



LAW COMMISSION OF INDIA

SEVENTY-NINTH REPORT

ON

**DELAY AND ARREARS IN HIGH COURTS
AND OTHER APPELLATE COURTS**

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CHAIRMAN
LAW COMMISSION
GOVERNMENT OF INDIA

May, 10, 1979.

My dear Minister,

I send herewith the Seventy-ninth Report of the Law Commission relating to delay and arrears in High Courts and other appellate courts.

The subject was taken up for consideration pursuant to the terms of reference of the Law Commission, according to which the Commission should, inter alia, keep under review the system of judicial administration to secure elimination of delays and speedy clearance of arrears. I may mention that the Commission has already forwarded its Report on delay and arrears in trial courts, being its 77th Report.

I must place on record my appreciation of the assistance rendered by Shri P. M. Bakshi, Member-Secretary, in the preparation of this Report.

With kind regards,

Yours sincerely,

Sd/-
(H. R. Khanna)

*Shri Shanti Bhushan,
Minister of Law, Justice
& Company Affairs,
New Delhi.*

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CHAPTER 1
INTRODUCTORY

I. GENESIS AND SCHEME

1.1. According to the terms of reference of the Law Commission, the Commission is expected, *inter alia*, to keep under review the system of judicial administration, to secure elimination of delay and speedy clearance of arrears in courts. The Commission has already forwarded to Government¹ its Report on delay and arrears in trial courts. The present Report deals with delay and arrears in the High Courts and other appellate courts. Genesis and scheme of discussion.

We shall deal first with the magnitude of the problem and the efforts so far made to solve it. After stating in brief the various types of jurisdiction exercised by High Courts, we shall proceed to a consideration of proceedings falling within particular species of such jurisdiction—appellate, original, special and so on. Measures for expediting disposal in respect of each type of proceeding will naturally find mention in the Chapter devoted to that particular type of proceeding, but we also propose to make certain suggestions of a general character which would apply to the entire judicial work of High Courts.

II. ARREARS

1.2. As will be evident from a later Chapter² of this Report, the jurisdiction of High Courts in India is of an infinite variety. The remedies available to an aggrieved person and the proceedings that he can institute for seeking relief depend on the nature of his legal grievance and the stage at which the matter stands. These remedies—inclusive of remedies by way of first appeals, second appeals, revision and writ petitions in the High Court—are, to our mind, necessary for the proper administration of justice, for the satisfaction of legal conscience and for the proper enforcement of legal rights. Accumulation of cases.

However, various proceedings filed and pending in the High Courts have, in course of time, piled up to a disquieting figure and at present, the situation in regard to arrears is so grave that it needs to be tackled without any delay.³ The problem is not new: and several efforts have been made in the past to solve it,⁴ but there has not been any abiding solution,—as, indeed, there cannot be,—because of expanding society, continuously changing social values and, above all, the ever-increasing and diversifying functions of the State, both in the public and in the private sector and the passing of new legislation, which adds to the burden and responsibilities of the courts.

1.3. To deal with the present situation rationally, it will be necessary to see which type of the pending cases can be said to be old so as to constitute arrears. We shall deal with this point in due course.⁵ Arrears.

1.4. While fall in disposal might, to some extent, have contributed to increase in the arrears of the High Courts, it cannot be denied that, as we have stated earlier,⁶ there has been substantial increase in the fresh institutions in the High Courts. In particular, this increase is due to the expansion of its special jurisdiction under the various Acts and the coming into force of the Constitution, with Articles 226 and 227 providing efficacious remedies to aggrieved citizens who, by now, have become more conscious of their rights—though perhaps a little oblivious to their duties and obligations. The delays in the making of proper appointment of judges of the High Court when vacancies arise, and the comparative indifference in regard to the strength of the judges in the High Court in spite of increase in institutions and the heavy backlogs, have also very appreciably added to the gravity of the situation. Increase in institution.

¹77th Report, Delay and Arrears in Trial Courts (December, 1978).

²Chapter 2, *infra*.

³Para 1.31 to 1.36, *infra*.

⁴Para 1.23 and 1.24, *infra*.

⁵Para 1.29, *infra*.

⁶Para 1.2, *supra*.

Speed and justice
—Need for har-
mony.

1.5. Speedy justice is of the essence of an organised society and it is in the interest of both the State and the citizen that disputes which go to the law courts for adjudication are decided as early as possible. Justice delayed is, in most cases, justice denied. At the same time, it is obvious that in order to speed up the decision of cases, the basic norms that are necessary for ensuring justice should not be dispensed with. This is the great problem facing any person or group of persons entrusted with the task of devising measures to secure elimination of delay and speedy clearance of arrears in courts. How does one balance the consideration of speed and the demands of justice? In making our recommendations, we have tried to keep in the forefront the need to maintain a reasonable amount of harmony between these two considerations.

Need to cry halt
to Litigation.

1.5A. Delay in the disposal of cases apart from causing hardship to the parties has a human aspect and has the effect of embroiling succeeding generations in litigation started by the ancestors. Some of these aspects were brought out in a judgment¹ of the Supreme Court in 1976 wherein the Court observed:

“Apart from that we find that the suit out of which the present appeal has arisen was filed as long ago as January 1950. From the title of the appeal we find that many of the original plaintiffs and defendants have during this period of more than a quarter of century departed and are no more in the land of the living, having bowed as it were to the inexorable law of nature. They are now represented by their legal representatives. To remand the suit to the trial Court would necessarily have the effect of keeping alive the strife between the parties and prolonging this longdrawn litigation by another round of legal battle in the trial Court and thereafter in appeal. It is time, in our opinion, that we draw the final curtain and put an end to this long meandering course of litigation between the parties. If the passage of time and the laws of nature bring to an end the lives of men and women, it would perhaps be the demand of reason “and dictate of prudence not to keep alive after so many years the strife and conflict started by the dead. To do so would in effect be defying the laws of nature and offering a futile resistance to the ravage of time. If human life has a short span, it would be irrational to entertain a taller claim for disputes and conflicts which are a manifestation of human frailty. The courts should be loth to entertain a plea in a case like the present which would have the effect of condemning succeeding generation of families to spend major part of their lives in protracted litigation. It may be appropriate in the above context to reproduce what was said in the case of *Sant Narain Mathur v. Rama Krishna Mission*:²

‘It is time, in our opinion, that we draw the final curtain on this long drawn litigation and not allow its members to smoulder for a further length of time, more so when the principal contestants have all departed bowing as it were to the inexorable law of nature. One is tempted in this context to refer to the observations of Chief Justice Crewe in a case concerning peerage claim made after the death without issue of the ‘Earl of Oxford. Said the learned Chief Justice:

“Time hath its revolutions; there must be a period and an end to all temporal things—an end of names, and dignities and whatsoever is terrene, and why not of De Vere? For where is Bohun? Where is Mowbray? Where is Mortimer? Why, which is more and most of all, where is Plantagenet? They are all entombed in the urns and sepulchres of mortality.”

‘What was said about the inevitable end of all mortal beings, however eminent they may be, is equally true of the affairs of mortal beings. their disputes and conflicts, their ventures in the field of love and sport, their achievements and failures for essentially they all have a stamp of mortality on them.’

One feels tempted to add that if life like a dome of many-coloured glass stains the white radiance of eternity, so do the doings and conflicts of mortal beings till death tramples them down.”

¹*Bechan Pandey v. Dulhin Janki*, (1976) 2 S.C.C. 286, 290, 291.

²*Sant Narain Mathur v. Rama Krishna Mission*, (1974) 2 S.C.C. 730, 737, para 15.

1.5B. With these preliminary observations, we proceed to a consideration of the subject.

III. THE COURTS

1.6. The judicial power of the Union and the States is exercised through the courts established by or under the Constitution. The Constitution of India, apart from creating a Supreme Court for the Union of India, has provided for a High Court for each State. It has also empowered every State to establish for its territory appropriate judicial machinery, with such judicial powers as are necessary, subject to constitutional limitations. This accounts for some difference in the functioning and exercise of jurisdiction by various courts, including, in certain respects, the High Courts, in each State. There are, however, certain features which are common to most High Courts.

1.7. The utility of the Supreme Court and the High Courts was well brought out in the 58th Report of the Law Commission¹ which dealt with the structure and jurisdiction of the higher judiciary:

“Ever since our Constitution was adopted and the Supreme Court was established, the Supreme Court has, by its verdicts rendered during the last twenty-two years, made the concept of the Rule of Law relevant, coherent and stable in this country. It has consistently protected the Fundamental Rights of the citizens against unconstitutional encroachment, examined the validity of legislative and executive actions fairly, impartially and fearlessly, and introduced an element of certainty and uniformity in the interpretation of laws. The service thus rendered by the Supreme Court is of a very significant character and its importance cannot be exaggerated in the context of the federal set-up of the Indian Republic.

“During the same period, High Courts in our States also have done valuable work in exercising their ordinary civil and criminal jurisdiction and their constitutional jurisdiction under Articles 226 and 227 of the Constitution. Broadly stated, it can be legitimately claimed that the operation of judicial process in our country during the last twenty-two years has, on the whole, fostered and strengthened the best judicial traditions and thereby deserved and commanded confidence from the Indian community in general and the litigating public in particular.”

IV. PAST REPORTS

1.8. To maintain this confidence, it is necessary that arrears be brought down. The problem of arrears in High Courts is of long standing and has been inquired into more than once. A brief review of the efforts made in the past may be of use.

1.9. To deal with the question of delay in the disposal of civil cases both in the High Courts and in the subordinate courts, a Committee was appointed in 1924 under the Chairmanship of Mr. Justice Rankin of the Calcutta High Court.² The task of the Committee was “to enquire into the operation and effects of the substantive and adjective law, whether enacted or otherwise, followed by the courts in India in the disposal of civil suits, appeals, applications for revision and other civil litigation (including the execution of decrees and orders) with a view to ascertaining and reporting whether any and what changes and improvements should be made so as to provide for the more speedy, economical and satisfactory despatch of the business transacted in the courts and for the more speedy, economical and satisfactory execution of the process issued by the Courts”. The Committee, after a thorough and careful enquiry into the various aspects, forwarded an exhaustive report in 1925.

1.10. In 1949, a High Courts Arrears Committee was set up by the Government of India under the Chairmanship of Mr. Justice S. R. Das, for enquiring and reporting as to the advisability of curtailing the right of appeal and revision, the extent of such curtailment, the method by which such curtailment should be

¹Law Commission of India, 58th Report (Structure and Jurisdiction of the Higher Judiciary), Questionnaire and the preamble thereto, quoted at page 1, para 1.1 and 1.2.

²Rankin Committee.

effected, and other measures, if any, which should be adopted to reduce the accumulation of arrears. A number of recommendations were then made by this Committee.¹

Review by Government and Committee of 1969-1972.

1.11. In 1967, the Government of India, greatly concerned at the problem of accumulation of arrears in various High Courts,² conducted a review of the state of work in each High Court and found that inadequacy of judges was the main cause of the accumulation of arrears.³ Government increased the strength of judges in some of the High Courts, taking into account the arrears of cases then pending, fresh institutions and disposals. Though this had some effect, no appreciable result was produced.

At the end of the year 1969, the Government of India constituted a Committee presided over by Mr. Justice Hidayatullah, the then Chief Justice of India, to suggest ways and means for reducing arrears of cases pending in the High Courts. Upon the retirement of Mr. Justice Hidayatullah, Mr. Justice Shah was appointed the Chairman of the Committee.⁴ When Mr. Justice Shah retired as the Chief Justice of India, Government requested him to continue as Chairman of the Committee. The Report of the Committee will be referred to in due course.

Committees appointed in various States.

1.12. Apart from the above three Committees which worked at all-India level, some Committees were appointed in different States to look into the problem of delay and other matters concerning judicial administration.

One such Committee was in West Bengal. This Committee was constituted in 1949 under the Chairmanship of Sir Trevor Harries, the then Chief Justice of the Calcutta High Court. Another Committee was constituted in 1950 in Uttar Pradesh under the Chairmanship of Mr. Justice K. N. Wanchoo.

Law Commission's Reports.

1.13. The Law Commission of India, in its 14th Report made in 1958, went into all aspects relating to the Reform of Judicial Administration, including the question of delay in the disposal of cases in High Courts.

The 27th and 54th Reports of the Law Commission dealing with the Code of Civil Procedure, and the 41st Report dealing with the Code of Criminal Procedure, when making recommendations for revision of the procedural codes, were addressed, *inter alia*, to the need for reducing delay at various stages of the trial, including appeals and revisions to High Courts.

It may be mentioned that it was as a result of the recommendations in the 54th Report that the scope of the right of second appeal came to be somewhat circumscribed. Also, it was as a result of the 41st Report that appeals to High Courts from Presidency Magistrates (who are now designated as Metropolitan Magistrates) came to be abolished. Such appeals now lie to the Court of Session.⁵

58th Report.

1.14. In 1974, when the Law Commission reviewed the structure and jurisdiction of the higher judiciary⁶ (58th Report), it focussed its special attention on the imperative need to reduce arrears in the higher courts, and dealt with a number of questions, including writ petitions, taxation, industrial disputes, matters relating to conditions of service of the judges. The Report also deals at length with appeals to the Supreme Court—both civil and criminal,—including appeals with special leave.

¹These are summarised by the later Committee Report, 1972, pages 9-10, paragraphs 32 to 36.

²See High Courts Arrears Committee Report (1972), page 1, Chapter 1, para 4.

³The other contributing factors were—

(a) delay in filling up vacancies;

(b) lack of court accommodation;

(c) diversion of serving judges to other duties, such as Commission of Inquiry etc., without providing replacement in the High Court.

⁴High Courts Arrears Committee Report (1972), page 2, paragraphs 6 and 7.

⁵Code of Criminal Procedure, 1973, section 374(3).

⁶Law Commission of India, 58th Report (Structure and Jurisdiction of the Higher Judiciary).

V. LEGAL AND EXTRA-LEGAL FACTORS

1.15. The very fact that the problem of arrears has received attention for such a long time, and has been considered by so many high powered committees, and yet continues to vex all concerned, is enough to indicate that the problem, by its nature, is not easy of solution. Being very conscious of this fact, we have not, in preparing this Report, been unmindful of the complicated nature of the subject and of the numerous issues involved. The institution of cases and increase therein is not a matter which can be adequately dealt with merely by legal amendments, though certain aspects thereof could be so attended to. Improvement in the rate of disposal of cases cannot also, in its totality, be achieved by mere statutory reforms, since the human factor cannot be overlooked. This human factor comprises so many elements—the judges, the ministerial staff of the courts, the members of the bar, the parties and the witnesses.

Complicated nature of the problem.

1.16. It should also be remembered that the judicial system and the legal machinery do not work in isolation from society. They are parts of the entire social and political system and their efficient working must, to a large extent, depend on the co-operation of other elements of the system. Take a familiar but important example. The service of summonses, notices and other documents issued by the courts—that is to say, prompt and efficient service—pre-supposes the promptness and efficiency of the serving establishment. Where postal service is introduced, it pre-supposes the efficiency and promptness of the postal authorities. Where service is effected through the Government—as for example, in the case of Government servants,—co-operation of the head of the office is needed. Delay in these fields—fields which are, in a sense, outside the legal system—necessarily causes delay in the disposal of cases. In this sense, the role of improvements that are operative only within the judicial system is obviously a limited one in dealing with the problem.

Judicial system not working in isolation.

1.17. We are mentioning this consideration, elementary though it may be, in order to indicate that without the active co-operation of other agencies, too much should not be expected of the steps that may be taken to implement the recommendations made in this Report or, for that matter, of any other Report on the subject that might have been given in the past.

Limitations of reforms in the system and need to look to the future as well as to the past.

1.18. We would also like to make it clear that it is simple arithmetic that arrears arise when—taking one calendar year—the rate of disposal in that year is less than the rate of institution. If disposal maintains a percentage equivalent to that of institution, then certainly no further arrears would accumulate and the problem would remain only of dealing with the past arrears. It is therefore of importance that any steps that may be taken in the matter should look not only to the past, but also to the future. This is not to say that the backlog must not be attended to. It must also be cleared,¹ and, in making our recommendations, we have tried to pay heed to that aspect also.²

Rate of disposal and rate of institution.

1.19. It cannot be denied that the problem of arrears in High Courts is not only serious in its magnitude, but also complex in its character. In order to elicit opinion on the complex issues involved, we invited views through a Questionnaire,³ copies of which were sent to various interested persons and bodies. The Chairman of the Commission also visited several places for holding oral discussions on the subject with the Bench and the Bar. The Commission is grateful for the co-operation of all concerned who were kind enough to spare their valuable time and expressed their views.

Complexity of the problem.

1.20. With a view to solving the problem of arrears in courts, suggestions have been made for the appointment of more judges, changes in the distribution of business, amendments in the rules of procedure, the elimination of delaying tactics and the like. The problem, however, has persisted, requiring again a review of the position. It is no exaggeration to speak of an impending crisis in judicial administration. To understand how this crisis has come about, it is necessary to inquire into the factors leading to work-loads, and the procedure adopted for the disposal of that load.

Efforts in the past.

¹Para 1.27 and 1.28, *infra*.

²See Chapter 3, *infra*.

³The Questionnaire is printed as an Appendix to the 77th Report.

Extra-legal and legal factors leading to workload. 1.21. The factors leading to judicial work-loads may be broadly classified as extra-legal and legal. For example, with the increase in population, there is naturally an increase in the work of the courts. In addition, our society is with the passage of time getting more complex. These are illustrations of extra-legal factors.

New rights. 1.22. New rights have been brought into being, and older rights (such as contract and property) have been subjected to Governmental regulation and legal control. New social interests are also pressing for recognition in the courts. In part, the increase is contributed by legislation and by broadened governmental programmes of all kinds, since issues arising out of these ultimately reach the courts for resolution. These factors may be described as legal.

All these developments have increased the demands on the law and its institutions, and it is desirable to keep in mind factors leading to increase in judicial business.

Law Commission -14th Report. 1.23. We have referred above¹ to the various Reports concerned with the subject of arrears. Some of them have examined the causes of arrears at length. The Law Commission of India, in its 14th Report,² while pointing out that the problem of arrears in the High Courts has to be viewed against the very large increase in the institution of cases in the High Courts, particularly during the post-Constitution period, summarised the reasons for the accumulation of work in the High Courts in the following manner:

- (1) The arrears can be partly attributed to the increase in both the normal work of the High Court and also the expansion of its special jurisdiction under various Acts.
- (2) The coming into force of the Constitution has also greatly added to the work of the High Courts.
- (3) The strength of the High Courts was not increased in time to prevent the arrears from accumulating.
- (4) There has been large increase of arrears in the High Courts and disposals have fallen short of what they should be in a properly regulated court.
- (5) Many unsatisfactory appointments have been made to the High Courts on political, regional and communal or other grounds with the result that the fittest men have not been appointed. This has resulted in a diminution in the outturn of work of the judges.
- (6) These unsatisfactory appointments have been made notwithstanding the fact that in the vast majority of cases appointments have been concurred in by the Chief Justice of the High Court and by the Chief Justice of India."

The Commission also recommended certain remedial measures.

View of High Courts Arrears Committee. 1.24. The High Courts Arrears Committee presided over by Mr. Justice Shah, after stating as many as fourteen causes which, in its view, were responsible for the accumulation of cases³ in the High Courts, recommended certain measures for their clearance. The Report of that Committee concluded thus:

"In the last analysis it is obvious that it will depend entirely on the calibre and willing effort of individual judges in the country not only to clear the back-log but keep down the file without unduly affecting the quality of justice. It is our firm belief that if proper care is taken in manning the superior judiciary in the best possible way with men of ability and character, that will be the surest guarantee for achieving prompt and efficient administration of justice in our land."⁴

Backlog 1.25. We may mention that most of the High Courts are not able to deal with old cases along with the current files, with the result that there continues to be a heavy backlog of arrears on their file. In some High Courts, the disposals

¹Paragraphs 1.8 and 1.9, *supra*.

²14th Report.

³High Courts Arrears Committee Report (1972), pages 36-48.

⁴High Courts Arrears Committee Report (1972), pages 91-92.

are not keeping pace even with the institution.¹ The courts and their staff have begun to feel oppressed and suffocated on account of the heavy work-load in courts.

1.26. Every one is familiar with the arrears in law courts, especially in the High Courts in most of the States. The hard fact of delayed justice has driven not only many Judges and lawyers, but also members of the public, to re-thinking about the court procedures and to search for better ways of getting justice. That congestion of cases in the High Courts is chronic and has been allowed to run for some time is clear from various Reports on the subject from 1924 to-date. Law's delays is not something peculiar to India, but it should be borne in mind that delay is curable if the Government, the members of the bar and the judiciary set their hearts at it. If the right remedies are applied at the appropriate time, the problem is not beyond solution. The need, therefore, at present is to find out the correctives; the causes are, by and large, well known.

Arrears and remedies.

1.27. The recommendations already made by us in a separate Report² for the disposal of suits and other original proceedings in the trial courts will be helpful in expediting the disposal of cases in these courts. Here we are concerned with the measures needed for the disposal of arrears and the prompt disposal of current files by the High Courts and other appellate courts. In doing this, we have to keep two objectives in the forefront—as indeed our terms of reference emphasise—namely, inexpensive justice and obtaining of speedy justice. At the same time, it is necessary to ensure that judicial decisions should not be hasty and made to depend merely on calculation of time.

Disposal of arrears and prompt disposal of current files.

1.28. In order that the respect which the judiciary has earned may be maintained, it is necessary—apart from any other considerations—to examine the problem of delay and its causes. The elimination of congestion in courts will certainly enhance the public respect for the law and the judges to a very considerable extent where it can be achieved without affecting the quality of justice.

Question of balancing justice and speed.

This, then, has been the great question that has faced all Committees and Commissions investigating judicial delay—how to reconcile justice with speed, and what kinds of measures to suggest for expediting disposal while maintaining the quality of justice.

One could conceive of a variety of measures: reform in the court structures; improvement in the rules of procedure; augmentation of numbers in the judiciary and in the auxiliary staff; improvement in the conditions of service; and many other reforms.

1.29. As to the structure of courts, by and large, the appellate courts in India are streamlined and the causes of delay cannot be sought in their structure. The structure, no doubt, visualises a hierarchy of courts and a procedure of appeals from one court to the other—but that is inevitable in any modern system. No organised system of administration of justice permits the findings of the trial court to carry a stamp of finality. The fact that the findings are liable to be assailed in appeal, constitutes in a large number of cases a guarantee against arbitrariness, and by itself produces judicial constraint. It is also essential that so far as questions of law are concerned, there should be a uniformity of decisions.³ Our system, therefore, by and large, contemplates that there should be one right of appeal on questions of law and facts and a second appeal on a substantial question of law to a court whose decisions are binding upon all the courts in the State.⁴

Structure of appellate courts—Hierarchy of courts inevitable in modern system.

1.30. The system, which is in force in many other countries like the United Kingdom, Canada, Australia and the United States of America, has won the support of most of those who have been dealing with law, and, in our opinion, it would not be proper to condemn it as a legacy of the colonial days. No doubt, every system has to meet the needs of national and local requirements, and whenever we feel the necessity of making changes for that reason, we should not be averse to making such changes as may be called for. But, as already

System not alien to Indian genius.

¹See Appendix.

²77th Report.

³See Chapter 4, *infra*.

⁴See Chapter 4, *infra*.

mentioned,¹ by and large, the system cannot be decried as alien to the genius of India. In this connection, we would repeat what was said by us in the 77th Report,² where we observed:

"No judicial system in any country is wholly immune from, and unaffected by, outside influences, nor can such outside influence be always looked upon as a bane. The laws of a country do not reside in a sealed book; they grow and develop. The winds of change, and the free flow of ideals, do not pass the laws idly by. The present day complications and delays in disposal of cases are not so much on account of the technical and cumbersome nature of our legal system as they are due to other factors operating in and outside the courts. In spite of the fact that we are still heavily dependent on agriculture, we can no longer be regarded as an underdeveloped peasant society, in view of the great strides that have been made in the direction of industrialisation and urbanisation of population, besides expansion of trade and commerce. It will be a retrograde step to revert to the primitive method of administration of justice by taking our disputes to group of ordinary laymen ignorant of the modern complexities of life and not conversant with legal concepts and procedures. The real need appears to be to further improve the existing system to meet modern requirements in the context of our national ethos and not to replace it by an inadequate system which was left behind long ago."

Observations in 1.31. The Law Commission presided over by Dr. P. B. Gajendragadkar made earlier Report of the following observations in its 58th Report:³ the Law Commission.

"We have sound judicial traditions; a coherent pattern developed for the organisation of the judiciary; and a rational and systematic judicial process. There is no doubt that these factors have conferred great advantages on the country. An independent and efficient judiciary, a unified judicial system and a modernised procedure—though legacies of the pre-independence era—have been cherished by us. The judicial system has earned the respect of the people, and the respect so earned is well deserved."

Compulsions of 1.32. We may mention that even in some of the countries which started with modern society as simple legal rules, the compulsions of modern society have led to a situation necessitating elaborate legal rules wherein they could not avoid having elaborate and cumbersome legal rules. We may in this context refer to a recent study⁴ about the Soviet legal system, wherein it is said: —Example of Soviet legal system.

"During the period immediately following the Bolshevik Revolution of 1917 there were devout Communists who believed that their new polity would offer the world a model of a different kind of judicial system. They intended to do away with complex legislation and procedures, to eliminate the roles of lawyers and even prosecutors, and to substitute for professionally trained judges wise laymen who would hear disputes presented by the parties themselves and then make their decisions according to the principles of socialist morality as much as formal norms. Justice was to be simple, quick and inexpensive and would not require an elaborate system of appellate review, judicial precedents, legal education, or legal scholarship."

"Within five years this aspiration was shattered. A frenzy of experimentation had produced not the simple, locally oriented judicial system that had been anticipated, but a rather complex and centralised one with institutions that bore embarrassing resemblances to those of imperial Russia and the West European tradition from which the last three Tsars had borrowed. Judges found it too inconvenient to try cases without the assistance of a public prosecutor, defence counsel, and carefully prescribed procedures, and the courts of the nation were being subjected to

¹Para 1.29, *supra*.

²77th Report, para 3.1.

³Law Commission of India, 58th Report (Structure and Jurisdiction of the Higher Judiciary), page 14, para 2.10A.

⁴Jerome Alan Cohen, "Will China Have a Formal Legal System?" (1968) Vol. 64, American Bar Association Journal, pages 1510-1511

ever greater uniformity of decision through the revival of appellate review and the issuance of statutes, decrees, and texts designed to guide the judiciary. 'The primitive concept of judicial procedure had collapsed under the burden of practice', as Professor John N. Hazard concluded. 'The formative years had proved to men who expected to avoid complexity and formality that there was no alternative.'

1.33. In the context of the judicial system in ancient India, we had occasion, in the 77th Report,¹ to point out that with the growth of society, the function of administration of justice was transferred to the King, who came to be regarded as the fountainhead of justice, and that a regular hierarchy was set up which gradually developed into a sophisticated system. Ancient Indian system also one of regular hierarchy with sophisticated system.

1.34. Reverting to delay, it may be said that it is sometimes due to dilatory tactics adopted by one party who attempts to protract the proceedings of the court. The courts must be in a position to control such acts and to see that the case proceeds in conformity with the rules and according to Schedule. Dilatory tactics.

1.35. The rules of procedure, on the whole, are simple and devoid of unnecessary technicalities, so that it cannot be said that these rules are responsible for holding up the hearing of cases. Improvements in procedure and administration may, no doubt, be desirable, and will be suggested in due course, but they will not, by themselves, alone solve the problem. Rules of procedure not responsible.

1.36. Moreover, the best of rules and the best of judges may be helpless in the face of sheer volume of work. This aspect would suggest that attention will have to be paid to the strength of judges also. Again, it is desirable that the number and quality of judicial personnel is put to the optimum use by proper distribution of business. Volume of work.

Thus, the solution lies not in this or that measure, but in a number of measures taken together. Finally, these measures, once adopted, will not solve the problem for all times to come. Periodical review of the impact of measures taken will be needed—an aspect to which we shall revert at the end.²

VI. NORMS

1.37. Since this Report is concerned with "arrears" and "delay" — two concepts vitally linked up with the time element—it is necessary to indicate certain norms to determine what cases can be treated as old at a given time. The Law Commission in its 14th Report³ suggested that cases which were pending for periods of time longer than those mentioned in that Report should be treated as arrears. The periods suggested were as follows: Norms for arrears

(Periods suggested in 14th Report)

- | | |
|---|-------------|
| (a) Second appeals and Letters Patent Appeals | One year. |
| (b) First appeals | Two years. |
| (c) Criminal matters, writs and civil revision petitions. | Six months. |

The period for treating cases as arrears was to be counted from the date of institution.

The High Courts Arrears Committee presided over by Mr. Justice Shah,⁴ considered that it was difficult to adhere to any time schedule for the disposal of a given cause, because the time for each individual cause would be determined by many factors. While we agree with the comment made by the High Courts Arrears Committee, we think that it may be necessary to fix certain periods beyond which a case should be regarded as "old" whose clearance assumes importance.

As regards the actual periods, we largely agree with those suggested in the 14th Report, but have a few modifications and additions to suggest—

- (a) The period for second appeals and appeals against judgments of single judges in writ petitions should be one year.

¹77th Report, paragraphs 3.2 and 3.3.

²Chapter 19, *infra*.

³14th Report, Vol. I, page 91, para 55.

⁴High Courts Arrears Committee Report (1972), page 33, para 21 and page 34, para 24.

- (b) The period for regular first appeals should be two years.
- (c) The period for criminal matters and civil revisions should be six months.
- (d) So far, however, as petitions under article 226 (other than those for a *habeas corpus*) are concerned, the more realistic period in our opinion should be one year. The period for a writ petition for *habeas corpus* should not normally exceed two months.
- (e) Cases submitted to the High Courts for confirmation of the sentence of death pronounced by a court of Session¹ should be disposed of within three months from the date of submission.
- (f) As regards original suits being tried in High Courts, the period should be two years.
- (g) Income-tax references and proceedings under the General Sales Tax Acts, should be disposed of within one year.
- (h) Original petitions or appeals or revision petitions under the Land Reforms Act or Tenancy Legislation and Rent Control Acts should be decided within six months.

VII. LITIGATION TO WHICH GOVERNMENT IS A PARTY

Government as a party. **1.39.** No proposal for judicial reform can achieve success without the co-operation of the parties to the litigation. This is particularly so where the Government is a party. At this stage, therefore, we would like to emphasise that the Government is one of the main parties in the bulk of cases before the High Courts. In all criminal cases the main party, apart from the accused, is the State. As to civil cases, the Government is generally one of the parties in most writ petitions. As to other civil proceedings, Government constitutes one of the parties in quite a number of cases. For the quick disposal of cases, it therefore becomes essential that the various departments of the Government should afford all reasonable co-operation to the judicial process and attend to court cases with diligence and promptness. Apart from that, a good bit of litigation can be avoided if the departments concerned pay proper attention to the notices issued to the Government prior to the initiation of proceedings. Likewise, much time of the court can be saved if frivolous objections are avoided in pleadings and written statements filed on behalf of the Government. The position of the Government, it needs to be stressed, is not the same as that of a private litigant. The Government has to project an image of being reasonable in all cases to which it is a party. Its conduct in litigation should, in the very nature of things, inspire a feeling of fairness.

VIII. NATURE AND MAGNITUDE — STATISTICS

Comparison of pendency at the end of 1977 with pendency at the end of 1972. **1.39.** The nature and magnitude of the problem will be further appreciated if the position regarding arrears in the High Courts in 1977 is noted. It would appear that in the country as a whole,² the pendency of cases in the High Courts at the end of 1977 was much higher than the pendency at the end of 1972. High Court-wise also, when one contrasts the pendency at the end of 1977 with pendency at the end of 1972, the trend is found to be upward excepting in four High Courts, namely, Andhra Pradesh (18.6% decline), Gujarat (6.7% decline), Calcutta (8.10% decline) and Orissa (6.6% decline). The percentage mentioned for these four High Courts represents a decline, and not an increase.

Quantum of increase in pendency. **1.40.** The increase of pendency at the end of 1977 over the pendency at the end of 1972 is—

- (a) more than 50% in the case of nine High Courts and
- (b) less than 50% but more than 20% in the case of three High Courts. The exact percentages are given below alphabetically:^{3,4}

¹Section 366(1), Code of Criminal Procedure, 1973.

²Department of Justice figures.

³Figures for Sikkim High Court are not given in this case.

⁴Based on figures given in Department of Justice letter No. 36/1/78-Jus(M), dated 2-6-78, Table XII.

Comparison of pending cases in the High Courts on 31-12-77 with those pending on 31-12-72

| S.No. | Name of the High Court | Pending on 31-12-1972 | Pending on 31-12-1977 | Percentage of increase or decrease |
|----------------------|------------------------|-----------------------|-----------------------|------------------------------------|
| 1. | Allahabad | 78,617 | 1,32,749 | +68.9 |
| 2. | Andhra Pradesh | 19,527 | 15,887 | -18.6 |
| 3. | Bombay | 41,442 | 52,592 | +26.9 |
| 4. | Calcutta | 78,820 | 72,448 | -8.1 |
| 5. | Delhi | 16,561 | 26,587 | +60.5 |
| 6. | Gauhati | 5,796 | 6,548 | +12.9 |
| 7. | Gujarat | 12,560 | 11,722 | -6.7 |
| 8. | Himachal Pradesh | 1,564 | 5,019 | +220.9 |
| 9. | Jammu & Kashmir | 1,726 | 4,677 | +171.0 |
| 10. | Kerala | 29,353 | 42,739 | +45.6 |
| 11. | Karnataka | 10,727 | 36,449 | +229.7 |
| 12. | Madhya Pradesh | 20,653 | 46,613 | +225.7 |
| 13. | Madras | 32,678 | 51,763 | +58.4 |
| 14. | Orissa | 6,470 | 6,042 | -6.6 |
| 15. | Patna | 23,704 | 29,435 | +24.2 |
| 16. | Punjab & Haryana | 25,150 | 46,069 | +83.2 |
| 17. | Rajasthan | 13,359 | 10,558 | +53.9 |
| 18. | Sikkim | .. | 21 | .. |
| Total in the country | | 4,10,707 | 6,07,918 | +48.0 |

141. Taking the actual percentage of increase every year, during the five-year period—1973 to 1977—it would appear that the percentage has been fluctuating. High Court-wise, the percentage change in pendency at the end of the year over the pendency of the previous year is as follows.¹

Actual percentage of increase during all the five years.

Pendency at the end of each year from 1973 to 1977 and percentage change in pendency over the previous year in the High Courts in India

| Sl. No. | Name of the High Court | Percentage change in pendency over the pendency of previous year | | | | |
|----------------------|------------------------|--|----------|----------|----------|----------|
| | | 31-12-73 | 31-12-74 | 31-12-75 | 31-12-76 | 31-12-77 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1. | Allahabad | +13.9 | +6.9 | +13.8 | +10.2 | +10.6 |
| 2. | Andhra Pradesh | +7.7 | +12.3 | -16.4 | -27.2 | +10.4 |
| 3. | Bombay | +8.9 | +1.9 | +4.3 | +4.4 | +5.0 |
| 4. | Calcutta | -6.0 | +3.5 | +8.9 | +2.4 | -5.7 |
| 5. | Delhi | +19.1 | +3.9 | +8.3 | +3.2 | +14.4 |
| 6. | Gauhati | -9.2 | +0.5 | +18.9 | -1.6 | +5.8 |
| 7. | Gujarat | -3.5 | +2.0 | +2.6 | -3.1 | -4.6 |
| 8. | Himachal Pradesh | +20.4 | +29.6 | +33.5 | +35.6 | +13.7 |
| 9. | Jammu & Kashmir | +33.7 | +14.9 | +9.5 | +32.4 | +21.6 |
| 10. | Kerala | +4.3 | -5.5 | +16.9 | +27.5 | -10.9 |
| 11. | Karnataka | -1.1 | +17.1 | +32.6 | +48.2 | +49.2 |
| 12. | Madhya Pradesh | +37.6 | +24.1 | +10.7 | +9.4 | +9.1 |
| 13. | Madras | +5.1 | -0.9 | +12.9 | +9.5 | +23.0 |
| 14. | Orissa | -9.3 | +2.2 | -0.1 | -0.5 | +1.3 |
| 15. | Patna | +6.2 | +3.9 | -2.1 | +20.4 | +7.5 |
| 16. | Punjab and Haryana | +0.7 | +14.2 | +12.0 | +34.4 | +5.8 |
| 17. | Rajasthan | +16.3 | +4.3 | +21.1 | +3.2 | +1.5 |
| 18. | Sikkim | .. | .. | .. | +100.0 | -40.0 |
| Total in the country | | +7.0 | +5.9 | +9.7 | +10.5 | +8.4 |

¹Department of Justice letter No. 36/1/78-Jus(M), dated 2-6-78, Table II.

Percentage of increase from 1973 to 1977. **1.42.** It would appear¹ that for the years 1973 to 1977, the increase in the whole country of arrears in the High Courts in terms of percentage is as follows:

| | | |
|------|---|-------|
| 1973 | (increase in pendency at the end of 1973 over pendency at the end of 1972). | 7.0% |
| 1974 | | 5.9% |
| 1975 | | 9.7% |
| 1976 | | 10.5% |
| 1977 | | 8.4% |

Sample figures. **1.43.** It would be tedious to give the figures of such increase during the five year period (1973 to 1977) for every --High Court.

Actual pendency **1.44.** One may also obtain a rough picture of the state of arrears² by mentioning that at the end of the year 1977, the total pendency of cases in the High Courts was 6,07,918 (comprising 4,97,172 main cases and 1,10,746 miscellaneous cases). In contrast with the figures of cases pending at the beginning of the year 1977, this increase represents an increase in pendency of 7.7 per cent in the case of main cases and 11.7 per cent in the case of miscellaneous proceedings.

The highest number of cases pending as at the end of 1977, was in Allahabad (1,32,749), followed by Calcutta (72,448), Bombay (52,592), Madras (51,763), Madhya Pradesh (46,613), Punjab and Haryana (46,069) and Kerala (42,739).³

Three principal characteristics of arrears. **1.45.** From the above sample figures about arrears, three characteristics of arrears stand out. In the first place, speaking chronologically, arrears, in the sense of increased pendency at the end of the year, has been continuous for the years represented by 1973-1977.⁴

In the second place, speaking numerically, the rate of arrears itself⁵ has varied from year to year.

Lastly, speaking territorially,⁶ the arrears are of an all-India extent, in the sense that they are not confined to only a few High Courts. With a few exceptions, arrears are found in all High Courts, though the rate of increase and the magnitude may vary from State to State.

¹Department of Justice letter No. 36/1/77-Jus(M), dated 12th July, 1977, Table IX and Department of Justice letter No. 36/1/78-Jus(M), dated 2-6-78, Table II.

²For discussion of recent figures, see para 3.2 and 3.3

³Department of Justice letter No. 36/1/78-Jus(M), dated 2nd June, 1978, paragraph 1.(ii), page 3.

⁴Para 1.42, *supra*.

⁵Para 1.42, *supra*.

⁶Para 1.40 and 1.42, *supra*.

CHAPTER 2

JURISDICTION OF HIGH COURTS AND CITY CIVIL COURTS

2.1. The jurisdiction of High Courts in India presents an infinite variety. The jurisdiction is original as well as appellate; civil as well as criminal; ordinary as well as extra-ordinary; general as well as special; derived from the Constitution of the country and the statute law, as well as from the Letters Patent or other instrument constituting the High Court and other sources. Variety of jurisdictions and history.

This jurisdiction has a long history. The oldest High Courts in India—the High Courts of Calcutta, Madras and Bombay—exercise ordinary original civil jurisdiction within the respective limits of the three presidency towns.¹ The source of their original jurisdiction is to be found in the Indian High Courts Act² and in the Letters Patent issued thereunder. But it may be noted that some of the provisions of the Letters Patent refer back to earlier Charters of the Supreme Courts for the three presidency towns.

2.2. In addition to their ordinary original civil jurisdiction, these High Courts also exercise original jurisdiction in admiralty³ and insolvency,⁴ testamentary,⁵ matrimonial and guardianship matters.⁶ The jurisdiction of High Courts in regard to admiralty is, incidentally, distinct from their ordinary original jurisdiction.⁷ While many of these matters are now regulated by Central Acts, some of them—e.g. admiralty jurisdiction—still have their source in the Letters Patent⁸ or in other instruments.⁹

2.3. All High Courts have extraordinary original jurisdiction.¹⁰

Extraordinary original jurisdiction.

2.4. All High Courts have original jurisdiction in election petitions under the Representation of the People Act.¹¹ Further, they have original jurisdiction under the Companies Act, the Banking Companies Act and certain other special Acts. Special original jurisdiction.

As Courts of Record, High Courts have also power to punish contempt of Court.¹² It would be of interest to note that the Mayor's Courts (which were the predecessors of the Supreme Courts)¹³ were Courts of Records.¹⁴

2.5. All High Courts exercise appellate and revisional jurisdiction under the two procedural codes, and under certain other laws,—those laws themselves dealing with matters of a diverse character. The High Courts have also supervisory jurisdiction under Article 227 of the Constitution. Appellate and revisional jurisdiction upon the Codes and other laws.

2.6. High Courts also hear references under the laws relating to direct taxes, made by the Income-tax Appellate Tribunal and under the laws relating to certain other taxes made by the competent authority. They are also vested with jurisdiction to hear references for the confirmation of death sentence under the Code of Criminal Procedure.¹⁵ Under the same Code,¹⁶ High Courts (and other References.

¹Certain other High Courts are at present vested with ordinary original civil jurisdiction. See Chapter 16, *infra*.

²The Indian High Courts Act, 1861.

³*Kamalakar v. Scindia Steam Navigation Co.*, A.I.R. 1961, Bom. 186, 189.

⁴Section 3, Presidency Towns Insolvency Act, 1909.

⁵Indian Succession Act, 1925. See Appendix 2 for a list of relevant sections.

⁶See Appendix 6.

⁷See also *Hamid Hasan v. Banwari Lal*, A.I.R. 1947, P.C. 90, 93.

⁸*Kamalakar v. Scindia Steam Navigation Co.*, A.I.R. 1961, Bom. 186, 189.

⁹E.g. certain British statutes. See para 2.10, *infra*.

¹⁰See Chapter 16, *infra*.

¹¹Section 80A, Representation of the People Act, 1951.

¹²Article 215 of the Constitution.

¹³Mayor's Courts were first established in 1726 and re-established in 1753.

¹⁴Cowell, Courts and legislative authorities in India (1905), page 13, citing Statute of 1726 (13 Geo. I)

¹⁵Sections 366 to 368, Code of Criminal Procedure, 1973.

¹⁶Section 432, Code of Criminal Procedure, 1973.

Courts also) can be consulted by the Government in certain matters concerned with exercise of the prerogative of mercy (application for suspension or remission of sentence).

Then, there are civil references heard under statutory provisions. Some examples of such provisions are given below:

1. Section 113, Code of Civil Procedure, 1908.
2. Order 46, Rule 1, Code of Civil Procedure, 1908.
3. Section 69, Presidency Small Cause Courts Act, 1882.
4. Sections 11 and 17, Provincial Small Cause Courts Act, 1887.

Under the Contempt of Courts Act, ^{1,2} a subordinate court can make a reference to the High Court in regard to contempt of court.

Confirmation procedure under the Divorce Act. **2.7.** Under the Indian Divorce Act, which applies to Christians, every decree for the dissolution of marriage made by a District Court, is subject to confirmation³ by the High Court, and section 17 of the Act requires such cases for confirmation to be heard by a bench of three judges, where the number of judges of the High Court is three or more, or by a bench of two judges where the number of judges of the High Court is two.

Matrimonial jurisdiction in regard to Parsis is of a special category.⁴ A judge of the High Court presides over the Chief Parsi Matrimonial Court constituted under the Act in Presidency towns.

Revisions. **2.8.** Civil revisional⁵ and supervisory jurisdiction of the High Court is derived from several constitutional and statutory provisions, chief amongst these being article 227 of the Constitution; section 115 of the Code of Civil Procedure, 1908; section 25 of the Provincial Small Cause Courts Act, 1887 (or corresponding law) and section 75(1), proviso, of the Provincial Insolvency Act, 1920. Against the decision of a High Court Judge in revision, there is no Letters Patent Appeal—a feature which under the existing law distinguishes revisional jurisdiction from decisions of a High Court Judge on first appeal.⁶

Criminal revisional jurisdiction is principally governed by the Code of Criminal Procedure.

Varied sources of jurisdiction. **2.9.** The sources of jurisdiction of High Courts are as varied as the jurisdiction itself. The jurisdiction is derived from the Constitution, the Letters Patent, the two procedural Codes, certain other Central Acts and, in some cases, from State Acts.

British statutes on Admiralty. **2.10.** Certain British statutes which are still in force⁷ also contribute their share to the judicial business of High Courts in regard to admiralty jurisdiction.⁸

File in High Courts. **2.11.** The jurisdiction of High Courts being, as stated above⁹ wide and of infinite variety, judicial business in the High Courts also presents considerable variety. The files in the High Courts include, in the main, (a) first appeals, (b) appeals, commonly known as Letters Patent Appeals, by whatever name they are known in some High Courts, (c) second appeals, (d) civil revision petitions, (e) criminal appeals, (f) criminal revision petitions and references, (g) petitions under Articles 226 and 227 of the Constitution, (h) writ appeals, (i) references under the Income Tax Act, and other laws relating to direct taxes, (j) matters arising under the Sales Tax Act, (k) election petitions, (l) petitions under the Companies Act, Banking Companies Act, and other special Acts already mentioned.¹⁰

¹Section 15, Contempt of Courts Act, 1971.

²See *in the matter of D. B. Vora*, (1974), Criminal Law Journal 899 (Delhi).

³Section 17, Indian Divorce Act, 1869.

⁴Sections 18 and 19, Parsi Marriage and Divorce Act, 1936

⁵For history, see para 2.12, *infra*.

⁶Chapter 11, *infra*.

⁷Cf. the Colonial Courts of Admiralty Act, 1890 (53-54 Vic. c. 27) read with the Colonial Courts of Admiralty Act (Central Act 16 of 1891).

⁸Para 2.1, *supra*.

⁹Para 2.1 to 2.8, *supra*.

¹⁰Para 2.4, *supra*.

Apart from the above, there is, as mentioned above,¹ the ordinary original civil jurisdiction in the matter of suits, exercisable by the High Courts of Bombay, Calcutta and Madras² under their Letters Patent. The High Courts of Delhi and Himachal Pradesh have ordinary original civil jurisdiction under a Central Act, to be discussed in due course.³ The High Court⁴ of Jammu & Kashmir has also ordinary civil jurisdiction.

2.12. The emergence of the various species of jurisdiction of the High Courts is integrally connected with important events in Indian legal history. Thus, the three High Courts in the Presidency towns have succeeded⁵ to the jurisdiction previously exercised by at least three different courts—the Supreme Court (principally a court of original jurisdiction),⁶ the Saddar Divani Adalat and the Saddar Nizamat Adalat (which heard appeals from civil and criminal courts respectively).⁷ Revisional jurisdiction can also be traced to the Saddar Divani Adalat. Plenitude of jurisdiction and its roots in history.

This fusion of jurisdiction by the Indian High Courts Act, 1861 is an interesting epoch of Indian legal history. Introducing the Bill, Sir Charles Wood⁸ made an interesting speech, pointing out that "the administration of justice in the minor courts depends on the mode in which the appeals sent up from them are treated (by the superior courts)".

2.13. Another epoch-making change took place with the coming into force of the Indian Constitution.⁹ Not only were High Courts created or continued for all States, but also all the High Courts came to be vested with writ jurisdiction—a jurisdiction which has played a notable part in the development of the constitutional and administrative jurisprudence of the country. It has been stated¹⁰ that presumably the object of giving this power was to put the High Courts substantially in the same position as the Court of the Queen's Bench in England. The basic principle of constitutionalism is that the Government itself must be subject to rules. In Aristotle's phrase, "Government must be of laws, not of men". Article 226 of the Constitution is intended to provide a machinery to implement this principle. The Indian Constitution.

2.14. This is a brief sketch of the jurisdiction of the High Courts. A full statement of the various species of jurisdiction exercisable by them would require a conspectus of almost the entire statute law of India. Hardly any superior court in any other country exercises jurisdiction of such plenitude and variety. No other court vested with such wide jurisdiction.

2.15. Before closing this Chapter, we may state that the burden of High Courts in the Presidency towns in respect of ordinary original civil jurisdiction has been somewhat lessened by the establishment of city civil courts.¹¹ Such a court was established for the city of Madras in 1892, for Greater Bombay by the Bombay City Civil Court Act, 1948 and for Calcutta in 1957 under the Calcutta City Civil Court Act, 1953. Their pecuniary limits have been revised from time to time. The City Civil Courts of Bombay, Calcutta and Madras have now jurisdiction to try suits of a civil nature not exceeding Rs. 50,000/- in value, except City Civil Courts in the three Presidency towns.

¹Para 2.1. *supra*.

²Chapter 15, *infra*.

³Chapter 15, *infra*.

⁴Chapter 15, *infra*.

⁵(a) Cowell, Courts and Legislative Authorities in India (1905), pages 13, 15, 79, 90, 107, 109, 113, 114, 128 and 131.

(b) *Kamalakar v. Scindia Steam Navigation Co. Ltd.*, A.I.R. 1961, Bom. 186, 189.

⁶Section 17, Act of Settlement (21 Geo. 2 c. 70).

⁷For history of appellate jurisdiction of High Courts, see *India Electric Works v. Registrar, Trade Marks*, A.I.R. 1947, Cal. 49, 52, 61.

⁸Hansard (1861), page 647; Cowell, Courts and Legislative Authorities in India (1905), pages 161-162.

⁹See para 1.7 and 1.21, *supra*.

¹⁰*Election Commissioner v. Saka Venkata Suba Rao*, (1952) S.C.R. 1144, 1150.

¹¹See also para 2.9, *supra*.

those specifically excluded from their cognizance, with the result that the ordinary original civil jurisdiction of those three High Courts is now confined to suits or proceedings exceeding Rs. 50,000/- in value, apart from the original jurisdiction which they are exercising under some special statutes.

Delhi and Himachal Pradesh. 2.16. As already stated,¹ High Courts of Delhi and Himachal Pradesh also exercise original civil jurisdiction in suits exceeding Rs. 50,000/- in value.² There are, however, no City Civil Courts in Delhi and Himachal Pradesh.

City Civil Courts in Ahmedabad and Hyderabad. 2.17. It may be mentioned that in Ahmedabad and Hyderabad, there are City Civil Courts, constituted under State legislation.

¹Para 2.11, *supra*.

²See Chapter 15, *infra*.

CHAPTER 3

STRENGTH OF THE HIGH COURTS : NUMERICAL AND QUALITATIVE ASPECTS

L STATISTICS

3.1. We propose to deal in this Chapter with the strength of High Courts and other connected matters,—matters which we regard as of primary importance in solving the problem of arrears and preventing the further accumulation of arrears. Since this question requires consideration of figures of institution, disposal and pendency of cases in High Courts, we first refer to such figures for recent years. Scope of Chapter.

3.2. According to the statistics issued by the Ministry of Law, Justice and Company Affairs¹ (Department of Justice), on June 2, 1978, the total number of cases pending in the High Courts on 1-1-77 and 31-12-77, as also the percentage of increase in pendency, was as under²: Increase in pendency.

| | 1-1-1977 | 31-12-1977 | Percentage increase in pendency |
|-------------------------------|----------|------------|---------------------------------|
| Main Cases | 4,61,720 | 4,97,172 | +7.7 |
| Miscellaneous Cases | 99,161 | 1,10,746 | +11.7 |
| Total | 5,60,881 | 6,07,918 | +8.4 |

The position in the High Courts with heavy pendency was as under :

| | 1-1-1977 | 31-12-1977 | Percentage increase or decrease in pendency |
|----------------------------|----------|------------|---|
| Allahabad | 1,20,022 | 1,32,749 | +10.6 |
| Calcutta | 76,866 | 72,448 | —5.7 |
| Bombay | 50,099 | 52,592 | +5.0 |
| Madras | 42,078 | 51,763 | +23.0 |
| Madhya Pradesh | 42,723 | 46,613 | +9.1 |
| Punjab & Haryana | 43,542 | 46,069 | +5.8 |
| Kerala | 43,130 | 42,739 | —0.9 |
| Karnataka | 24,427 | 36,449 | +49.2 |
| Patna | 27,375 | 29,435 | +7.5 |

3.3. Institution and disposal during the year 1977 in the country as a whole and percentage of disposal qua institution in each of the High Courts were as under : Institution and disposal.

(i) In the country (1977)

| | Institution | Disposal | Percentage of disposal qua institution |
|-------------------------------|-------------|----------|--|
| Main Cases | 2,39,796 | 2,04,331 | 85.2 |
| Miscellaneous Cases | 2,14,937 | 1,96,373 | 91.4 |
| Total | 4,54,733 | 4,00,704 | 88.1 |

¹See Department of Justice figures (Appendix).

²For figures of five years, see para 1.32 to 1.36, *supra*.

(ii) *Percentage of disposal qua institution in the High Courts (1977)*

| | |
|------------------|-------|
| Sikkim | 128.6 |
| Calcutta | 110.2 |
| Gujarat | 104.1 |
| Kerala | 101.1 |
| Orissa | 98.4 |
| Rajasthan | 96.8 |
| Andhra Pradesh | 96.6 |
| Bombay | 93.6 |
| Punjab & Haryana | 92.1 |
| Patna | 87.6 |
| Madhya Pradesh | 86.6 |
| Delhi | 84.5 |
| Himachal Pradesh | 83.2 |
| Madras | 82.2 |
| Gauhati | 81.8 |
| Allahabad | 77.9 |
| Jammu ; Kashmir | 70.1 |
| Karnataka | 67.5 |

The average disposal per judge during the years 1976 and 1977 in the country as a whole and the various High Courts was as under:

| | 1976 | 1977 |
|--------------------------------|--------|--------|
| (i) <i>In the country</i> | 688.2 | 729.2 |
| (ii) <i>In the High Courts</i> | | |
| Punjab & Haryana | 917.4 | 1216.3 |
| Kerala | 844.3 | 1063.4 |
| Madras | 1001.2 | 1031.6 |
| Calcutta | 1078.1 | 1006.9 |
| Gujarat | 884.3 | 840.5 |
| Andhra Pradesh | 992.0 | 826.1 |
| Karnataka | 952.9 | 807.7 |
| Allahabad | 590.0 | 648.3 |
| Bombay | 931.5 | 627.3 |
| Madhya Pradesh | 805.2 | 590.8 |
| Patna | 718.5 | 580.4 |
| Orissa | 608.1 | 571.2 |
| Rajasthan | 606.4 | 444.9 |
| Delhi | 525.2 | 350.3 |
| Himachal Pradesh | 225.0 | 349.3 |
| Jammu & Kashmir | 280.0 | 320.2 |
| Guahati | 385.5 | 210.5 |
| Sikkim | 22.0 | 30.7 |

3.4. Total number of main cases in High Courts at the end of 1977 was 4,97,172. Taking 650 main cases as the average disposal per judge per year, and taking 352 as the total number of judges¹ during 1977, this number of cases would take 2 years, 2 months and 2 days for disposal, even if the full strength of judges is available.

The statistics mentioned above point to the need for examining at some length the question of strength of the High Courts.

Sanctioned str- 3.5. The sanctioned strength² of Judges during the year 1977 was 352, as against the sanctioned strength of 351 in the previous year. One post was kept in abeyance during the two years. Out of the sanctioned strength of 352 in

¹Department of Justice figures.

²Department of Justice figures.

1977, only 287 Judges on an average were in position. The number of such judges during the year 1976 was 292. Out of the actual strength, seven judges on an average were entrusted with work outside their normal duties during the year 1977 and 14 judges during the year 1976. The effective strength for the purpose of court work in 1977 was 280 and in 1976 it was 278. The position as on 31st March, 1979 was as follows for the entire country:—

Strength of High Court Judges—Position as on 31st March, 1979
(All India)

| | | |
|-------------------------|----------------|-----|
| 1. Sanctioned strength. | | 292 |
| (31st March, 1979) | (a) Permanent | 79 |
| | (b) Additional | 213 |
| | Total | 371 |
| 2. Actual strength | | |
| (31st March, 1979) | (a) Permanent | 280 |
| | (b) Additional | 65 |
| | Total | 345 |
| 3. Vacancies. | | |
| (31st March, 1979) | (a) Permanent | 12 |
| | (b) Additional | 14 |
| | Total | 26 |

II. INCREASE IN JUDGE STRENGTH

3.6. A close scrutiny of the figures reproduced above would show that the number of cases disposed of by the High Courts in the country as a whole was less than the number of cases instituted during the year 1977. This resulted—as it must—in further piling up of the huge backlog of arrears. Any scheme which aims at clearing of the backlog of arrears and eliminating delay in the disposal of cases must take into account the imperative need to achieve two objectives, namely: (i) the disposal of cases in the High Courts in the country must not be less than the institution during the year, and (ii) effective steps must be taken to reduce and lighten the heavy backlog of arrears. Disposal less than institution.

To attain the above objectives, increase in the judge strength of the High Courts cannot be avoided. It has to be borne in mind that the disposal of cases, whether pending in the High Court or in any other court, needs the observance of certain procedural requirements. In the absence of such observance, any attempt to accelerate the disposal of cases would be only at the cost of rules of fair play and natural justice. Such an attempt would thus be substituting a much worse evil, compared with the evil manifested by delay in the disposal of cases. We are, therefore, opposed to attempts at expediting the disposal of cases at the cost of the requirements of fair play and substantial justice.

3.7. Stress has also been laid quite often on the personality of judges. Although we agree that the personality of judges can make a substantial difference in the quality and quantum of disposal, we must not lose sight of the fact that there is a limit up to which this factor can affect the totality of disposal. By and large, the solution for increasing disposal of cases, eliminating delays and clearing arrears lies in raising the judge strength of the High Courts. With this end in view, we recommend that the judge strength of the High Courts should be kept at that level as ensures— Recommendation as to Judge strength.

- (a) that the disposal in the year is not less than the institution,¹ and
- (b) also that one-quarter of the backlog of old cases may be cleared² in a period of one year.

3.8. So far as the permanent strength of each High Court is concerned, we are of the opinion that it should be fixed keeping in view the average institution during the preceding three years. As and when necessary, the permanent strength Fixation of permanent strength.

¹See para 3.8. *Infra*.

²See para 3.9. *Infra*.

Additional and ad hoc judges. may be reviewed. The permanent strength would thus be in a position to cope with the fresh institution¹ and prevent any further accumulation in the heavy backlog of cases

3.9. As regards² the clearance of arrears of old cases, it would plainly be not necessary to increase the permanent strength of the judges in a High Court on that account. For this purpose, we would necessarily have to take recourse to appointing additional judges and ad hoc judges.³

We have considered the alternative of appointing *only* additional judges for clearing the arrears but, on further reflection, we have arrived at the conclusion that it would not be advisable to have *only* additional judges for this purpose. The reason which has prevailed with us in arriving at this conclusion is the necessity of adhering to a rule that ordinarily, and, in the absence of any special reason, persons appointed additional judges from amongst the members of the Bar practising in court and the District Judges should not be sent back to the profession to practise in that court or reverted to their substantive post. So far as the members of the Bar are concerned, it is, in our view, extremely undesirable to appoint them additional judges unless there is certainty of their being ultimately absorbed as permanent judges. Instances—though, fortunately, very few—have not been lacking of members of the Bar being appointed as additional judges and, after a spell of a year or two on the Bench, going back to the profession and practising in that very court. Such a practice is most undesirable. It is fraught with grave abuse and should not be countenanced. As regards the District Judges also, it seems desirable that the eventuality of their reversion to their substantive post should, as far as possible, be avoided. Reversion to the post of district judge after a person has been a High Court judge is bound to create within him a feeling of discontent and frustration. The prospect of reversion is also likely to affect the approach and independence of such a judge when sitting in Division Bench with a senior judge.

It is also plain that during the time a person functions as additional judge of the High Court, vacancies are bound to arise from time to time for the office of permanent judges, consequent upon the retirement of some of those judges. As and when such vacancies occur, additional judges can, in accordance with their seniority, be made to fill in the vacancies.

Filling of vacancies. 3.10. As mentioned earlier,⁴ though the sanctioned judge strength of the High Courts in the country during the year 1977 was 352, only 287 judges on an average were in position. Like wise, in the year 1976, even though the sanctioned strength was 351, only 292 judges were in position. Leaving aside the judges who were entrusted with work outside their normal duties, the fact remains that the number of judges in position in both the years was less than the sanctioned strength. This disparity between the sanctioned strength and the number of judges in position was apparently due to the fact that vacancies in the posts were not filled in as soon as they occurred. It is our considered opinion that delay in filling in the vacancies is one of the major contributing factors responsible for the piling accumulation of arrears. In our opinion, when a vacancy is expected to arise out of the retirement of a judge, steps for filling in the vacancy should be initiated six months in advance. The date on which such a vacancy will normally arise is always known to the Chief Justice of the High Court and also to others concerned. It should be ensured that necessary formalities for the appointment of a Judge to fill the vacancy are completed by the date on which the vacancy occurs.

As already mentioned,⁵ the total number of judges in position has, as a result of certain step, increased to 345 as on 31st March, 1979, as against the sanctioned strength of 371.

III. RECOMMENDATIONS OF CHIEF JUSTICE TO BE PROMPTLY ATTENDED TO

Recommendations of Chief Justice to be attended to without delay. 3.11. Complaints have been heard that sometimes a Chief Minister sits tight over the recommendation made by the Chief Justice for the appointment of judges, and this fact results in delaying the appointment. In this regard, it would,

¹Para 3.7(a), *supra*.

²Para 3.7(b), *supra*.

³Para 3.13, *infra*.

⁴Para 3.5, *supra*.

⁵Para 3.5, *supra*.

in our opinion, be necessary to ensure that whatever may be the view of the Chief Minister about the particular recommendation of the Chief Justice, the recommendation of the Chief Justice should engage the prompt attention of the Chief Minister and should not be kept pending for more than a month. Sometimes the recommendation of the Chief Justice necessitates the exchange of correspondence between the Chief Minister and the Chief Justice. In such an event, efforts should be made to see that because of such exchange of correspondence the matter does not get stuck up. It would perhaps be appropriate that necessary reply to a letter received be sent within a week of its receipt. We feel that the outside limit of six months which we have indicated above¹ should be sufficient to take into account the various bottlenecks and delays which take place at different stages.

IV. AD HOC JUDGES UNDER ARTICLE 224A

3.12. It has been stated above² that the number of additional judges in each High Court should be such as takes into account the prospects of their absorption as permanent judges. Apart from such additional judges, more judges would also be needed to cope with the arrears. The only suitable alternative that we can think of for this purpose is the appointment of ad hoc judges. For this purpose, we may have to avail of the provisions of article 224A of the Constitution, according to which the Chief Justice of a High Court for any State may, at any time, with the previous consent of the President, request any person who has held the office of a judge of that court or of any other High Court to sit and act as a Judge of the High Court for that State and every such person so requested shall, while so sitting and acting, be entitled to such allowance as the President may, by order determine and have all the jurisdictions, powers and privileges but shall not otherwise be deemed to be a judge of that High Court.

Judges appointed under article 224A of the Constitution.

3.13. We would like to stress that in taking recourse³ to article 224A, only those retired judges may be appointed under that article as are known for efficiency and quickness in disposal. It is also, in our view, necessary to ensure that only those persons may be appointed under that article who retired within a period of three years of their appointment. This would prevent persons who have got out of touch with the court work being appointed.

Field of choice and duration.

The choice in making an appointment under article 224A to a particular High Court should not be confined to the persons who have retired as judges from that very court. For this purpose, the Chief Justice can look also to persons who have retired as judges from other High Courts. Such a course is permissible under article 224A. Initially, the appointment should normally be for a period of one year, to be extended by further periods of one year each, upto total three years. In making the recommendation for extension, the performance of the retired judge appointed under article 224A during the preceding year can be taken into account.

V. ASSIGNMENT OF WORK

3.14. As mentioned elsewhere also,⁴ the Chief Justice of the High Court can play a pivotal role in securing the optimum disposal out of the Judge strength of his court. The Chief Justice is presumed to know the aptitude of his colleagues, and in the formation of Benches and assigning the type of work to each Bench, he should keep in view the aptitude, grounding and familiarity with any particular branch of law of each judge. We shall have occasion to revert to this topic and deal with it at greater length subsequently.⁵

Role of Chief Justice.

VI. QUALITY

3.15. We are also of the opinion that every effort should be made to see that the best persons available are appointed to serve on the High Court Bench. The overriding consideration for this purpose should be the merit of the individual. All other considerations must be subordinated to the paramount necessity of having the best available person for the post. Experience tells us that wrong appointments not only affect the image of the courts, they also undermine the

Judges on the Bench best persons to be appointed.

¹Para 3.10, *supra*.

²Para 3.8 and 3.9, *supra*.

³Para 3.12, *supra*.

⁴See Chapter 7, *infra*.

⁵Chapter 7, *infra*.

confidence in, and respect for, the High Court amongst the litigants, the members of the Bar and the general public. A wrong appointment also affects the quantum of output and the quality of disposal. Cases have also not been unknown when one wrong appointment has deterred competent persons from joining the Bench subsequently despite the entreaties of the Chief Justice.

3.16. Also, with a view to attracting persons of the right calibre to the Bench, something may have to be done to improve the service conditions. This might also take into account the benefits, including pension, to which they would be entitled after retirement. While it is true that the pay-scales of the judges cannot be wholly divorced from the general pattern of pay structure of the country at the higher levels, it has also to be borne in mind that bright and capable members of the Bar by sticking to the profession can earn much more. In the eyes of some there may be a halo around the office of judgeship. The halo has, however, been getting dimmer and dimmer with the efflux of time, the rising spiral of prices and the disparity between the professional income and the salary of judges. We must take note of the fact that some measures have recently been adopted to improve the service conditions of the High Court Judges by providing them rent-free house and giving them a conveyance allowance. However, having regard to the existing tax laws, the steps taken in this respect may perhaps not provide adequate relief. Conditions of service.

VII. INCREASE IN ADMINISTRATIVE FACILITIES

3.17. Increase in the number of judges must also take into account the need for more court rooms and chambers, larger staff of the High Court and the necessity of adequate number of law books for each court. Court rooms, staff and library—consequential increase needed

It may also be ensured that judges are provided with suitable residences and have not to wait long for the purpose. A number of suitable government houses commensurate with the judge strength of the courts should be earmarked for the judges and be placed at the disposal of the Chief Justice for being allotted.

VIII. PUNCTUALITY

3.18. We are happy to find that by and large the judges in the High Courts are punctual and observe court timings. This, however, does not mean that no complaints have been heard about the lack of punctuality or non-observance of the court timings in some individual cases. It would essentially be for the Chief Justice of each High Court to ensure that no deviations in the matter of punctuality and the observance of court timings are countenanced. It is also plain that failure to adhere to court timings by a judge would result in less time being given by him for court sittings and thus affect quantum of his disposal. The Chief Justice would normally be able to secure adherence to court timings by the judges only if he himself sets an example and abides by the court timings. Instances have sometimes been known when a Chief Justice, as a matter of routine, does administrative work during court time. This causes dislocation of the court work and, as such, results in considerable inconvenience to the members of the bar and the litigant public. Punctuality.

CHAPTER 4

APPELLATE JURISDICTION UNDER THE CODE OF CIVIL PROCEDURE

I. PRESENT SCHEME AND HISTORY

4.1. A major part of the judicial business of the High Courts is constituted by appellate and revisional work. This work is of various types—first appeals (civil), second appeals (civil), appeals under special Acts, civil revisions and references, criminal appeals and revisions and the like. In this Chapter, we are concerned¹ with appellate jurisdiction under the Code of Civil Procedure, 1908. Scope of the Chapter.

4.2. The cost of litigation could very well be reduced and justice made speedier if the remedy of appeal were to be dispensed with altogether, but it is generally agreed that this is not possible. Giving a stamp of finality to the decisions of the trial court may seem to some to be an easy solution to the problem of congestion in courts, but it should not be overlooked that to every litigant his case is very important. There is, therefore, nothing surprising in the attempts made by many of them to exhaust all their remedies in the various courts in the judicial hierarchy before calling a halt to the course of litigation. Remedy of appeal.

4.3. The rationale of the system of civil appeals in Indian law has been considered at length in two Reports of the Law Commission², where the history of the relevant statutory provisions has also been dealt with. A brief description of the present scheme would be useful. Rationale of the system.

4.4. The Indian procedural law has provided for appeals in civil suits according to a pattern now well known. The Code of Civil Procedure, 1908, provides for first appeal³ against the decree of the trial court, for second appeal on specified grounds against the decree of the first appellate court,⁴ for appeal against certain orders passed under the Code,⁵ and for revision⁶ on specified grounds. The court in which first appeals have to be filed depends on the provisions of the civil courts Act in force in each State,⁷ including (as regards decrees passed by a City Civil Court), the City Civil Court Act in force in some areas.⁸ Second appeals, and petitions for revision under the Code of Civil Procedure, are to be filed only in the High Court. In addition, appeals and petitions for revision to the High Court are provided for by some special Acts⁹ while certain local Acts vest revisional powers in the District Court. Scheme of civil appeals.

4.5. As has been pointed out in the Law Commission's 54th Report on the Code of Civil Procedure,¹⁰ the scheme of the Code, ever since 1859, has been to give a party to suit at least two opportunities of hearing on facts—one by the trial court and another by the appellate court. The right of a litigant to take his cause before a second appellate court on a question of law has also been recognised in our country. Two opportunities on facts.

4.6. Against certain decisions of the High Courts there is a right of appeal to the Supreme Court.¹¹ By a constitutional amendment,¹² certain limitations have been introduced on this right. These limitations had their genesis in two Reports Appeals to Supreme Court in civil cases.

¹For Letters Patent Appeals, see Chapter 11, *infra*.

²Law Commission of India, 54th Report (Code of Civil Procedure) and 58th Report (Structure and Jurisdiction of the Higher Judiciary).

³Section 96, Code of Civil Procedure, 1908.

⁴Section 100, Code of Civil Procedure, 1908.

⁵Order 43, Code of Civil Procedure, 1908.

⁶Section 115, Code of Civil Procedure, 1908.

⁷See para 8.2, *infra*.

⁸See para 8.11, *infra*.

⁹Section 25, Provincial Small Causes Courts Act, 1887; Section 75(1), proviso, Provincial Insolvency Act, 1920. See Chapter 2, *supra*.

¹⁰54th Report, page 74, para 1-J.16A.

¹¹For history of appeal to the Supreme Court, see 44th and 45th Reports of the Law Commission.

¹²Constitution (30th Amendment) Act, 1972.

of the Law Commission, forwarded on a reference made by the Government of India.¹⁻³

The position now is that apart from an appeal with special leave under article 136 of the Constitution, and apart from the right of appeal in a case involving questions of interpretation of the Constitution, a litigant in a civil proceeding can appeal to the Supreme Court against any final decision of the High Court only if the High Court certifies that "the case involves a substantial question of law of general importance which in the opinion of the High Court needs to be decided by the Supreme Court".³

II. NEED FOR RIGHT OF APPEAL

Appeal on facts. 4.7. This, then, is a brief description of the existing scheme of civil appeals. There is, no doubt, a school of thought, according to which there should be finality of the decisions of the trial court in regard to findings of fact. According to this school, appeals on question of fact serve no useful purpose, nor do they justify the expense, delay, anxiety and inconvenience which the right of such appeal involves. We do not, however, consider it advisable to do away completely with the right of one appeal on questions of fact.

We have already pointed out⁴ that the appellate courts in India are streamlined and the causes of delay cannot be sought in their structure. A hierarchy of courts and a procedure of appeals from one court to the other is inevitable in any modern system. No organised system of administration of justice permits the findings of the trial court to carry a stamp of finality. The fact that the findings are liable to be assailed in appeal, constitutes in a large number of cases a guarantee against arbitrariness, and by itself produces judicial constraint. It is also essential that so far as questions of law are concerned, there should be a uniformity of decision in a State.

The procedural law in this respect, in our view, has considerable merit and, in our opinion, it would be inadvisable to deprive a litigant of the right of first appeal on questions of fact,—a right which has been enjoyed by him for a long time. The fact that we have not so far been able to devise effective means for prompt and efficient disposal of appeals is, in our opinion, no reason for short-circuiting the procedure on a cardinal aspect.

Evershed Committee's view. 4.8. We may also note that in England, the Committee on Supreme Court Practice and Procedure expressed itself thus on this subject⁵ :

"The legal system of every civilised country recognises that judges are fallible and provides machinery for appeal in some form or another. The right of appeal is too ingrained in our legal system to be capable of being uprooted *in toto*. The problem must be approached on the basis that it would be palpably wrong to leave the defeated litigant entirely without remedy even in those cases where the judgment against him is demonstrably wrong or to deny him altogether the chance of appeal from a decision which leaves him smarting under a sense of injustice."

We are in substantial agreement with the above observations. Appeal is an essential part of the gamut of our judicial system and should continue to be so.

Need to retain right of appeal. 4.9. Although we are against conferring a right of multiple appeals at various stages of the same litigation, we are also, as already mentioned,⁶ of the opinion that the right of appeal cannot be dispensed with altogether. The present scheme of conferring one right of appeal against the judgment of the trial court on questions of fact and law, and a right of second appeal on a substantial question of law (in those cases where the judgment on first appeal was of a court subordinate to the High Court) meets the requirements of the situation. So far as appeals to the Supreme Court are concerned, the matter is governed by the provisions of the Constitution⁷ and calls for no comment.

¹Law Commission of India, 44th Report (Appellate Jurisdiction of the Supreme Court in Civil matters) (August 31, 1971).

²Law Commission of India, 45th Report (Civil appeals to the Supreme Court on a certificate of fitness) (October, 1971).

³Article 133 of the Constitution; cf. section 109, Code of Civil Procedure.

⁴Para 1.29, *supra*.

⁵Committee on Supreme Court Practice and Procedure in England (1953), page 153, para 473.

⁶Para 4.8, *supra*.

⁷Para 4.5 and 4.6, *supra*.

III. SECOND APPEALS

4.10. We are also not in favour of doing away altogether with the right of second appeal in civil cases on a substantial question of law, as provided by section 100 of the Code of Civil Procedure. The reason for that is that, in our view, there should be uniformity of decisions on questions of law in a State.¹ If the findings of the courts subordinate to the High Court when deciding a first appeal were to have a finality on a question of law, the inevitable effect of that would be that we shall be confronted with situation wherein, on identical questions of law, the different courts in the State would be taking different—and sometimes diametrically opposite—views. This, in our opinion, is wholly undesirable and should not be countenanced. To have uniformity of decisions on a question of law in the same State, we consider it proper that for questions of law the final court of appeal within the State should be the highest court of the State.

Rationale of second appeal.

It also needs to be emphasised that a finding of fact is of importance only to the parties to the case, as it is those parties who are affected by that finding. As against that, a finding on a question of law is of importance not only to the parties to the case but also to a large number of other persons in whose cases that question of law would arise. A finding on a question of law is, therefore, of general importance and it is for that reason also that it becomes imperative to ensure that the approaches to the highest court in the State to secure authoritative pronouncements on questions of law should not be barred. We shall have occasion to refer to this aspect later.²

4.11. At the same time, it was realised that allowing appeal on a simple question of law had given rise to some loopholes for filing all kinds of appeals by stretching the connotation of the words "question of law" in section 100. It was, therefore, thought proper to restrict the right of second appeal under section 100 of the Code of Civil Procedure to an appeal on a substantial question of law. We find no compelling ground to make any further curtailment of the right of second appeal as contemplated by section 100.

Appeal limited to substantial question of law.

4.12. It would be useful in this context to refer to what was said by the Law Commission in its 54th Report.³ The Commission observed :

54th Report.

"1-J.74. Since we are retaining the right of second appeal with the above modification, the query may be raised why the litigant who, before coming to the High Court, has had one right of an appeal before a subordinate court, should have the right of two appeals on questions of law. In other words, why a multiplicity of appeals should be allowed. Now, it is to be remembered that in any legal system which recognises the binding force of precedent, the status and calibre of the final appellate court on questions of law is vital. This consideration over-balances the consideration of multiplicity of appeals.

It is obvious that the numerous subordinate courts in the districts cannot be final arbiters on questions of law. If the law is to be uniformly interpreted and applied, questions of law must be decided by the highest court in the State whose decisions are binding on all subordinate courts.

If the right of second appeal is so abridged as to remove questions of law from the High Court, it would create a situation wherein a number of subordinate courts will decide differently questions of law, and their decisions will stand. Such a situation would be unsatisfactory.

1-J.75. The subordinate appellate courts functioning in the districts are not superior courts of record, and their interpretations of law are not binding on other courts. In fact, ordinarily, subordinate courts in one district are not even aware of the pronouncements of other courts in other districts (except when a point of law is declared by the High Court in appeal). It is section 100 which enables the High Court to function as the author, distributor and clearing house of pronouncements of law for the benefit of all subordinate courts.

¹See also para 10.2 and 10.3, *infra*.

²Para 10.6, *infra*.

³Law Commission of India, 54th Report, pages 87-88, paragraphs 1-j-74 and 1-j-75.

“The interpretation of the law by the High Court is (subject to the law declared by the Supreme Court) binding on all subordinate courts. It is, therefore, essential for uniformity that every error of law, raising a substantial question is promptly rectified by the High Court by a correct pronouncement of the law.”

Letters Patent Ap- 4.13. We may also make it clear that our observations regarding right of second
peals. appeal on a substantial question of law¹ relate only to those cases where first
appeals are decided by courts subordinate to the High Courts. So far as first
appeals decided by the High Courts are concerned, even when those decisions are
given by single judges, we are not, as would be indicated elsewhere,² in favour
of grant of a right of second appeal to a Division Bench of the High Court. The
reason for that is that the decision of the court of first appeal in such cases would
be given by the High Court itself.

Measures to ex- 4.14. We now proceed to consider to what extent improvements in the process
pedite hearing. of decision of the appeal are possible in order to achieve expedition in hearing
without impairing the essence of the remedy or principles of fair play and natural
justice.

¹Para 4.12, *supra*.

²Chapter 11, *infra*.

CHAPTER 5
PROCEDURE IN APPEALS—GENERAL

I. STAGES OF DELAY

5.1. We propose to discuss in this Chapter certain matters concerning appellate procedure in regard to which there is need for improvement. We shall concentrate only on those matters that need attention, but it will be convenient to mention the chronological stages of the process of appeals, and to refer to the causes of delay at every stage. Scope of Chapter.

5.2. An appeal must be made ready for hearing before it can be heard. Delay in making an appeal ready for hearing, and in the hearing, can be dealt with in this order, with reference to the various stages of the process— Delay in making appeals ready for hearing.

- (1) delay in making available certified copies of the judgments and decrees of the Subordinate Courts so as to enable the aggrieved party to file an appeal, or (though the copies are ready), delay in presenting the appeal.¹
- (2) delay in the scrutiny and registration of the appeal,²
- (3) delay by way of the requirement of preliminary hearing,³
- (4) delay in the preparation of notice of appeal and its service,⁴
- (5) delay in the preparation of the paper books for the use of the court for hearing the appeal,⁵
- (6) delay in final hearing.⁶

Certain special issues relevant to appeals from interlocutory orders could be separately dealt with.⁷

Before an appeal can be filed in the appellate court, there are certain pre-requisites that have to be complied with. After the appeal is presented, it has to be scrutinised. After scrutiny, there is a preliminary hearing for admission. If it is admitted, notice has to be served on the respondent and (in the High Courts) a paper book has to be prepared, as required by rules made by the High Court for regulating its appellate procedure.

II. PRE-REQUISITES FOR APPEAL : COPY OF THE DECISION

5.3. The first pre-requisite for an appeal is the statutory requirement to file a copy of the decision sought to be appealed from.⁸ Delay may result from the time that elapses between the pronouncement of the judgment and the preparation of a copy thereof. The filing of the appeal, either in a subordinate court having appellate jurisdiction or in the High Court, may then be delayed. This has been sought to be remedied by amendment of Order 20 of the Code of Civil Procedure,⁹ by the insertion of certain new provisions, referred to in the next paragraph.¹⁰ Scope of delay.

5.4. By the amendment of 1976, there was inserted a new rule to which we made a reference in our Report on arrears in trial courts,¹¹ namely, Order 20, Rule 6A, Code of Civil Procedure, which deals with judgment and decree. Sub-rule (1) of this rule provides that the last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment. Sub-rule Filing of appeal.

¹Para 5.3, 5.4 and 5.5. *infra*.

²Para 5.6 and 5.7. *infra*.

³Para 5.8, *infra*.

⁴Para 5.10, to 5.16, *infra*.

⁵Para 5.17 to 5.28, *infra*.

⁶Chapter 6, *infra*.

⁷Para 5.27 to 5.30, *infra*.

⁸O.41, R. 1(1), Code of Civil Procedure.

⁹O.20, Rules 6A and 6B, Code of Civil Procedure.

¹⁰Para 5.4, *infra*.

¹¹77th Report, para 7.8.

(2). clause (a) then provides that an appeal may be preferred against the decree without filing a copy of the decree and, in such a case, the last paragraph of the judgment shall, for purposes of Order 41, rule 1, be treated as the decree. This amendment will, to some extent, ameliorate the difficulty which was faced in the past about having to wait for a long time to get certified copy¹ of the decree with a view to filing the appeal.

Despite the above provision, we cannot under-estimate the importance of the prompt supply of the copies of the judgment soon after its pronouncement to the parties. Long delays have in the past occurred in the supply of such copies by the copying agency. Such delays have now been sought to be minimised by Order 20, rule 6B of the Code of Civil Procedure which was added by Act 104 of 1976. According to this provision, where the judgment is type-written, copies of the type-written judgment shall, where it is practicable so to do, be made available to the parties immediately after the pronouncement of the judgment, on payment, by the party applying for such copy, of such charges as may be specified in the rules made by the High Court. Apart from that, such delays, as pointed out by us in the 77th Report,² can be avoided or cut short if, instead of typing out the copies, the whole thing is done by mechanical or electronic process.

Application for extension of limitation to be heard first.

5.5. An appeal is normally filed within the time prescribed therefor by the Limitation Act, 1963. But if, for any reason,³ it is filed beyond the prescribed time, the memorandum of appeal has to be accompanied by an application under section 5 of the Act. In such case, the Code⁴ of Civil Procedure requires that the application should be finally decided before the court proceeds to deal with the appeal under Order 41, Rule 11 or Order 41, Rule 13.

III. SCRUTINY AND REGISTRATION

Delay in registration of appeal.

5.6. After an appeal is presented,⁵ it has to be scrutinised and registered.⁶ Delay in this process is sometimes appreciable, and could be avoided by adopting certain measures.

There is a practice in almost all the courts of noting the defects in the memorandum⁷ of appeal and returning the same to the parties for re-presentation after curing the defects within a certain time. But the parties or their counsel take their own time in re-presenting the memorandum of appeal with the application to excuse delay which is automatically granted, and the office is obliged to register the appeal at that time. There is also a complaint among the bar in some States that all the defects found in the appeal are not noted at the same time, but that the defects are being pointed out in instalments and at different times.—a practice which, apart from causing inconvenience to the members of the bar and the litigant public, is responsible for further delay.

To remedy the above difficulty, we suggest that the court should register the memorandum of appeal within seven days of its presentation, and the office should, within that period, note all the defects to be cured. Registration, however, need not be postponed until rectification of defects. A time limit should then be stipulated within which such defects will have to be cured. This time limit should not exceed fifteen days, and a notice of the same should either be published on a notice board of the court, or given to counsel or the appellant. If the defects are not cured within that time limit, the Registrar of the High Court should have power, under rules to be framed by the High Court, to extend the time for a period not exceeding 15 days for proper reasons, on an application to be filed by counsel or by the appellant. If the defects are not cured even within the extended time, or if no application is filed for extension of time, the appeal should, without further delay, be listed before the court for necessary orders. Modifications of the rules, if necessary, may be made to give effect to the above suggestion⁸.

¹Para 5.2(1), *supra*.

²77th Report, para 13.10.

³Section 5, Limitation Act, 1963.

⁴Order 41, Rule 3A, Code of Civil Procedure, 1908.

⁵Order 41, Rule 1(f), Code of Civil Procedure, 1908.

⁶Order 41, Rule 3(f) Code of Civil Procedure, 1908.

⁷Order 41, Rule 9(1), Code of Civil Procedure, 1908.

⁸For action in connection with rules.

5.7. In this connection, reference¹ should be made to Order 41, Rule 11A, Code of Civil Procedure, 1908, which provides that every appeal should be heard under Order 41, Rule 11, as expeditiously as possible and endeavour shall be made to conclude such hearing within 60 days from the date on which the memorandum of appeal is filed. In view of this provision, it is necessary to tone up the administrative machinery of High Courts for scrutiny of the memorandum of appeal, so that there is adequate staff and not much time is spent in bringing to light deficiencies in the memorandum of appeal.

Order 41, Rule 11A, Code of Civil Procedure—expeditious hearing of appeal.

IV. PRELIMINARY HEARING

5.8. We now turn to the procedure for appeal. Support has been canvassed for the view that we² should do away with the preliminary hearing of the appeals contemplated by Order 41, Rule 11 of the Code of Civil Procedure and that the only hearing of the appeal should be in the presence of counsel for the respondent after service of notice upon the latter. The reason given in support of the above view is that very few appeals are dismissed under Order 41, Rule 11 and that in most of the appeals the hearing under Order 41, Rule 11 results in the duplication of labour and serves no useful purpose. We have given the matter our consideration and are unable to subscribe to the view that the hearing of the appeal under Order 41, Rule 11 is without utility. Experience tells us that quite a number of appeals are dismissed under Order 41, Rule 11.

Suggestion to dispense with preliminary hearing not favoured.

In any case, this provision results in the dismissal, *in limine*, of a number of frivolous appeals. To keep such appeals pending and to dispose them or only after service of the notice upon the respondent and after elaborate hearing would, in our opinion, not only add to the workload of the courts, but would also be subjecting the respondent to needless expense. The fact that in the event of dismissal of the appeal, the appellant can be ordered with costs is not enough to compensate the respondent for the labour, time and money spent by him.

5.9. The matter can also be looked at from another angle. Most memoranda of appeal are also accompanied by applications asking for interim relief. Quite often, the fact that the appeal is admitted operates as a factor with the courts in the matter of grant of interim relief. To have a general provision making it imperative that all appeals which are filed should be disposed of only after notice to the respondent would necessarily act as a temptation for the parties to file appeals, however frivolous, just with a view to seeking an order for interim relief. As the position stands at present, the preliminary hearing of the appeal under Order 41, Rule 11, not only results in the dismissal of frivolous appeals, but also results in the dismissal of applications asking for interim relief sought in such appeals.

Interim relief an important factor in connection with preliminary hearing.

V. SERVICE OF NOTICE

5.10. Registration of the appeal is followed by the service of notices on the respondents to the appeal. It cannot be gainsaid that there is some amount of delay in the service of such notices by the appellate court, for two reasons—

Summons to be filed up by parties

- (a) the first being the delay caused in the office of the High Court³ in the preparation of the notices,⁴ and
- (b) the second being the time taken for actual service of notices on the respondents.⁵

5.11. Delay in the office in preparing the notice⁶ can be avoided by requiring the parties or their counsel to follow the same procedure as we have, in our Report on delay and arrears in trial courts, recommended for the preparation of summonses to be issued in suits to be served on the defendants.⁷ The parties should be required to produce, along with the memorandum of appeal, printed forms of the process in duplicate, duly filled up, for each respondent, leaving the date for appearance and the date of the issue of process blank for being filled in by the concerned officer of the court. Such printed forms should be made available to members of the bar and litigants at nominal cost by the

Parties to file printed forms of process.

¹Order 41, Rule 11A, Code of Civil Procedure, 1908.

²Suggestion of a High Court Judge, forwarded to the Law Commission.

³This applies also to appeals heard by the District Courts.

⁴Para 5.11, *infra*.

⁵Para 5.12, *infra*.

⁶Para 5.10(a), *supra*.

⁷77th Report, para 4.2.

High Courts. It should also be provided that the appellant should along with the memorandum of appeal file, as many copies of the memorandum as there are respondents, and additional number of copies for the use of the Court. This is necessary in view of Order 41, Rule 14(3) of the Code of Civil Procedure as amended.¹

Payment of charges or process fees and issue of notice.

5.12. The necessary charges or the process fee for the service of notices on the respondents should also be paid at the time of presentation of the appeal or within a week of admission of the appeal under order 41, rule 12(1) of the Code of Civil Procedure. Order 41, rule 14(1) and (2) of the Code² makes the provisions of Order 5 relating to service of summons applicable to the court of appeal, and Order 5 now provides for simultaneous issue of summons by registered post and in the ordinary way. Where there is no dismissal of appeal under Order 41, rule 11 of the Code, the notice of appeal can be issued by the Court to the respondents by registered post acknowledgement due and in the ordinary way at the addresses given in the memorandum of appeal. This should be done within a time to be fixed by the rules of the High Court for the purpose, the time being computed from the date of registration of the appeal or from the date of admission of the appeal under Order 41, rule 12(1) of the Code.³

Service of notice.

5.13. After a notice of appeal is prepared and ready for service, actual service⁴ on the respondent, according to the present system in vogue, takes quite a long time and is one of the major factors contributing to the over-all delay in the disposal of appeals.

Advantage of early service.

5.14. It is true that even if the notice of appeal is served, say, within a month or so, the appeal, having regard to the present state of arrears, will be no nearer hearing and decision in the High Court till after the lapse of two further years,—or even more. But that is due to the heavy backlog that has accumulated, for the disposal of which we have elsewhere in this report made our recommendations,⁵ including, in particular, the appointment of additional and ad hoc judges. If proper care is taken, then, as and when this backlog is eliminated, early service of the notice of appeal will undoubtedly ensure quick disposal of the appeal.

VI. PAPER BOOKS

Paper books.

5.15. We now come to the stage of preparation of paper books. Experience has shown that much time is taken in the High Court in the preparation of paper books of appeal, but the system of preparing paper books has proved helpful and of use in an expeditious decision of the appeal. Hearing of appeal by a Bench consisting of more than one Judge is not possible without a separate paper book for each one of the Judges constituting the Bench. Besides this, the paper book also facilitates the hearing. The paging of the original record in the trial courts, it has been seen, is often confusing and not very systematic. Paper books prepared in accordance with the rules of the High Court eliminate that difficulty and save the time of the court when arguments are heard.

There is, however, scope for improvement in certain matters of detail, to which we address ourselves.

Sending for records.

5.16. While dealing with the question of paper books, we should advert to the necessity of sending for the records of the courts below as contemplated by Order 41, rule 13(2) of the Code of Civil Procedure. We feel that except for appeals against interlocutory orders⁶ and except in cases wherein those records have already been sent for under Order 41, rule 11 of the Code of Civil Procedure, the High Court should, immediately after an order for the admission of appeal has been made, send for the records of the courts below. Much delay in the preparation of paper books can be eliminated by sending promptly for the records of the courts below. As would appear from what follows subsequently,⁷ we are fastening responsibility upon the appellant to file paper

¹Order 41, Rule 14(3), Code of Civil Procedure, 1908.

²Order 41, Rule 14, Code of Civil Procedure, 1908.

³For implementation by rules.

⁴Para 5.10(b), *supra*.

⁵See Chapter 3, *supra*.

⁶Para 5.28, *infra*.

⁷See discussion as to copies, para 5.20, *infra*.

books containing certain copies. This can be done only if the records are promptly sent for by the High Court. In a large number of cases the counsel for the appellant would not be able to furnish the requisite copies unless the records of the courts below are in the High Courts.

5.17. So far as appeals against interlocutory orders are concerned, we are of the view that the records of the courts below should be sent for only as and when a specific order is made by High Court for that purpose. Our experience tells us that many cases in the trial courts remain stayed because of transmission of records to High Courts, even though no stay order has been made by the High Court. Records in appeal against interlocutory orders

5.18. Another question in the context of preparation of paper books relates to translation of documents and depositions, where such translation is necessary under the rules of the High Court. In our opinion, it should be the duty of the party who has to file the requisite copy to also get the deposition or document translated. The translation should be done by a counsel, who would normally be a junior counsel, and should bear his certificate about its correctness. The translated copy, along with other necessary copies, should be filed in the High Court within the time suggested hereafter.¹ In case the opposite party questions the correctness of the translation, the deposition or document in question should be translated by the official translator of the High Court. Translation.

5.19. According to the prevalent practice, the paper books are printed either in the Government printing press or in private printing presses selected by the High Court for that purpose under the supervision and on the direction of the High Court. This process involves a lot of delay and entails expense which it is possible to curtail. As compared with printing, the cyclostyling or typing of records is not only cheaper, but also more expeditious. We therefore recommend that except in cases where the court otherwise directs, the printing of paper books may be dispensed with, and liberty may be allowed to the parties to have the records typed or cyclostyled in accordance with the Rules of the High Court. Recommendation for typing.

5.20. After the records of the trial court are sent for, the next step would be the preparation of the paper book. For this purpose, we are of the view that as soon as the records are received in the High Court, intimation about that fact should be sent to the counsel for the appellant and also to the counsel for the respondent, or the respondent in case no lawyer has put in appearance on his behalf. It shall be the responsibility of the appellant in all regular first appeals in civil matters to file within four months, or such further time as may for sufficient cause be allowed by the court, of the date of intimation of the receipt of the records of the trial court in the High Court, properly bound paper books containing copies of the following documents: Paper books—copies to be filed by appellant.

- (a) **plaint ;**
- (b) **written statement ;**
- (c) **issues ;**
- (d) **judgment ;**
- (e) **decree sheet ;**
- (f) **memorandum of appeal ;**
- (g) **admission order ;**
- (h) **documents, depositions, applications, replies thereto, and interlocutory orders upon which the appellant wants to rely at the time of arguments ; and**
- (i) **documents, depositions, applications, replies thereto and interlocutory orders referred to by the trial court in its judgment while dealing with issues, findings on which are sought to be challenged by the appellant.**

The copies to be included in the paper books, should, as already mentioned,² be either cyclostyled or typed. The number of paper books should be sufficient for the purpose of supply to the respondents and for the use of the court.

¹Para 5.20, *infra*.

²Cf. para 5.19, *supra*.

Paper books to be supplied to respondents. **5.21.** Within two weeks of the filing of the abovementioned paper books, one or more such paper books, as may be necessary, should be supplied to the counsel for the respondents.

Respondents' paper books. **5.22.** It would be necessary for the respondents to file in court within two months, or such further time as may, for sufficient cause, be allowed by the court, of the receipt of the above, properly bound paper books containing copies of depositions, documents, applications, replies thereto and interlocutory orders, upon which they wish to rely and which have not been filed by the appellant. The number of these paper books would be the same as that of the paper books filed on behalf of the appellant.

One or more paper books, as may be necessary, filed by the respondents shall be supplied to the counsel for the appellant and counsel for other respondents within a period of one week of the filing of the same in court.

Translation and exempted documents. **5.23.** Reference to "copies" in the above paragraphs¹ would include reference to the translation of the plaint, written statement, issues, depositions, documents, applications and replies thereto, when translated copies of the same are required according to the rules of the High Court. Nothing in the above paragraphs should make it necessary to include in the paper book copies of documents in respect of which exemption has been granted for the purpose of printing by the High Court rules.

Existing rules. **5.24.** We are aware of the fact that rules have already been framed by the various High Courts regarding most of the matters referred to above. We have made the above suggestion just with a view to introducing uniformity in the practice prevailing in the different High Courts and also with a view to accelerating the process of preparation of paper books. The above procedure, if accepted by the High Courts, will not cause any delay in making a case ready for hearing, and will also save the parties from a certain amount of the expenses of litigation.

Delegation to Registrar of powers in connection with paper books. **5.25.** For the completion of the record of appeal and preparation of the paper books, power may be delegated by the court to the Registrar or any other officer of the court specially empowered in this behalf, with the proviso that in case the order passed by the Registrar or such officer is not complied with, the appeal shall be placed before the court for appropriate orders or directions. If the court finds that the omission to comply with the order was wilful or without sufficient cause, it may dismiss the appeal for non-prosecution, or award conditional costs against the defaulting party, or may unconditionally give such further time as it may consider proper to do the needful. It should also be open to the court, in appropriate cases, if it thinks it just and proper, to direct that the appeal shall be heard without any further documents or papers being filed, and in such an event such documents and papers will not be allowed to be referred to at the time of hearing.

Paper book not to be burdened with unnecessary documents. **5.26.** It is important from the point of view of saving both cost and time in the hearing of the appeal that the paper books should not be burdened with unnecessary and irrelevant documents. If in a given case, this is not done and the court, at the time of hearing of the appeal, finds that irrelevant documents have been included in the paper book, the court may, irrespective of the decision of the appeal, order that the cost occasioned by inclusion of those documents should be paid by the party at whose instance they were typed or cyclostyled. The preparation of paper book and the order in which the papers are to be arranged in it should be left to conform to the rules that may be framed by the High Courts for the purpose.

VII. INTERLOCUTORY ORDERS

Appeals and revisions against interlocutory orders. **5.27.** The filing of appeals or applications for revision sometimes creates problems where the appeal or revision is against an interlocutory order, as the grant by the court of appeal or revision of stay of proceedings holds up the progress of the case in the lower court.

Records not to be sent for unless express orders made. **5.28.** We recommend that in revisions against interlocutory orders, records of the court below should not be sent for,² unless an express order is made for the purpose by the High Court. It shall be the responsibility of the petitioner

¹Para 5.20 to 5.22, *supra*.

²See also para 5.17, *supra*.

in such a case to file, copies of pleadings, documents, depositions, applications and replies thereto or orders as are sought to be relied upon at the time of the hearing of the revision. The copies shall be accompanied by an affidavit about their correctness. The same should be the procedure in appeals against interlocutory orders, as already indicated.¹

5.29. We are also of the view that in order to obviate any delay in getting service effected upon the respondents in appeals or petitions for revision against interlocutory orders, service may be effected upon the counsel representing the respondents in trial court. An amendment in the law appears to be needed in the interests of expeditious justice.

Service on pleader
—Amendment of
Order 3, Rule 4(3)
C.P.C. recom-
mended.

We are, however, of the opinion that so far as service of injunctions is concerned, the same should be effected upon the party itself, and not upon the counsel.

5.30. We, therefore, recommend that the following proviso should be added to Order 3, Rule 4, sub-rule (3) of the Code of Civil Procedure, 1908 :

Recommendation
to amend Order 3,
Rule 4(3), C.P.C.

To be added to Order 3, Rule 4(3), C. P. C.

“Provided that in regard to an appeal or petition for revision against an interlocutory order passed in the course of a suit or other proceeding, pending on the date of filing of such appeal or petition, service of any notice or document issued by the court hearing the appeal or petition on the pleader representing any party in the suit or other proceedings in the trial court shall, unless the court otherwise directs, be as effectual as service upon the party represented by the pleader, but nothing in this proviso shall authorise service on the pleader of any injunction issued by the court of appeal or revision.”

¹Para 5.17, *supra*.

²For amendment of Code.

CHAPTER 6

ARGUMENTS AND JUDGMENT IN APPEALS

I. SCOPE OF CHAPTER

Scope of Chapter. 6.1. Once an appeal is ready for hearing,¹ the next stage is the addressing of arguments and judgment. We propose to deal in this Chapter with these two stages of the appellate process.

II. ARGUMENTS : WRITTEN AND ORAL

Importance of arguments. 6.2. In contrast with an original trial, the duration of hearing before an appellate court depends almost entirely on the time taken up by the counsel for the parties in presenting their case before the court. No doubt, the questions which the appellant proposes to raise can sometimes be properly answered from an examination of the record; but usually it becomes necessary to allow the parties to present before the appellate court at some length their points of view in regard to the verdict of the lower court. The appellate court, therefore, needs statements of the contentions advanced by the respective parties to challenge or support the verdict. Such statements could be written—these are known usually as “briefs”; but in India, the practice is to hear the counsel for the parties orally. This renders it desirable that some attention should be paid to the time taken in an appellate court in the oral presentation of the arguments. The question whether some saving of time could be effected in his regard without prejudice to the interests of justice should therefore be examined.

Two methods of arguments. 6.3. One of the most important questions which needs attention when dealing with the hearing of appeals is about the method of arguments to be adopted. There are, at present, two main schools of thought in this regard. One school pleads for substituting written briefs for oral arguments, or for reducing oral arguments to the minimum extent. The opposite school stresses the need for oral arguments and is averse to introducing the system of written “briefs” in arguments. In U.S.A. the arguments addressed to the appellate courts are in the form of written “briefs”, supplemented by oral arguments lasting normally not more than an hour for each case.² In many countries on the European continent also,³ the system adopted in appeals is that of written arguments. As against that, the system prevalent in England,⁴ India⁵ and a number of Commonwealth countries⁶ is of oral arguments.

The two procedures. 6.4. We propose to consider at some length the English and American appellate procedure, since they represent two diametrically opposite systems in regard to oral and written arguments. The salient features of the two systems and the contrast between the two have been given in an article,⁷ to which we shall make a reference.

Papers on appeals in U.S.A. and England. 6.5. An outstanding difference between the two nations is the fact that ‘briefs’ are required in the United States, whereas in England they are not. The ‘brief’ is a full-dress argument in writing, often running into fifty or more printed or mimeographed pages in length. It states the facts, outlines the claimed errors in the proceedings below, and cites and discusses the authorities claimed to justify reversal or affirmance. The appellant serves his brief on the other side well in advance of the time for oral argument, and the respondent then serves his answering brief on the appellant, again well in advance of oral argument. Sometimes the appellant serves a reply brief.

¹Chapter 5. *supra*.

²Para 6.8. *infra*.

³E.g. France, see Appendix 7.

⁴See para 6.4 and 6.5, *infra*.

⁵Order 41, Rules 9, 10, 11(1) and 16, Code of Civil Procedure, 1908.

⁶For Canada, see para 6.11, *infra*.

⁷Delmar Karlen, “Appeals in England and the United States” (1962) 78 L.Q.R. 371, 378-382.

6.6. In England, a brief is virtually unknown. The closest approach to it is the 'case' normally required from both sides in the House of Lords and Privy Council. This however, is a very abbreviated paper, seldom running into more than six or seven pages in length, and is intended only as a preliminary out-line of the extended oral argument to be made later. It does not discuss authorities in detail, or argue the propositions of law to be relied upon. Relatively few cases are cited.¹ Case in House of Lords.

In the House of Lords,² prior to the hearing, the parties provide the Court and each other with only a very short out-line of the line of argument they intend to adopt and the legal authorities they will rely on. The judges do not usually analyse this document in any detail before-hand, apparently on the assumption that this would detract from the right of counsel to make his case before judges who do not have any preconceptions. Oral argument is not limited in time, lasts an average of three days and occasionally up to twenty days, and is the primary external influence on the Court's conclusion.

6.7. The record of appeal in the United States consists of the notices of appeal, pleadings and other formal documents, the judgment below and so much of the evidence as may be relevant as to the questions raised on appeal.³ Record in U.S.A.

6.8. Oral arguments in U.S.A.⁴ are secondary in importance to the 'briefs', and are rigidly limited in duration. In the United States Supreme Court, half an hour is usually allowed to each side.⁵ In many appellate courts, frequently no more than fifteen minutes or a half-hour for each side is permitted for oral arguments.⁶ Reading by counsel is frowned upon.⁷ The judges do not wish to hear what they can read for themselves. They expect to get all the information they need about the judgment below, the evidence, and the authorities relied upon, from studying the briefs and record on appeal. They do not even encourage counsel to discuss in detail the precedents claimed to govern the decision, preferring to do that job by themselves in the relative privacy of their chambers, with or without the assistance of law clerks. Oral arguments in U.S.A.

The relevant rule, so far as is material reads⁸

"1. Oral argument should undertake to emphasize and clarify the written argument appearing in the briefs theretofore filed. The court looks with disfavour on any oral argument that is read from a prepared text.

2. The appellant or petitioner shall be entitled to open and conclude argument. But when there are cross-appeals or cross-writs of certiorari they shall be argued together as one case and in the time of one case, and the court will, by order reasonably made, advise the parties which one is to open and close.

3. Unless otherwise directed, one half hour on each side will be allowed for argument. Any request for additional time shall be presented not later than fifteen days after service of the petitioner's, or appellant's, brief on the merits by letter addressed to the clerk (copy to be sent opposing counsel), and shall set forth with specificity and conciseness why the case cannot be presented within half hour limitation.

4. Unless additional time has been granted one counsel only will be heard for each side, except by special permission when there are several parties on the same side. Divided arguments are not favoured by the court.

¹Delmar Karlen, "Appeals in England and the United States" (1962) 78 L.Q.R. 371, 378-382.

²Weiler, *In the Last Resort* (1978), page 24.

³Delmar Karlen, "Appeals in England and the United States" (1962) 78 L.Q.R. 371, 378-382.

⁴Delmar Karlen, "Appeals in England and the United States" (1962) 78 L.Q.R. 371, 378-382.

⁵See Rule 44, quoted *infra*.

⁶This was the position in 1962.

⁷Delmar Karlen, "Appeals in England and the United States" (1962) 78 L.Q.R. 371, 378-382.

⁸Title 28, U.S. Code (1970), Ed. Rule 44 (Oral Argument).

5. In any case, and regardless of the number of counsel participating, a fair opening of the case shall be made by the party having the opening and closing.

6. Oral argument will not be heard on behalf of any party for whom no brief has been filed."

Oral arguments in England. 6.9. In contrast, in England, where there are no written briefs, oral arguments are all-important. They are never arbitrarily limited in duration. While some last for only a few minutes, others go on for many days, even weeks. The position in England has been thus stated¹ :—

"The only controls ordinarily exercised over the time of oral argument are informal, *ad hoc* suggestions from the judges. Thus when counsel wishes to cite a case as authority, the presiding judge may ask him: for what proposition? If the judges indicated that they "accept the proposition as stated, there is no need to read the case. Similarly, if counsel has persuaded the judges on a certain point, they may indicate that it is unnecessary for him to pursue it further. If counsel for the appellant, by the time he finishes his argument, has failed to persuade the court that the decision below should be reversed or modified, the court informs counsel for the respondent that it does not wish to hear from him at all, and proceeds forthwith to deliver judgment. Despite such controls as these, the time spent in England in oral argument tends to be very much greater than that spent in the United States.

"In recent years, the average duration of argument in the court of Appeals has been about a day and a quarter per case, and in the House of Lords and the Privy Council, about three days per case. Much of the time, perhaps half, has been spent by counsel reading aloud to the court. It is in this way that the judges have learned what transpired in the court below (by listening to a reading of the judgment and such parts of the evidence as may be relevant), what errors are complained of by "counsel (by listening to a reading of the notice of appeal, which is required to specify the errors), and the authorities relied on by counsel (by listening to a reading of statutes and cases, either in their entirety or in large part)."

No 'brief' in England. 6.10. Very rarely does one come across a written 'brief' in England. In *Rondel v. Worsley*,² a 'brief' (written statement prepared by counsel and handed in to an appellate court to show the contentions put forward) was received and read by the Court of Appeal, but it was described as "wholly irregular and contrary to the practice of the Court and should not be allowed as a precedent for future proceedings".

Appellate procedure in Supreme Court of Canada. 6.11. It may be of interest to note that the procedure in Canada in the hearing of appeals before the Supreme Court is half-way between that adopted in England and in U.S.A. A fairly recent study,³ after stating that in the House of Lords, the parties provide the court with only a short out-line of arguments they intend to adopt and the legal authorities they will rely on, tells us as follows about Canada⁴:

"In the Supreme Court factums are much larger—often over 100 pages—and make a much more sustained argument in their own right. The Judges are assisted by a clerk who can make some analysis of the issues in the case and critical points in contending positions and provide this for the Judges before the hearing..... At the hearing, oral argument is again unlimited, lawyers on each side spend a great deal of time reading from the record of the case or from prior judicial authorities, and a typical hearing will last up to two days."

View of the Evershed Committee. 6.12. In England, the adoption of the American method of disposing of appeals was considered by the Evershed Committee,⁵ which carefully examined the arguments in favour of and against the method. The Committee reached the

¹Delmar Karlen, "Appeals in England and the United States" (1962) 78 L.Q.R. 371.

²*Rondel v. Worsley*. (1967) 1 Q.B. 443.

³Paul Weiler, *In the Last Resort* (1974), page 25.

⁴For criminal cases in Canada, see para 6.15, *infra*.

⁵Committee on Supreme Court Practice and Procedure Report (1953), pages 191-193, para. 573, 574.

conclusion "that the American system would provide in this country a less satisfactory system for conducting appeals than that now prevailing. Furthermore, we are satisfied that the American system would be quite unsuitable for adoption in this country in view of the different conditions prevailing here and would not be likely to lead to any marked reduction in the costs of appeals".

6.13. The Evershed Committee further stated¹ that "Whatever may be thought to be the advantage of the American system of 'briefs'..... we found singularly little enthusiasm for it amongst the witnesses whose opinions we sought. The members of the Court of Appeal whom we consulted were emphatically opposed to the adoption of such a system in this country as also were the representatives of the Bar Council and Law Society".

6.14. It would be of interest to refer to the views expressed before the Evershed Committee by certain distinguished judges and lawyers. The Committee stated: Views expressed by Mr. Justice Frankfurter and Mr. John Davis.

"We also had the advantage of hearing evidence from Mr. Justice Frankfurter, of the United States Supreme Court, as well as from Mr. John W. Davis, who was able to speak with a wealth of experience of appellate work in "the United States Courts. We gained the impression from these witnesses that they were by no means whole-heartedly in favour of the American system of conducting appeals, but that they rather envied the system prevailing here of unrestricted oral argument. They appeared to regard the American 'brief' system, with its strict limitation of the time for oral argument, as a necessary evil forced upon them by the pressure of appellate work, the volume of which is so great that it would be simply impossible to get through it if unrestricted oral argument were permitted."

6.15. It would seem that the idea of dispensing with oral arguments has not, as a rule, found favour with Commonwealth countries.² Position in Commonwealth.

III. MODIFICATIONS CONSIDERED

6.16. As already mentioned³ the members both of the Bench and the Bar in India have so far been accustomed to the system of oral arguments. After giving the matter our earnest consideration, we are of the opinion that it would not be desirable to give up the system of oral arguments. What modifications, if any, are needed, in this system would be discussed by us later,⁴ but by and large we feel that we shall not be justified in dislocating the existing appellate system by giving up the method of oral arguments and replacing it by that of written briefs. There are some practical difficulties and weighty considerations which should not be lost sight of while taking a decision in this matter. Unlike in India, judges in the United States have law clerks who are generally brilliant law graduates from universities like Harvard or Yale. These clerks study the whole brief and render assistance to the judges in knowing about the different aspects of fact and law in each case. The judges in the United States Supreme Court sit in open court for not more than 8 or 10 days in a month. The rest of the days are spent by them in studying briefs and preparing judgments. System of oral arguments to be retained.

The United States Supreme Court normally is in session from the first Monday in October until the end of June the following year. Generally the first two weeks of each month are set apart for hearing cases argued orally, and the last two weeks are spent discussing the cases and writing opinions⁵.

6.17. No oral submissions are made in the United States Supreme Court at the time of admission of appeals—a stage broadly corresponding to what constitutes in India a preliminary hearing. It is obvious that if judges have to spend considerable time in studying lengthy and elaborate written briefs, there would have to be a curtailment of the number of days on which the court holds public sittings. Looking to the conditions which are prevalent in India, we are of the opinion that such a course would be wholly undesirable.

¹Committee on Supreme Court Practice and Procedure Report (1953), pages 191-193, para. 574.

²For Canada, see para. 6.11, *supra*.

³Para 6.2 and 6.3, *supra*.

⁴Para 6.18, *infra*.

⁵Lewis and Others, Introduction to the Courts and Judicial Process (Prentice—Hall) (1978), page 91.

View taken in the 14th Report. **6.18.** We may mention at this stage that the Law Commission presided over by Shri Setalvad did not favour the adoption of the American system. It was observed by that Commission in the 14th Report¹—

“8.it will be realised that the system operating in the United States proceeds on three fundamental hypotheses. It postulates:

“(i) A competent Bar which should be able to prepare and submit an exhaustive and fully documented brief;

(ii) Judges who would be able to comprehend the full hearings of the points involved in an appeal by a mere perusal of the briefs;

(iii) Expert qualified assistants to the Judges who would make research into the questions arising so as to assist the Judges to get thoroughly seized of the briefs filed.

9. We may, perhaps, with some hesitation accept that the first requisite would be available at the Bar of the Supreme Court and the High Courts. It would be difficult to say the same with regard to the second. Our Judges are trained to gather facts and perceive the relevant points of law from fairly full oral arguments. Indeed, they, from time to time, resolve doubts both as to inferences of facts and validity of legal contentions by questions put to counsel. As to the third, its introduction into the working of the judicial system in our country will be an entirely novel feature. It involves the question whether we “would not be in many cases substituting the efficient Legal Assistants for the Judges. Lawyers in the United States have not infrequently a feeling that cases are disposed of by the Legal Assistants and not by the Judges.....

10. What is more, the United States system involves the practice of granting what is called free time to the Judges to peruse the briefs, the Judges working in Court half the time, remaining half being devoted to study and disposal of briefs. It also means the increased cost of the employment of a number of very capable well paid legal assistants.

Having regard to the essential difference in the jurisdiction and powers of our Courts and the entirely different conditions in which they function, is the adoption of the American system by us at all practicable?”

The Commission ultimately rejected the suggestion for adoption of the American system.

Concise note of arguments to be filed and read— Recommendation. **6.19.** At the same time, we are not unmindful of the fact that oral arguments quite often take much more time than is warranted by the facts of the case. In our opinion, considerable saving in the time taken can be effected if we have a system of a concise note of arguments to be presented in advance before the commencement of oral arguments. This would also bring about a certain amount of precision and orderliness, and eliminate desultory submissions.

In our opinion, it will be of assistance to the court and a matter of satisfaction to the counsel and the litigants if, in every first civil appeal before the High Court and writ petition other than petition for *habeas corpus*, a concise note of arguments is filed in court by the parties, and read and studied by the judge, before the commencement of the hearing of the case. The note should contain, in separately numbered paragraphs, the material facts and all propositions of fact and law that are sought to be raised by the parties before the court, with specific authorities in support thereof noted separately under each head. In order that the note may be of real assistance to the litigants and the court, it should be drawn up with care and exactitude. Oral arguments should, unless otherwise permitted by the court, be confined to the propositions that are set out in the note. These notes should be exchanged by opposing counsel at least one week before the commencement of the oral arguments.

So far as writ petitions are concerned, we shall deal with the matter subsequently also.²

¹14th Report, Vol. I, pages 468-469, para. 8-10.

²Para 16.15, *infra*.

6.20. We may note that the matter was discussed in the 14th Report of the Law Commission¹, which did not favour either the introduction of written arguments² or the filing of a statement of cases in appeals. View in 14th Report.

It appears to us, however, that so far as the need for filing a statement of case is concerned having regard to the magnitude of arrears, which, since then, have piled up and call for clearance, a somewhat different approach to the matter is desirable. That is why we are recommending³ a modification in that regard.

6.21. Looking to the magnitude of the problem, we are inclined to agree, in principle, with the conclusion reached by the High Courts Arrears Committee presided over by Mr. Justice Shah.⁴ The Committee, while arriving at its conclusion, said:— Shah Committee.

“97. It is uniformly complained that lengthy arguments are addressed in many cases on matters which are only of incidental importance and there is no attempt to concentrate upon the essentials of the dispute between the parties to the litigation. Sometimes passages from evidence are read out in extenso, and decisions are read verbatim from the commencement to the final order. Citation of decision from obscure sources is also a common occurrence. To obviate all this and to compel the counsel of both sides to concentrate upon the essentials of the dispute, we recommend that unless otherwise ordered by the court, in every appeal or petition to be heard before the High Court, the Advocates for the parties would draw up a concise statement setting out briefly the facts giving rise to the dispute, the points at issue, the propositions of law or fact to be canvassed and the authorities relied upon for each proposition, and the relief claimed. These statements should be exchanged between the advocates and filed in court well in advance of the hearing and the judges should not ordinarily permit the advocate to travel outside such a statement or to cite authorities, not included herein. It may be noted that the High Courts Arrears Committee of 1949 observed that a full statement of the case on law and fact should be filed by the appellant along with the Memorandum of appeal, in all second appeals and in all civil appeals to the High Court a concise statement of the case with relevant law and authority which will in all essential features be presented to the court at the time of the final arguments should be exchanged between the parties and filed in Court, a short time before the hearing actually begins on the lines of the statement of the case in the Privy Council. The Law Commission did not recommend acceptance of that suggestion but merely recommended the exchange between counsel of lists of authorities they propose to cite in order to prevent surprise and to ensure speedy assistance to the court. In our view, if the statements “are properly drawn up and the Advocates are not permitted to travel outside except for compelling reasons, the length of arguments would be considerably reduced”.

6.22. We may observe that the filing of concise note⁵ of arguments would prove helpful and result in curtailing the time of the court hearing, only if the judge concerned reads beforehand the said concise note of arguments. Otherwise, the preparation of a note would prove a mere exercise in futility. There is, in the words of an American jurist,⁶ nothing in the whole field of procedure as futile as an appellate court solemnly listening to the arguments of counsel without having read and analysed the briefs that counsel have gone—or should have gone—to great pains to prepare. Reading in advance.

6.23. To avoid any possible misconceptions, we would make it clear that it is not suggested that we should, in this country, adopt the American system of “written briefs”. But it would be worth while making an experiment aimed at a real reduction in the time taken in the appellate court and therefore a real reduction in costs, without at all fettering the right of counsel to full oral arguments not to be dispensed with.

¹14th Report (Reform of Judicial Administration) Vol. 1, pages 465-474.

²Para 6.18, *supra*.

³Para 6.19, *supra*.

⁴High Courts Arrears Committee Report (1972), pages 72-73, para 97.

⁵Para 6.19, *supra*.

⁶Vanderbilt. Challenge of Law Reform (1955), page 71.

argument of their cases on propositions set out in a concise note. We do not contemplate doing away with oral arguments. What we contemplate is a method whereby the time taken in oral arguments may, to a certain extent, be reduced and oral arguments could be made more purposeful. A concise note of the arguments filed in the court and received in advance by the counsel would, in our view, go a long way towards achieving this object.

No time limit on arguments. **6.24.** We are also averse to putting a time limit on arguments. The time required for oral argument in each case would depend upon the nature of the case, the questions of fact and law involved in it, the volume of evidence and the number of legal propositions advanced. To prescribe a time limit on arguments would not only cause discontent, but might also result in miscarriage of justice in some cases. Every case is unique and is entitled to the time and individual attention necessary for a fair hearing, considering all the circumstances of the case.

If the presiding judge has read the judgment of the trial court and perused the concise note of arguments in advance, he would be able to regulate the arguments and avoid any desultoriness therein.

In this context, we may refer to the observations of the High Courts Arrears Committee presided over by Mr. Justice Shah :¹

"98. We are averse to the suggestion made by some Judges and the Members of the bar that a time limit should be set for arguments before the High Court, as is the practice in the Supreme Court of the United States of America. The Law Commission has in its Report elaborately examined the system in vogue in the Supreme Court of the United States of America and has shown how it is unsuitable to the conditions here.

"99. The procedure prevailing in the Supreme Court of the United States of America is entirely different from that in vogue in our High Courts. The practice adopted in the Supreme Court of the United States of America cannot be transplanted here. At the same time we are conscious of the fact that lengthy arguments waste a good deal of time of the Court."

Scheme to be tried in the High Courts in certain proceedings in the first instance. **6.25.** For the present the scheme recommended by us² regarding concise note of arguments may be tried in the High Courts in regard to regular first appeals and petitions under article 226 of the Constitution other than those seeking *habeas corpus*. If this scheme is found successful, it can be extended to regular second appeals and revisions in the High Courts and also to the Lower Civil Appellate Courts.³

Need for working the scheme in proper spirit. **6.26.** We may finally state that the scheme recommended by us will be successful only if the bar and the bench work it in its true spirit.

IV. JUDGMENTS

Judgments to be pronounced within reasonable time. **6.27.** We now deal more specifically with judgments. It has been observed that judgments are generally reserved and, in some cases, pronounced a long time after the arguments have been heard. Long delay in the pronouncement of judgment is an unhealthy practice. The Law Commission of India, in its Report on the Reform of Judicial Administration,⁴ expressed the view that though ordinarily the most convenient course for the judges would be to deliver the judgment straightaway at the close of the hearing, there could be certain cases in which judgments would need to be reserved. The Commission observed that in such cases the reserved judgments should be pronounced within a reasonable time. We fully agree that judgments should be pronounced within a reasonable time.

Statement to be circulated. **6.28.** Normally, it should be possible to pronounce a judgment, if not done immediately, within a week of the conclusion of arguments. Care may be taken to ensure that the time lag between the conclusion of arguments and the pronouncement of the judgment does not exceed one month, except in some special

¹High Courts Arrears Committee Report (1972) pages 72-73, para 98-99.

²Para 6.19, *supra*.

³See also para 18.15, *infra*.

⁴14th Report, Vol. 1, page 360, para. 102.

matters. We are, however, not unmindful of the fact that judgments are, on occasions, not pronounced for a number of months after conclusion of arguments. This is an undesirable practice and affects the image of the courts. It would perhaps administratively help if in each High Court a statement is circulated amongst the judges every month, giving a list of cases in which judgments have not been pronounced within two months of the conclusion of arguments.

6.29. It has been brought to our notice that sometimes the judges have to spend considerable time in dictating judgments in regular second appeals and civil revisions, even though those appeals and revisions are devoid of any merit. We suggest that it would be permissible for a judge, when dismissing a regular second appeal or a civil revision, to give a short statement of facts, the main contentions advanced and brief reasons for repelling those contentions. This would eliminate the necessity of writing long and elaborate judgment in such cases.

Judgment of dismissal.

6.30. We may also draw attention to the observations made by us in the context of judgments of the trial courts in our 77th Report¹. We feel that though some of those observations may not be apt for the judgments of High Courts, by and large they underline the importance of some wider aspects which can prove helpful. It was said in that Report—

Observations in earlier Report on the subject of judgment.

“7.4. One general tendency is to cite a very large number of authorities and to read lengthy passages from those judgments. Experience tells us that the fate of most cases depends upon facts. The law bearing on the cases is well settled by statute or the pronouncements of the highest court. It would be much better if the judgments of the trial deal with questions of fact by appraising the evidence, refer to the relevant statutory provisions applicable to the matter and cite such of those authorities as have a direct bearing. Burdening of the judgments with too many authorities mostly with a view to distinguish them has invariably the effect of making judgments unduly lengthy. It has to be borne in mind that the primary function of the judge is to decide the case before him. A judgment should set out the salient facts of the case, deal with the points of controversy, appraise the relevant evidence, discuss the questions of law which arise and incorporate the findings of the court on the various issues. The judgment should conclude by stating in precise language the actual relief, if any, granted to the plaintiff.

“7.5. A judgment, it needs to be emphasised is not a medium to display the learning of the judge, on points which have only incidental bearing. The function of a judge while deciding a case is not the same as that of a research scholar writing a thesis on a particular branch of law. The art of writing not very long judgment while at the same time dealing with all material points of controversy can be acquired only slowly and gradually. It is indeed learning the art of condensing the maximum of ideas into the minimum of words.

“7.6. There is, however, one danger which we have to guard against. Brevity in the matter of judgments should not be used as a justification for not dealing with inconvenient contentions and not facing the crux of the argument of a counsel against whom the judge decides the matter. The stress on brief judgments should certainly not provide a cover for mental lethargy nor an alibi for intellectual dishonesty. A balance has, therefore, to be kept in the matter.”

¹77th Report, Delay and Arrears in Trial Courts para. 7.4 to 7.6.

CHAPTER 7
GROUPING AND LISTING OF APPEALS

I. IMPORTANCE

Need for proper listing. 7.1. In order that an appellate court — or, for that matter, any court — may function with the maximum efficiency, it is necessary that the business before that court is so arranged that matters which require prompt attention get such attention and also that the situation of old cases getting older and of new cases receiving priority should, as far as possible, be avoided. It is not enough to ensure the good quality and adequate strength of the judges; it is also necessary that the same be utilised in the best manner in attending to judicial business, so that arrears do not accumulate.

Cause of arrears. 7.2. It has not been disputed¹ that lack of proper listing and proper notice of ready cases, and not giving priority to old cases, is a factor which contributes to the accumulation of arrears. Similarly, failure to group cases involving the determination of common questions of law may contribute to the piling up of arrears.² Accordingly, we propose³ to devote a few paragraphs to that aspect.

II. GROUPING

Listing of appeals and grouping. 7.3. In the matter of listing of appeals, it has frequently been noticed that adequate care is not taken by the Registry. Very often, there are appeals involving determination of common questions of law, but due notice is not taken of this important aspect and such appeals are posted separately before different benches. Instructions should be issued to the staff concerned for (i) the grouping of cases involving determination of common question of law; and (ii) posting them together for hearing before the same bench.

Observations by earlier Committee. 7.4. The High Courts Arrears Committee presided over by Mr. Justice Shah in its Report⁴ made the following pertinent recommendation relating to the grouping and classification of cases:

“We recommend that there should be grouping and classification of cases, so that cases raising similar disputes or cases under “specialised branches such as tax cases, cases under the Industrial Disputes Act, cases under the Land Acquisition Act, petitions for writs dealing with special statutes may be brought together. This would not only expedite disposal of cases but would also conduce to a uniformity of approach and decisions, with a progressive development of the law. The method of clubbing together and posting before the same Judge or Bench of Judges cases of the same nature, has in our opinion much to commend. This method need not be confined to petitions for writs alone, but may be adopted for all cases including first appeals”.

Appeals under Land Acquisition Act. 7.5. It will be useful to refer here, in particular, to appeals under the Land Acquisition Act^{5,6} Very often, when large parcels of lands situated in, the same locally or in similarly placed localities are acquired, separate awards are made at different times in respect of the parcels of land comprised in the locality. References from the awards of Land Acquisition Collectors are heard by the District Judge, from whose decisions appeals lie to the High Court. These appeals relating to different parcels of land in the same locality most usually involve common questions of law or fact, but are not filed at the same time nor put up together in the High Court. This leads not only to want of uniformity, but also to the unnecessary accumulation of cases—unnecessary, because matters involving common questions of fact or law should preferably be put up together, thereby effecting saving of time.

¹Para 7.4, *infra*.

²High Courts Arrears Committee Report (1972), page 49, para 33, 34

³Para 7.3 and 7.4, *infra*.

⁴High Courts Arrears Committee Report (1972), page 72, para 94.

⁵As to general discussion of appeals under special Acts, see Chapter 9, *infra*.

⁶As to priority, see para 7.9 and 7.10, *infra*.

There is a remedy which could remove the defect. Officials of the Revenue Department generally are in the full know of the particulars of all such proceedings and of the various awards made by the Land Acquisition Collectors and by the Land Acquisition Courts in references made to them in such cases. When the matters come up before the High Court in separate appeals from the awards of the Land Acquisition Courts, the counsel in charge of conducting the appeals in the High Court on behalf of the State has ample means and facilities for collecting the relevant data in this regard from the Departments concerned. The Registry of the High Court can make necessary enquiries from the counsel who, after contacting the concerned officials of the Revenue Department should give necessary information about appeals relating to the same area. All such pending appeals can then be listed in one batch and posted together for hearing. This will not only facilitate a correct assessment of compensation by the High Court, but will also, at the same time, bring about speedy disposal of the appeals.

7.6. Likewise, there are appeals involving points which, since the filing of the memorandum of appeal, have been settled by authoritative decisions. If proper care is taken, it should not be difficult for the Registry to pick out those appeals and list them in one batch before the High Court for disposal.

Appeals involving same points settled after filing of appeal.

III. LISTING

7.7. Another cause of delay in the disposal of appeals is the defect in the system of listing with reference to dates. Fixing of actual dates in all appeals is not possible in the High Court. The time taken in each appeal is uncertain and cannot be estimated. An appeal fixed for a particular actual date, if not reached on that date, has necessarily to be adjourned to another date which may well be after several months, because of the intervening actual date appeals already fixed. This may result in the old appeals becoming older and the newer appeals being taken up and disposed of earlier. It will be conceded that this is not desirable. In our view, the system best suited to the High Court is normally that of a continuous list.

System of listing—continuous list recommended.

7.8. For the system of continuous list¹ to work effectively, meticulous care should be taken in its preparation. We recommend (as, in fact, is the practice already being followed in most of the High Courts) that there should be a ready list containing particulars of cases ready for hearing in chronological order according to the dates of their institution. From this ready list, a daily list should be drawn up in the same manner and with reference to the dates of institution. The cases should be taken up by the court *seriatim* from this daily list from day to day, strictly in the order in which they appear in the list. No deviation should normally be made save in exceptional circumstances.² Adjournment of cases reached for hearing according to the daily list should be an exception, and not a matter of course.

Continuous list—ready list to be prepared.

7.9. We may add that there are certain types of cases which, on account of their very nature, call for early disposal. It is plain that great injustice would be done and hardship caused if these cases have to take their turn in the queue. Justice demands that priority should be given to their disposal.

Cases requiring early disposal.

7.10. Certain cases require urgent attention as having effect upon the pendency of other proceedings. Certain cases require urgent attention as affecting life or liberty. Certain other cases require urgent attention because of the peculiar nature of their subject matter.

List.

The following list enumerates the categories of cases calling for priority:

- I. *Cases Requiring Urgent Attention as having effect upon pendency of other Proceedings*
 - (a) Cases in which orders have been passed whereby other proceedings have been stayed.
 - (b) Appeals against orders of remand.
- II. *Cases Requiring Urgent Attention as affecting Life or Liberty.*
 - (a) Cases involving death sentence.
 - (b) Habeas Corpus petitions.

¹Para 7.7, *supra*.

²See also Chapter 20, *infra*.

III. Cases Requiring Urgent Attention because of their Peculiar Nature

- (a) Appeals in matrimonial cases, and cases involving custody of children.
- (b) Appeals under the Motor Vehicles Act, 1939 in claim cases.
- (c) Appeals under the Indian Succession Act, 1925.
- (d) Cases arising out of statutes dealing with agrarian reform.
- (e) Cases between the landlords and tenants where eviction is claimed on the ground of *bona fide* personal need of the landlord.
- (f) Cases where the relief sought is a declaration that suspension or termination of service of an employee, including employees in industrial undertakings, is illegal and not warranted, with or without a prayer for consequential relief.
- (g) Election matters.
- (h) Such other cases as may, in the opinion of the High Court, call for early disposal.

Criminal appeals. 7.11. We may add that criminal appeals and revisions also need early disposal. One or more separate Benches should normally deal with these appeals and revisions, so that they do not remain pending for a long time. It hardly needs to be emphasised, so far as criminal cases are concerned, that it is essential that as they relate to the liberty of the subject and impinge upon the maintenance of law and order in the society, they be disposed of as early as possible. The criminal cases on that account would have to be treated as a class by themselves, and for that reason it becomes imperative to have separate Benches to deal with them.

So far as tax cases are concerned, the matter is being dealt with in a subsequent chapter.¹

IV. BENCHES

Benches. 7.12. Relevant at this stage is also the question of constitution and disbanding of Benches. It is undoubtedly a matter which falls within the domain of the discretion of the Chief Justice of the High Court, and we are averse to prescribing fetters on the general exercise of that discretion. It is because of the complaints that have sometimes been made on this score that we have considered it proper to suggest some guidelines, not with a view to fettering the exercise of that discretion as with a view to bringing about better functioning of the High Court in order to attain the objective of securing optimum output. Experience has shown that a Bench constituted of judges having a particular aptitude for a certain branch of law is best suited to handle cases pertaining to that branch with ease, grace and speed, and its overall performance is generally very satisfactory, both from the point of view of quality and from the point of view of speedy and larger disposal.

Assignment of cases to Judges with experience. 7.13. Complaints are not uncommon that some of the judges to whom certain types of cases are assigned have no experience of that branch of law. The result is that a case which, before a judge having experience, of that branch of law, might take, say, one hour would take before the judges before whom it is posted four or six hours if they have no aptitude for that branch of law. This results in unnecessary wastage of the time of the court. Such wastage can be avoided if the Chief Justice takes into account the aptitude of different judges while constituting Benches. A person holding the office of the Chief Justice should acquaint himself, as he normally does, with the aptitude of his colleagues. It is necessary that he should take that fact into account when constituting different Benches. It hardly needs to be emphasised that the Benches of the High Court cannot be used virtually as training ground for judges in branches of law new to them.

Observations in Report of earlier Committee. 7.14. In this context, we may refer to the observations made by the High Courts Arrears Committee presided over by Mr. Justice Shah² which we quote below:

“There is occasionally failure to make optimum utilisation of the judge strength. One factor which undoubtedly affects the turnover in some High Courts, is the non-utilisation of judges having special aptitude and

¹Chapter 17, *infra*.

²High Courts Arrears Committee Report (1972), page 83, para 135.

talent for a particular class of causes. It should not be difficult for the Chief Justice of the High Court to assess the special aptitude and talent of the judges in his court and to allocate as far as possible judicial work in such a manner that judges are called upon to attend to causes for which they have special experience, aptitude or talent. It need hardly be emphasised that if judges with special acquaintance or competence or who have specialised in certain branches of the law are allotted causes under that particular branch of the law, the time taken to decide those causes would be much shorter than the time taken by judges not familiar with the branch, especially a specialised branch."

7.15. Arthur T. Vanderbilt, Chief Justice, Supreme Court of New Jersey, on Vanderbilt's view. this aspect said :¹

"Judicial work is of various kinds: appellate, criminal, civil, equity, probate and matrimonial. A Judge who is equally interested or equally proficient in all of them is indeed a rarity. Every judge, if he is to do his work best, should be assigned, wherever possible, to the kind of judicial business in which he excels..... Because this power of assignment is a delicate one, to be exercised only on mature reflection in the interest of the judicial establishment as a whole, it should be committed to the Chief Judicial Officer of the state, and he, in turn would do well to seek the advice of his colleagues, even though the ultimate responsibility must be solely his."

Experience has shown that the observance of this rule has yielded good results.

7.16. We may also advert to the question of duration of benches. Principally, Duration of Benches. the object of constituting a Bench is disposal of a particular type or category of work, such as first appeals, second appeals, land acquisition appeals or writ petitions. To relieve monotony, work of a different nature is also included at times in the list of cases posted before a Bench. But the principal object is what we have just now stated. This system has worked well, and has yielded good result. It is, however, desirable that the Benches so constituted should be allowed to function for a reasonable length of time and the Judges constituting the Bench should know well in advance when the Bench is to break, so that there may be no part heard cases left by the Bench after it is disbanded.

7.17. Another aspect that results in delay and also dis-satisfaction amongst the lawyers and the litigants is that the bench so constituted for hearing a particular type of appeal is discontinued abruptly without making arrangement for the hearing of cases (of the same type) already on the daily list in the order of their dates of institution. What happens in such cases is that when the bench is disbanded, those cases are taken out of the daily list altogether and very often it is after months, if not years, that they suddenly appear again in the daily list either at the bottom or at the top. In either event, apart from causing inconvenience to the counsel, this results in the old matters becoming older and the newer institutions gaining preference. Disbanding of benches.

To obviate this difficulty, it is necessary that cases not disposed of by the disbanded bench should be posted for hearing before the successor bench. In case that is, for some reason, not immediately possible, steps should be taken to post them for hearing without delay.

¹Vanderbilt, Challenge of Law Reform (1955), page 87.

CHAPTER 8

FIRST APPEALS (INCLUDING APPEALS FROM CITY CIVIL COURTS) TO HIGH COURTS

I. MATTERS DEALT WITH

Scope of the Chapter. **8.1.** We have so far considered the general question of appeal and appellate procedures; it will be convenient now to deal with particular types of appeals. We shall deal later with appeals under special Acts¹ and with what have come to be known as Letters Patent Appeals.² This Chapter will be mainly confined to first appeals that lie under the general provision in the Code of Civil Procedure³ to the High Courts. It will, however, be necessary to deal with certain connected questions. In the first place, the matter that will engage our attention is the appellate machinery in City Civil Courts, these being courts that have been established under State or Central legislation, in Ahmedabad, Bombay and Calcutta, Hyderabad and Madras. In the second place, we shall also deal with the question whether first appeals should be admitted and heard by a single judge or by a division bench. Thirdly, certain points of procedure will also require attention, namely, summary dismissal of appeals.

II. ADMISSION AND HEARING BY BENCHES

Admission of first appeals to be done by Division Bench. **8.2.** In some High Courts, while the regular first appeals are heard and decided only by a Division Bench, they are put up for admission before a single judge. In such cases, the single judge has no alternative but to admit the appeal, simply because he has no power to dismiss it. This practice sets at naught the provisions of Order 41, Rule 11, Code of Civil, Procedure, 1908. If regular first appeals are to be heard and decided by a division bench, they should be placed for admission before such a bench only, so that the bench may be competent to scrutinise and pass appropriate orders in the matter.

Hearing of first appeal by Bench. **8.3.** There is also a difference as regards the hearing of first appeals in various High Courts. In some High Courts, appeals arising out of suits upto a certain amount are heard by single judges. In other High Courts, all first appeals are normally heard by a Bench of two Judges.

In the High Courts where the appeal is heard by a single judge, a further appeal lies to the bench, normally consisting of two judges, under the Letters Patent or corresponding law⁴⁻⁵. This, in our opinion, is unnecessary duplication of work, and if the minimum limit of appellate jurisdiction of the High Court is increased as will be recommended later in this Report,⁶ it would be a convenient rule to be framed by the High Court that all regular first appeals should be placed before a Division Bench for admission, hearing and disposal. So far as other first appeals are concerned, they may be heard by single or division bench according to the rules made by the High Court.

No further appeal in High Court. **8.4.** We are also of the opinion that there should be no further right of appeal in the High Court against the judgment passed in appeal by a single judge. We have already recommended⁷ that so far as regular first appeals are concerned, they should be heard by Division Benches and not by single judges. This would bring about the application of a plurality of minds for the disposal of those appeals. Regarding other first appeals decided by single judges, in our opinion the decision should have a stamp of finality, except in those cases where the matter is taken up by certificate or special leave in appeal to the Supreme Court. We shall, in a later Chapter⁸ advert to the reasons which have weighed with us in arriving at this conclusion.

¹Chapter 9, *infra*.

²Chapter 11, *infra*.

³Section 96, Code of Civil Procedure, 1908.

⁴See Chapter 11, *infra*.

⁵See also sections 17-20, Indian Divorce Act, 1869.

⁶See *infra*.

⁷Para 8.3, *supra*.

⁸Chapter 11, *infra*.

III. APPEALS AGAINST JUDGMENTS OF CITY CIVIL COURTS

8.5. We now address ourselves to the appeals that lie to the High Courts from the judgments of City Civil Courts. This topic was briefly dealt with in the Report of the High Courts Arrears Committee presided over by Mr. Justice Shah.¹ The matter requires some discussion. From the following rapid survey, it would be evident that there are certain differences as regards the structure and composition of the various City Civil Courts, leading to differences regarding the forum of appeal against decision of the respective judges. Introductory.

8.6. We have, at present, city civil courts functioning in five metropolitan cities Calcutta², Bombay³, Madras⁴ Ahmedabad⁵ and Hyderabad⁶. City Civil Courts and their jurisdiction.

The jurisdiction of the City Civil Courts at Ahmedabad and Hyderabad is, from the point of view of pecuniary limits, unlimited. The jurisdiction of the courts in the three presidency towns is limited to Rs. 50,000, suits of a higher value being within the exclusive competence of the respective High Courts which have ordinary original civil jurisdiction.⁷

8.7. More important is the difference in the position as regards structure and composition, including rank of the personnel, of the various City Civil Courts. In the City Civil Courts in Calcutta, Bombay and Ahmedabad, the presiding officers are of the rank of District Judges. In the City Civil Courts in Madras⁸ and Hyderabad⁹, some of the presiding Officers are of the rank of District Judges¹⁰, and other officers are of a lower rank. Structure and composition.

8.8. Connected with this difference in the internal structure¹¹ of the various City Civil Courts is the difference as regards the forum of appeal from their decisions. Jurisdiction of individual judges—original and appellate.

- (a) In the City Civil Courts in Calcutta, Bombay and Ahmedabad, the judges have concurrent original jurisdiction. But they have no appellate jurisdiction. Appeals from their decisions lie to the respective High Courts. The valuation of the subject matter makes no difference to the forum of appeal.
- (b) In the City Civil Court at Madras, the various Presiding Officers—Principal Judge, Additional Judges and Assistant Judges—All exercise original jurisdiction¹². But appeals lie¹³ to the Principal Judge from a decision of the Assistant Judge in any suit or proceeding where the value does not exceed Rs. 10,000. The Principal Judge may, from time to time, transfer for disposal such appeals to any Additional Judge.¹⁴

This affords a contrast to the position applicable to the City Civil Courts in the three cities of Calcutta, Bombay and Ahmedabad.

8.9. Similarly, in the City Civil Court, Hyderabad the Chief Judge and Additional Chief Judges have, under the relevant State law¹⁵, jurisdiction to hear and dispose of appeals against the decisions of the other judges of the court in certain cases; in other cases, the appeals lie to the High Court. Hyderabad.

¹High Courts Arrears Committee Report (1972), page 66, Chapter 6, para 66.

²City Civil Court Act, 1933 (Calcutta).

³Bombay City Civil Court Act, 1948.

⁴For statutory references relating to Madras, see para 8.9, *infra* (footnotes)

⁵Ahmedabad City Civil Court Act, 1961.

⁶For statutory references relating to Hyderabad, see para 8.9, *infra*.

⁷Chapter 2, *supra* and Chapter 15, *infra*.

⁸Principal Judge and Additional Judge in Madras.

⁹Chief Judge and Additional Chief Judge in Hyderabad.

¹⁰E.g., in Madras the Principal Judge belongs to the cadre of D. J. Grade I, and the Additional Judges belong to the cadre of D. J. Grade II.

¹¹Para 8.7, *supra*.

¹²Section 4(1), Madras City Civil Court Act (Central Act 7 of 1892).

¹³Section 15(2), Madras City Civil Court Act (Central Act 7 of 1892), as amended in 1957; and information obtained in F. 2(7)/77-L.C., Part II, Sl. No. 17.

¹⁴Section 15(4), Madras City Civil Court Act (Central Act 7 of 1892).

¹⁵Andhra Pradesh (Telangana Area) Civil Courts Act, 1954, section 16(2).

Question of introducing uniformity regarding forum of appeal considered.

8.10. The above resume will show that there are differences as regards the structure and composition of the various city civil courts, and as regards the appellate forum in respect of decisions of judges thereof. In fact, as already stated¹ the differences regarding appellate forum are due to the differences in respect of structure and composition, including the rank of the Presiding Officers.

We have considered the question of having a uniform pattern for city civil courts in all the metropolitan cities in the context of appeals which lie to the High Courts. There can be no doubt that each of the systems, the one in operation in Calcutta, Bombay and Ahmedabad and the other in Madras and Hyderabad, has its pros and cons. To adopt a uniform pattern for all the five metropolitan cities, would necessarily have the effect not only of disturbing the *status quo*, but also of causing considerable dislocation either in the system in operation in two cities, or in that in force in the other three cities. The litigants and the members of the Bar in each of these cities have grown used to the existing systems and there has been no major demand for changing the pattern of the city civil courts in operation in these cities. Looking to all the facts, we are averse to recommending any change in the system of city civil courts functioning in the different metropolitan cities, or in the forum of appeal from their judgments. In case any change is called for, the same can well be effected by local legislation in the light of any particular difficulty which might have been encountered in the metropolis concerned.

IV. SUMMARY DISMISSAL OF FIRST APPEALS

Dismissal preliminary hearings.

8.11. Reverting to the chronological stages in the appellate process, we would like to deal with the dismissal of appeals at the preliminary hearing under Order 41, rule 11 of the Code of Civil Procedure.² Under Order 41, rule 11(4), inserted in 1976, where an appellate court, not being the High Court, dismisses an appeal, it shall deliver a judgment recording in brief its grounds for doing so. The Law Commission had, in its 54th Report³ recommended that the mandate which subsequently came to be contained in Order 41, rule 11, sub-rule (4) should be applicable not only to the subordinate courts, but also to the High Courts when dealing with first appeals.

This recommendation of the Law Commission, in so far as the High Courts are concerned, does not appear to have been incorporated in the statute when necessary amendment was made in the Code of Civil Procedure in 1976.

Change needed as to regular first appeals.

8.12. We have given the matter our consideration and are of the opinion that so far as regular first appeals in the High Courts against final judgments of trial courts are concerned, there should be a rule, making it imperative that when the High Court dismisses such appeals under Order 41, rule 11, Code of Civil Procedure, it should do so by a brief order giving reasons for the dismissal of the appeal at the preliminary stage. The High Court, when it decides a regular first appeal against the final judgment, has to record its findings, both on questions of fact and law, and its findings on questions of fact are final. The normal rule is that an appeal which raises triable issues for court of appeal should not be dismissed *in limini*. The Supreme Court also, in one of the cases,⁴ expressed the view that when a first appeal raises triable issues, it should not be dismissed *in limini*. To give effect⁵ to our recommendation made above, necessary amendment should be made in Order 41, rule 11, Code of Civil Procedure, 1908.

At the same time, we would like to emphasise the fact that the need for a brief order giving short reasons for dismissal should arise only in regular first appeals. It would not be necessary for the High Court to record such an order in the case of second appeals or appeals against orders.

¹Para 8.8, *supra*.

²O.41, r. 11(4), Code of Civil Procedure, 1908.

³Law Commission of India, 54th Report, paragraphs 41.13 to 41.15.

⁴*M. T. Vetale v. Smt. Sugandha*, A.I.R. 1972 S.C 1932, 1933, para 4

⁵Amended of Code recommended.

CHAPTER 9

APPEALS UNDER SPECIAL ACTS

9.1. Apart from regular first appeals, there are other statutory appeals also which lie to the High Court against decisions under special Acts, as for example, the Guardians and Wards Act,¹ the Land Acquisition Act,² the Companies Act, the Trade and Merchandise Marks Act,³ the Workmen's Compensation Act^{4,5} and the Motor Vehicles Act.⁶ Rules have been framed in most of the High Courts in this regard. It is necessary that there should be no default in their observance.

Scope of the Chapter.

For the preparation of paper books in such appeals, typed copies supported by an affidavit as to their correctness may be accepted, and the same procedure as has been recommended by us in an earlier Chapter⁷ for supplying copies thereof to the respondent in case of regular first appeals may be adopted.

9.2. Appeals in matrimonial cases have an importance of their own, and should be given priority^{8,9} as already recommended by us while dealing with the listing of appeals.

Appeals in matrimonial cases.

9.3. The majority of appeals in matrimonial cases in the High Court are now appeals under section 28 of the Hindu Marriage Act, 1955. There are also certain appeals filed under the corresponding provision in the Special Marriage Act, 1954. As regards Christians, jurisdiction of the High Court under the Indian Divorce Act, 1869 is ordinarily by way of confirmation¹⁰ of the decree of divorce passed by the District Judge, proceeding for such confirmation being mandatory¹¹ under the Act.¹² In regard to the Parsi Marriage Act, 1936, in the three Presidency towns, the Chief Matrimonial Courts presided over by a High Court Judge exercise special jurisdiction of an original character in matrimonial causes under that Act.¹³ Appeals lie to a Division Bench of the High Court.

What we have said above, as to giving priority to appeals in matrimonial cases, is intended to cover all these Acts.

9.4. It is also our view that the existing provision of the Indian Divorce Act,¹⁴ under which a decree of divorce granted by the District Judge needs to be confirmed by a special Bench consisting normally of three judges of the High Court, on a reference made to it, should be modified and need for such a reference and confirmation should be done away with altogether. The existing procedure not only causes delay in the final disposal of the petitions for divorce under the Indian Divorce Act, but also subjects the parties to unnecessary expense.

Confirmation—cases under the Indian Divorce Act, 1869.

9.5. It may be mentioned that other matrimonial laws like the Hindu Marriage Act, contain no provision for confirmation of a decree of divorce and we see no cogent ground why a special provision for the purpose applicable to decrees of divorce granted under the Indian Divorce Act, should be required.

¹Section 47, Guardians & Wards Act (8 of 1890).

²Section 54, Land Acquisition Act, 1894, (See also Chapter 7, *supra*).

³Section 109(2), Trade and Merchandise Marks Act, 1958.

⁴Section 30, Workmen's Compensation Act, 1923.

⁵See also separate note as to special Acts, Appendix 3.

⁶Section 110D, Motor Vehicles Act, 1939.

⁷Chapter 8, *supra*.

⁸Cf. Law Commission of India, 77th Report (Delay and Arrears in Trial Courts), Chapter 10 (as to priority in trial courts).

⁹Chapter 7 (Listing of appeals).

¹⁰Section 17, Indian Divorce Act, 1869.

¹¹Para 2.7, *supra*.

¹²See para 9.4, *infra*, for recommendation.

¹³Parsi Marriage Act 1936, sections 17 to 19.

¹⁴Section 17, Indian Divorce Act, 1869, para 9.3, *supra*.

It is also plain that the above requirement about the confirmation of the decree by a Bench of the High Court is a hangover of the days which no longer exist. It has also lost all its relevance in the present-day India. It should, therefore, be done away with and replaced by appeals, as in the Hindu Marriage Act. We may add that a substantially similar recommendation was also made by the Law Commission in its Reports dealing, *inter alia*, with the Indian Divorce Act.^{1,2} The High Courts Arrears Committee³ presided over by Mr. Justice Shah also recommended a similar change in the law.

¹Law Commission of India, 15th Report (Law relating to marriage and divorce amongst Christians in India), page 40, para 78 and page 128, Note on section 17.

²Law Commission of India, 22nd Report (Christian Marriage and Matrimonial Causes Bill, 1961), page 2.

³High Courts Arrears Committee Report (1972). Chapter 5, page 68, para 76.

CHAPTER 10
SECOND APPEALS

10.1. The search for absolute truth in the administration of justice must, in the very nature of things, be put under some reasonable restraint. Such search has to be reconciled with the doctrine of finality. There must come, in the course of litigation, a stage when the decision rendered on a question of fact should become final and the matter should be allowed to rest where it lies, without further appeal on facts. At the same time, any rational system of law must provide for taking the cause to a specified superior court on a question of law—a superior court whose decision on the question of law will become binding on subordinate courts. There should be one authoritative and final tribunal in various appellate matters, competent to give decisions which are recognised as binding all over the State and which keep alive what Lord Birkenhead so felicitously described as the ‘immense unity of the law’.¹ When a substantial question of law is in issue, the general interest of society in the predictability of the law clearly necessitates a system of appeals to the highest court of the State.²

Second appeals—
need for.

10.2. This aspect has a vital connection with two basic principles of our constitutional and legal system, and its interest therefore transcends the boundaries of mere procedural law. It is a basic principle of our legal system that precedent is a source of law. This postulates that there shall be a superior court with jurisdiction to determine questions of law, whose determinations shall find a place in the law reports of the country.

Basic principles.

Then, it is also a postulate of the rule of law that if the law has been clearly laid down by such a superior court, and the decision of a subordinate court when exercising appellate jurisdiction is in clear violation of the law pronounced by the superior court, the power of the superior court of the State to correct that decision should be recognised.

10.3. These may be said to constitute the implicit assumptions underlying the right of appeal to the High Court from appellate decrees, provided by section 100 of the Code of Civil Procedure, 1908. These are also the implicit assumptions underlying the negative provision in section 101 of the same Code, to the effect that no second appeal shall lie except on the grounds mentioned in section 100.

Implicit assumptions of section 100.

10.4. Section 100 of the Code, as amended in 1976, allows a second appeal only if the High Court is satisfied that the case involves a substantial question of law. The limitation flowing from this provision may be emphasised.

Second appeal under amended Code.

10.5. Even before its amendment in 1976, section 100 had a restricted scope. The restricted scope of interference by the High Court in second appeals even before the amendment had been repeatedly emphasised by the Supreme Court while dealing with second appeals and their admission by the High Court. After the amendment, it has become all the more necessary to bear in mind the restricted ambit of the section, in view of the fact that the scope of interference in second appeal has been further narrowed down. What the section now requires is not only that the appeal should raise a question of law, but also that it should be a substantial question of law.

Narrow scope of section 100.

10.6. We would again like to point out an essential difference between a first appeal and a second appeal. The primary purpose of an appeal on facts is justice in the individual instance. On the other hand, the primary purpose of an appeal on law, at least in the case of a second appeal, is the affirmation or re-affirmation of a particular rule of law. The principal aim, in this case, is the production of certainty in the law. The mere dissatisfaction of a litigant with the judgment on the merits does not itself furnish a ground of second appeal. This is the theory underlying section 100 of the Code of Civil Procedure.

First appeal and second appeal.

¹Lord Birkenhead in (1927) 63 L.J. 298, 304. “The Judicial Committee” (Lord Birkenhead’s remarks from the Chair while presiding over a lecture by Professor J. H. Morgan).

²E.g. para 4.10, *supra*.

Small cases

10.7. So much as regards the principle underlying section 100. While the section permits a second appeal on a substantial question of law, practical considerations impel the law to place certain limitations even in this respect. For example, in cases where the amount involved is not large, the policy of the law is that at a particular stage halt should be called, and the parties should not be burdened, or even be tempted to burden themselves, with further expense. The quest for justice is not something abstract. It has also to bear the impress of a certain amount of pragmatism. It is because of these considerations that limitations have been placed on the right of appeal when the amount involved is not large.¹ It is plain that in such matters a line has to be drawn somewhere. The point at which the line is drawn may appear to some to smack of arbitrariness, but such a charge would perhaps be always there, whenever we have to draw a line at some point. While determining the point at which the line is drawn, the law has to keep in view all the relevant factors, including the need for finality, the cost to be incurred and the imperative of ensuring that the cost should not be disproportionate to the stakes actually involved. Section 102 of the Code accordingly bars a second appeal in any suit of a nature cognisable by courts of small causes when the amount or value of the subject matter does not exceed rupees three thousand. The amount of rupees three thousand was increased from rupees five hundred as a result of the amendments made in 1956 and 1976. These amendments seek to ensure that the time and energy of the courts should not be wasted by over-litigious individuals.

No change for the present.

10.8. We have in an earlier Chapter dealt at some length² with the question as to whether we should have a right of second appeal on a substantial question of law. It would not, therefore, be desirable to cover the same ground over again. Not much time has elapsed since the amendment referred to above in section 100 of the Code of Civil Procedure. It is obvious that the impact of the amendment would be visible only after the passage of some time. It is apposite that we should for the time being watch the situation.

¹Section 102, Code of Civil Procedure, 1908.

²Para 4.10 to 4.13, *supra*.

CHAPTER 11

APPEALS AGAINST JUDGEMENTS OF SINGLE JUDGE

11.1. This Chapter is concerned with appeals from the decisions of a High Court judge to a Bench of the High Court. The right of appeal in such cases is governed by the relevant clauses of the Letters Patent of the High Court concerned,^{1,3} or, in the case of High Courts which are not governed by the Letters Patent, by the corresponding provisions contained⁴ in the instruments constituting the High Courts. Such instruments usually provide for appeal against judgments of a single judge to a Bench of the High Court.⁵

Scope of the Chapter.

11.2. There can be no doubt that even if an appeal were permissible against the judgment of a single judge of a High Court rendered in first appeal⁶ it would amount to second appeal.

11.3. In an earlier Chapter⁷ of this report, we made certain recommendations as to appeals in the High Courts—

Recommendation made as to Letters Patent Appeal from decision on first appeal.

- (a) there should be no further right of appeal in the High Court against a judgment pronounced in appeal by a single judge ;
- (b) regular first appeals should be heard by Division Benches, and not by single judges ;
- (c) in regard to other first appeals decided by single judges, the decision should have a stamp of finality, except where the matter is taken up by certificate or special leave in appeal to the Supreme Court.

We then indicated that we would later give the reasons which had weighed with us in making the above recommendations. We now proceed to give our reasons.

11.4. In regard to regular first appeals, our recommendation⁸ that they should be heard by Division Benches was influenced by the fact that these appeals have an importance of their own, and it is but meet that there should be an application of plurality of minds for their disposal.

Reasons for hearing by Division Bench.

Regarding other first appeals⁹ our recommendation was based on the view that important though they are, their importance cannot rank on the same level as that of regular first appeals. We, therefore, recommended that except where the statute so provides otherwise, such appeals may be heard and decided by single judges. This would result in larger disposal of the appeals belonging to this category. It may be that some of these appeals against orders might involve questions of importance. In such cases, it would be always open to the single judge before whom these appeals are posted to direct, either at the time of admission or at the time of regular hearing, that they be posted before a Division Bench. In any case, the decision of the single judge should, as already stated, have a stamp of finality¹⁰

¹Clause 15, Letters Patent, Calcutta, Bombay and Madras.

²Clause 10, Letters Patent, Allahabad, Lahore, Patna and Nagpur (substantially continued in force by the High Courts Order or other instrument, e.g. section 8, Delhi High Court Act, 1966).

³Clause 12, Letters Patent, Jammu & Kashmir.

⁴E.g. (a) Section 5, Kerala High Court Act, 1958 (5 of 1959).

(b) Section 18, Rajasthan High Court Ordinance (5 of 1949).

⁵For procedure, see Mulla, Code of Civil Procedure (1955), Vol. 1, pages 25, 417, 452.

⁶Unless abolished by statute, e.g., the U.P. High Court Abolition of Letters Patent Appeal Act, 1962 (Appendix 8), page 305.

⁷Para 8.9 and 8.10, *supra*.

⁸Para 11.3(b), *supra*.

⁹Para 11.3(c), *supra*.

¹⁰Para 11.3(c), *supra*.

Reasons for barring appeal. 11.5. Coming now to the reasons which have weighed with us in recommending¹ that there should be no further right of appeal in the High Court against the judgment of a single judge in first appeal, we may point out that the present position presents two anomalies, which will become evident when one compares the position under the Code of Civil Procedure (in respect of appeals governed by that Code) with the position under the Letter Patent. The matter could be considered with reference to questions of fact and questions of law.

Questions of fact. 11.6. So far as questions of fact are concerned the general scheme of the Code of Civil Procedure which applies where the first appeal is decided by a subordinate court—is that the decision in first appeal should be final. Where a first appeal is decided by a judge of the High Court, the reason for putting a stamp of finality on the finding of fact recorded by the court in first appeal is all the more weighty.

Question of Law. 11.7. So far as questions of law are concerned, there no doubt exists under the Code a right of second appeal to the High Court, against the judgment passed in appeal by a court subordinate to the High Court, if a substantial question of law is involved. We have, in an earlier Chapter, examined the rationale of second appeal under section 100 of the Code. As we have already stated,² the principle underlying such appeals is that on questions of law, the authoritative pronouncement should emanate from the High Court, whose pronouncement on such questions would be binding on all the courts in the State. Now, most of regular second appeals are decided by single Judges and no further appeals can be filed in the High Court against such decisions in view of the express bar created by section 100A of the Code of Civil Procedure. Enunciations of principles of law³ when given by single judges in *second appeals* thus bind the courts in the State. It would, therefore, seem somewhat anomalous that such enunciations of law should lose their binding force if they emanate from *single judges* of the High Court when dealing with *first appeals*. Necessity of affording a right of second appeal on substantial questions of law may exist when the matter is decided by a court subordinate to the High Court, but this consideration loses its relevance where the decision sought to be appealed from is itself that of a High Court judge. In this sense, a further appeal under the Letters Patent is anomalous, even on questions of law. There may be justification for allowing an appeal to the High Court (on law) from a judgment in first appeal passed by a subordinate court, but not when the first appeal itself is decided by a judge of the High Court. The demands of uniformity of law are amply satisfied by allowing an appeal to the High Court, and a further appeal is not needed. Of course, in all appropriate cases, where the question of law is of importance or needs an authoritative pronouncement by a larger Bench, it would be always open to the single judge,⁴ to refer the matter to a larger Bench. But there is no compelling reason for permitting a second appeal in such cases.

11.8. It is for these reasons that we have made the recommendations on the subject,⁵ to which we have already made a reference.⁶

Appeals against judgment on the original side. 11.9. It may be mentioned that under the Letters Patent of the High Court or other instrument creating the High Court, appeals against the judgments of the single judge exercising original or writ jurisdiction lie to a Division Bench of the High Court.⁷ Nothing herein stated would affect the maintainability of such appeals.

¹Para 11.3(a) and 11.3(c), *supra*.

²Para 4.10 to 4.13, *supra*.

³Section 100A, Code of Civil Procedure, 1908.

⁴Compare para 11.9, *supra*.

⁵Para 8.9 and 8.10 *supra*.

⁶Para 11.3, *supra*.

⁷Para 11.1, *supra*.

CHAPTER 12

CIVIL REVISIONS

12.1. The High Courts in India exercise revisional jurisdiction under several provisions—to which we have already made a reference.¹ Of these, the provision frequently resorted to in civil cases is section 115 of the Code of Civil Procedure, 1908. This is one of those sections that have come up for consideration whenever the question of delay in courts has been discussed. Section 115, it should be noted, contributes its share not only to increased judicial business of the High Courts, but also to the progress and duration of proceedings in subordinate courts.

Scope of revisional power.

At least since 1924, this section has attracted the attention of law reformers, and the solutions suggested to minimise delay consequential on revision have been numerous and of infinite variety. We need not enter into a history of the section or of the various measures considered in the past for revising it. Attention will be confined to such features of revisional jurisdiction as are relevant for our purpose.

12.2. It may, in the first place, be mentioned that section 115 of the Code of Civil Procedure prescribes a very narrow area for interference by the High Court in exercise of its revisional jurisdiction. The High Court can interfere only where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity. There are certain other limitations recently introduced by the amendment made in 1976 in section 115. The scope of the section, and the limitations introduced recently, should both be borne in mind. It may be true that not more than 40 to 50 per cent of the applications for revision are admitted, and the rest are dismissed summarily. But when a rule *nisi* is issued in case of a revision, proceedings in the lower court are generally held up during the pendency of the revision and it is not infrequently that the record of the case in the subordinate court is also called for in the High Court, so that further proceedings in the subordinate court, even in the absence of a stay order, come to a standstill. Greater care should therefore be taken, and close scrutiny be made, at the stage of admission of revisions.

Revision under the Code of Civil Procedure—Need for scrutiny.

12.3. We have, in an earlier Chapter,² laid stress on the point that in revisions against interlocutory orders, records of the court below should not be sent for unless an express order is made for the purpose by the High Court. We have also expressed³ the view that it would be the responsibility of the petitioner in such a case to file copies of pleadings, documents, depositions, applications and replies thereto or orders as were sought to be relied upon at the time of the hearing of the revision. The copies are to be accompanied by an affidavit about their correctness. To give effect to this recommendation, necessary modifications may be made in the rules of the High Court.⁴

Filing of fresh revision proceedings.

¹Chapter 2, *supra*.

²Para 5.2, *supra* (Revision against interlocutory orders).

³Para 5.22, 5.29, 5.30, *supra*.

⁴For action in connection with rules.

CHAPTER 13

CERTIFICATE FOR APPEAL TO SUPREME COURT

Certificate of fitness for appeal. 13.1. Articles 132, 133 and 134 of the Constitution make provisions for grant by the High Court of certificate of fitness for appeal to the Supreme Court in certain categories of cases. Experience tells us that most of the applications for such certificate in the past used generally to be made some days after the pronouncement of the judgment of the High Court. Notice of those applications had therefore to be issued to the opposite party. The applications were thereafter posted for hearing and necessary orders were made on the same after hearing the counsel for the parties.

Position under Constitution (44th Amendment) Act. 13.2. All this consumed considerable time and resulted in protracting the proceedings. The appropriate course to remedy such a situation appeared to be to provide for making of an oral application immediately after the judgement was pronounced by the High Court. The High Court would then pass an order on that application soon thereafter. The adoption of such a course would have obviated the necessity of issuing notice to the opposite party, because both parties already would have notice of the date on which the judgment is to be pronounced. It would have also rendered unnecessary elaborate arguments, as the whole matter would be fresh in the mind of the court as well as of the counsel for the parties. The necessity for making a suggestion on the above lines is no longer there, as we find that according to the Constitution (Forty-fourth Amendment) Act, amendment have been made in articles 132, 133 and 134, and a new article 134A has been inserted. As a result of the above amendments and insertion, every High Court passing or making a judgment, decree, final order or sentence referred to in clause (1) of article 132, clause (1) of article 133 or clause (1) of article 134:—

- (a) may, if it deems fit so to do, on its own motion ; and
- (b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence,

determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

In view of the said amendment of the Constitution, the time that was consumed in proceedings before the High Court for obtaining a certificate of fitness for appeal to the Supreme Court would be saved.

CHAPTER 14

CRIMINAL APPEALS, REVISIONS AND REFERENCES

I. INTRODUCTORY

14.1. Criminal appellate and revisional jurisdiction of the High Courts presents a fair measure of variety. Appeals could lie against convictions¹ or acquittals.² Revision can also lie against certain judgments and other orders,³ when the case falls within sections 397 to 401 of the Code of Criminal Procedure, 1973. Then, there is the jurisdiction by way of hearing references for confirmation of the death sentence.⁴ Introductory.

II. CRIMINAL APPEALS

14.2. A criminal appeal lies to the High Court under the Code of Criminal Procedure, 1973, in a limited number of cases. In the first place,⁵ any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years has been passed, may appeal to the High Court. There are certain statutory limitations⁶ on the right of appeal, which are not material for our purpose. In the second place,⁷ the State Government may, in any case of conviction on a trial held by any court other than a High Court, direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy and, in certain cases, this power of appealing to the High Court can be exercised by the Central Government. In the third place,⁸ subject to certain limitations, Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court. This appeal cannot be entertained except with the leave of the High Court.⁹ In the case of an order of acquittal passed in any case instituted upon complaint, the complainant may present an appeal against acquittal to the High Court after obtaining "special leave" of the High Court.¹⁰ Appeals to the High Court.

We need not deal with appeals from orders of criminal courts other than judgments of conviction or acquittal.

14.3. The need for expediting the hearing of criminal appeals has been emphasised more than once. The High Court Arrears Committee¹¹ presided over by Mr. Justice Shah noted that in some courts, a criminal appeal did not reach hearing for five or six years after the appeal was admitted to the file. Need for expedition.

14.4. Measures for expediting the hearing of criminal appeals in the High Courts, as far as we can see, will have to be mostly administrative. We may, however, deal with certain matters which need particular attention and in respect of which the law or rules, if necessary, should be amended Criminal appeals from the Assistant Sessions Judge.

14.5. There has been a tendency in some courts of dismissing first appeals against judgments of conviction *in limini* with a one word order—'dismissed'. Many such orders are reversed on further appeal and the cases are remanded. We are of the view that whenever a first appeal against a judgment of conviction is dismissed *in limini*, the court of appeal, irrespective of the fact whether it is the High Court or the Court of Session or Chief Judicial Magistrate, should Summary dismissal of criminal appeal against conviction.

¹Para 14.2, *infra*.

²Para 14.2, *infra*.

³Para 14.7, *infra*, and sections 397 to 401, Code of Criminal Procedure, 1973.

⁴Chapter 2, *supra*. See also section 432(2), Code of Criminal Procedure, 1973.

⁵Section 374(2), Code of Criminal Procedure, 1973. See also para 14.8, *infra*.

⁶Sections 375 and 376, Code of Criminal Procedure, 1973.

⁷Section 377, Code of Criminal Procedure, 1973.

⁸Section 378, Code of Criminal Procedure, 1973.

⁹Section 378(3), Code of Criminal Procedure, 1973.

¹⁰Section 378(4), Code of Criminal Procedure, 1973. See para 14.10, *infra*.

¹¹High Courts Arrears Committee Report (1972), page 75, para 109.

record a brief order, giving reasons as to why it is dismissing the appeal at the preliminary stage.

So far as the courts of session and of the Chief Judicial Magistrate are concerned, there already exists¹ a provision in the Code that such courts, while dismissing an appeal summarily, should record reasons for doing so. We have,² while dealing with regular first appeals against final judgments in civil matters, recommended that not only the subordinate courts [for whom a provision already exists in Order 41, Rule 11(4), Code of Civil Procedure, 1908] but also the High Courts, should record a brief order giving reasons which weigh with it in dismissing such appeals at the preliminary hearing. We feel that the need for such an order when a first appeal against a judgment of conviction is being dismissed at a preliminary hearing is all the more great, because a criminal appeal involves the liberty of the subject and has quite often more serious consequences.

Hearing by single Judge of certain appeals against convictions.

14.6. In our view, it is also necessary to enlarge the power of the single judge of High Courts so as to enable a single judge to dispose of all criminal appeals against convictions except those in which a sentence of death or imprisonment for life is passed. We would recommend that the High Courts may revise their rules accordingly, where such is not the position at present.

III. CRIMINAL REVISIONS

Various orders.

14.7. The orders against which criminal revision may be filed could themselves be of infinite variety,—such as orders for security, orders for the maintenance of wives and children, orders of certain types finally disposing of the proceedings,^{3,4} and orders concerned not with the determination of guilt but with other matters (e.g. disposal of property).

Importance of orders for maintenance.

14.8. We are particularly mentioning⁵ revisions in regard to orders for maintenance passed under section 125 of the Code of Criminal Procedure, since, on a perusal of the reported decisions^{6,7,8} on the subject, it appears that both the jurisdiction of the Magistrate to award maintenance under this section and the powers of the High Court to revise such orders, are assuming greater importance every day. The exercise of the revisional jurisdiction of the High Court under the Code, or its supervisory jurisdiction under the Constitution,⁹ has remedied serious injustice that might have otherwise arisen from orders of the Magistrates.

¹Section 384(3), Code of Criminal Procedure, 1973.

²Para 8.18, *supra*.

³Section 397(3), Code of Criminal Procedure, 1973.

⁴See also Appendix 4.

⁵Para 14.7, *supra*.

⁶*Mehbubabi v. Nasir Mohd. Sheikh*, (1976) Maharashtra Law Journal, 631, summarised in the Yearly Digest (1976), column 813.

⁷*Mehbubabi v. Nasir Mohd. Sheikh*, (1976) 78 Bombay Law Reporter 258.

⁸*Kunhi Moyen v. Pthomma*, (1976) Kerala Law Times summarised in the Yearly Digest (1976), column 814.

⁹Article 227 of the Constitution.

CHAPTER 15

ORDINARY ORIGINAL CIVIL JURISDICTION OF HIGH COURTS

15.1. We propose to deal, in this Chapter, with the ordinary original civil jurisdiction of High Courts. To start with, only the three High Courts of Calcutta, Madras and Bombay were vested with such jurisdiction, exercisable within the respective limits of the three Presidency towns. However, two important developments took place later. On the one hand, certain other High Courts (besides those in the Presidency towns) came to be vested with such jurisdiction.¹ On the other hand, the jurisdiction of the High Courts in the three Presidency towns came to be curtailed in course of time.²

Ordinary original civil jurisdiction.

15.2. As to the other High Courts, it may be noted that in the year 1966, ordinary original civil jurisdiction was conferred on the Delhi High Court³ in respect of suits of a value of more than Rs. 25,000/-. This amount was subsequently⁴ raised to Rs. 50,000/- with effect from 1st October, 1969.

Delhi High Court ordinary civil jurisdiction.

15.3. In regard to the erstwhile Union Territory of Himachal Pradesh, the hierarchy of courts was previously regulated by the Himachal Pradesh (Courts) Order, 1948, issued under the Extra Provincial Jurisdiction Act, 1947, as then in force. After the Delhi High Court was established,⁵ such jurisdiction as was exercisable in respect of the Union Territory of Himachal Pradesh by the Court of the Judicial Commissioner for Himachal Pradesh was transferred to the High Court of Delhi, and it was also provided⁶ that the High Court of Delhi shall have, in respect of the territories for the time being included in the Union Territory of Himachal Pradesh, "ordinary original civil jurisdiction in every suit the value of which exceeds twenty-five thousand rupees, notwithstanding anything contained in any law for the time being in force". The amount of twenty-five thousand rupees was raised⁷ to fifty thousand⁸ rupees in 1969.

Himachal Pradesh.

Subsequently, on the creation of Himachal Pradesh as a State in 1970, the High Court of Himachal Pradesh was created as a separate High Court,⁹ and succeeded to the jurisdiction of the Delhi High Court in relation to the Union Territory of Himachal Pradesh. That is how the High Court of Himachal Pradesh has come to be vested with ordinary original civil jurisdiction in every suit the value of which exceeds fifty thousand rupees.

15.4. It would be of interest to note that when the Chief Court of Oudh was established under an Act enacted by the United Provinces legislature,¹⁰ it was invested with original civil jurisdiction for the trial of suits valued at Rs. 5 lacs or above. The relevant section was as follows¹¹ :—

Oudh Chief Court.

"7. Original Civil Jurisdiction

The Chief Court shall have jurisdiction to hear and determine any suit or original proceeding of which the value is not less than five lakhs of rupees and notwithstanding anything contained the section 15 of the Code of Civil "Procedure, 1908, every such suit or proceeding shall be instituted in the Chief Court.

Provided that nothing in this section shall affect the provision of section 24 of the Code of Civil Procedure, 1908."

This jurisdiction was abolished in 1939.¹²

¹See para 15.2 and 15.3, *infra*.

²See para 15.5, *infra*.

³Section 5, Delhi High Court Act, 1966.

⁴Delhi High Court (Amendment) Act, 1969.

⁵Section 17(1) and (2), Delhi High Court Act, 1966.

⁶Section 17(3), Delhi High Court Act (26 of 1966).

⁷Delhi High Court Amendment Act, 37 of 1969.

⁸See para 15.2, *supra*.

⁹The State of Himachal Pradesh Act, 1970.

¹⁰Section 7, Oudh Courts Act (U.P. Act 4 of 1925). See *Bisent Bhuvan v. Son of Madho Singh* A.I.R. 1927 Oudh 59.

¹¹Government of U.P. Gazette dated 16th May 1925. Part VII, U.P. Act No. 4 of 1925 (Oudh Courts Act 1925).

¹²Oudh Courts (Amendment) Act—U.P. Act 9 of 1939.

Curtailment on establishment of City Civil Courts. 15.5. The jurisdiction of the three High Courts in the Presidency Towns came to be limited with the establishment, at different times, of the City Civil Courts, in all the Presidency towns. In Madras, the original civil jurisdiction of the Madras High Court was curtailed by the establishment of the civil court for the city of Madras in the year 1892, with jurisdiction in respect of suits or other proceedings of a civil nature not exceeding Rs. 25,000/- in value. The limit was gradually raised, until it was Rs. 50,000/- in the year 1955. This continues to be so up to the present time. The ordinary original civil jurisdiction of the Madras High Court, at present, is only in regard to matters exceeding Rs. 50,000/- in value.

The jurisdiction of the Bombay City Civil Court, according to the City Civil Court Act, 1916, was initially Rs. 10,000/-. It was raised to Rs. 25,000/- in January, 1950 and subsequently raised to Rs. 50,000/-.

In Calcutta, the City Civil Court was established only in the year 1957, with a pecuniary jurisdiction of Rs. 10,000/-. In regard to certain types of suits—compendiously described as “commercial causes”—its jurisdiction was restricted to suits and proceedings not exceeding Rs. 5,000/-. Some other exceptions were also made in regard to certain other types of suits which were not cognisable by this court, but they are not material for the present purpose. At present, the jurisdictional limit of the City Civil Court at Calcutta is Rs. 50,000/-.

Present position. 15.6. So the position in all the five High Courts¹ which exercise ordinary original civil jurisdiction is that they try suits exceeding Rs. 50,000/- in value.

Jammu & Kashmir. 15.7. Apart from the above, the High Court of Jammu & Kashmir has ordinary original civil jurisdiction in suits above Rs. 20,000/-.

Debate about utility. 15.8. This process of expansion and curtailment of the ordinary original civil jurisdiction of High Courts has been accompanied by an interesting debate as to the utility of such jurisdiction. The argument in support of ordinary original civil jurisdiction of the High Courts has been that the administration of justice at this higher level is of a better quality and that it also inspires more confidence in the litigating public. There, however, is also a contrary view, which is opposed to the ordinary original civil jurisdiction of the High Courts on the ground that it is more costly and cumbersome.

Previous Reports. 15.9. The question which has called for examination is whether the ordinary original civil jurisdiction of the High Courts should be retained or not. In the case of the Calcutta High Court, this question was referred for consideration to the Judicial Reforms Committee for the State of West Bengal (Trevor Harries Committee). The Committee recorded its conclusion thus :

“After giving the matter the fullest consideration that the original side of this court should not be abolished in its entirety. We are convinced that there is a genuine demand for it, particularly in the commercial community and its abolition would be a real loss to the litigant public of Calcutta.”²

The Law Commission of India, presided over by Shri M. C. Setalvad, also took the same view in its 14th Report.³

Conclusion. 15.10. We do not propose to suggest any change in the matter. We may note that there is already a move to enhance the lower pecuniary limit of some of the High Courts to Rs. 1 lac. In view of the lower purchasing power of the rupee, this approach has much to commend itself.

Original suits in High Courts—adoption of suggestion in 77th Report. 15.11. We have, while dealing with the question of delay in the trial courts, made certain suggestions in the 77th Report⁴ with a view to cutting short delays. While some of those suggestions pertain only to the subordinate courts, many other suggestions, such as the desirability of recording statements of the parties under Order 10 of the Code of Civil Procedure before the framing of issues, would equally hold good for the trial of original suits in the High Courts. Those suggestions made in the 77th Report, if adopted with such modifications as may be called for in regard to proceedings in the High Court can, in our opinion, go a long way in cutting short the time taken for the disposal of original suits in the High Courts.

¹Para 15.2, 15.3 and 15.5, *supra*.

²See 14th Report, Note 1.

³Law Commission of India. 14th Report, Vol. 1, pages 117-118, para 12 to 14.

⁴77th Report.

CHAPTER 16

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION OF HIGH COURTS: WRITS

I. GENERAL

16.1. Besides ordinary original civil jurisdiction,¹ High Courts have extraordinary original civil jurisdiction, derived from a number of sources. These sources include the Constitution,² the Code of Civil Procedure, 1908³ the Letters Patent,⁴ and other laws or instruments having the force of law.⁵ Extraordinary original civil jurisdiction.

16.2. Occasions for the exercise of such jurisdiction⁶ may arise when a suit or proceeding is withdrawn by the High Court for trial before itself, under the Code of Civil Procedure, 1908, or when the suit or proceeding is transferred by the Supreme Court from another court to the High Court under that Code.⁷ By the Letters Patent⁸ also, certain High Courts in exercise of their extraordinary original civil jurisdiction, are empowered to remove any civil case from a court subordinate to them and cause it to be tried and determined by themselves. Occasions for the exercise of extraordinary original civil jurisdiction.

II. WRITS : NATURE AND VOLUME

16.3. The most important species of extraordinary original civil jurisdiction of the High Courts that has assumed importance in recent times is the jurisdiction to issue "writs". Before 1950, the power to issue a writ as such was vested only in the three High Courts for the three presidency towns,—though there were certain statutory provisions conferring on other High Courts the power to grant substantially similar relief. After 1950, under Article 226 of the Constitution,⁹ power has been expressly conferred on all High Courts to issue, *inter alia*, directions in the nature of writs for the specified purposes. We are here concerned not with the details of the purposes for which writs can be issued, but with the breadth of the jurisdiction. Writs.

16.4. With the increase in the socio-economic and welfare activities of the State and the growing awareness of the citizen as to his rights, Article 226 of the Constitution assumed singular importance in our system of administration of justice. It empowers every High Court, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including, in appropriate cases, any Government within those territories, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* or any one of them for the purpose mentioned in that Article. With the passage of time, the institution of writs has been on the increase. The relevant Appendix¹⁰ to this Report shows that the pendency of writs has substantially increased. Taking an all-India view, the total number of writs pending in all the High Courts as on December 31, 1977, was 134639, as against 122009 pending on 1st January, 1977. There is, thus, an increase of 12630, representing a 10.35 per cent increase in 1977 over the previous year. The existing strength of judges of the High Courts is obviously not sufficient to clear the backlog and at the same time to deal satisfactorily with the increasing institution. This shows the imperative need for the appointment of additional and *ad hoc* judges to tackle the problem,—a matter which we have already dealt with.¹¹ Here we confine ourselves to the ways and means that may be adopted to expedite the disposal of writ petitions. What we propose to indicate will be a general pattern Scope of writs.

¹Chapter 15. *supra*.

²Articles 226-227, of the Constitution.

³(a) Section 24(1)(b)(ii), Code of Civil Procedure, 1908.

(b) Section 25, Code of Civil Procedure, 1908.

⁴E.g. Letters Patent, clause 9 (Allahabad), clause 13 (Calcutta) and so on.

⁵See Chapter 2. *supra*.

⁶See para 16.1, *supra*.

⁷Section 25(1), Code of Civil Procedure, 1908.

⁸Para 16.1, *supra*.

⁹Para 16.4, *infra*.

¹⁰Appendix relating to figures of institution etc., Table IV.

¹¹Chapter 3, *infra*.

III. PROCEDURAL DELAYS IN WRITS : SERVICE

Service of notice and recommendation.

16.5. One of the causes of delay in the matter of writ petitions is the difficulty in getting service effected on the respondents. In most of the writ petitions, apart from the other respondents, the State Government or the Central Government too is a respondent. Whatever steps may be taken to expedite the service on other respondents, we may mention that so far as the State Government or the Central Government is concerned, in some of the High Courts the Advocate-General accepts service of the notice on behalf of the State Government, and the Central Government Standing Counsel accepts service of notice on behalf of the Central Government. We are given to understand that this procedure has worked well, and has resulted in the elimination of delays.

We suggest that the feasibility of adopting this course in other places might also be considered by the State Government and the Central Government. It may be added that the adoption of this course would necessitate increasing the strength of the staff of the office of the Advocate-General and the Central Government Standing Counsel.¹ Looking to the advantage which would accrue, no one should grudge the increase in the expense on that score.

Service matters.

16.6. In service matters, especially those relating to seniority, it has been often noticed that in addition to the Government, quite a large number of respondents who are interested in the subject matter of the writ petition or who are likely to be affected by the order on the petition, are also impleaded. Individual service of such respondents takes a lot of time. Quite often, by the time the notice of the writ petition issued by the court reaches at the address given, the official is transferred and the notice comes back with the report that the official is no longer at that station. To avoid this difficulty, we recommend that instructions may be issued to the various departments of the Government that so far as court notices are concerned, they should, instead of being sent back to the court with the above report, be re-directed to the new station of posting of the official concerned. It is obvious that the department would know the exact place at which an official is posted at a particular time.

Lengthy writ petitions.

16.7. It is not uncommon to come across writ petitions which are lengthy and prolix, even though the facts relevant to the points that call for decision lie within a narrow compass. It would facilitate quick disposal of writ petitions on the date of preliminary hearing as well as that of final hearing, if the writ petition is accompanied by a chronological statement of facts necessary for the purpose of the relief sought by the petitioner. This may be provided for in the rules.²

Show cause notice.

16.8. There are many petitions under article 226 of the Constitution which are dismissed at the preliminary stage by the High Court with a one-word order "dismissed". Quite a number of these orders are reversed on appeal and the cases are remanded to the High Court for disposal. All this entails unnecessary wastage of time and also leads to duplication of work. We are of the opinion that a substantial number of writ petitions can be disposed of at the preliminary hearing if a notice is issued to the opposite side to show cause why the writ petition be not admitted. The result of issuing such a notice is that fresh light is thrown on many of the allegations of fact which otherwise remain uncontroverted. Some new facets of law, not mentioned in the petition, may also be brought to the notice of the court in the return. All this helps the court in deciding whether the petition should or should not be admitted for regular hearing. Experience has also shown that as a result of show cause notice, the area of controversy becomes so much narrowed down that the parties agree to some quick solution of the controversy at that stage itself. These aspects highlight the utility and advantage of a show cause notice in appropriate cases. It is, however, essential that the show cause notice is made returnable by an early date, so that the provision regarding interim relief is also not abused. The High Court would also be on a much firmer ground in dismissing a writ petition if it does so after issuing a show cause notice.

Order of dismissal.

16.9. Apart from the above, we are of the opinion that the High Court, while dismissing a petition under article 226 of the Constitution, should record a short order, giving its reasons for not admitting the petition. This is necessary to enable the petitioner as well as the Supreme Court, in case the matter is

¹For action by State Governments and Central Government.

²For rules.

taken up before it, to know what considerations have weighed with the High Court in dismissing the petition. The need for such an order is all the more great in writ petitions because, unlike in an appeal, in a writ petition there is generally no reasoned decision of a subordinate court.

16.10. Rules of the High Court should also specify the time, — as has already been done in many of the States,—during which counter-affidavit or the affidavit in opposition should be filed by the respondent. In our view, such time should not exceed three months from the date of the service of notice of admission of the writ. However, if sufficient cause is shown by application in writing made before the expiry of three months, the court may further extend the time for a period generally not exceeding one month. The respondent must, in every case, serve an advance copy of the counter-affidavit on the petitioner or his counsel. The Registry should refuse to accept the counter-affidavit if it is filed beyond three months or without obtaining an extension of time for the purpose from the court or without serving an advance copy on the petitioner or his counsel.

Time for filing counter-affidavit.

16.11. If the counter-affidavit is not filed within three months or within the extended time, the case should be listed for hearing without counter-affidavit. The respondent shall not be entitled to file counter-affidavit after the expiry of the period mentioned above (original or extended) without express permission of the court. An advance copy of the counter-affidavit should be served on the petitioner or his counsel before the same is filed in court.

Consequences of non-filing of counter-affidavit.

16.12. Rules of the High Court should also provide for filing a replication, if any is desired to be filed by the petitioner or if the court considers it necessary. Time for this purpose may be prescribed by rules to be four weeks from the date of service of copy of the counter-affidavit.

Replication by petitioner when to be filed.

IV. WRIT PETITIONS : HEARING

16.13. After the matter is complete in terms of the aforesaid rules, the writ petition should be included in the ready list of cases published by the court in chronological order according to its date of institution, except where the petition has, for sufficient reason, to be listed for a future date. The writ petitions which belong to a class needing priority, as has been indicated elsewhere,¹ would not, however, have to stand in queue. Apart from that, the daily list should be prepared strictly in the order in which the cases appear in the ready list, subject, of course, to the order of the court as to actual date in any matter.

Ready list.

16.14. As recommended by us in the case of regular first² appeals, a concise note of arguments should be filed in writ petitions before the date of hearing. The contents of the note of arguments and the time of its filing should be the same as in the case of regular first appeals. It would not, however, be necessary to file such note of arguments in petitions for the issue of a writ of habeas corpus, as these petitions stand in a class by themselves. This apart, the reasons which weighed with us in suggesting filing a note of arguments in regular first appeals equally hold good for writ petitions.

Concise note of arguments.

16.15. We have indicated above only a general pattern of rules³. However, it would be open to each High Court to frame or amend its own rules with such changes or variations as may be found to be necessary. The object of the rules should be to obtain a regulated procedure conforming to the principles of natural justice, at the same time securing quicker disposal of the writ petitions. The rules⁴ will be efficacious and purposeful only if their observance is scrupulously adhered to.

General pattern of rules.

V. BENCHES FOR DECIDING WRIT PETITIONS

16.16. It is the general practice in High Courts to have separate writ benches, but it is necessary that their sittings should continue for a reasonable length of time.

Writ Bench.

¹See Chapter 7, *supra*.

²Para 6.19, *supra*.

³Para 16.4, *supra*.

⁴Para 16.4, *supra*.

Grouping of writ petitions. **16.17.** While dealing with civil appeals¹ we have pointed out the necessity of grouping of appeals involving the same question of law. This is all the more important and necessary in the case of writ petitions. Very often, a number of writ petitions are filed in respect of the orders of administrative tribunals, involving not only the same point of law, but also the same or similar facts. The grouping of all such petitions by the Registry will very much help in the quick and satisfactory disposal of these cases.

Practice of not listing writ petitions in anticipation of other petitions not to be favoured. **16.18.** It has also been observed that writ petitions raising a particular question are not listed by the office for hearing before the bench, simply on the ground that other petitions of the same nature are likely to follow. This is not a correct practice. Normally, unless there are some special features, it will be more conducive to better administration of justice if such a petition, when filed, is given precedence,—if need be, with the permission of the Chief Justice, and put up for decision in accordance with law. The chances of further or more petitions of the same or similar nature are thereby eliminated or minimised, in case the petition is dismissed. On the other hand, if the petition succeeds, it is possible that the department or authority concerned may take suitable action without further loss of time and harassment to persons similarly aggrieved.

VI. DISPOSAL OF WRITS

Time limit for disposal of writs. **16.19.** The writ is basically an expeditious remedy and the decision of the writ petition should normally be as quick as possible. The Writ Rules of the High Courts should be framed with that object in view. Having regard, however, to the extensive field that is covered by Article 226 and the nature of controversies that come up for decision before the court in these proceedings, we are of the view that the writ petitions should normally be disposed of within a year from the date of their institution, as suggested elsewhere in this Report.²

Co-operation of Government necessary for expeditious disposal of writ petitions. **16.20.** It would be seen from the scheme of the Writ Rules recommended by us that for the expeditious functioning of the writ court very prompt and whole-hearted co-operation of the Government and its various Departments is necessary. Without such co-operation, the very purpose underlying article 226 of the Constitution would be frustrated. We, therefore, suggest that special attention be paid to this aspect at the Governmental level, and necessary instructions be issued to the various departments. It is only then that the problem of arrears and further accumulation of writ matters in courts can be tackled with any measure of success.

¹Chapters 4 and 5, *supra*.

²See para 1.29, *supra*.

CHAPTER 17

JURISDICTION UNDER SPECIAL ACTS—TAX CASES

I. THE PRESENT POSITION

17.1. A number of special Acts confer jurisdiction on the High Courts.¹ In an earlier Chapter,² we have referred to the jurisdiction exercisable by the High Courts in appeals under special Acts. In this Chapter, we propose to deal with one important species of jurisdiction under special Acts, namely, jurisdiction in regard to matters relating to taxation. We are, in this context, primarily concerned with direct taxes. Introductory.

Taxing statutes, as is well known, undergo changes more frequently than legislation on other subjects. It is obvious that as the pattern of taxing law changes, the pattern of litigation in proceedings concerned with the decisions of income-tax authorities would also change. Tax planning, in the sense of planning one's affairs so as to legitimately avoid tax, is also now a familiar phenomenon. In this process, the complexity of the questions that come up for determination before various appellate authorities under the direct tax laws increases. Thus, taxing statutes, complicated and technical as they usually are, require continual concern with them for acquiring and maintaining reasonable familiarity with their provisions. Jurisdiction under these laws has, therefore, an interest and importance of its own.

17.2. Authorities administering the direct tax laws have large powers, but an important restraining influence is the review of their decisions by appellate authorities functioning under those laws. The Income Tax Act and other Central laws relating to direct taxes provide a machinery for appeals. There is a whole hierarchy, starting with the Appellate Assistant Commissioner and ending with the Supreme Court. The first appeal lies generally to the Appellate Assistant Commissioner. Appeals in taxation cases.

The Finance (No. 2) Act (19 of 1977)³ now makes provision for disposal of appeals by the Commissioner (Appeals). From the decisions of the income-tax authorities mentioned above, an appeal lies⁴ to the Income Tax Appellate Tribunal.⁵

In certain cases, there is an alternative avenue by approaching the Commissioner of Income-tax, but we are not concerned with that.

In this hierarchy of appeals, the final authority on facts is the Income Tax Appellate Tribunal,⁶ while the High Courts, and, in certain cases, the Supreme Court⁷ can be approached on questions of law. Jurisdiction of the High Court, as the law stands at present, is advisory (being exercisable on a reference made by the Appellate Tribunal). To the High Court, the Appellate Tribunal can make a reference on question of law. From the judgment of the High Court delivered on such reference, an appeal lies to the Supreme Court on a certificate of fitness for appeal granted by the High Court⁸ or on special leave granted by the Supreme Court.⁹⁻¹⁰

17.3. This jurisdiction has been extensively resorted to, as would appear from the statistics on the subject. Volume of tax cases.

A large number of matters before the High Court consists of references made to it by the Appellate Tribunal under section 256 of the Income Tax Act.

¹Chapter 2, *supra*.

²Chapter 9, *supra*.

³Finance (No. 2) Act (29 of 1977), section 39 and Fifth Schedule.

⁴Section 253, Income Tax Act, 1961.

⁵Briefly referred to as the Appellate Tribunal.

⁶*Rameshwar Prasad Bagala v. C.I.T., U.P.*, A.I.R. 1973 SC 182, 185, para 10

⁷Section 261, Income Tax Act, 1961.

⁸Section 261, Income Tax Act, 1961.

⁹*C.I.T. v. Arunachalam Chettiar*, 23 I.T.R. 180, 185; S.C. AIR 1953 SC 118, 121 para 8.

¹⁰Article 136, Constitution of India.

1961, or under substantially similar provisions in the other central enactments relating to direct taxes, or in certain state enactments relating to sales-tax and other indirect taxes.

It would appear¹ that on the 1st January, 1977, 12,133 Income Tax references and applications were pending in the High Courts, and during the year 1977, 6289 such references and applications were instituted. During the same year, 3195 such references and applications were disposed of by the High Courts. At the end of the year 1977, 15,227 such references and applications were pending. The disposal, counted as a percentage of institution, was 50.8 per cent in the case of such references and applications. Barring the disposal rate in regard to election petitions, during the year 1977, this rate of disposal as a percentage of institution represents the lowest disposal rate of various types of cases during the year 1977.

II. VARIOUS ALTERNATIVES

Need for devising ways and means to ensure disposal. 17.4. This is hardly a satisfactory situation. We have to devise ways and means so as to ensure that not only the arrears of references pending in the High Courts are cleared, but also that the number of references disposed of by the High Courts in a year is commensurate with the number of references made to the High Court during that period. Care would have, therefore, to be taken that as far as possible the number of references disposed of is not less than those made to the High Court in a year. It is apparent that the early disposal of references in tax matters is of importance, both from the point of view of the assessee and from the point of view of the State. So far as assesseees are concerned, they would, by and large, be interested in the early disposal of matters relating to their tax liability and the extent of such liability. As regards the State, its interest in the recovery of revenue and avoidance of delay in such recovery is so obvious that it hardly needs any dilation.

Need for certain measures to deal with delay in regard to taxation matters. 17.5. From the figures to which we have referred above² it is evident that concerted efforts are needed to—

- (a) increase the strength of judges in the High Courts to deal with taxation references; and
- (b) constitute separate benches in High Courts wherever the volume of work so justifies, for disposing of tax cases.³

On the question whether any structural or procedural changes are needed in the machinery for finally determining questions arising in taxation matters, considerable labour has been devoted in the past to examining various alternatives.⁴

Separate Benches. 17.6. One way of expediting the disposal of income-tax references and of preventing accumulation of arrears in such matters is to constitute one or more separate Benches in the High Court to deal with such references, depending upon the volume of work. It is also plain that to get the optimum disposal, we should put those judges on such Benches as have some grounding in the subject. The constitution of a separate Bench for the disposal of tax cases might necessitate an increase in the strength of Judges. In view of the fact that delay in the disposal of tax matters impinges upon the revenue, the burden on the exchequer which would fall as a result of the increase in the strength of judges should not be grudged.

Central Court. Tax 17.7. One of the questions which has attracted attention in the matter of tax cases is the creation of one or more Central Tax Courts. This question was considered by the High Courts Arrears Committee presided over by Mr. Justice Shah, which expressed its view against the creation of such courts.⁵ The Law Commission, in its 58th Report⁶ also considered the pros and cons of the proposal to create such a Court and ultimately came to the conclusion that the idea of a National Tax Court could not be recommended.

¹Ministry of Home Affairs, Department of Justice, letter No. 36/1/1978-Justice (M), dated 2nd June, 1978, Table V, item 9.

²Para 17.3, *supra*.

³See also para 17.9, *infra*.

⁴Para 17.6 to 17.17, *infra*.

⁵High Courts Arrears Committee Report (1972), page 69, para 81-82.

⁶Law Commission of India, 58th Report (January, 1974), pages. 72-73, para 6.12 to 6.18.

17.8. As against the above, the Direct Tax Laws Committee (more popularly known as the Chokshi Committee), in its Report of September 1978 has recommended the creation of a Central Tax Court with Benches at Ahmedabad, Bombay, Calcutta, Delhi, Kanpur, Nagpur and Madras. According to the Committee each Bench of the proposed Court should consist of two judges. Highly qualified persons should be appointed as judges of this court from among persons who are High Court judges or who are eligible to be appointed as High Court judges. According to the Committee, in the matter of conditions of service, scales of pay and other privileges, the judges of the Central Tax Court should be on par with High Court Judges.¹ Such courts, in the words of the Committee, "will be special kind of High Courts with functional jurisdiction over tax matters and enjoying judicial independence in the same manner as the High Courts". The Committee has also recommended that the jurisdiction of the Central Tax Court should be appellate, and not advisory. As such, appeals on questions of law would lie to the Central Tax Court and it would not be necessary to make a reference as is being done under the existing law to the High Courts. The Committee was conscious of the fact that implementation of this recommendation may necessitate amendment of the Constitution and that might take time. The Committee has accordingly suggested the desirability of constituting, in the meanwhile, special tax Benches in the High Courts to deal with the large number of tax cases by continuous sitting throughout the year. The judges to be appointed to these special Benches, in the view of the Committee should be selected from amongst those who have special knowledge and experience in dealing with matters relating to direct tax laws.

Recommendation of Chokshi Committee.

III. CENTRAL TAX COURT AND TAX BENCHES

17.9. While we are in agreement with the view of the Chokshi Committee² that there should be a continuous sitting of the tax Benches in the High Courts if the volume of work so warrants,³ and also as to the desirability of deputing those judges on such Benches as have a grounding in the tax laws, we would, as regards its proposal for creating a Central Tax Court, express our preference for the view taken by the High Courts Arrears Committee presided over by Mr. Justice Shah and by the Law Commission in its 58th Report, in so far as they arrived at the conclusion against the formation of the Central Tax Court.⁴ The main reason which weighed with the Chokshi Committee in recommending the establishment of a Central Tax Court was the inability of the High Courts to cope with the number of references which were made to them under the tax laws.

Preference of this Commission for view taken by earlier Commission.

In our view, low disposal of references relating to direct tax laws can be adequately remedied by resorting to continuous sitting of tax Benches in the High Courts where the volume of work so warrants. In High Courts where there are not sufficient number of tax references, the tax Bench can have a continuous sitting till all the ready tax matters are disposed of. As mentioned earlier,⁵ the view of the Chokshi Committee is based on the assumption that a constitutional amendment is required.

17.10. We are not in favour of too frequent changes of the Constitution. The Constitution is our basic law and there should be a resort to amendment of its provisions only in exceptional situations of the most compelling nature. Amendment of the Constitution is not the answer to meet the general run of administrative and other difficulties. There is an element of sanctity about the provisions of the Constitution and although we do not suggest that they be canonised or given a stamp of deification we are averse to suggesting changes of the constitutional provisions with a view to taking us out of every difficulty, fancied or genuine.

Frequent constitutional changes not favoured.

17.11. Another reason which has also weighed with us in agreeing with the conclusion of the High Courts Arrears Committee⁶ and the Law Commission in its 58th Report⁷ is the inconvenience to which the assessee would be subjected if, when they feel aggrieved, they have to go outside their State in appeal

Inconvenience to assessee.

¹Direct Tax Laws Committee Report (September 1978), pages 173-175 para II-6.10 to II-6.22.

²Para 17.8 *supra*.

³See also para 17.5, *supra*.

⁴Para 17.7, *supra*.

⁵Para 17.8, *supra*.

⁶Para 17.9, *supra*.

⁷Para 17.9, *supra*.

or reference against the order of the Appellate Tribunal. It is plain that according to the Report of the Chokshi Committee,¹ the proposed Central Tax Court would not function in all the States. This would make it necessary in quite a number of cases for the assessee to go to other States for approaching the Central Tax Court.

Conflicting views unavoidable.

17.12. It is, no doubt, true that the disposal of references by the various High Courts sometimes results in different and conflicting views. This in the very nature of things, cannot be helped. It, however, needs to be mentioned that as stated elsewhere,² the Appellate Tribunal³ is empowered to make a reference direct to the Supreme Court of a question of law, if the Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court.

IV. SUBSTITUTION OF APPEAL FOR REFERENCE

Substitution of appeal for reference.

17.13. A view has also been expressed that the present procedure of the Appellate Tribunal making a reference to the High Court should be done away with, and, instead of that, an appeal should lie to the High Court against the order of the Tribunal on a question of law or a substantial question of law. The position, as already noted⁴ is that an appeal lies from the Income Tax Authority concerned to the Appellate Tribunal on a question of fact as well as law⁵. The finding of the Appellate Tribunal on questions of fact is final.⁶ In case, however, the assessee or the department feels aggrieved with regard to the finding of the Appellate Tribunal on a question of law, it can file an application to the Appellate Tribunal under section 256(1) of the Income Tax Act, 1961, within the prescribed time, for a reference to the High Court on the question of law arising out of the order of the Tribunal.⁷ If the Appellate Tribunal finds, after issuing notice to the opposite party, that a question of law arises out of its order, it draws up a statement of case and refers to the High Court the formulated question of law.

If the Appellate Tribunal declines to make a reference to the High Court, it is open to the aggrieved person to apply to the High Court under sub-section (2) of section 256 of the Income Tax Act for an order directing the Appellate Tribunal to make a reference to the High Court regarding the question of law about which the Tribunal had declined to accede to the prayer of the applicant. The High Court in such application can, after hearing both the parties, make an order if the circumstances of the case so warrant, directing the Appellate Tribunal to refer the question of law to the High Court. In pursuance of the order of the High Court the Appellate Tribunal draws up a statement of case and refers the formulated question to the High Court.

Advantage of appeal.

17.14. The advantage of doing away with the reference, and substituting in its place a right of appeal, is that the time spent before the Appellate Tribunal in proceedings for referring the question of law to the High Court would be saved. It would also obviate the necessity of filing applications under sub-section (2) of section 256 of the Income Tax Act⁸ in those cases in which the Appellate Tribunal has declined to make a reference about a question of law to the High Court.

Advantage of reference.

17.15. As against the above, the advantage of adhering to the present system of reference is that the time spent at the hearing of the reference is much less, compared with the time which the hearing in the High Court would take if the matter is taken up before it by way of appeal. In a reference, the High Court has before it the statement of the case drafted by the Appellate Tribunal. The statement of the case contains all the relevant facts, and in most cases it is a statement which is agreed to by both the parties to the case. The statement of case, as already mentioned⁹ formulates the question of law which has

¹Para 17.9. *supra*.

²See para 17.17. *infra*.

³Section 256, Income Tax Act, 1961.

⁴Para 17.3. *supra*.

⁵Section 253(1), Income Tax Act.

⁶Para 17.3. *supra*.

⁷Section 256(1), Income Tax Act, 1956.

⁸Para 17.12. *supra*.

⁹See para 17.12, *supra*.

to be answered by the High Court. At the time of the hearing, the High Court, after looking at the statement of case, straightaway proceeds to hear arguments on the question of law. As against the above, in the event of an appeal, the High Court would have to cull out the necessary facts from the order of the Appellate Tribunal and also to find out the question of law which would arise. This would result in greater time being spent at the time of hearing. We may state that both the High Courts Arrears Committee and the Law Commission in its 58th Report have dealt with this question.

17.16. The High Courts Arrears Committee presided over by Mr. Justice Shah observed in this respect as under¹ :— View of Shah Committee.

"43. This procedure under our administrative system is entirely archaic and is capable of being an instrument of great injustice. It would be wise to do away with all complicated provisions relating to the application for stating a case either under the order of the Tribunal or the High Court or the Supreme Court and to confer upon the aggrieved litigant a right to appeal from the order of the Tribunal on questions of law, on points raised and/or argued before the Tribunal. It would be necessary to impose certain restrictions on the exercise of that right—

(a) that the appeal shall lie only on questions of law raised and/or argued before the Tribunal; and

(b) that absence of evidence to justify a finding or a perverse finding be deemed a question of law."

17.17. The Law Commission, in its 58th Report, observed as under² :—

"6.13. In regard to the present provisions relating to the reference proceedings, there appears to be almost complete unanimity for deleting them and for substitution of an appeal in their place; and this trend of opinion can be well appreciated, because it is common experience that the procedure of reference, at present contemplated by section 256, is dilatory and serves no significant or important purpose. We ought to add that if proceedings relating to reference are omitted from section 256, it is certain that the decisions of the Income Tax Appellate Tribunal would naturally be more elaborate and conform to the traditional requirements of appellate judgment. We are, therefore, satisfied that the present provision about reference should be deleted. We shall deal later with the question of the procedure to be substituted in their place." View of Law Commission (58th Report).

"6.23. Therefore, having carefully examined this problem, we are satisfied that the only reasonable solution, which may tend to make the disposal of tax matters more satisfactory and expeditious, would be to delete the present provision relating to reference (section 256, Income Tax Act) and to provide for an appeal against the decision of the Income Tax Appellate Tribunal on a substantial question of law instead of on a simple question of law, as at present, and also to provide that against the appellate decision of the High Court, it should be open to the aggrieved party to move the Supreme Court with a certificate of the High Court that the case involves a substantial question of law of general importance which needs to be decided by the Supreme Court."

17.18. It may also be mentioned that if on an application made under section 256, the Appellate Tribunal is of the opinion that on account of a conflict in the decisions of the High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.^{3,4} Direct reference to Supreme Court by the Appellate Tribunal.

17.19. Since the matter about the substitution of appeal in place of reference against the order of the Tribunal has already been dealt with⁵ by the High Courts Arrears Committee and the Law Commission in its 58th Report, sent in 1974, we do not propose to say anything further in the matter. No further comments.

¹High Courts Arrears Committee Report (1972), page 60, para 43.

²Law Commission of India, 58th Report (Structure and Jurisdiction of the Higher Judiciary), para 6.13 and 6.23.

³Section 257, Income Tax Act, 1961.

⁴See also para 17.11, *supra*.

⁵Para 17.15 and 17.16, *supra*.

APPEALS TO COURTS SUBORDINATE TO THE HIGH COURT

I. CIVIL AND CRIMINAL APPEALS IN SUBORDINATE COURTS

- Civil appeals in subordinate courts. **18.1.** First appeals in the courts subordinate to the High Court constitute an important stage of litigation in quite a large number of cases. In order to cut short the chequered course of litigation, one of the major steps which will have to be taken would be to reduce the time consumed for the disposal of appeals in the courts subordinate to the High Court. The chart given on page No. 71 indicates the number of appeals pending at the district level in the various States in the country in 1978.
- Criminal appeals to subordinate courts. **18.2.** The chart given on page No. 71 also indicates the number of criminal appeals and revisions pending in the Sessions Courts in the various States during the year 1978.
- Forum of civil appeals and criminal appeals. **18.3.** So far as civil appeals from decrees passed by the trial courts are concerned, they lie to the High Court or the District Judge or the Subordinate Judge, by whatever name he is described in the State, depending upon the valuation of the suit as provided in the Civil Court Act in force in that particular State.

Criminal appeals lie to the Court specified in the Code of Criminal Procedure.

Any person convicted on a trial held by a sessions judge or an additional session judge can appeal to the High Court. Any person convicted on a trial held by any other court in which a sentence of imprisonment for more than 7 years has been passed can appeal to the High Court.

Any person convicted on a trial held by an Assistant Session Judge or a Metropolitan Magistrate or a Magistrate of the first or the second class may appeal to the court of session.¹ There are certain limitations as to appeals in petty cases.²

Appeals against a sentence on the ground of its inadequacy and appeals against acquittals lie to the High Court, subject to certain conditions.³

II. PECUNIARY LIMITS OF APPELLATE JURISDICTION OF THE DISTRICT JUDGE

- Present law. **18.4.** Coming more specifically to the pecuniary limits of the appellate jurisdiction of the District Judge, we may state that the limits of such jurisdiction vary from State to State.⁴ For example, the appellate jurisdiction of the District Judge in Gujarat, Himachal Pradesh, Kerala and Rajasthan is Rs. 10,000/-. In Andhra Pradesh, it is Rs. 15,000/-, but a proposal to raise it further is stated to be under consideration. In Maharashtra⁵ according to the Bombay Civil Courts Act, 1869, the appellate limit has been raised to Rs. 25,000/-.
- Need for change in valuation. **18.5.** The regulation of appellate jurisdiction on the basis of valuation is sound in principle, but it has to be kept in mind that the amount for the purpose of jurisdiction has to be fixed according to the conditions as they prevail when the fixation is made; and such amount ought to be revised with the changing conditions. As far back as 1949, the High Court Arrears Committee,⁶ set up by the Government under the Chairmanship of Mr. Justice S. R. Das for enquiring

¹Section 374, Cr. P.C., 1973.

²Section 376, Cr. P.C., 1973.

³Sections 377 and 378, Cr. P.C., 1973.

⁴See Appendix I.

⁵For details of appellate jurisdiction of District Judge, see Appendix I.

⁶High Courts Arrears Committee Report (1949), quoted in 14th Report, Vol. I, page 370, para 12.

Position of Institution, Disposal and Pendency In Criminal and Civil Courts During 1976, 1977 and 1st Half Year of 1978.

| | Institution | | | | | Disposal | | | | | Pendency as on | | | | |
|---------------------------|----------------------|-----------------------|----------------------|-----------------------|----------------------|----------------------|-----------------------|----------------------|-----------------------|----------------------|----------------|-----------|-----------|-----------|------------|
| | 1-1-76 to 30-6-76 | 1-1-76 to 31-12-76 | 1-1-77 to 30-6-77 | 1-1-77 to 31-12-77 | 1-1-78 to 30-6-78 | 1-1-76 to 30-6-76 | 1-1-76 to 31-12-76 | 1-1-77 to 30-6-77 | 1-1-77 to 31-12-77 | 1-1-78 to 30-6-78 | 30-6-76 | 31-12-76 | 30-6-77 | 31-12-77 | 30-6-78 |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
| CRIMINAL | | | | | | | | | | | | | | | |
| <i>Sessions Courts</i> | | | | | | | | | | | | | | | |
| Original | 31,267 | 62,920 | 36,791 | 92,763 | 53,258 | 25,769 | 53,955 | 34,899 | 89,838 | 52,338 | 60,264 | 64,548 | 66,716 | 67,992 | 68,975 |
| Revision | 19,470 | 37,401 | 16,343 | 36,848 | 21,210 | 18,542 | 35,553 | 17,272 | 35,920 | 19,938 | 19,552 | 19,239 | 18,035 | 19,841 | 21,104 |
| Appeals | 33,878 | 79,853 | 34,750 | 71,990 | 34,082 | 30,377 | 64,436 | 34,960 | 71,741 | 32,996 | 38,035 | 42,098 | 41,620 | 42,103 | 43,184 |
| TOTAL | 84,615 | 1,71,174 | 87,884 | 2,01,601 | 1,08,550 | 74,688 | 1,53,944 | 87,131 | 1,97,499 | 1,05,272 | 1,17,851 | 1,25,885 | 1,26,371 | 1,29,936 | 1,33,263 |
| <i>Magisterial Courts</i> | | | | | | | | | | | | | | | |
| Police challans | 28,96,670 | 58,96,900 | 25,54,903 | 49,55,288 | 24,31,578 | 26,85,136 | 56,89,229 | 26,21,523 | 50,83,161 | 22,46,893 | 26,14,391 | 27,32,279 | 26,40,119 | 25,75,815 | 27,57,897 |
| Complaint cases | 13,18,638 | 27,00,166 | 11,61,536 | 23,56,947 | 11,19,001 | 12,53,847 | 25,05,190 | 11,64,839 | 22,57,253 | 11,11,522 | 16,09,226 | 17,39,866 | 17,08,739 | 17,78,975 | 17,86,328 |
| TOTAL | 42,15,308 | 85,97,066 | 37,16,439 | 73,12,235 | 35,50,579 | 39,38,983 | 81,94,419 | 37,86,362 | 73,40,414 | 33,58,415 | 42,23,617 | 44,72,145 | 43,48,858 | 43,54,790 | 45,44,225 |
| CIVIL | | | | | | | | | | | | | | | |
| <i>Original side</i> | | | | | | | | | | | | | | | |
| Regular Suits | 4,53,004 | 9,26,851 | 4,57,592 | 9,76,634 | 4,79,245 | 41,2,004 | 9,12,121 | 4,36,800 | 9,23,747 | 4,31,700 | 13,40,807 | 13,17,821 | 13,37,966 | 13,70,071 | 14,17,002 |
| Miscellaneous cases | 5,86,352 | 12,89,583 | 5,75,068 | 12,92,314 | 5,95,007 | 5,42,359 | 12,48,554 | 5,63,683 | 12,73,021 | 5,74,945 | 7,19,263 | 7,18,225 | 7,31,906 | 7,39,915 | 12,14,196* |
| TOTAL | 10,39,356 | 22,16,439 | 10,32,660 | 22,68,948 | 10,74,252 | 9,55,003 | 21,60,715 | 10,00,483 | 21,96,768 | 10,06,645 | 20,60,070 | 20,36,046 | 20,69,872 | 21,09,986 | 26,31,198 |
| <i>Appellate Side</i> | | | | | | | | | | | | | | | |
| Regular appeals | 61,596 | 1,27,051 | 63,574 | 1,36,901 | 66,284 | 54,980 | 1,22,071 | 62,312 | 1,32,922 | 64,140 | 1,37,710 | 1,34,659 | 1,36,363 | 1,39,086 | 1,41,156 |
| Miscellaneous appeals | 37,967 | 85,012 | 34,279 | 70,066 | 33,673 | 35,711 | 80,741 | 36,220 | 75,803 | 33,473 | 55,985 | 57,660 | 55,493 | 51,690 | 51,862 |
| TOTAL | 99,563 | 2,12,063 | 97,853 | 2,06,967 | 99,957 | 90,691 | 2,02,812 | 98,532 | 2,08,725 | 97,613 | 1,93,695 | 1,92,319 | 1,91,856 | 1,90,782 | 1,93,018 |

*This increase in pendency is due to 454463 Karnataka Agriculturist Debt. Relief Act cases which were not included previously.

and reporting, besides other matters, as to the advisability of curtailing the right of appeal and revision and the extent and method by which such curtailment should be effected, observed that 30 to 40 per cent of the first appeals in the High Court arose out of suits valued at Rs. 10,000/- or less, and that "considering the depreciation which has taken place in the value of money and the consequent rise in the market value of the property generally, there does not appear to be any cogent reason why the District Court should not be vested with jurisdiction to dispose of first appeals upto Rs. 10,000/-". It may be mentioned that the jurisdiction of the District Judge for purposes of civil appeals was Rs. 5,000/- in most States when the above observations were made.

18.6. In the Report of the High Courts Arrears Committee, presided over by Mr. Justice Shah, this aspect was again stressed.¹ The Committee stated that disputes concerning transactions in immovable property and commodities that were then brought before the High Court by way of first appeals were such as did not reach the High Court in the earlier decades. The Committee also recommended Rs. 20,000/- as the minimum for the appellate jurisdiction of the High Court.

Need to raise appellate jurisdiction of District Judges. **18.7.** The pecuniary appellate jurisdiction of the District Judge was fixed long ago in most of the States. Since then, there has been a considerable depreciation in the value of the rupee and we feel that it would be appropriate if the pecuniary appellate jurisdiction of the District Judge is raised. This would also have the effect of relieving the workload in the High Courts. No doubt it would give rise to a corresponding rise in the workload of the District Judge and this might, in its turn, entail the appointment of more persons as District Judges or Additional District Judges. Despite this, we are of the view that the pecuniary appellate jurisdiction of the District Judge should be raised, because we find that the time normally taken for the disposal of an appeal in the court of District Judge is less than the time taken in the High Court and also because the cost involved in an appeal in the District Court is less than that in the High Court.

Whether uniform figure feasible. **18.8.** This takes us to the next question as to what should be the pecuniary jurisdiction of the District Judge, and whether we should have a uniform figure for the different areas in the country. We have given our thought to the matter and are of the view that it would not be desirable to fix a uniform figure for the entire country. The circumstances vary from State to State and place to place. The impact of the depreciation in the value of the rupee is also not felt to the same extent in different areas.

Recommendation. **18.9.** We have, therefore, refrained from suggesting a uniform figure for the pecuniary appellate jurisdiction of the District Judge. All that we can point out² is that the pecuniary appellate jurisdiction of the District Judge has been raised to Rs. 25,000/- in one State and that in some other States it has been raised to Rs. 20,000/-. As already mentioned,³ it would depend on local conditions in each State as to what figure should be fixed for the purpose of appellate jurisdiction of the District Judge. Accordingly, we leave the matter to the authorities in each State.

These remarks would also hold good so far as the question of enhancing the appellate jurisdiction of subordinate judges (by whatever nomenclature they are described) is concerned.

Appeals of higher value to continue to be heard by High Courts. **18.10.** At the same time, we are averse to increase inordinately the pecuniary appellate jurisdiction of the District Judge. Appeals in cases of higher values in our opinion, should continue to be decided by the High Courts, because the High Courts, by and large, inspire greater confidence.

III. NUMBER OF COURTS AND ALLOTMENT OF DAYS

Number of appellate courts and allotment of days for civil appeals—Recommendation. **18.11.** One important step which will have to be taken with a view to curtailing the time taken for the disposal of civil appeals is to ensure that the number of appellate courts in each district is sufficient to deal with the volume of appeals instituted in the district. As it is, we find that these appeal remain pending

¹High Courts Arrears Committee Report (1972), page 63, para 55

²See Appendix 1.

³See para 18.8, *supra*.

in the courts subordinate to the High Court for a long time because of the low priority which is accorded to them in the matter of disposal. It has been common experience that the appeals fixed in the court of District Judge are seldom taken up for hearing on the first or second date of hearing. The parties and their counsel attend the court on those dates and after waiting for a considerable time have to go back because the presiding officer of the court is pre-occupied with the recording of evidence in a sessions case or has to deal with some other matter to which preference is shown for the purposes of disposal. It is one thing if such a situation were to arise on a few occasions or in a small number of cases. Where, however, it becomes almost a matter of rule and civil appeals get repeatedly adjourned for want of time because of the pre-occupation of the presiding officer with other cases, the inevitable effect is to create a feeling of dissatisfaction and frustration amongst the litigant public. It also results in what we regard as unnecessary and avoidable prolongation of the course of litigation. We recommend that the courts subordinate to the High Court vested with appellate jurisdiction should set apart a number of days every month for the disposal of civil appeals. On those days, except for some compelling reason, the only cases, apart from miscellaneous matters, to be listed before the court should be civil appeals. Where, however, the workload of the pending file in a particular court (that is to say, the general workload apart from appeals) is so heavy as not to permit the setting apart of a number of days in a month exclusively for the disposal of civil appeals, recourse should be had to increasing the number of appellate courts in the district, so that the appeals can be disposed of without undue delay.

18.12. It needs to be emphasised that the time required for the disposal of an appeal is much less compared with that taken for the disposal of the original suit. So far as appeals in the courts subordinate to the High Court are concerned, generally they are not of a very complicated nature, and if a number of days were earmarked in each month for dealing exclusively with such appeals we see no particular reason as to why they should remain pending for an unduly long time. Normally, in our opinion, it should be possible to dispose of most of the civil appeals in the courts subordinate to the High Court within six to nine months of their institution. The objective of expeditious disposal of appeals in those courts, in our opinion, can be attained without much difficulty if only proper attention is given for this purpose. The problem in this respect is not intractable. Of the three problems of delay which face us, namely, those relating to—

Time required for disposal of civil appeals.

- (i) disposal of suits in trial courts,
- (ii) disposal of appeals in courts subordinate to the High Court, and
- (iii) disposal of appeals in the High Courts,

we feel that the problem at No. (ii) is the easiest of solution. It can be tackled by just increasing the number of the appellate courts and the increase which would be needed for this purpose would be rather small and insignificant compared with the increase in the number of courts necessary for dealing with problems at No. (i) or (iii).

18.13. What we have said above about civil appeals also holds good for criminal appeals in the courts subordinate to the High Court. We have already given the number of those appeals pending in the various States. With a little increase in the number of those courts, it would be possible not only to keep the disposal abreast of the institution but also to reduce the backlog of arrears. Criminal appeals too are accorded low priority. Experience tells us that quite often they have to be adjourned because the presiding officer of the court is pre-occupied with the disposal of some sessions or other important case. Whatever steps we have indicated above regarding civil appeals² can also be adopted for the disposal of criminal appeals. Increase in the number of courts of Additional District and Sessions Judges would be helpful in expediting disposal of both civil and criminal appeals, as these courts can deal with both types of appeals. It can also sometimes happen that there is not enough work for the court of Additional District and Sessions Judge which may be created for one district. In such an event, the Additional District and Sessions Judge can look after the appeals in two adjoining districts.

Number of courts and allotment of days for criminal appeals.

¹Para 18.2. *supra*.

²Para 18.3 to 18.12, *supra*.

Number of Public Prosecutors. **18.14.** One difficulty which sometimes has been encountered in the disposal of criminal appeals is that there are not enough number of public prosecutors for each district. Most often one public prosecutor has to look after criminal cases in more than one Sessions Court. This actually leads to the situation that when criminal cases are called in both the courts, the public prosecutor can attend to cases in only one of them. The result is that the cases in one of the courts either proceed without effective representation of the public prosecutor, or have to be adjourned. Either of the results is undesirable. We are, therefore, of the opinion that there should be as many public prosecutors in each district as are adequate to deal with criminal cases as and when they are called in the different courts.¹

IV. CONCISE NOTE OF ARGUMENTS

Concise note of arguments not necessary in civil appeals in subordinate courts. **18.15.** In the Chapter dealing with arguments and judgments² we have made a recommendation that in regular first appeals to the High Court the parties should file a concise note of arguments. We have considered the question whether the filing of a concise note of arguments should be similarly made compulsory in regard to civil appeals in the courts subordinate to the High Court, and have decided against such a course. The reason is that generally, appeals in those courts are, as already mentioned,³ not of a very complicated nature. The time taken for arguments in those courts is also much less compared with that taken for arguments in regular first appeals in High Courts. Stenographic assistance is also not available in those courts to the same extent as in the High Courts. Taking all these circumstances into consideration and keeping in view the existing conditions we do not regard it proper at present to make the filing of concise notes of arguments compulsory for civil appeals in these courts.⁴

¹Cf. 77th Report, para 12.14.

²Para 6.19, *supra*.

³See para 18.12, *supra*.

⁴See also para 6.25, *supra*.

CHAPTER 19

HIGH COURT FOR GOA, DAMAN AND DIU

19.1. While the territories throughout the length and breadth of Union of India are subject to the jurisdiction of some High Court, the Union Territory of Goa, Daman and Diu stands in a different position. The highest court for this territory is that of the Judicial Commissioner. Appeals against the judgments of the Judicial Commissioner can, of course, lie to the Supreme Court as against judgments of High Courts. Income tax references relating to the above territory lie to the High Court at Bombay.¹ Apart from that, writ petitions relating to that territory are filed in, and disposed of by, the court of the Judicial Commissioner.² Likewise, civil and criminal appeals against the judgments of District and Sessions Judges and subordinate courts lie to the court of the Judicial Commissioner.

Present position as to Goa, Daman and Diu.

19.2. In our opinion, the present disparity³ between the Union Territory of Goa, Daman and Diu and other parts of India, which is primarily due to the accident of history, should be done away with as soon as possible, and the above territory should also be made subject to the jurisdiction of a High Court. Considering the fact that the population of the territory is not very large, it may not be feasible to have a separate High Court for it. It seems to us more appropriate to extend the jurisdiction of another High Court to the territory. A circuit Bench of that High Court can sit in the territory for the disposal of cases arising in the territory. Creation of such a circuit Bench would obviate the necessity of people belonging to the territory being forced to go to any other State for approaching the High Court. It would also prevent the chance of cases arising in the territory getting submerged in the large number of cases of the State wherein the High Court already exercises jurisdiction. Not to post a circuit Bench of the High Court in this territory would necessarily cause heart-burning in the people belonging to the territory.

Recommendation.

19.3. Members of the Bench and the Bar in the Union Territory with whom the Chairman of the Commission held discussion during his visit to the Union Territory were definitely of the view that for this Union Territory, jurisdiction should be conferred on some High Court, so that its inhabitants may have access to justice of the same quality as the inhabitants of the rest of India at every level.

View of the Bench and the Bar.

19.4. It may also be mentioned that for the Union Territory of Dadra and Nagar Haveli, jurisdiction has been conferred on the Bombay High Court.⁴ The Dadra and Nagar Haveli Act provides that as from such date as the Central Government may, by notification in the Official Gazette, specify, the jurisdiction of the High Court at Bombay shall extend to Dadra and Nagar Haveli. The requisite notification was issued⁵ so as to take effect from 1st July, 1965.

Dadra and Nagar Haveli.

¹Sections 256 and 269(vi), Income Tax Act, 1961.

²Judicial Commissioners (Declaration as High Courts) Act, 1950.

³Para 19.1, *supra*.

⁴Section 11, Dadra and Nagar Haveli Act, 1961, (35 of 1961).

⁵S.O. No. 1957, dated 15th June, 1965, Gazette of India, dated 17th June, 1965, Part II, section 3(ii), Extraordinary page 579.

CHAPTER 20

CONCLUSION

Details avoided. **20.1.** We are now coming to the close of our Report. We have deliberately avoided burdening this Report with too much of detail or too many statistics. Having regard to the paramount importance of prompt action for implementing such of our recommendations as may be found acceptable, and bearing in mind the need for presenting our views in a form that may facilitate such prompt action, we have considered it wise to confine ourselves to the essentials of the problem.

Search for solutions to be regarded as a quest. **20.2.** It should not, however, be assumed that the adoption of the various measures recommended in this Report will solve the problem of arrears for all times to come. We have no such illusions, and would prefer to be a little sceptic till the implementation of our recommendations. The search for a permanent solution to the problem would be futile. In human history, in the long run, there are no solutions—only problems. The search for a solution must, therefore, be a continuous process. It is a quest, not a discovery.¹

In the affairs of men—and particularly in a field in which many complex factors operate together and in which a satisfactory solution postulates a consideration of several aspects in conflict with each other—a permanent solution would be difficult. This or that aspect may with the passage of time, become prominent and others may shade into insignificance. No solution, even if it is satisfactory for the needs of the moment, would be effective for all times to come. Experience may reveal the inadequacy, or even the total inappropriateness, of a particular assumed solution; and fresh efforts may then have to be made to devise measures for dealing with the problem. This is precisely the reason why in most countries with whose legal systems we are familiar, the problem of delay and arrears in courts had to be examined more than once in the course of, say, the last half a century.

Periodical re-definition of methods. **20.3.** In this sense, the quest for a solution must be continuous and the system must be kept under constant review. Each fresh effort must assess the gains that might have already been made, take into account the shortcomings which might have come to the surface and the deficiencies which have made themselves manifest, and in the light of that, re-define the methods and seek new solutions.

Similarity with past recommendations and need for implementation. **20.4.** Perusal of this Report would show that though we have made a number of new fresh recommendations, there are certain other matters about which our recommendations are more or less similar to those that have been made already by the various Committees and Commissions which have, in the past, dealt with the question of delay and arrears. The similarity of those recommendations, in the very nature of things, is inevitable and cannot be helped. The response of those who have spent many years in the world of law to some of the problems faced in the working of the judicial system cannot be very dissimilar or much different, and it should not be surprising if we find a trend towards similarity of the remedies suggested by them. The fact that, like other Committees and Commissions appointed for the purpose in the past, we have had to pin-point attention to the desirability of resorting to substantially similar steps and measures in quite a number of fields goes to show that much remained to be done in the matter of implementing the recommendations made in the past by the various Committees and Commissions. It is in the above context that we wish to emphasise that, unless there be positive will and strong desire to give concrete and practical shape to the recommendations, the problem of delay and arrears would dog our steps in the judicial field. It is also plain that there cannot be much satisfaction in having Reports of Committees and Commissions, if those Reports are ultimately to be shelved in pigeon holes to gather dust and to be taken out only when a future Committee or Commission is again entrusted with the task of dealing with delays and arrears.

¹Daniel Borstin (Librarian of Congress) "Democracy and its Discontents", extracted in "Technology and Democracy" (Autumn 1978) American Review, 66, 72.

20.5. Finally, we may add that any report that deals with the question of delay in the disposal of judicial cases and the heavy backlog of arrears can bear fruit only if prompt action is taken on the report and there is speedy implementation of such of the recommendations contained therein as are found to be acceptable. A report dealing with the question of delay must be distinguished from a report dealing with the review of a particular enactment or code. A report of the former kind has an urgency of its own, and it is but imperative that there should be no undue delay in taking action on report which itself deals with the question of eliminating delay. Need for speedy implementation.

CHAPTER 21
SUMMARY OF MATTERS DEALT WITH

Following is a summary of matters dealt with in the Report.

1. Introductory.

(1) The High Courts in India exercise a variety of jurisdictions, affording a variety of remedies; these are necessary for ensuring the proper administration of justice and enforcement of legal rights. However, the problem of piling arrears, aggravated by increased institution and delay in appointing judges, requires to be attended to without delay.¹

(2) Speedy justice is essential to an organised society. At the same time, the basic norms for ensuring justice cannot be dispensed with.² The judicial process in India has commanded the confidence of the Indian community.³ To maintain the confidence, delay and arrears should be attended to.

(3) Various efforts have been made so far to solve the problem.⁴ Mere legal amendments cannot, however, solve a problem created by increased institution. Nor can mere statutory reforms achieve improvement, as there are human factors involved,⁵ and improvements operating within the judicial system can have only a limited impact.

(4) To prevent arrears, disposal must maintain pace with institution. The backlog must also be attended to. There have been legal as well as extra-legal factors, leading to increased workload. Nevertheless, the problem is curable if all concerned set their hearts at it.⁶

(5) Certain norms have to be prescribed to determine the cases which can be treated as old. (Specific periods of durations are set out).

(6) A good deal of litigation being one to which the Government is a party, its departments should afford all reasonable co-operation to the judicial process.⁷

(7) The figures show that arrears have been continuous; that their rate itself has gone up; and that they are of an all-India extent.⁸

2. Jurisdiction of High Courts and City Civil Courts.

(8) High Courts in the three Presidency towns exercise ordinary original civil jurisdiction, and also several other species of jurisdiction,⁹ though their burden has been somewhat reduced by establishing City Civil Courts.

All High Courts have extra-ordinary original jurisdiction, original jurisdiction in election petitions, and appellate and revisional jurisdiction, writ jurisdiction and power to punish for contempt.¹⁰

(9) High Courts hear references under various laws and also have civil revisional and supervisory jurisdiction.¹¹

(10) For historical and other reasons, judicial business in the High Courts also presents considerable variety.¹²

(11) The writ jurisdiction has played a notable part in the development of constitutional and administrative jurisprudence.¹³

¹Para 1.1 to 1.4.

²Para 1.5 to 1.6.

³Para 1.7.

⁴Para 1.8 to 1.14; also para 1.20.

⁵Para 1.15 to 1.17.

⁶Para 1.3 and 1.29.

⁷Para 1.30.

⁸Para 1.31 to 1.37.

⁹Para 2.1, 2.2 and 2.14 to 2.17.

¹⁰Para 2.3 to 2.5.

¹¹Para 2.6 and 2.7 to 2.10.

¹²Para 2.11 and 2.12.

¹³Para 2.12.

3. Strength of High Courts : numerical and qualitative aspects.

(12) Institution being in excess of disposal, any scheme for improvement must ensure that:—

- (i) the disposal is not less than the institution; and
- (ii) the heavy backlog is reduced—one quarter be cleared in one year 'Increase in judges' strength is unavoidable.¹

(13) Permanent strength of each High Court should be fixed and reviewed, keeping in view the average institution during the preceding three years.²

(14) For clearing arrears, additional and *ad hoc* judges should be appointed. However, it is not advisable to have only additional judges for the purpose as, ordinarily, persons so appointed should not be sent back to the profession or to their substantive judicial posts.³

(15) Recommendation of the Chief Justice (for the appointment of Judges) should be attended to promptly. An outside limit of six months should be observed in this regard.⁴

(16) For clearing arrears, Article 224A of the Constitution may be availed of. Retired Judges, who had a reputation for efficiency and quick disposal, and who retired within three years, be reappointed *ad hoc* under this article. Persons who have retired from other High Courts can also be considered.⁵ The appointments should be normally for one year, to be extended by further periods of one year each, upto a total of three years.

(17) The Chief Justice can play a pivotal role in securing disposal.⁶

(18) The best persons should be appointed on High Court benches, the over-riding consideration being merit.⁷

(19) Service conditions of judges should also be improved in order to attract persons of the right calibre.⁸

(20) Increase in the number of judges must also take into account the need for more court rooms, staff, and law books.⁹

(21) Punctuality should be adhered to, and court timings duly observed.¹⁰

4. Appellate jurisdiction

(22) Giving finality to decisions of the trial courts may solve congestion in courts, but every litigant expects the best possible justice. Hence the need for 'one good appeal on facts and on law.'¹¹

(23) The Indian procedural law has provided for appeals in original suits, according to a pattern now well known.¹²

It is not advisable to curtail the right of appeal under the present scheme (one appeal on facts and law, and second appeal on a substantial question of law).¹³

Ways and means of expediting the hearing of appeals constitute the real remedy.¹⁴

¹Para 3.1 to 3.7.

²Para 3.8.

³Para 3.9.

⁴Para 3.10.

⁵Para 3.12 and 3.13.

⁶Para 3.14.

⁷Para 3.15.

⁸Para 3.16.

⁹Para 3.17.

¹⁰Para 3.18.

¹¹Para 4.1 to 4.3.

¹²Para 4.4 to 4.7.

¹³Para 4.9 and 4.10.

¹⁴Para 4.11.

5. Procedure in appeals : General

(24) Delay occurs in making the appeal ready for hearing at various stages.¹

(a) As to time taken in obtaining copy of the judgment, Order 20, Rules 6A and 6B, Code of Civil Procedure (newly inserted) would expedite the filing of appeal without waiting for certified copies² of the judgment and decree.

(b) If an appeal is filed beyond the prescribed time, Order 4, Rule 3A of the Code now requires that the application for extension of time should be first decided.³

(25) As to scrutiny, the court should register the memorandum of appeal within seven days of its presentation and, within that period, the office should note all the defects therein. The appellant should be directed to cure the defect within a specified time limit (not exceeding fifteen days), subject to extension by the Registrar for further fifteen days failing that the appeal⁴ should, without further delay, be placed before the court for necessary order.

(26) Administrative machinery for the scrutiny of appeals should be toned up.⁵

(27) Elimination of preliminary hearing of appeals is not favoured. It would encourage the filing of frivolous appeals, particularly to seek interim relief.⁶

(28) (a) The appellant should be required to produce, along with the memorandum of appeal, printed forms furnished in duplicate, duly filled up.⁷

(b) The appellant should also file as many copies of the memorandum as there are respondents, and additional number of copies for the court.⁸

(c) Charges or process fee for service should also be paid when the appeal is presented. The notice can be sent to the respondents by registered post, within a time to be fixed under the rules.⁹

(d) Early service of the notice of appeal will undoubtedly enable quick disposal of appeal.¹⁰

(29) Paper books are essential for ensuring proper hearing of appeals (particularly, hearing by benches), but there is scope for improvement in certain matters of detail.¹¹

(30) Record of the lower court, where required for appeal, should be promptly sent for by the High Court. Except in appeals against interlocutory orders, this should be done immediately on admission.¹²

(31) In appeals against interlocutory orders, the record should be sent for only if specifically ordered by the High Court.¹³

(32) The party who has to file a document etc. should get it translated by counsel. If that translation is questioned, the official translator will translate the document.¹⁴

(33) Except where the High Court otherwise directs, parties may be allowed to type or cyclostyle the records.¹⁵

¹Para 5.1 and 5.2.

²Para 5.3 and 5.4.

³Para 5.5.

⁴Para 5.6.

⁵Para 5.7 (Order 41, rule 11, Code of Civil Procedure referred to).

⁶Para 5.8 and 5.9.

⁷Para 5.10 and 5.11.

⁸Para 5.11.

⁹Para 5.12.

¹⁰Para 5.13 and 5.14.

¹¹Para 5.15.

¹²Para 5.16.

¹³Para 5.17.

¹⁴Para 5.18.

¹⁵Para 5.19.

(34) (a) On receipt of the record (from the lower court), the parties should be intimated.

(b) The appellant in all regular first civil appeals should file copies of the documents (listed in the Report) within four months of receipt of the record, or such further time as the court may allow.¹

(c) Within two weeks of filing (as above) of the paper books, the copies should be supplied to counsel for the respondent.²

(d) Within two months of the receipt of the above (or such further time as the court may allow), the respondents should file their paper books, containing copies of depositions, documents, etc. upon which they wish to rely and which have not been already filed by the appellant.³

(e) The respondent's paper books so filed should, within a week, be supplied to counsel for appellant and counsel for other respondents.⁴

[Reference to 'copies' above would include reference to translations.]⁵

(f) Documents exempted by the High Court for the purpose of printing need not be included in the paper book.⁶

(35) The above suggestions have been made for introducing uniformity and accelerating the process of preparation of paper books.⁷

(36) Powers regarding preparation of paper books may be delegated to the appropriate officer of the High Court, subject to a provision for orders of the court in cases of non-compliance. These orders would include dismissal of the appeal, award of costs or direction to hear the appeal without filing of further papers, so that the papers not filed will be barred from being referred to at the hearing.⁸

(37) Scrutiny by the office should see that unnecessary documents do not burden the paper book. If the court finds in the paper book irrelevant documents, it may order payment of the cost occasioned by their inclusion, irrespective of the ultimate result of the appeal.⁹

(38) In appeals or revisions against interlocutory orders, records of the court below should not be sent for, unless expressly ordered by the court. The petitioner or appellant should be required to file attested copies.¹⁰

(39) In such appeals or revisions, service may be effected on the counsel representing the respondent in the suit or proceeding in trial court¹¹ except in the case of injunction.¹²

6. Arguments and judgment in appeals

(40) A comparison of the English, American and Canadian system of arguments is made.¹³ The American system of written briefs was not favoured in England by the Evershed Committee, nor has the idea of dispensing with oral arguments found favour with Commonwealth jurisdiction.¹⁴

It would not be desirable to give up the system of oral arguments in India.¹⁵ Neither the Law Commission (in its 14th Report) nor the High Courts Arrears Committee, presided over by Mr. Justice Shah, favoured the substitution of written "briefs" in place of oral arguments.¹⁶

¹Para 5.20.

²Para 5.21.

³Para 5.22.

⁴Para 5.22.

⁵Para 5.23.

⁶Para 5.23.

⁷Para 5.24.

⁸Para 5.25.

⁹Para 5.25.

¹⁰Para 5.26.

¹¹Para 5.27 and 5.28.

¹²Para 5.28 (0.3, R. 43, C.P.C. to be amended).

¹³Para 6.1 to 6.11.

¹⁴Para 6.12 to 6.16.

¹⁵Para 6.17 to 6.20.

¹⁶Para 6.17 to 6.21.

(41) However, a concise statement of arguments filed in the High Courts before the commencement of the oral arguments would reduce the time taken by oral arguments and improve their quality,¹ and is recommended. Doing away with oral arguments is not contemplated.²

(42) Imposition of a time limit on arguments is not favoured. It may result in miscarriage of justice.³

(43) The scheme recommended (as to filing a concise statement of arguments) may be tried in the High Courts in regard to regular first appeals and petitions under Article 226 of the Constitution other than those seeking habeas corpus.⁴ The scheme will, however, be successful only if the Bar and the Bench work it in its true spirit.⁵

(44) Judgment should be pronounced within a reasonable time. It should be pronounced within a week of the conclusion of arguments, and the interval should not, in any case, exceed one month. A statement of cases in which judgments have not been pronounced within two months of the arguments should be circulated.⁶

(45) When dismissing a regular second appeal or a civil revision, the judges should write short judgments only.⁷

(46) Certain points concerning judgments discussed in detail in the 77th Report may also be seen.⁸

7. Grouping and listing of appeals.

(47) The system of listing should be such that matters which require prompt attention get it, and the situation of old cases getting older while new cases receive priority is avoided.⁹

(48) (a) Cases involving common questions of law should be grouped and posted together for hearing before the same Bench.¹⁰

In particular, appeals in land acquisition cases relating to different parcels of land in the same locality should preferably be put up together.¹¹

(b) Appeals involving points which, since the filing of the memorandum of appeal, have been settled by authoritative decisions should also be listed in one batch for disposal.¹²

(49) (a) The normal system should be that of a continuous list. There should be a ready list, containing particulars of all cases ready for hearing in chronological order according to the date of institution.

(b) From this ready list, the daily list should be drawn up in the same manner, and with reference to the date of institution. Cases should be taken up from this daily list seriatim, deviation being made only in exceptional circumstances.

(c) Adjournment of cases in the daily list should be an exception, not a rule.¹³

(50) Priority should be given to certain types of cases, which, because of their nature, require early disposal.¹⁴

¹Para 6.22.

²Para 6.23.

³Para 6.24.

⁴Para 6.25.

⁵Para 6.26.

⁶Para 6.27 and 6.28.

⁷Para 6.29.

⁸Para 6.30.

⁹Para 7.1 and 7.2.

¹⁰Para 7.3 and 7.4.

¹¹Para 7.5.

¹²Para 7.6.

¹³Para 7.7 and 7.8.

¹⁴Para 7.9 to 7.11.

(51) Cases should be assigned to judges with experience in the particular branches of law.¹

(52) (a) Benches constituted for particular classes of cases should be allowed to function for a reasonable length of time, so as to avoid part-heard cases being left when the Bench is disbanded.²

(b) Cases not disposed of by a disbanded Bench should be posted before the successor Bench or (if that is not immediately possible), posted for hearing without delay.³

8. First appeals (including appeals from City Civil Courts) to High Courts.

(53) Where the final hearing of an appeal is to be before a Division Bench, it should for admission also, be placed before a Division Bench.⁴

(54) Regular first appeals should be placed before a Division Bench for admission, hearing and disposal.⁵

(55) Decisions of a single judge on appeal should not be appealable to a Division Bench.⁶

(56) The structure and composition of City Civil Courts and the forum of appeal from their judgments, vary from State to State. In some States, there is provision for appeal from a judge of the City Civil Court to the Principal Judge or Chief Judge.

(57) No change in this respect is recommended. Local Legislation can deal with the matter, if necessary.⁷

(58) Dismissal of a regular first appeal in the High Court at the preliminary stage should be accompanied by brief reasons.⁸⁻⁹

9. Appeals under special Acts.

(59) As regards appeals under certain special Acts, rules made for the purpose should be observed scrupulously.¹⁰

(60) Typed copies supported by an affidavit may be accepted for paper books in such appeals.¹¹

(61) Appeals to the High Court under matrimonial legislation should be given priority.¹² The present procedure under the Indian Divorce Act, 1869 requiring confirmation of a decree of divorce causes delay and unnecessary expense, and should be done away with.¹³

10. Second Appeals.

(62) The search for absolute truth has to be reconciled with the doctrine of finality. At some stage, the decision on facts should become final. At the same time, any rational system of law should provide for taking cases to a specified superior court on a question of law, so that the 'immense unity of the law' may be maintained.¹⁴

(63) This aspect has a vital relation to the basic principle of law, namely, that there shall be a superior court to determine questions of law, whose decisions shall be binding precedents.

¹Para 7.12 to 7.15.

²Para 7.16.

³Para 7.17.

⁴Para 8.1 and 8.2.

⁵Para 8.3.

⁶Para 8.4.

⁷Para 8.5 to 8.10.

⁸0.41, R. 11, C.P.C.

⁹Para 8.11 and 8.12.

¹⁰Para 9.1.

¹¹Para 9.1.

¹²Para 9.2 and 9.3.

¹³Para 9.4 and 9.5

¹⁴Para 10.2.

These principles are implicit in section 100 of the Code of Civil Procedure.¹

(64) The object of section 100 is to achieve certainty of law; the mere dissatisfaction of a litigant with a judgment does not afford him a ground for second appeal.²

(65) Practical considerations (such as, the consideration that the amount involved is not large), have, however, necessitated a curb on the right of second appeal.³

11. Appeals against judgments of single judges.

(66) An appeal under the Letters Patent of the High Court (or corresponding instrument) lies to a Bench of the High Court against the decision of a single judge given in original proceeding, or in first appeals. In the latter case, it is virtually a second appeal.⁴

(67) The reason why hearing by a Division Bench is recommended in an earlier Chapter for regular first appeals is that there should be an application of plurality of minds.⁵ Other appeals may be heard by single judges, unless otherwise provided by law or directed by the judge.⁶

(68) Since judgments of a single judge on second appeal from subordinate courts are binding, even on matters of law, it is anomalous that the judgments of single judges lose their binding force when the matter is heard in first appeal. Judgments in first appeals decided by a single judge should be final, except where certificate or special leave is granted for appeal to Supreme Court.⁷

(69) Above discussion is not intended to affect the maintainability of appeals against the decisions of single judges *on the original side*.⁸

12. Civil Revisions.

(70) The scope of section 115 of the Code of Civil Procedure and its limitations should be borne in mind, since a rule *nisi* in revision holds up proceedings in the lower court. Greater care should be taken at the stage of admission of revisions.⁹

(71) As recommended in an earlier Chapter, in revisions against interlocutory orders, records of the court below should not be sent for, unless expressly ordered by the High Court. The petitioner should file copies of required pleadings, documents etc.¹⁰

13. Certificate for appeal to Supreme Court under article 133.

(72) In the past, applications for certificate of fitness for appeal to the Supreme Court against the judgment of a High Court were made some days after the pronouncement of the judgment, necessitating issues of notice to the opposite party and hearing of the application. A provision permitting an oral application on pronouncement of the judgment would have been more appropriate. However, now under the Constitution (44th Amendment) Act, the time previously consumed in proceedings for obtaining the certificate would be eliminated.¹¹

¹Para 10.3.

²Para 10.6.

³Para 10.7.

⁴Para 11.1 to 11.4.

⁵Para 11.4.

⁶Para 11.5 to 11.7.

⁷Para 11.4 to 11.7.

⁸Para 11.9.

⁹Para 12.1 and 12.2.

¹⁰Para 12.2 and 12.3.

¹¹Para 13.1 to 13.3.

✓ 14. Criminal appeals, revisions and references.

(73) Measures for expediting the hearing of criminal appeals will have to be mostly administrative. However, on certain matters, amendment is needed.¹

(74) A court dismissing a first appeal from conviction (whether it be the High Court or any lower court) should record a brief order, giving reasons for dismissal at the preliminary stage.²

(75) Single judges of High Courts should have power to dispose of all criminal appeals against convictions, except where a sentence of death or imprisonment for life has been passed.³

(76) The orders against which revisions may be filed are of infinite variety.

The jurisdiction of the Magistrate to award maintenance⁴ and the powers of the High Court to revise such orders, are assuming greater importance every day. Exercise of revisional jurisdiction in these proceedings has remedied serious injustice.⁵

15. Ordinary original civil jurisdiction of High Courts.

(77) At present, the High Courts of Delhi, Himachal Pradesh, Madras, Bombay and Calcutta try suits exceeding Rs. 50,000 in value.⁶

(78) The debate on the utility of such ordinary original civil jurisdiction is summarised. No change in the matter is, however, recommended.⁷

(79) Of the suggestions made in the 77th Report, such as are applicable in regard to proceedings in High Courts should be adopted to eliminate delay.⁸

16. Extraordinary original civil jurisdiction of High Courts : writs.

(80) (a) High Courts have extraordinary original civil jurisdiction derived from a number of sources.⁹ Occasions for the exercise of such jurisdiction may (in particular) arise on the withdrawal of a case by, or its transfer to, a High Court.¹⁰

(b) The Constitution has now also conferred on all High Courts power to issue writs.¹¹

With increased activities of the State, the writ jurisdiction has assumed importance.¹² The existing strength of judges is obviously not enough to cope with the pendency and to clear the backlog. Ways and means are needed to expedite the disposal of writ petitions.¹³

(81) To avoid delay in the disposal of writ petitions resulting from service where the respondent is a Government Department, the Advocate-General or Central Government Standing Counsel should accept notice on behalf of the Government. Consequential additional expenditure on staff would be worthwhile.¹⁴

¹Para 14.1 to 14.3.

²Para 14.5.

³Para 14.6.

⁴Section 125, Cr. P.C., 1973.

⁵Para 14.6 to 14.8.

⁶Para 15.1 to 15.6.

⁷Para 15.8 to 15.10.

⁸Para 15.11.

⁹Para 16.1.

¹⁰Para 16.2.

¹¹Para 16.3.

¹²Para 16.4.

¹³Para 16.4.

¹⁴Para 16.5 and 16.6.

(82) In service matters, where a large number of individual officers are impleaded, service of the notice of writ petition on them takes time, because of the frequent transfer of the officers. Instructions may be issued to the various departments of the Government that court notices, instead of being sent back to the court with the report that the officer is transferred should be re-directed to the new station of posting.¹

(83) To facilitate quick disposal, writ petitions should be required to be accompanied by a chronological statement of necessary facts.²

(84) Dismissal of writ petitions at the preliminary stage by a one-word order—'dismissed' causes delay, as later on the case is remanded on appeal. Issue of a show-cause notice is desirable and would narrow down the controversy.³

The notice should, however, be made returnable early, to avoid abuse of the provision for interim relief.⁴

(85) The High Court, while dismissing a writ petition, should record a short order giving reasons.⁵

(86) (a) For filing the counter-affidavit in writ petitions, rules should prescribe a time limit not exceeding three months from date of service of notice of admission.⁶ This time limit could be extended by the court, for sufficient cause, for a period generally not to exceed one month.⁷

(b) In every writ petition, the respondent must serve an advance copy of the counter-affidavit on the petitioner. A counter-affidavit not complying with the above requirements should not be accepted, and the case should be listed for hearing without the counter-affidavit; the respondent should not then be allowed to file a counter-affidavit without special permission of the court.⁸

(87) Rules should also provide for filing a replication (where it is to be filed) within four weeks from service of copy of the counter affidavit.⁹

(88) Writ petitions should be included in the ready list of cases in chronological order according to the date of institution, except where the petition has, for sufficient reason, to be listed for a future date, and except petitions belonging to a class needing priority. Apart from that, the daily list should be prepared strictly according to the order in the ready list, subject to the order of the court as to actual date in any matter.¹⁰

(89) A concise note of arguments should be filed in writ petitions (except petitions for *habeas corpus* before the date of hearing. Its contents should be the same as recommended for regular first appeals.¹¹

(90) The above is only a suggested general pattern. High Courts may frame their own rules with variations. The object should be to obtain a regular procedure, conforming to natural justice and, at the same time, securing quicker disposal.¹²

(91) Sittings of writ Benches should continue for a reasonable length of time.¹³

(92) Writ petitions involving the same questions of law should be grouped together.¹⁴

¹Para 16.7.

²Para 16.8.

³Para 16.9.

⁴Para 16.9.

⁵Para 16.10.

⁶Para 16.10.

⁷Para 16.11.

⁸Para 16.12.

⁹Para 16.13.

¹⁰Para 16.14.

¹¹Para 16.15.

¹²Para 16.16.

¹³Para 16.17.

¹⁴Para 16.18.

(93) Listing of writ petitions should not be deferred on the ground that other petitions of the same nature may follow. Such a petition, when filed should be given precedence—if need be with the permission of the Chief Justice. This would minimise the filing of similar petitions. If the petition succeeds, the department may possibly take similar action in regard to persons similarly aggrieved.¹

(94) (a) Decision of writ petitions should be as quick as possible. The writ Rules should be framed with that object in view.

(b) For expeditious disposal of writs, whole-hearted co-operation of the Government is necessary. Special attention should be paid to this aspect at Government level.²

17. Jurisdiction under special Acts: Tax cases.

(95) While the Income Tax Appellate Tribunal is the final authority on facts, a reference lies to the High Court on a question of law in taxation matters. This Jurisdiction has been extensively resorted to. But the rate of disposal does not keep pace with institution. This situation requires to be remedied, as early disposal is important both to the State and to the assessee.³

(96) Strength of judges for dealing with these references be increased, and also separate benches constituted where the volume of work so justifies.⁴ Judges having a grounding in the subject should be posted to those Benches.⁵

(97) A proposal for the creation of a Central Tax Court was rejected by the High Courts Arrears Committee presided over by Mr. Justice Shah and by the Law Commission in its 58th Report.⁶ The proposal was, however, favoured by the Direct Tax Laws Committee (Chokshi Committee), whose Report envisages a Central Tax Court with Benches at seven important cities, and with judges who are to be on par with High Court Judges. According to that Committee, amendment of the Constitution would be required. Until it is constituted, Special Tax Benches should according to the Committee, sit continuously.⁷

The Commission would, however, agree with the conclusion reached in earlier Reports against the formation of a Central Tax Court. Disposal of tax cases can be expedited by resorting to continuous sittings in the High Court,⁸ without creating a Tax Court. Frequent changes in the Constitution are also not desirable.⁹ Moreover, assesseees would be subjected to inconvenience if they have to go outside their State for seeking relief against the order of the Appellate Tribunal.¹⁰

(98) As regards replacing references by appeal in tax cases, there are pros and cons. Substitution of appeal would eliminate the time taken in hearing before the Tribunal of the application for a reference, and obviate the necessity of filing before the High Court applications directing the Tribunal to make a reference.¹¹

But an appeal would take more time in hearing than a reference.¹²

Since the matter has been already dealt with by the Law Commission in its 58th Report, and the High Courts Arrears Committee presided over by Mr. Justice Shah, both of which recommended substitution of appeal, this Commission does not propose to say anything further in the matter.¹³

¹Para 16.20.

²Para 16.21.

³Para 17.1 to 17.4.

⁴Para 17.5.

⁵Para 17.6.

⁶Para 17.7.

⁷Para 17.8.

⁸Para 17.9.

⁹Para 17.10.

¹⁰Para 17.11. As to direct reference to the Supreme Court, see para 17.12.

¹¹Para 17.13 to 17.17.

¹²Para 17.13 to 17.17.

¹³Para 17.13 to 17.19.

18. Appeals to courts subordinate to the High Court.

(99) To relieve the High Courts of their burden regarding first appeals, the pecuniary appellate jurisdiction of District Judges should be raised. More District Judges will, of course, have to be appointed.

Because of variable local conditions, a uniform figure for the whole country as to the pecuniary limits of appellate jurisdiction of District Judges is not feasible. Appeals of higher value should lie to High Courts, which inspire greater confidence.

These remarks apply also to the subordinate judges exercising appellate jurisdiction.¹

(100) It should be ensured that the number of appellate courts in each district is sufficient to deal with the volume of appeals in that district. Because of the low priority accorded to appeals, such appeals remain pending and the parties have to go back because of the pre-occupation of the judge. To avoid this, the courts subordinate to High Court should set apart a number of days every month exclusively for the disposal of civil appeals. Where the workload does not permit such a course, recourse should be had to increasing the number of appellate courts in the district.²

Appeals in subordinate courts generally not being of a complicated nature, they should not remain pending for an unduly long time, if days are earmarked for exclusively dealing with them.³

(101) Normally, civil appeals in subordinate courts should be disposed of within six to nine months of their institution.

The problem of disposal of appeals in subordinate courts can be tackled by just increasing the number of the appellate courts. The increase required would be small and insignificant.⁴

(102) Criminal appeals too are accorded low priority. Quite often, they have to be adjourned because the Presiding Officer of the court is pre-occupied with other matters. The steps recommended above regarding civil appeals can also be adopted for the disposal of criminal appeals. Increase in the number of courts of Additional District and Sessions Judges would be helpful in expediting the disposal of both civil and criminal appeals.

Where there is not enough work for the court of Additional District and Sessions Judge which may be created for one district, he can look after appeals in two adjoining districts.⁵

(103) Most often, one public prosecutor looks after cases in more than one court. When cases are called in more courts than one, he can attend to only one of them, necessitating either a hearing without effective representation or an adjournment. The number of public prosecutors in each district should be adequate to deal with cases called in different courts at the same time.⁶

(104) The proposed system of filing a concise note of arguments (recommended in this Report for first appeals in the High Court) need not be made compulsory for civil appeals in subordinate courts.⁷

19. High Court for Goa, Daman and Diu.

(105) The present disparity between the Union Territory of Goa, Daman and Diu and other parts of India in regard to the highest Court in the territory should be removed and jurisdiction of some High Court be extended to that territory. A circuit Bench of that High Court can sit in the territory. This would avoid delay in travelling as well as heart-burning.⁸

¹Para 18.1 to 18.10.

²Para 18.11.

³Para 18.12.

⁴Para 18.12.

⁵Para 18.15.

⁶Para 18.14.

⁷Para 18.15.

⁸Para 19.1 to 19.4.

20. Conclusion.

(106) To facilitate implementation, this Report confines itself to the essentials of the problem.¹ However, the recommended measures will not solve the problem for all times to come. The search for a solution has to be continuous. It has to be a quest, not a discovery.² Where so many complex factors operate together, a permanent solution would be difficult. This or that aspect may, with the passage of time, become prominent, and others may shade into insignificance. Each fresh effort must assess the progress achieved and suggest appropriate action for the future.³

(107) A report dealing with arrears and delay can bear fruit only if prompt action is taken thereon. It must be distinguished from a report dealing with the review of a particular enactment. There should be no undue delay in taking action on a report which itself deals with eliminating delay.⁴

| | |
|---------------------------|-------------------------------|
| H. R. KHANNA | <i>Chairman</i> |
| S. N. SHANKAR | <i>Member</i> |
| T. S. KRISHNAMOORTHY IYER | <i>Member</i> |
| P. M. BAKSHI | <i>Member-Secretary</i> |

May 10, 1979.

¹Para 20.1.

²Para 20.2.

³Para 20.2 and 20.3.

⁴Para 20.4 and 20.5.

APPENDIX I

APPELLATE JURISDICTION OF DISTRICT JUDGES IN VARIOUS STATES

| | |
|---|---|
| 1. Andhra Pradesh. | (1) Rs. 15,000 (District Judge). (Proposal raise to Rs. 20,000 under consideration). (2) Rs. 10,000 (Subordinate Judge). |
| 2. Gujarat. | Rs. 10,000 (District Judge). |
| 3. Haryana. | Rs. 20,000 (District Judge). |
| 4. Himachal Pradesh. | Rs. 10,000 (District Judge). |
| 5. Karnataka. (1) District Courts (Appellate Jurisdiction). | Regular, execution and miscellaneous Appeals from the decisions of the civil judges, involving monetary value upto Rs. 20,000. |
| [Civil Judges' courts in Karnataka have original jurisdiction as follows:— | |
| | (a) All original suits with the monetary value exceeding Rs. 10,000 (unlimited). |
| | (b) Small cause suits upto the monetary value of Rs. 2,000. Separate small cause courts are existing at Bangalore and Mysore presided over by the officer in the cadre of civil judge. The jurisdiction of these courts is upto Rs. 3,000. |
| (2) Civil Judges (Appellate Jurisdiction). | Regular, execution and miscellaneous appeals from the decisions of munsiffs. |
| Munsiff's courts in Karnataka have jurisdiction in original suits upto the monetary value of Rs. 10,000 and small causes suits upto Rs. 500.] | |
| 6. Kerala. | Rs. 10,000 (District Judge). |
| 7. Maharashtra. (Bombay Civil Courts Act, 1869). | Rs. 25,000 (District Judge). (Amendment made in January, 1978) |
| 8. Manipur. | Rs. 5,000 (District Judge). |
| 9. Nagaland. | Administration of justice is governed by special rules. |
| 10. Punjab. | Rs. 20,000 (District Judge). |
| 11. Rajasthan. | Rs. 10,000 (District Judge). |
| 12. Sikkim. | Rs. 5,000 (District Judge). (In Sikkim, the original court next lower than the District Court is the court of civil Judge-cum-Judicial Magistrate. Its jurisdiction is only Rs. 5,000. Suits of a higher value go to the District Judge on the original side). |
| 13. Tamil Nadu. | Appellate jurisdiction. (a) District Judge—Rs. 10,000. (b) Subordinate Judge—Rs. 5,000. |
| 14. Tripura. | Rs. 10,000 (District Judge). |
| 15. West Bengal. | Rs. 15,000 (District Judge). |

APPENDIX 2

**LIST OF SECTIONS OF THE INDIAN SUCCESSION ACT, 1925, UNDER WHICH
THE HIGH COURTS HAVE TESTAMENTARY JURISDICTION**

PART I

Section 2(bb)—

The definition of "District Judge" includes High Court in original Jurisdiction.

PART IX

Sections 218, 219, 222 to 225, 228, 229, 232, 236 to 243, 255 to 260, 261 to 267, 299, 300, 301, 302.

[Jurisdiction of District Judge under section 300 is concurrent with the High Court.]

PART X

Sections 371, 372, 374, 375, 383, 384, 388.

[Section 384 deals with appeals to the High Courts.]

APPENDIX 3

APPEALS TO THE HIGH COURTS^{1,2} UNDER SPECIAL ACTS BESIDES THOSE MENTIONED IN THE BODY OF THE REPORT

1. Workmen's Compensation Act, 1923.

Section 30 provides for appeals to the High Court from certain orders of the Commissioner. This is a first appeal.

2. The Copyright Act, 1957.

Section 71 provides for appeals against certain orders of Magistrates.

Under section 72, an appeal lies to the Copyright Board from the decision of the Registrar, and a second appeal lies to the High Court from the decision of the Copyright Board.

3. The Foreign Exchange Regulation Act, 1973.

Section 52 provides for first appeal to the Appellate Board, from the orders of the adjudicating officer.

Section 54 provides for appeal to High Court on questions of law from the decision or order of the Appellate Board.

¹This is an illustrative list only.

²For Companies Act, Trade Marks Act, Insolvency Act and Matrimonial Law, See the body of the Report.

APPENDIX 4

JURISDICTION OF THE HIGH COURT UNDER GUARDIANS & WARDS ACT, 1890

Definition of District. Section 2(4) of the Guardians and Wards Act, 1890 defines the expression "District Court". It has the same meaning as assigned to it in the Code of Civil Procedure, and includes a High Court in the exercise of its ordinary original civil jurisdiction. According to section 2(4) of the Code of Civil Procedure, "district" means the local limits of a Principal Civil Court of original jurisdiction, and includes the local limits of the ordinary original civil jurisdiction of a High Court.

Nature of the powers to be exercised by the Court under various sections of the Guardians and Wards Act, 1890, can be gathered from the following illustrative list:—

| | |
|----------------|--|
| Section 9 : | Court having jurisdiction to entertain application with respect to the guardianship of the person of a minor as also guardianship of the property. |
| Section 14(2): | if simultaneous proceedings are being held in different courts, the High Court shall determine which court shall deal with the matter. |
| Section 25: | Title of guardian to custody of ward. |
| Section 26: | Removal of ward from jurisdiction |
| Section 29: | Limitation of powers of guardian. He shall not mortgage or sell or lease the property without the previous permission of the court. |
| Section 31: | Practice with respect to permitting transfers under section 29. |
| Section 32: | Variation of powers of guardian appointed by the court. |
| Section 33: | Right of the guardian so appointed to apply to the court for opinion in respect of management. |
| Section 34A: | Power to award remuneration for auditing accounts. |

Sections 44 and 45 of the Act are penal sections

Section 47 provides for appeal to the High Court from decisions of the District Court under the Act.

APPENDIX 5

ORAL ARGUMENTS IN FRANCE

The following extract from a mimeographed publication states the position as to the French Cour de Cassation¹:—

(b) Proceedings of appeal:

Proceedings before the "Cour de Cassation" are in writing, the pleadings being stated in request.

--in civil proceedings:

Ordinary proceedings (articles 1 through 20 of the decree Nr. 67-1210 as December 22, 1967).

It is based on the principle that the parties are not exempt by the law from being assisted or represented by an "advocate a la cour de Cassation".

The appeal is entered by a request concerning the decision challenged and such request is filed with the Court's clerk who serves thereafter the appeal to the defendant within fifteen days from the date of said filing.

Subject to forfeiture, the claimant must file with the Court's office within a maximum period of five months from the filing of the appeal, a pleading called 'memoire ampliatif' comprising the legal remedies against the contested decision; the claimant must serve within one month after the filing of the pleadings, the 'memoire ampliatif' to the defendant or to the defendant's counsel, when such counsel has filed his authority with the Court's office.

The court's registrar states that the appeal has not been filed or served by drafting a report and the forfeiture is decided *ipso facto* by the court.

The defendant must file with the court's office, not later than three months from the date of the 'memoire ampliatif', pleadings which he has to serve to the claimant's counsel not later than fifteen days after the lodging of such 'memoire'.

In case of default of filing of pleadings within the allotted time, the Court's registrar drafts a report.

As soon as the defendant has filed his pleadings and, upon expiration of such period, the case is deemed ready and delivered to the Court's sections.

The case is submitted by the President of the competent section to a judge or to "Counsellors referendaires" who is appointed as recording judge. The parties have no right to add supplementary pleadings once such a report has been filed with the registrar. Thereafter, the case is submitted to the Public Prosecutor (Ministere Public) who must draft his pleadings within the next four days and propose to enter it on the register.

The Court hears the report of the judge, the counsel's pleadings and the pleading of the prosecution; then the Court considers the case and makes a decision.

The claimant may withdraw his appeal, provided he obtains the agreement in writing of his opponent otherwise, the court has to state the withdrawal of, appeal in a decision which is equivalent to a dismissal and entails a sentence of guilty against the claimant who has to pay the Court's expenses and, if any, a fine and damages as compensation to the defendant.

--proceedings without counsel:

(Articles 21 through 25 of the decree Nr. 67-1210 as of December 22, 1967 and general rulings of articles 1 through 20 of said decree).

The filing and the notice of appeal as well as the lodging of the 'memoires' must comply with the requirements of such decree. The period for lodging the 'memoire ampliatif' and for giving notice of said 'memoire' to the defendant are reduced respectively to four months and fifteen days. The Court's registrar is in charge of giving notice of the 'memoire'.

Proceedings before the Court are the same as in the case of ordinary affairs.

¹The French 'Cour de Cassation' (Mimeographed), page 13.

APPENDIX 6

**[THE] U.P. HIGH COURT (ABOLITION OF LETTERS PATENT APPEALS)
ACT, 1962**

(U.P. ACT NO. 15 OF 1962)

[13th November, 1962.]

**An Act to provide for Abolition of Letters Patent Appeals in the High Court of Judicature
at Allahabad**

It is hereby enacted in the Thirtieth Year of the Republic of India as follows:

1. Short title and commencement :

(1) This Act may be called The Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962.

(2) It shall come into force at once.

2. Definition of High Court :

In this Act "High Court" means the High Court of Judicature at Allahabad as constituted by the U.P. High Courts (Amalgamation) Order, 1948.

3. Abolition of appeals from the Judgment or order of one Judge of the High Court made in the exercise of appellate jurisdiction.

(1) No appeal, arising from a suit or proceeding instituted or commenced, whether prior or subsequent to the enforcement of this Act, shall lie to the High Court from a judgment or order of one Judge of the High Court, made in the exercise of appellate jurisdiction, in respect of a decree or order made by a court subject to the superintendence of the High Court, anything to the contrary contained in clause ten of the Letters Patent of Her Majesty, dated the 17th March, 1866, read with clause 17 of the U.P. High Courts' (Amalgamation) Order, 1948, in any other law, notwithstanding.

(2) Notwithstanding anything contained in sub-section (1) all appeals pending before the High Court on the date immediately preceding the date of enforcement of this Act shall continue to lie and be heard and disposed of as heretofore, as if this Act had not been brought into force.

APPENDIX 7

PENDENCY OF CASES IN HIGH COURTS DURING 1976 TO 1978

Institution of Cases in High Courts

| Sl. No. | Name of the High Court | Institution | | | | | |
|---------|----------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|
| | | 1-1-1976 to 30-6-1976 | 1-1-1976 to 31-12-1976 | 1-1-1977 to 30-6-1977 | 1-1-1977 to 31-12-1977 | 1-1-1978 to 30-6-1978 | 1-1-1978 to 31-12-1978 |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| 1 | Allahabad | 26,838 | 56,693 | 22,708 | 57,571 | 32,930 | 64,734 |
| 2 | Andhra Pradesh | 17,319 | 38,903 | 17,152 | 43,956 | 22,064 | 48,700 |
| 3 | Bombay | 23,485 | 43,693 | 20,202 | 38,864 | 15,701 | 35,898 |
| 4 | Calcutta | 27,102 | 53,015 | 22,951 | 43,339 | 24,021 | 50,449 |
| 5 | Delhi | 10,115 | 20,108 | 10,065 | 21,661 | 11,597 | 23,424 |
| 6 | Gauhati | 1,215 | 2,297 | 1,065 | 1,966 | 980 | 2,097 |
| 7 | Gujarat | 5,770 | 15,091 | 6,748 | 13,993 | 7,242 | 14,972 |
| 8 | Himachal Pradesh | 2,127 | 3,844 | 1,454 | 3,599 | 2,434 | 4,517 |
| 9 | Jammu & Kashmir | 1,373 | 2,610 | 1,261 | 2,783 | 1,530 | 4,285 |
| 10 | Karnataka | 13,468 | 28,438 | 17,206 | 37,014 | 17,987 | 36,920 |
| 11 | Kerala | 23,991 | 47,001 | 18,429 | 36,540 | 17,854 | 34,275 |
| 12 | Madhya Pradesh | 11,612 | 27,711 | 11,910 | 29,132 | 16,506 | 34,043 |
| 13 | Madras | 25,449 | 55,605 | 23,772 | 54,320 | 26,799 | 55,472 |
| 14 | Orissa | 2,451 | 4,936 | 2,123 | 4,872 | 2,503 | 5,269 |
| 15 | Patna | 8,082* | 21,029@ | 10,571@ | 23,562@ | 10,439* | 22,506* |
| 16 | Punjab & Haryana | 17,485 | 37,146 | 15,139 | 32,092 | 16,394 | 34,402 |
| 17 | Rajasthan | 5,462 | 10,962 | 4,215 | 9,420 | 6,045 | 13,831 |
| 18 | Sikkim | 29 | 67 | 36 | 49 | 10 | N.A. |
| | TOTAL | 2,23,373 | 4,67,154 | 2,07,007 | 4,54,733 | 2,33,036 | 4,85,854 |

Disposal of Cases in high Courts

| Name of the High Court | Disposal | | | | | |
|----------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|
| | 1-1-1976 to 30-6-1976 | 1-1-1976 to 31-12-1976 | 1-1-1977 to 30-6-1977 | 1-1-1977 to 31-12-1977 | 1-1-1978 to 30-6-1978 | 1-1-1978 to 31-12-1978 |
| (1) | (2) | (3) | (5) | (5) | (6) | (7) |
| Allahabad | 22,327 | 45,593 | 17,283 | 44,844 | 26,364 | 60,020 |
| Andhra Pradesh | 17,235 | 44,266 | 16,210 | 42,459 | 21,216 | 44,597 |
| Bombay | 16,643 | 41,579 | 16,853 | 36,571 | 13,368 | 33,668 |
| Calcutta | 25,351 | 51,185 | 24,894 | 47,757 | 27,089 | 47,770 |
| Delhi | 8,941 | 19,390 | 8,243 | 18,310 | 9,238 | 19,881 |
| Gauhati | 1,033 | 2,397 | 809 | 1,608 | 801 | 1,520 |
| Gujarat | 5,279 | 13,489 | 6,706 | 14,560 | 6,644 | 13,704 |
| Himachal Pradesh | 1,258 | 2,686 | 1,158 | 2,995 | 2,890 | 4,255 |
| Jammu & Kashmir | 851 | 1,669 | 763 | 1,952 | 868 | 2,622 |
| Karnataka | 9,748 | 20,489 | 12,977 | 24,992 | 12,589 | 29,263 |
| Kerala | 13,758 | 37,694 | 17,640 | 36,931 | 23,204 | 42,462 |
| Madhya Pradesh | 9,125 | 24,039 | 10,461 | 25,242 | 16,467 | 37,450 |
| Madras | 22,247 | 51,952 | 18,925 | 44,635 | 23,643 | 57,079 |
| Orissa | 2,080 | 4,963 | 2,489 | 4,794 | 1,596 | 3,412 |
| Patna* | 7,670 | 15,807 | 6,616 | 14,510 | 7,441 | 16,127 |
| Punjab & Haryana | 12,753 | 26,009 | 17,116 | 29,565 | 19,864 | 42,193 |
| Rajasthan | 4,360 | 10,330 | 4,764 | 9,116 | 3,639 | 12,339 |
| Sikkim | 20 | 51 | 35 | 63 | 12 | N.A. |
| TOTAL | 1,80,679 | 4,13,588 | 1,83,942 | 4,00,704 | 2,189,33 | 4,68,362 |

*Main cases only.

@The institutions in Patna High Court for the period 1-1-1976 to 31-12-1976; 1-1-1977 to 30-6-1977 and 1-1-1977 to 31-12-1977 include 3,457; 3,251 and 6,992. Miscellaneous cases respectively. These cases have not been taken into account by the Patna High Court while working out the pendency of cases.

Pendency of Cases in High Courts

| Name of the High Court | Pendency as on | | | | | |
|------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| | 30-6-1976 | 31-12-1976 | 30-6-1977 | 31-12-1977 | 30-6-1978 | 31-12-1978 |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| Allahabad | 1,13,428 | 1,20,022 | 1,25,447 | 1,32,749 | 1,39,315 | 13,6978 |
| Andhra Pradesh | 19,837 | 14,390 | 15,332 | 15,887 | 16,735 | 20,050 |
| Bombay | 54,827 | 50,099 | 53,448 | 52,592 | 54,925 | 54,822 |
| Calcutta | 76,787 | 76,866 | 74,923 | 72,448 | 69,380 | 75,127 |
| Delhi | 23,364 | 22,908* | 25,058 | 26,587 | 28,946 | 40,130 |
| Gauhati | 6,472 | 6,190 | 6,446 | 6,548 | 6,727 | 7,125 |
| Gujarat | 13,178 | 12,289 | 12,331 | 11,722 | 12,320 | 12,990 |
| Himachal Pradesh | 4,126 | 4,415 | 4,711 | 5,019 | 4,563 | 5,281 |
| Jammu & Kashmir | 3,427 | 3,846 | 4,344 | 4,677 | 5,339 | 6,340 |
| Karnataka | 20,198 | 24,427 | 28,656 | 36,449 | 41,847 | 44,106 |
| Kerala | 44,056 | 43,130 | 43,919 | 42,739 | 37,389 | 34,552 |
| Madhya Pradesh | 41,538 | 42,723 | 44,172 | 46,613 | 46,652 | 43,206 |
| Madras | 41,627 | 42,078 | 46,925 | 51,763 | 52,919 | 50,156 |
| Orissa | 6,362 | 5,964 | 5,598 | 6,042 | 6,953@ | 7,908 |
| Patna** | 26,022 | 30,832* | 28,079 | 29,435 | 32,433 | 35,814 |
| Punjab & Haryana | 37,137 | 43,542 | 41,565 | 46,069 | 42,599 | 39,278 |
| Rajasthan | 20,724 | 20,254 | 19,705 | 20,558 | 22,954 | 22,050 |
| Sikkim | 25 | 32* | 36 | 21 | 19 | 14 |
| TOTAL | 5,53,135 | 5,64,007 | 5,80,695 | 6,079,18 | 6,22,030 | 6,24,927 |

*These figures were revised by the Delhi, Patna and Sikkim High Courts to 23,236; 27,375 and 35 cases respectively. As a result the total pendency in the Country on 1-1-1977 was revised to 5,60,881 cases.

@The increase of 9 cases is due to restoration of 6 second appeals and 3 miscellaneous first appeals during 1st half year of 1978.

** Main cases only.