⁽ⁱⁱ⁾ those who can ill-afford to pay for the service. This classification is based on intelligible differentia and it has a real nexus to the objects sought to be achieved namely, removal of economic barriers from access to justice. In the approach of the Law Commission, there is no violation, threatened or apprehended, of article 14 of the

Constitution. The differential treatment in the matter of payment of court fees between corporations, companies and bodies of individuals and taxpayers on one hand and others on the other would be justified on the theory of classification. Such a view was also expressed before the Committee by the Advocates-General of Kerala and West Bengal who asserted that there was no justification for extending concessions in the matter of court fees to the companies. They advocated differential rates of court fees for payment by individuals and corporate bodies/companies. They were of the view that there is no constitutional bar in so doing.

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3.24. The Committee recommended that the court fee on first as well as second appeals should be 50% of the fee leviable on the original suit, whether the appeal is by the plaintiff or the defendant in the original suit. Now it is well-settled that appeal is a continuation of a suit. If that principle is applied, it is gravely doubted whether any court fees can be levied depending upon the value of the subject matter in disputes at different stages of the same litigation. However, since the hoary past, court fee is leviable on the memo of appeal also, it would be a sudden about turn if it is totally

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abolished. Therefore, subject to exemption clause as hereinabove stated, the Law Commission would concur in the recommendation of the Committee in the matter of court fees leviable at appellate stage.

3.25. The Committee also recommended that the question of levy of nominal fee on tort cases may be referred to the Law Commission for its examination and recommendation.²⁷ The maximum litigation for compensation by victims of tort or by dependants in case of death is under the Motor Vehicles Act. Section 92A provides that where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the section. This is styled as no fault liability. Section 92B makes provision for payment of higher compensation where the death or injury has been suffered on account of the tortious conduct of the person in charge of vehicle and the owner of the vehicle. Section 94 makes it obligatory to insure against third party risks every motor vehicle before being used in a

public place. Section 110 empowers the State Government to set up Claims Tribunals where those entitled to claim compensation on account of death or bodily injury by the use of motor vehicles in public place may institute their claims. Almost all the States in India have set up Claims Tribunals and, with ever expanding surface transport, on an average 40,000 persons per year become victims of motor accidents. The petitions claiming compensation are filed in large numbers.

3.26. When a victim of a motor accident dies on account of the injuries suffered by him in the accident caused by wrongful act, neglect or default, the wife, husband, parent and child, if any, of the person whose death shall have been so caused are entitled to initiate an action for damages.²⁸ In Indian conditions, generally the bread-winner who is on the move out meets with an accident and if he dies, the family is rendered destitute. The wife would generally be a non-working woman and the children may be minors. The death of the bread-winner would raise the spectre of struggle for survival from the next day. Now if dependants of the deceased are reduced to the state of destitution and have to initiate an action for damages and if ad valorem court fees are levied on the claim for damages, in large

number of cases, either the claimants would have to resort to Order 33, rule 1, of the Code of Civil Procedure or give up the claim. The action for damages by the dependants of the victim of accident has to be viewed as an action for social justice via social security. The principle is of restitution. These are cases which invoke all humanitarian considerations. A levy of ad valorem court fees would be inconsistent with the spirit both of legislation and the overall humanitarian consideration that must inform such litigation.

3.27. The Committee has given in a tabulated form the information received by it from various States about the levy of court fees on petitions by the victims of the motor accident claiming compensation. The lowest is a court fee of Rs.1.25 provided for by the State of Punjab and Union territory of Chandigarh, whatever be the quantum of damages claimed. In other States, the levy commences from Rs.10 for any amount to a fixed fee plus certain percentage on graded scale in different slabs of compensation. The suggestions received by the Committee were, at the one end of the spectrum, total exemption from court fee as recommended by the Government of Andhra Pradesh to, at the other end of the spectrum, Rs.200 for claims between Rs.15,000 by

Government of Madhya Pradesh and on a graded scale
by Government of Maharashtra.²⁹ Levy of court
fees on petitions claiming compensation filed by
the victims of motor accidents have given rise to
a very nefarious practice of some lawyers sharing
the booty. There are two guiding considerations
why there should be levy of no court fee in the
initial stage of the petition before a Motor
Accident Claims Tribunal, namely, that in most of
the cases, the bread winner is either dead or has
suffered permanent disability and the income has
stopped and the family is rendered destitute. And
secondly, if court fee is levied, the investment
by legal profession can hardly be avoided.

3.28. Champerty if proved constitutes professional
misconduct, and yet to what extent it has corroded
the professional ethics may be gauged from a
recent case published in the print media,
justifying the contemptuous epithet 'ambulance
chasers'. One Manibhai Zenabhai of Mahudha,
District Nadiad, Gujarat State, met with an
accident in 1980 in which he lost his right leg
and his wife Manguben received fatal injuries and
his son suffered serious injury. Manibhai
Zenabhai and his injured son engaged advocate
Dilip Patel of Nadiad and instituted a claim for
compensation in the Motor Accidents Claims

Tribunal, Nadiad. The Tribunal awarded Rs.59,025 to Manibhai. The amount was received by his lawyer and credited it in account No. 5646 maintained in the branch of Bank of India at Kathalal. Afterwards, in settling account of cost of litigation and his fees, the lawyer paid only Rs.3,500 to Manibhai, appropriating an amount of Rs.55,500 to himself. Claimant Manibhai called upon the lawyer to render account and pay up all the amount deducting only legally payable fees. Failing to get any satisfactory reply, Manibhai filed a suit through his advocate Raojibhai in the Civil Court presided over by Judge Mr. Mankad at Nadiad.³⁰ Victims of accidents become victims of aggrandisement because they are unable to pay court fees for initiating action when on the quantum of damages ad valorem court fee is levied. These are two vital considerations why the Law Commission is of the firm opinion that no court fees should be levied except a token amount of Re.1 on petitions by victims of motor accidents before Motor Accidents Claims Tribunals. Undoubtedly, when the petition ends in an award in favour of the claimant, the contesting respondent should be called upon to pay court fees to the court on the amount awarded. But if the petition is dismissed for any reason, victims or dependents

of victims of motor accidents should not be required to pay any court fees.

3.29. Recently, Parliament has enacted The Railway Claims Tribunal Act, 1987. The Act empowers the Central Government to establish a Claims Tribunal, to be known as the Railway Claims Tribunal, to exercise the jurisdiction, powers and authority conferred on it by or under the Act. Section 13 confers on the Claims Tribunal all such jurisdiction, powers and authority as were exercisable before its constitution by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act, amongst others, for compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to railway administration for carriage by railway and compensation payable under section 82A of the Railways Act. Section 82A specified liability of railway administration in respect of accidents to trains carrying passengers. Anyone claiming compensation may make an application to the Claims Tribunal. Sub-section (2) of section 16 provides that every such application shall be in such form and be accompanied by such documents or other evidence and by such fee in respect of the filing of such application and by such other fees for the service

or execution of processes as may be prescribed. Section 30 which confers power to make rules to carry out the provisions of the Act inter alia provides that the rules would prescribe the form of application, the documents and other evidence to be accompanied with such application and fee in respect of filing of such application and fee for the service or execution of processes under subsection (2) of section 16. An enquiry revealed that the Act came into force in December 1987, but the Rules under the Act have still not been framed.

3.30. Let it not be forgotten that compensation to victims of accidents partakes the character of social justice or relief in case of disablement as contemplated by article 41 of the Constitution. For such relief to be obtained in the form of social justice, if one is required to pay court fee, in many cases, relief will be unattainable. When the Rules under the Railway Claims Tribunal Act, 1987 are framed, hopefully, the Law Commission would expect either a provision that no court fee would be levied or a token court fee of Rs.1 may be levied.

3.31. At the appeal stage, no court fee shall be levied if the appeal is confined to a claim upto Rs.10,000. For any amount over Rs.10,000, a court

fees at the rate of 5% of the amount involved in appeal should be levied. Let it be remembered here that since the nationalisation of general insurance, in view of a statutory provision for compulsory insurance for third party risk, in every petition for compensation by victim of motor accident, General Insurance Corporation or one of its subsidiary companies is a party. If the petition culminates in an award, ordinarily costs are awarded which would include court fees and the General Insurance Corporation or its subsidiary will have to pay the court fees. Therefore, the maximum court fees would come out of the pocket of a public sector undertaking. This is also one of the considerations why a differential treatment is to be accorded to levy of court fees on petitions for compensation by victims of motor accidents.

3.32. Apart from the claim for compensation by the victims of motor accident or, where death has occurred, by the dependants of the deceased, in almost all tort cases, the principle is the principle of damages for civil wrong suffered. There might be a claim for damages for tort of defamation, trespass, assault, battery, wrongful confinement and alike. In this class of cases, the question of any humanitarian principle permeating the litigation does not arise.

Therefore, subject to exemption clause, keeping in view the individual, ad valorem court fees should be levied on the claim for damages.

3.33. Subject to the recommendations made herein departing from the recommendations of the Committee, the rest of the recommendations of the Committee are deemed to be endorsed by the Law Commission. The recommendations of the Committee are set out in the Appendix for ready reference.

CHAPTER IV
ANTICIPATIONS

4.1. The ideal to be pursued can be summed up in one sentence: economic disability of any kind shall not preclude a man from having access to justice. Whatever strata of the society he comes from, the affluent or the impoverished, each should have access to justice unimpeded by any kind of economic barrier. Even a developing society may have to formulate this as an ideal. If ideal has to be kept in view, the Law Commission could not have evolved the approach it has done in this report nor the Committee of Law Ministers could have backed out from its 1980 stand of abolition of court fees to 1984 stand of rationalising the same. The approach of the Law Commission, therefore, is generally earthy in this behalf, being pragmatic and not dogmatic. The Commission stands on the firm ground of realities because, in its view, every recommendation that it makes - and by now they are innumerable in terms of figures - yet each one has kept in view the resource crunch of a developing society. The Commission, therefore, went to the other extreme of pointing out from where additional resources for lay out on administration of justice can be generated.

4.2. Therefore, the second approach is to take from where it is available and to extend it where it is needed. That justifies in this report the theory of cushion and the classification based thereon. That in fact is theory of taxation which permits higher bracket income group paying more tax, though services of the State are available equally to those who pay and those who cannot afford to pay. This larger principle must inform the approach of the Law Commission till such time as the State is in a position to totally abolish court fee irrespective of the status of the person, of the strata from which he comes and the gender. The Law Commission hopes that we will be able to reach this ideal in non-too-distant future.

4.3. But till then the question is what should be the guiding consideration. And here the Law Commission's approach departs from the standard accepted till now, namely, the emphasis on subject matter of dispute rather than on litigant who comes to the court. Up to now, behind the mountain of ad valoremism, the litigant has been made invisible. It is the litigant who needs the services of the court. It is his approach to the subject matter of the dispute, its evaluation, its place in his life-style that is

material. A dispute involving millions may be of little or no value to one dealing in billions. But a dispute involving a few rupees may make or mar a poor man or one in none-too-happy circumstances. Therefore, the basic approach has been to remove the mountain of ad valoremism and to make the invisible litigant visible and he will be the starting point of all consideration for court fees. That is the basic approach in this report.

4.4. Does it need further justification? The Department of Justice - Ministry of Law and Justice, which forwarded the report of the Committee of Law Ministers itself provides the rationale for this approach. At an inconvenient moment in the development of this country, in 1980, the then Committee pursued the ideal. The Law Commission would have been very happy to be in tune with them - namely, abolition of dreaded court fees. But before the Law Commission stepped in, the Committee of the Law Ministers realistically reappraised the situation and retained court fees and recommended only rationalisation thereof.

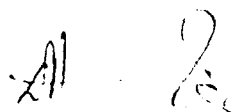
4.5. The Law Commission still pursues the ideal but in part. The Law Commission recommends that anyone in receipt of an income up to Rs.12,000 per

annum or the other classes specifically set out in the report shall be totally exempt from payment of court fee in any matter at any stage of the proceeding. This is abolition in favour of those who deserve it richly. But a developing society needs resources and, therefore, the court fees and the service charges of civil administration have been considerably raised in respect of those persons who will not feel even the slightest handicap in access to courts because of the revised court fees or revised recovery of court service charges. To them it is a flea bite. To the State it is an important inlet of income for expanding services of administration of justice,² as recommended in some earlier reports. Therefore, no one can say that the approach is utopian. And that is the justification.

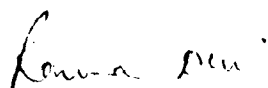
4.6. However, the Law Commission would be extremely happy if the State Governments or the Government of India, as the case may be, view the court fees as something incompatible with a society governed by rule of law and would, therefore, like to abolish it.

4.7. After an inordinate delay of nearly two years since the constitution of this Commission, assistance of five experts was provided to this Commission by the Government of India, each expert

having a time span of six months. Each one of them undertook to work on different specified topics. Prof. H.C. Dholakia, Head of the Faculty of Law, Maharaja Sayajirao University at Baroda, agreed to assist the Commission by undertaking a research on the question of 'cost of litigation'. The Law Commission must express its grateful thanks for the assistance received from Prof. Dholakia, which is hereby acknowledged.



(D.A. DISAI)
CHAIRMAN



(V.S. RAMA DEVI)
MEMBER SECRETARY

NEW DELHI,
JULY 3, 1963

NOTES AND REFERENCES

Chapter I

1. LCI, 127th Report on Resource Allocation for infrastructural Services in Judicial Administration- (A Continuum of the Report on Manpower Planning in Judiciary: A Blueprint).
2. N. Cappalletti (Edited), Access to Justice, Vol I Book 2, p.915.
3. Id., p.916.

Chapter II

1. For list of cases where litigation expenses have been held to be deductible, Chaturvedi and Pithisaria, Income Tax Law, Vol.2, p.1403 (3rd ed, 1983)
2. LCI, 114th Report on Gram Nyayalaya.
3. Id., para 6.15, p.36
4. Id., para 6.12, p.35.
5. Mange Ram v. Brij Mohan and Others, (1983) 4 SCC 36.
6. Indian Evidence Act, 1872, Section 6.
7. LCI, 114th Report on Gram Nyayalaya, para 6.6, pp. 30-32.
8. See Order 22, rules 3 and 4 of the Code of Civil Procedure, 1976.

Chapter III

1. Article 145(1) (f), The Constitution of India.
2. The Court fees (Haryana Amendment Act 1974.
3. LCI, 14th Report, Chapter 22, para 1, p. 487.
4. Report of the Committee of Law Ministers on Rationalisation of Court fee, October 1984, pp. 3-4
5. To illustrate, in Haryana no court fee stamps were leviable under S 110A of the Motor Vehicles Act, 1939 for payment of compensation till 1979 when an amendment was introduced providing that an application for claims of compensation upto forty thousand rupees shall bear court fee of ten rupees and for any sum above this amount the court fee shall be one-fourth of the amount chargeable as ~~and~~ ad valorem fee on the institution of suits under court fees Act, 1870 see Rule 22, Punjab Motor Accident claims Tribunal (Haryana Seventh Amendment) Rules 1979.
6. Supra note 3, para 6, p. 489
7. Id., para 42, p. 509
8. Report of the Taxation Enquiry Commission, 1953, vol. 3, p. 107.
9. Proceedings of the meeting of Consultative Committee held on Nov, 3, 1987.
10. Government of Madras v. Zenith Lamp and Electrical Ltd., AIR 1973 SC 724.
11. M/s Central Coal Fields Ltd v M/s Jaswal Coal Co 1980 (Suppl) SCC 471
12. Municipal Corporation of Delhi and Others v. Mohd Yasin, (1983) 3 SCC 229.
13. Supra note 3 at 496; supra note 8.
14. LCI, 120th Report on Manpower planning in Judiciary: A Blueprint.
15. LCI, 127th Report on Resource Allocation for Infra-structural Services in Judicial Administration - (A Continuum of the Report on Manpower Planning in Judiciary : A Blueprint).

Chapter III (contd)

16. Supra note 4 section VII, para 3, p.40
17. For justification, see LCI, 114th Report on Gram Nyayalaya, para 6.15, p. 36.
18. For detailed reasons and justification see infra note 19.
19. For a fuller and complete recommendation on this point, reference may be made to Supra note 15, Chapter V, paras 5.15 to 5.19 and especially para 5.18.
20. Article 19(1) (g) The Constitution of India.
21. Excel Wear v. Union of India, (1978) 4 SCC 224.
22. Lohia Machines Ltd, and Another v. Union of India and Others, (1985) 2 SCC 197.
23. Delhi Cloth and General Mills v. Union of India, (1983) 3 SCR 438.
24. Supra note 4, para 8.15, p.16.
25. In re Special Courts Bill, AIR 1978 SC 478.
26. Supra note 4 section VII, para 11, p.41
27. Id., para 34, p.43.
28. Section 1A Fatal Accidents Act, 1955.
29. Supra note 4, paras 30.1 and 30.2 at pp.29-31.
30. Gujarat Samachar Daily published from Ahmedabad dated June 15, 1988, p.7, columns 5 & 6.

Chapter IV

1. LCI, 127th Report on Resource Allocation for Infra-structural Services in Judicial Administration- (A continuum of the Report on Manpower planning in Judiciary : A Blueprint), Chapter V.
2. LCI, 120th Report on Manpower Planning in Judiciary: A Blueprint; LCI, 121st Report on a New Forum for Judicial Appointments; LCI, 127th Report, supra note 1.

REPORT OF THE COMMITTEE OF LAW MINISTERS ON RATIONALISATION
COURT FEE, OCTOBER 1984

Summary of Conclusions/Recommendations:-

General

1. Over the years, several States have raised the ad Valorem fee on money suits by many times over what was prescribed in the Central Court Fees' Act, 1870. The rates vary from State to State and widely in a number of States. A ceiling of Rs.3000 on ad valorem fee on money suits was prescribed in the said Act of 1870. Now there is a ceiling ranging from Rs.10,000 to Rs.15,000 only in 9 States.
(Paras 4,1;6.4 and 6,5)
2. The Committee recommends rationalisation in the structure of court fee broadly through reduction in ad valorem fee; exemption of certain categories of litigants and certain categories of cases from payment/levy of court fee; and refund of court fee in certain types of cases (Para 5,2)
3. Having regard to the level of difference in the socio-economic conditions among States, the Committee feels that it may not be practicable to have uniform rate of court fee throughout the country in respect of all matters. (Para 8, 1/4)
Advalorem Court Fee
4. Keeping in view the financial constraints, the system of levy in court fee on ad valorem basis on money suits and other items, such as application for grant of probate/Letter of administration and issue of succession certificate may continue for the present. (Para 8, 3)
5. The rate structure of ad valorem fee on money suits in different States may be reviewed and revised so that the rate tapers from 10 percent in the lowest slab to 1 per cent in the highest slab. It may be left to the State Governments to determine the slabs for different tapering rates. This however does not imply that where the rate is lower, it should be raised to 10 per cent. The 10 percent ad valorem rate at the lowest slab is the maximum limit.
(Para 8, 8)
6. Though there is no legal requirement to have a ceiling on court fee, it is desirable to have a ceiling in States where there is no such ceiling. A ceiling of Rs.30,000 on court fee would be appropriate.
(Para 8, 12)

Note: The Para Nos. indicated above relate to the above mentioned Report of the Committee.

7. The Committee does not recommend any differential rates of court fee as between individuals and companies/corporate bodies. (Para 8. 16)

8. The rate of court fee on applications for grant of probate/letter of administration may be as under:-

<u>Value of property</u>	<u>Rate of Court Fee</u>
(a) Contested cases	
(i) Upto Rs.1 Lakh	No fee
(ii) Above Rs.1 lakh but not more than Rs.2 lakhs	1 % of the value in excess of Rs.1 lakh
(iii) Above Rs.2 Lakhs	Fee for Rs.2 lakhs plus 1% to 5 % of the remainder; (5% being the maximum); (Tapering rate for different slabs to be determined by State Governments).
(b) Uncontested cases	
(i) Upto Rs.1 lakh	No fee
(ii) Above Rs. 1 lakh	1/4% of the value in excess of Rs.1 lakh

(Para 9. 8)

9. The Court fee on application for issue of succession certificate under the Indian Succession Act, 1925 may be as under:-

(a) Contested Cases	
(i) Upto Rs.25,000	No fee
(ii) Above Rs.25,000	1% to 5% of the value in excess of Rs.25,000 (5% being the maximum. Tapering rate for different slabs to be determined suitably by the State Governments)
(b) Uncontested cases	
(i) Upto Rs.25,000	No fee
(ii) Above Rs.25,000	1/4% of the value in excess of Rs.25,000 (Para 9.11)

10. The present system of levying fee on applications for review of judgment may continue. (Para 10. 3)

11. The court fee on first as well as second appeals should be 50 percent of the fee leviable on the original suit, whether the appeal is by the plaintiff or the defendant in the original suit. (Para 10. 8)

12. Litigants having annual income upto Rs.6,000 may be exempted from payment of court fee. If a State Government is in position to exempt litigants having income higher than Rs.6,000 it may do so, keeping in view the overall impact such an exemption may have. As regards proof of income an affidavit by the plaintiff may be accepted. (Para 12.4)

13. If a State Government finds it feasible to exempt:

- (i) Scheduled Caste/Scheduled Tribe litigants who have income higher than Rs.6,000 a year, or
- (ii) Scheduled Castes/Scheduled Tribes as a class, from payment of court fee, it may do so

(Para 13. 2)

14. Women may be exempted from payment of court fee in matrimonial cases. (Para 14 and 28,2)

15. Children may be exempted from the payment of court fee on suits for maintenance.

16. The recommendation for exempting litigants with annual income limit of Rs.6000 would take care of the interests of most of the indigent litigants. The existing provision for exempting an indigent person from payment of court fee and for realising the same in case his suit fails or is withdrawn or is dismissed or when it abates may continue to apply in the case of indigents, if any, with annual income above Rs.6,000.

(Para 16.2)

17. The income limit of Rs.6,000 per annum recommended by this Committee (vide para 12.4) for exempting litigants from payment of court fee would take care of the genuinely need people amongst socially/economically weaker classes.

(Para 17)

18. The interests of those living in backward States will be taken care of by the general scheme of exemption recommended by the Committee on the basis of income limit. (Para 18)

19. Economically handicapped among the physically and mentally handicapped persons will be taken care of by the recommendation made with regard to exemption based on income.

(Para 19)

20. General Scheme of exemption based on the limit of income will largely cover the interests of landless persons, debtors bringing suits and proceedings under Money Lenders' Acts. (Para 20)

21. The general scheme of exemption recommended by the Committee on the basis of annual income should take care of the interests of most of the agriculturists who need assistance.

So far as relief during drought etc. is concerned the Committee recommends that remission may be given by the State Governments as and when the situation so demands.

(Para 21)

22. (i) It may not be fair to give any special treatment to Government servants. They should stand on the same footing as other litigants.

(Para 22)

- (ii) No exemption need be given to employees as a class from payment of court fee on matters pertaining to service conditions.

(Para 32.3)

23. The general exemption based on income limit will be available to workers too as it will be available to others.

(Para 23)

24. All litigants who file cases before the Nyaya Panchayats may be exempted from payment of court fee, if not exempted already. (Para 24)

25. It will not be a practicable proposition to exempt suits of a given value from court fee. (Para 26.6)

26. Legal aid cases (except cases in which such aid is given also to persons having income of more than Rs.6000 a year) will automatically be covered by the recommendation made for exemption based on annual income limit. (para 27.5)

27. To exempt a litigant from payment of court fee or to reduce fee on a suit for recovery of possession of a house owned by him even if that be the only house he has, is not practicable and accordingly not recommended. (Para 33.2)

Reduction in Court Fee

28. In respect of cases relating to motor accidents claims, recommendation is as follows:

- (i) The court fee payable by the claimant before the Tribunal should be Rs.10 upto Rs.1 lakh.
- (ii) If the amount claimed exceeds Rs.1 lakh, the fee should be $\frac{1}{2}$ per cent of the amount in excess of Rs. 1 lakh.
- (iii) In cases mentioned in (ii) above, 50 percent of the fee may be paid at the time of filing the claim and the remaining 50 per cent may be paid after the decree is passed.
- (iv) In calculating the fee payable under (iii) above, the amount decreed, and not the amount claimed (if there be a difference between the two) should be taken into account. Suitable adjustment may be made, keeping in view the fee paid at the time of preferring the claim.
- (v) At the stage of appeal, fee should be paid on the amount of difference between the Tribunal's award and the amount claimed in appeal, at the same rate as on a money suit.

(Para 30.5)

29. In land acquisition cases, the court may be as under:-

- (i) A nominal fee to be charged on an application for "reference" to the court against the Collector's award.
- (ii) In appeal against the decision on "reference", 50 per cent of the ad valorem fee as on money suits to be charged on the amount of difference between the amount claimed and amount decided by the court. (Para 31.5)

Refund/Remission of Court Fee

30. The Scheme of refund of court fee on cases which are compromised between the parties outside the court may be as under:-

Compromise cases	Extent of refund of fee recommended
(a) (i) Before framing of issues	50%
(ii) Before recording of evidence	25%
(iii) At any other stage of pendency	25%
(b) If the compromise is reached at stage of appeal	50%

(Para 36.4)

31. State Governments may examine other types of cases in respect of which refund is allowed in some Stages and consider whether similar concessions can be given in their respective States, if not already given. (Para 36.5)

32. All State Governments/Union Territory Administrations may undertake a review of lists of remissions in court fee issued from time to time and enlarge them, if considered justified. Lists of remissions notified by other States may be of help in this regard. These lists may be obtained/compiled and circulated to all States/Union Territories by the Department of Justice in the Ministry of Law, Justice and Company Affairs. (Para 37.2)

Writ Petitions

33. The rate of court fee on writ petitions under Article 226 of the Constitution may be as under:-

(i) Habeas Corpus	: No fee
(ii) Fundamental rights	: Rs.100
(iii) Tax Matters	: Rs.500
(iv) Miscellaneous matters	: Rs.250/-

(Para 39.4)

Miscellaneous Matters

34. The question of levy of nominal fee on tort cases may be referred to the Law Commission for their examination and recommendation.

(Para 34.2)

35. It will not be practicable to abolish fee on miscellaneous items and therefore fixed court fee as is being levied at present may continue to be levied. However, no fee may be charged on applications for certified copies of judgment. (Para 40.2)

36. With a view to avoiding difficulties in calculation and overpayment by litigants when stamps of requisite value of odd denominations are not available to fixed fee may be in terms of whole rupees or half rupees.

(Para 41)

37. Introduction of a system, as a general rule, by which court fee may be realised in instalments at different stages of litigation is not practicable in all cases. The present system of realising full court fee at the time of filling of petitions/suits/appeals may continue unless otherwise specifically laid down in cases where hardship is involved. (e.g. claims before Motor Accident Claims Tribunal).

(Para 42.3)

38. The present scheme of levy of process fee (which is, strictly speaking not court fee) may continue. (Para 43)

39. The structure of court fee in States/Union Territories may be reviewed and revised as may be necessary every ten years.

(Para 44)