REPORT NO.

78

PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

SEVENTY-EIGTH REPORT

The Commercial Courts Commercial Division and Commercial Appellate Division of High Courts Bill, 2015

(*Presented to the Rajya Sabha on 10th December*, 2015)

(*Laid on the Table of Lok Sabha on 10th December*, 2015)

Rajya Sabha Secretariat, New Delhi
December, 2015/ Agrahayana, 1937 (Saka)

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C O N T E N T S

* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE
(Constituted on 1st September, 2014)

1. Dr. E.M. Sudarsana Natchiappan — *Chairman*

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Majeed Memon
4. Shri Parimal Nathwani
5. Smt. Rajani Patil
6. Shri Sukhendu Sekhar Roy
7. Shri Ramchandra Prasad Singh
8. Dr. Abhishek Manu Singhvi
9. Shri K.T.S. Tulsi
10. [*]Shri Bhupender Yadav

LOK SABHA

11. Shri Suvendu Adhikari
12. Shri Subrata Bakshi
13. Adv. Sharad Bansode
14. Shri P.P. Chaudhary
15. Shri Abu Hasem Khan Chowdhury
16. Choudhary Mehboob Ali Kaiser
17. Shri Shanta Kumar
18. Shri Santosh Kumar
19. Shri S. Bhagwant Mann
20. Shri Anoop Mishra
21. Shri B.V. Naik
22. Shri Vincent H. Palla
23. Shri V. Panneerselvam
24. Shri Vithalbhai Hansrajbhai Radadiya
25. Dr. A. Sampath
26. Shri Bharat Singh
27. Shri Udhayakumar M.
28. Shri Varaprasad Rao Velagapalli
29. Dr. Anshul Verma
30. [#]Shri Tariq Anwar
31. [$]Adv. Joice George

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[*] Change in the nomination of Shri Aayanur Manjunatha w.e.f. 30th September, 2014.
[#] Vacancy existing since the constitution of the Committee and filled-up on 11th September, 2011.
[$] Change in the nomination of Shri Innocent w.e.f. 22nd December, 2014.

COMPOSITION OF THE COMMITTEE
(Re-constituted on 1st September, 2015)

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27. Shri Bharat Singh
28. Shri M. Udhayakumar
29. Shri Varaprasad Rao Velagapalli
30. Dr. Anshul Verma
31. *Shri Shanta Kumar

SECRETARIAT

Dr. D.B. Singh, Secretary
Shri K.P. Singh, Joint Secretary
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhannem Guite, Assistant Director

* Resigned from Committee w.e.f. 9th October, 2015.

INTRODUCTION

I, Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Seventy-eight Report of the Committee on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 **(Annexure-I).**

2. In pursuance of the Rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha referred the Bill, as introduced in the Rajya Sabha on the 29th April, 2015 to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 1st May, 2015, for examination and report to Parliament.

3. In order to solicit the views of stakeholders, the Committee issued a Press Communiqué on the 13th June, 2015. In response thereto the Committee received several memoranda containing suggestions from various organizations/ individuals / experts. Comments of the Department of Legal Affairs on the views/suggestions so received were obtained for consideration of the Committee. The Committee heard the views of Department of Legal Affairs on the 18th May and the 10th August on the Bill. The Committee, in its sitting held on 26th November, 2015 took cognizance of the promulgation of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 **(Annexure-II)** on 23rd October, 2015 by Hon'ble President of India and heard the explanation given by the Secretary, Department of Legal Affairs of the circumstances under which the said Ordinance was promulgated.

4. The Committee had wider consultations with stakeholders from Bar, Business Chambers, Financial Institutions, PSUs, and other commercial entities. The Committee heard the Registrar, Supreme Court of India, representatives of PHD Chamber of Commerce and Industry, Confederation of Indian Industry (CII), Indian Council of Arbitration, the Law Commission of India amongst others.

5. The Committee during its study-visit interacted with the Registrar Generals/Registrars of High Courts of Calcutta, Bombay, Madras, Andhra Pradesh and Telangana, Jammu & Kashmir, Punjab & Haryana, and Uttarakhand, State Governments of West Bengal, Maharashtra, Andhra Pradesh, Telangana, Tamil Nadu, Jammu & Kashmir, Himachal Pradesh, Punjab, Haryana and Uttarakhand.

6. While considering the Bill, the Committee took note of the following documents/information placed before it:-

(i) Background note on the Bill submitted by the Department of Legal Affairs, Ministry of Law and Justice;

(ii) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015;

(iii) The Arbitration and Conciliation (Amendment) Ordinance, 2015;

(iv) 14th, 128th, 188th, 189th, 220th, 231st, 236th and 253rd Reports of the Law Commission of India;

(v) Ninth Report of the Committee on The Arbitration and Conciliation (Amendment) Bill, 2003 (July, 2005);

(vi) The Ease of Doing Business Report (2011 & 2016) of the World Bank;

(vii) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(viii) Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(ix) The Delhi High Court (Original Side) Rules, 1967;

(x) The Civil Procedure Rules, 1998 of United Kingdom;

(xi) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Department of Legal Affairs thereon;

(xii) Views expressed during the oral evidence tendered before the Committee by various official and non-official witnesses; and

(xiii) Replies of High Courts and other stakeholders to the Common Questionnaire prepared by the Secretariat on the issues dealt with by the Bill.

7. The Committee considered and adopted its Report in its meeting held on the 8th December, 2015, and decided to present/lay the Evidence tendered on the Bill in both the Houses of Parliament.

8. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
8th December, 2015

(Dr. E.M. SUDARSANA NATCHIAPPAN)
Chairman,
Department-related Parliamentary Standing
Committee on Personnel, Public Grievances, Law and Justice

REPORT

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 (Annexure-I) seeks to set-up Commercial Courts/Commercial Divisions for fast track resolution of commercial disputes of the value of rupees one crore and above. As mentioned in Statement of Objects and Reasons of the Bill, the proposal to establish the Commercial Court and Commercial Division of High Court shall:-

(i) accelerate economic growth;

(ii) improve the international image of Indian justice delivery system; and

(iii) improve the faith of investor world in the legal culture of the nation.

2. Growth of international trade in globalised economy has led to increase in commercial disputes. Owing to increasingly internationalisation of commerce, specialised commercial courts have been instituted by many countries to decide complex commercial cases expeditiously. It started with United Kingdom in 1895 as a part of Queens Bench Division of High Court; thereafter as many as seventeen countries, namely, France, Canada, Belgium, Germany, Australia, New Zealand, United States of America (22 States), Philippines, Pakistan, United Arab of Emirates, Poland, Russia, Romania, Ukraine, Ghana, Sri Lanka and Singapore have set up commercial courts as a part of their municipal court for speedy settlement of commercial disputes. Singapore and Dubai have emerged as commercial dispute resolution hub in South-Asia and Middle East, respectively. Singapore International Commercial Court (SICC) which started in January, 2015 happens to be a division of Singapore High Court having judges from other countries and allowing foreign lawyers to appear before it on commercial disputes. Similarly Dubai International Financial Centre Court (DIFCC) also decides cross-border commercial disputes on the consent of parties. But India has not emerged as preferred destination of commercial dispute resolution due to delay in Indian judicial forums.

3. As against five months (150 days) in Singapore, it takes nearly four years in India (1420 days) for enforcing a contract. The Union Government has been making internal corrections for easing business in the Country. Judicial reforms in the form of providing fast track courts for resolving commercial disputes is one of them to instil confidence amongst domestic and foreign investors. The Law Commission of India in its Two Hundred and Fifty Third Report (January, 2015) has reported that as on 31st March, 2014 more than three million civil cases are pending in various High Courts **(Annexure-III).** Delay in adjudication in Courts amounts to breach of India's obligation under bilateral and multi-lateral investment treaties to provide effective means of asserting claims. As reported in Law Commission's Two Hundred and Fifty Third Report on Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (January, 2015), 51.7 percent of civil cases belongs to the category of commercial dispute in the five High Courts having original jurisdiction. The break up in those High Courts is given below:

Table - 1

Pendency of "Commercial Disputes" in High Courts with Original Jurisdiction

High Court	Total Number of Civil Suits pending	Total Number of Commercial Disputes pending	% age of Commercial Disputes
Madras	6326	5865	92.71%
Calcutta	6932	5352	77.20%
Bombay	6081	1997	32.83%
Delhi	12963	3582	27.63%
Himachal Pradesh	354	88	24.8%
Total	**32656**	**16884**	**51.7%**

4. In a globalised economy, several Bi-lateral Investment Treaties (BITs) have been signed by Union Government. Countries which have entered into BITs with India prefer judicial forum in other countries even though cause of action has arisen in our country, as they have little confidence in the Indian justice delivery mechanism which is plagued by inordinate delays. In the case of *White Industries vs Union of India*, the arbitration award of International Chamber of Commerce has adversely affected the interest of the country in the international arena. The delay in justice delivery can have impact upon India's treaty obligation and terms with other nations, ultimately commerce of our country. The Commercial Courts are proposed to overcome the delayed judicial process.

5. The Government of India is committed to create an FDI friendly environment to attract more foreign investments for economic growth of the country. In the "Ease of Doing Business" Report (2015) of the World Bank, the overall rank of India has slipped to 142, out of 189 countries, from 140 in the year 2014. Out of the ten parameters used for ranking, rank in all the parameters has declined except on "Protecting Minority Investors", which has improved and the other on "enforcing contract" has remained constant at 186 rank. There is an endeavour of the Government to improve the position of the country by placing within top 50 countries of the world. The current economic slowdown in China may be a contributing factor for acceleration of economic growth.

Background of the Bill

6. In the year 2003, the Law Commission of India *suo motu* took up for an in-depth study of international practice of commercial courts and the need for such courts in India in post liberalised phase of economy. The Law Commission in its One Hundred Eighty Eighth Report on Proposals for Constitution of Hi-Tech Fast – Track Commercial Divisions in High Courts (December, 2003) felt the need for having efficient dispute resolution mechanism for commercial disputes. It had also felt that quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages are, absolutely critical to encourage investment and economic growth. In that Report it had recommended for setting up of fast track Commercial Divisions in all High Courts. Following were the main features of the Commercial Division of High Courts Bill, 2009 are:-

- Commercial Divisions of High Courts to comprise two judges to adjudicate high value commercial disputes;
- The pecuniary value of commercial disputes to be not less than rupees five crores;
- Fast track procedure indicating time line for filing pleading, recording of evidence and delivery of judgment by the Division Bench;
- Case Management Conference for judges with the lawyers for the purpose of filing written statement and completion of evidence;
- Statutory appeal to Supreme Court from the orders and judgment of Commercial Division of High Court; and
- The jurisdiction of the tribunals and other forums were not to be affected by the jurisdiction of the Bill.

7. The said Bill was examined by a Select Committee of Rajya Sabha which presented its Report on 29th July, 2010 with certain amendments. Those amendments were considered by Law Commission of India in its Two Hundred Fifty Third Report (January, 2015). Thus, the present Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 is an improvement upon the Commercial Division of High Courts Bill, 2009.

Salient features of the Bill

8. Following are the key features of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015:-

- Creation of Commercial Division in five High Courts having original jurisdiction (Calcutta, Bombay, Madras, Delhi and Himachal Pradesh) and Commercial Courts in such districts to be decided by the State Government in consultation with concerned High Court to fast track commercial disputes of the value of rupees one crore and above;
- All pending commercial suits to be transferred to Commercial Court/Commercial Division from District or High Court concerned after the constitution of those courts. But those suit where the final judgment has been reserved by the court prior to the constitution of Commercial Division/Commercial Court, would not be transferred;
- Commercial disputes to be heard by judges having demonstrable expertise and experience in commercial law;
- Commercial Appellate Division of High Courts to hear appeal from the decisions/ judgments of proposed Commercial Division/ Commercial Court and the following Tribunals/ Boards:-
    (a) Competition Appellate Tribunal;
    (b) Debts Recovery Appellate Tribunal;
    (c) Intellectual Property Appellate Board;
    (d) Company Law Board or the National Company Law Tribunal;
    (e) Securities Appellate Tribunal; and
    (f) Telecom Disputes Settlement and Appellate Tribunal.
- Application or appeal in international commercial arbitration to be heard and disposed of by the Commercial Appellate Division of High Court;
- Introduction of case management conference; setting time line for both oral and written arguments;
- Civil Procedure Code proposed to be amended to fast track commercial disputes which would prevail over existing High Court Rules and other provisions of Civil Procedure Code.
- Time bound oral arguments to be supplemented by written submissions to be filed four weeks prior to commencement of oral arguments;
- Time bound delivery of judgement within ninety days from the conclusion of arguments;
- Forfeiture of right to file written statement after expiry of 120 days;
- No civil revision application or petition shall be entertained against any interlocutory order of the commercial court including an order on the issue of jurisdiction;
- All appeals against the order of Commercial Division/Commercial Court to be heard and disposed of by the Commercial Appellate Division of High Court within six months from the date of filing of such appeal;

9. The Secretary, Department of Legal Affairs during the meeting of the Committee held on 26th November, 2015, submitted that there was a pressure from the legal fraternity to

give effect to Delhi High Court (Amendment) Act, 2015. In the event of bringing into force all disputes of Rupees two crore and above would have to be transferred to District Courts. Again with the enactment of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 all commercial disputes of Rupees one crore and above would be taken back from District Courts to Commercial Bench of High Court of Delhi. In order to save time, both the Acts have been given simultaneous effect from single day. Therefore, an Ordinance was promulgated by Hon'ble President of India on 23rd October, 2015. He further added that a new Bill would be introduced in the Parliament to replace the Bill under examination of the Committee. However, the Government will take into account the recommendations of the Committee while introducing the new Bill on the subject.

10. A comparison of both the Bill under consideration of the Committee and the Ordinance is at **Annexure -IV**.

Existing system of dealing with Commercial Disputes

11. The Registrar of Supreme Court responding to the queries of the Committee on the definition of 'commercial disputes' has stated as under:-

> …*"Till date "Commercial Litigation" has neither been defined nor had been recognised as a class in itself. The fact however remains that litigation pertaining to commercial matters has been and is being agitated before the different hierarchy of "Courts throughout the Country. Illustratively matters relating to Company Law, MRTP, TRAI, SEBI, IRDA, Civil matters, Mercantile Law, Commercial Transaction including Banking, Simple Money and Mortgage matters, matters relating to Leases, Government Contracts and Contracts by Local Bodies are and were being decided by different courts and at different levels right from the inception and till date....."*
>
> *".....It would be worthwhile to mention that the cases mentioned in Section 2(1)(c) of the proposed Bill are already being taken care of by the Hon'ble Supreme Court under its ordinary and appellate jurisdiction. In fact, even cases relating to commercial disputes arising from the other statutory Boards and Tribunals are also being decided by the Hon'ble Supreme Court as of now....."*
>
> *".....Classification has been made on the basis of pre-existing subject categories in the Hon'ble Supreme Court. Whatever matters were found to be related to trade and commerce from amongst the existing subject categories were inserted in the list. However classification is also based upon the cases filed under various enactments relating to commercial transactions....."*

12. A special Bench for Commercial Litigation commenced on 1st July, 2015 in the Supreme Court of India. The High Court of Madras is already having a Company Court to deal with matters arising out of the Companies Act, 1956. During its study-visit, the Committee was apprised that Commercial Benches have been made functional in High Court of Kolkata and Mumbai. The High Court of Delhi also recently established two Benches of Commercial Courts in the Original Jurisdiction and two Benches in the Appellate Jurisdiction on 26th March, 2015. As far as District Courts in Delhi are concerned, a Commercial Court at the Tis Hazari Court Complex was created in 1990s.

13**.** The Committee approached all the High Courts and State Governments to furnish their written views on provisions of the Bill through a common Questionnaire. Accordingly, the Committee received written views of thirteen High Courts, i.e. Delhi, Sikkim, Calcutta,

Madras, Hyderabad, Himachal Pradesh, Madhya Pradesh, Jharkhand, Allahabad, Rajasthan, Guwahati, Uttarakhand, and Punjab and Haryana on the various provisions of the Bill. Except High Court of Sikkim, none of the High Courts have opposed the creation of Commercial Courts.

14. The observation of Hon'ble Justice N. Ramamohana Rao of High Court of Judicature at Hyderabad on the Bill is as under:-

> *"…The measure to create a Commercial Appellate Division in all High Courts, including those which did not have original jurisdiction to entertain civil disputes such as the High Court at Hyderabad, would help in resolving the disputes much faster…."*

15. The observation of Hon'ble Justice P. Naveen Rao of High Court of Judicature at Hyderabad on the Bill is as under:-

> *"…It is laudable object but functioning of alternative forums created is much to be desired. Unless the purpose of speedy disposal is ensured, there is no point in creating such forums…."*

16. To the query of the Committee on the need of Commercial Courts in the Country, State Governments of Kerala, Andhra Pradesh, Tamil Nadu and Telengna have felt that establishment of commercial courts for expeditious disposal of high value commercial cases is the need of the hour. Even though this law does not apply to Jammu and Kashmir, that State Government has supported the objectives of the Bill. The High Court of Jammu and Kashmir has also felt that such a law is also needed in that State even though commercial activities are limited to the areas of Jammu and Srinagar only. There are only fifty-six cases above the pecuniary limit of rupees one crore are pending in that State.

17. State Governments of Uttarakhand, Sikkim, Mizoram and Union territory of Andaman and Nicobar have expressed that there is no need for Commercial Courts in their States as commercial disputes of rupee one crore are very limited. In Uttarakhand commercial disputes of rupee one crore and above are only twenty five cases and which are confined to the district of Dehradun only. In the State of Sikkim there is only one such case in the whole State. In Mizoram and UT of Andaman and Nicobar very few commercial cases are pending.

Commercial Disputes - An inclusive definition

18. The definition of 'commercial dispute' proposed under Clause 2(1) of the Bill is quite exhaustive having scope of addition of more items of commercial disputes in future by the Union Government. It covers every kinds of commercial transaction by merchants, bankers, traders, investors, etc. The details of commercial disputes enumerated in the Bill are as under:-

(i) Ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) Export or import of merchandise or services;

(iii) Issues relating to admiralty and maritime law;

(iv) Transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) Carriage of goods;

(vi) Construction and infrastructure contracts, including tenders;

(vii) Agreements relating to immovable property used exclusively in trade or commerce;

(viii) Franchising agreements;

(ix) Distribution and licensing agreements;

(x) Management and consultancy agreements;

(xi) Joint venture agreements;

(xii) Shareholders agreements;

(xiii) Subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(xiv) Mercantile agency and mercantile usage;

(xv) Partnership agreements;

(xvi) Technology development agreements;

(xvii) Intellectual Property Rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

(xviii) Agreements for sale of goods or provision of services;

(xix) Exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) Insurance and re-insurance;

(xxi) Contracts of agency relating to any of the above, or relating to such other commercial disputes as may be prescribed; and

(xxii) Such other commercial disputes as may be prescribed.

19. The Delhi High Court (Original Side) Rules, 1967 under Chapter 'XVI' under caption 'Commercial Suits' has defined the commercial cases which arises out of the ordinary transactions of merchants, bankers and traders and relating to the construction of mercantile documents, export or import of mercantile, affraightment, carriage of goods by land, sea or air, insurance, banking and mercantile agency and mercantile usage.

20. The definition of 'commercial disputes' proposed in the Bill is wider than the definition mentioned in the Delhi High Court Rules, 1967. However the definition enumerated under Rule 58 of Civil Procedure Rules, 1998 of the UK (which deals with the procedure followed in English Civil Court) appears to be similar with the definition proposed in the Bill.

21. The Registrar-General of High Court of Delhi in his written submission to the Committee on the Clause 2 of the Bill has stated as under:-

> *….Execution of Judgments/decrees in commercial dispute should also be before Commercial Division/Commercial Court. Else, the order/decree would remain on paper and defeat the expeditious disposal. Objections of several nature, in execution under Order XXI of CPC, are required to be decided as a suit and those proceedings also ought to be included in the definition of 'commercial dispute'….*

22. The Registrar of Madras High Court in his written submission to the Committee on the stated as under:-

> *"…the establishment of a Commercial Court at District level, a Commercial Division in the High Court and Commercial Appellate Division in the High Court could be achieved in the High Court of Madras subject to a few amendments to be made to the Original Side Rules to be in tandem to the amendments suggested by the Law Commission to the Code of Civil Procedure, 1908 in respect of Commercial dispute of high value. Firstly, speaking on Commercial Courts at District level, at the first instance a survey is required to be done to assess the number of commercial disputes/suits/ applications which were filed before the Civil Courts in a particular District. The data collected in this regard will give a fair idea as regards the number of Commercial 'Dispute arising in a particular District. This could enable the High Court to recommend to the Government to sanction a Commercial Court for the District or depending upon the volume of work to notify an already existing Court to be a Commercial Court apart from dealing with its regular works. When the Family Courts Act, 1984 was enacted, Family Courts were constituted in District Headquarters in a phased manner by assessing the volume of work apart from other parameters which require the State Government to constitute a Court-on a permanent basis. This procedure could be adopted in so far as the State of Tamil Nadu after collection of the statistics…."*

23. **Suggestions received from Stakeholders**

- The present definition of commercial dispute is very wide and its sweeping effects will practically take away all the litigation pending or to be instituted in subordinate courts all over the Country.
- The definition of commercial disputes should have generic terms rather than specific terms regarding commercial disputes and it should not confine the definition in respect of specific contracts as English Jurisprudence is not very specific on species of contract.
- It was also suggested to specify relevant Statues in the Schedule of the Bill rather than listing commercial disputes in the definition clause of the Bill.
- The definition of 'commercial dispute' should specifically include disputes with both State and Central Government as well as public sector enterprises wherein they are a party to the contract, pursuant to the tender provisions or otherwise.
- The power to classify other disputes as commercial disputes should be with the Chief Justice of High Court and not with the Central Government as the latter itself is one of the largest litigants.
- The Bill has failed to include in its definition of commercial dispute, the disputes arising out of direct and indirect taxes such as custom duties, central excise, etc.
- A separate Commercial Appellate Division, especially for tax related cases may be established in each High Court.
- Oral understanding, agreements and other transactions between parties which are not in writing, but promised on market practices, conventions and traditional usages may be included in the definition of commercial dispute.

- In sub-cause (j) of clause(c) of sub-section(1) of Section 2, the words "on such higher value as may be prescribed" may be omitted, as it may create a situation where on Act pressed by Parliament is amended by mere prescription without undergoing due legislative processes.
- Items like E-commerce may also be included.

24. Apprehensions have been expressed that wider definition may create jurisdictional issue with the proposed Commercial Court/ Division. It was suggested that the relevant statutes governing commercial activities be mentioned in the Schedule of the Bill so as to avoid jurisdictional problem which may delay the trial of commercial disputes. An attempt has, however, been made to list some of the extant statutes in the **Annexure-V.**

25. The Department of Legal Affairs has stated that wide range of commercial activities have been mentioned in the definition clause and has been made as exhaustive as possible. To the query whether it is feasible to list the statutes having commercial activities under the Schedule, that Department was open to the idea of the Committee.

Observations/Recommendations of the Committee

26. The Committee feels that the definition of commercial dispute under Clause 2 (c) of the Bill may lead to multiple interpretations and confusion as these provisions have already been defined in their parent Acts. Therefore, to allay the apprehensions expressed by stakeholders on the said Clause, the Committee feels that instead of inserting all the items in the Bill, having the provisions of commercial angle, it would be appropriate to include in the Schedule, the list of Acts which deal with commercial transaction(s). The Union/State Government may add any exact statute which it feel to be having commercial transaction in the Schedule of the Bill.

27. The State of Sikkim and Uttarakhand are having one and twenty five commercial cases in total, respectively. The Committee is, therefore, of the view that Government should establish Commercial Courts/ Divisions on a pilot basis in some States where commercial disputes are large in number and thereafter, it be replicated in remaining States depending upon its requirement. The Committee feels that the Government should have collected statistical data regarding the number of commercial suits, applications, appeals, petitions pending before the various courts in the Country to determine the financial implication on the exchequer. The Committee recommends that data of pendency of commercial cases be obtained and financial implications on the exchequer be calculated during the pilot phase of the execution of the Bill so as to better equip it in respect of the logistical and financial implications once the Bill is executed.

28. These pilot courts should be provided with adequate funds, state of the art infrastructure and human resource including judges and staff members. A model court fee structure may be worked out factoring into the recurring cost of those Courts. It should clearly indicate that the resolution of a commercial dispute is a service provided by the State to a section of litigants who can very well afford the cost of such adjudication. Such a revised court fee structure is the need of the hour. The Committee feels that such a super specialty facility to be rendered by commercial courts could be competitive with international institutional arbitration.

Valuation of Dispute and its Determination

29. The specified value of the commercial suite in the Commercial Division of High Courts Bill, 2009 was fixed at rupees five crore and above , whereas the monetary value of the suit should not be less than rupees one crore under Clause 2(1) (j) of the present Bill. The determination of specified value of a commercial dispute is provided under Clause 12 of the Bill.

Suggestions received from stakeholder

- Dispute relating to any commercial transaction irrespective of its valuation should be treated as commercial dispute;
- While filing the suit, appeal, application, the actual value of the subject matter of the dispute in claim or counter claim is taken into account whereas the aggregate value of claim and counter claim is taken into account if such matter has been decided by arbitration before approaching Commercial Court / Division. Therefore a clarification between actual and aggregate value of commercial dispute is required to avoid confusion;
- The specified value should not be fixed. It may vary from State to State. Determination of specific value should be left to the concerned High Court as economic valuation of the commercial affairs differs from State to State and case to case;
- Section 2(1) may be amended and valuation of suit be not less than rupees one crore or such higher value as the Central Government may by notification, after consultation with the respective High Court, from time to time prescribe;
- Fixing of rupees one crore as specified value may preclude commercial disputes especially faced by Micro Small and Medium Enterprises sector. Hence the specified value may be brought down from one crore to rupees twenty five lakhs;
- Specified value may be increased and fixed at rupees two crore.

30. The Delhi High Court (Amendment) Act, 2014 has enhanced the pecuniary jurisdiction of District Courts in Delhi to rupees two crores from twenty lakhs. The pecuniary jurisdiction of the High Court of Bombay is rupees one crore; the High Court of Calcutta is rupees one crore; the High Court of Madras is rupees twenty-five lakhs and High Court of Himachal Pradesh is rupees ten lakhs. The Law Commission of India in its Two Hundred and Fifty Third Report (2015) has recommended that:-

> *"....Pecuniary jurisdiction of the High Courts having original jurisdiction to be raised uniformly to rupees one crore and commercial divisions should be set up only when the pecuniary jurisdiction has been so raised. Consequently, commercial divisions may be set up in Delhi, Himachal Pradesh, and Madras High Courts once the pecuniary jurisdiction is raised to rupees one crore...."*

31. The observation of Hon'ble Justice A. Ramalingeswara Rao of High Court of Judicature at Hyderabad on the Bill is as under:-

> *"…There need not be any specific provision with regard to the determination of 'specified value' as 'pecuniary jurisdiction' is already decided by various decisions when the suits under C.P.C. were filed. Thus Clause 12 in Chapter III can be omitted but the 'specified value' for different tiers can be notified by the Central Government from time to time…."*

32. The Registrar-General, High Court of Himachal Pradesh in his written submission to the Committee on the Clause 2 (c) of the Bill has stated as under:-

> *"....weightage shall have to be given to all the commercial suits whether the same are above one crore or less than one crore, otherwise, it would give a wrong signal in the society as well as world over that even Indian Judicial System treats elitist people and the egalitarian society differently whereas in the eyes of law everyone should be equal...."*

33. The Co-ordination Committee of All District Court Bar Associations of Delhi in their written submission to the Committee on the Bill stated as under:-

> *"…The proposed Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 provides to enhance the original jurisdiction to Rupees one crore only. This is in direct conflict with the Delhi High Court (Amendment), Bill 2014 which was unanimously passed in the Rajya Sabha…."*

Observations/Recommendations of the Committee

34. The Committee feels that the transfer of all pending commercial disputes to the proposed Commercial Court/Division may overburden the said courts and defeat the very purpose of establishing them. There may not be requirement of Commercial Courts in some States as they have limited number of such cases. The Committee recommends that instead of transferring the pending cases to Commercial Courts, a sunset clause may be inserted in the Bill whereby only fresh cases with a pecuniary limit may be transferred to Commercial Courts. However, the litigants may be given a choice to move Commercial Courts if the pending dispute is of commercial nature as per the Schedule of the Bill.

35. Since the pecuniary jurisdiction of High Court of Delhi has been enhanced to rupees two crore from rupees twenty lakhs, the Commercial Division of High Court of Delhi may not entertain commercial disputes upto the value of rupees two crore. Therefore, the value of dispute to be entertained by the Commercial Division of High Court of Delhi should be more than rupees two crore. This calls for harmonisation between the provisions relating to pecuniary jurisdiction in the Delhi High Court (Amendment) Act, 2015 and the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015. Moreso, the valuation of property in metro cities has increased and the cost of a two bedroom flat in those cities are generally above rupees one crore. The Committee, therefore, feels that specified value of the commercial dispute should not be less than rupees two crore.

36. The Committee also takes note of the apprehension that many cases pending in District Courts may be transferred to the designated Commercial Court as a result of which many District Courts may be having limited number of cases and a designated Commercial Court may be overburdened with commercial disputes particularly when the value of commercial disputes is rupees one crore. The Committee has been apprised by the Registrar, High court of Delhi that a designated Commercial Court in Tis Hazari Court Complex has been made functional from 1990s. The Committee notes that the High Court of Delhi has created a Commercial Court in Delhi on need based to fast track those cases. Even after creation of such Commercial Court in Tis Hazari Court Complex, pendency in six other District Courts has not been reduced. Therefore, the interest of practising advocates would not be affected in the event of creation of

designated Commercial Court. Further, increase of specified value of commercial dispute from rupees one crore to two crore would also allay the apprehension expressed by the legal fraternity.

Appointment of Judges to Commercial Court

37. The judges of the commercial courts will be appointed by the concerned High Court and where more than one judge is appointed, the senior judge to be designated as principal judge. According to Clause 4 (1) & (2) of the Bill the Chief Justice of the concerned High Court is to nominate judges having experience in dealing with commercial cases for Commercial Division and Commercial Appellate Division for a period of two years or as determined by the Chief Justice of the concerned High Court.

Suggestions received from Stakeholders

- The provision of appointment of judges of Commercial Court by the High Court of the concerned State under Clause 5(3) of the Bill is an apparent encroachment upon the power of the Governor of the State and also is in a contravention of Articles 233 and 234 of the Constitution. State Government of Tamil Nadu has submitted that appointment of judges of Commercial Court, if restricted to, the judges of District Court exclusively would not violate aforesaid Articles of the Constitution.
- The person appointed in Commercial Court should be qualified to be appointed as a District Judges or a District/Additional District Judge. The terms and conditions of service of the judges of Commercial Court be similar to District/Additional District Judges. Since prescribing service conditions of the rank of the District Judge is in exclusive domain of the Governor of the State in consultation with the High Court, this power cannot be exercised by Central Government.
- Appointment of a judge of a Commercial Court shall be made by the relevant High Court from amongst the judicial officers of the State qualified to be appointed as a district judge and having demonstrable expertise and experience in commercial disputes. Chief justice needs to consult and obtain the views of the judge proposed to be nominated. Terms and conditions of service for judges of Commercial Court shall be same as that of the post of the rank which such judicial officer would have otherwise got in that State/UT.
- The existing vacancies in the High Courts must be filled up first, otherwise the objectives of the Bill will fail.

38. Judges for the Commercial Court would be appointed from amongst District Judge/ Tribunal having proficiency and experienced in commercial disputes by the Chief Justice of High Court concerned in a State. Articles 233 and 234 of the Constitution stipulate that Governor is the appointing authority for District Judges. Apparently, Clause 5(3) is in contravention with Articles 233 and 234 of the Constitution.

39. The observation of Hon'ble Justice N. Ramamohana Rao of High Court of Judicature at Hyderabad on the Bill is as under:-

> *"….Section 5 provided adequate freedom to the High Court for appointing the Judges of the Commercial Courts….however, there should have been freedom to appoint/choose experienced and retired Senior District Judges, who maintained good track record and also possessed integrity, for a period of two (2) years. Similarly, nomination of appropriate Judges by the Chief Justice as*

Judges of the Commercial Division or Commercial Appellate Divisions gives freedom to utilise the service of the Judges who are capable of resolving commercial disputes in real quick time…."

40. The Registrar-General of High Court of Delhi in his written submission to the Committee on the Clause 5 of the Bill has stated as under:-

"…A provision should be made for better infrastructure of the Commercial Court, with the facility, may be also of a vehicle, to save the commuting time for the Presiding Officer of the Commercial Court. Since the Judges of Commercial Courts will be dealing exclusively with high value matters, an appointee should have a sufficiently long remaining tenure and should not be on the verge of the retirement. Often, it is found that Judges manning such Special Courts go on long leave necessitating the High Court to intervene in exercise of powers under Article 226…"

41. The Registrar-General of Madras High Court in his written submission to the Committee on the Bill has stated as under:-

"…The Hon'ble Judge dealing with such commercial disputes should be equipped to deal with them. The nomination of such Hon'ble Judge by the Honble Chief Justice of the High Court shall be by assessing the capability of the Hon'ble Judge to deal with such high value commercial suits. In order to better, enable those Hon'ble Judges to deal with these specialized matter which may require expertise or exposure to certain branches of law or principles, the Hon'ble Judges so identified/nominated by the Hon'ble Chief Justice be imparted special training to better equip themselves. The present establishment viz., State judicial Academy has the necessary infrastructure to impart such training and effectiveness of the training would be by devising a proper training module/curriculum with experts in the concerned branch as resource persons…."

42. The Department of Legal Affairs, Ministry of Law and Justice submitted that **t**he introduction of the Bill would not violate the constitutional provisions under Articles 233 and 234 as the Chief Justice will nominate from the existing cadre of judges available in the prescribed manner in the Bill and no new requirement/appointment will be done for the Commercial Courts/Divisions as the judges will be nominated from the existing pool of the District and High Court.

43. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 has replaced Clause 5(3) of the Bill with Clause 3 of the Ordinance wherein the appointing power of Commercial Court has been vested with State Government in consultation with the High Court concerned of the State. Thus, the Ordinance has pruned the deficiency pointed out in Clause 5 of the Bill.

Observations/Recommendations of the Committee

44. The Committee observes that the power of appointment of person to the post of District Judge in State lies with Governor of that State who exercise that power in consultation with the High Court of the State concerned. The Clause 5(3) of the Bill, however, gives that power to Chief Justice of the High Court concerned. This is not in conformity with provision under Article 233 of the Constitution. The Committee feels that the appointment of judges of Commercial Courts by the concerned High Court will encroach upon the powers of the State Government and infringe upon the federal

structure provided under the Constitution of India. The Committee, therefore, recommends that appointment powers of the State Government should be left as provided in the Constitution. The Committee also takes note of the Clause 3(3) of the Ordinance issued by Government on the 23rd October, 2015. The said Clause empowers the State Government in consultation with the concerned High Court to appoint judges of Commercial Court from the Higher Judicial Service of the State. The Committee feels that this Clause is in conformity with the constitutional scheme.

45. The Committee notes that as of 1st September, 2015, out of 1017 sanctioned post of judges, 392 posts are lying vacant in various High Courts of the Country. The Committee feels that without filling-up of these existing vacancies, the present Bill, may prove counter-productive far from achieving its objective. Therefore, the Committee recommends to the Government to fill-up the existing vacancies in these High Courts taking into consideration the specialised knowledge and experience requirement for appointment.

Appeal to Commercial Appellate Benches from Tribunals

46. Clause 14 of the Bill states that any appeal filed in a High Court against the orders of certain Tribunals/Boards like: (i) Competition Appellate Tribunal; (ii) Debt Recovery Appellate Tribunal; (iii) Intellectual Property Appellate Board; (iv) Company Law Board or the National Company Law Tribunal; (v) Securities Appellate Tribunal; and (vi) Telecom Dispute Settlement and Appellate tribunal shall be heard and disposed of by the Commercial Appellate Division of the High Court, if the matter relates to a commercial dispute. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 has, however, removed Clause 14 of the Bill.

47. **Suggestions received from Stakeholders**

- If commercial cases pending in tribunals are transferred to Commercial Courts or Commercial Division of High Courts then tribunals would become redundant.
- The proposed Bill will take away the jurisdiction of certain tribunals like Debt Recovery Tribunals and other Tribunals of similar nature.
- High Court's jurisdiction except under Articles 226 and 227 of Constitution have been ousted by specific statutes by setting up of specialised Tribunal/Board have been brought in without amending those specific statues causing jurisdictional challenge in future.

48. The specified value in commercial dispute is rupees one crore and above, as per Clauses 2(1)(j) and 12 of the Bill, whereas, Section 1(4) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 stipulates that dispute relating to banks over rupees ten lakh can be filed in Debt Recovery Tribunal(DRT) and Debt Recovery Appellate Tribunal(DART). After the creation of commercial courts, cases above rupees one crore can be filed by the banks in DRT/DART under Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In other words, banking related cases of rupees one crore may not come to Commercial Court/ Division even dispute relating to bankers and financers is a commercial dispute and can be filed in Commercial Court/Division. Therefore, there would be jurisdictional overlap between Commercial Court/Division and DRT/DART.

Observations/Recommendations of the Committee

49. Jurisdiction of regular courts are ousted in the commercial disputes by the specific statute. Commercial Court is also a regular civil Court; jurisdiction thereof may be ousted by invoking Section 18 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in the debt related cases. The Committee, therefore, feels that harmonisation between the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is required so far as commercial dispute relating to banking sector is concerned.

50. The decision/orders of six tribunals/Boards mentioned under Clause 14 of the Bill are appealable to Commercial Appellate Division of concerned High Court. Three Tribunals viz., Securities Appellate Tribunal, Competition Appellate Tribunal and Telecom Disputes Settlement and Appellate Tribunal are headed by sitting or retired judges of Supreme Court of India or the sitting or retired Chief Justice of High Courts, whose decisions are appealable in Supreme Court. Therefore, the Clause 14 of the present Bill is in contravention of Section 15(z) of Securities and Exchange Board of India Act, 1992, Section 53(T) of the Competition Act, 2002 and Section 18 of The Telecom Regulatory Authority of India Act, 1997. Suggestions have been received that creation of so many tiers of appeal in the case of tribunals referred to in the Bill have been increased to four as the decision of appellate tribunals would now lie to Commercial Appellate Bench of High Court. The cases which are fast tracked may be stuck up in appeals. Therefore, the Committee feels that tiers of appeal should not be more than two including tribunal also.

51. The Committee also notes that the Ordinance issued by the Government has omitted Clause 14 of the Bill and thereby excluded all the six Tribunals/Boards from the appeal to be heard and disposed by the Commercial Appellate Division of the concerned High Court. The Committee is in agreement with such exclusion.

52. The Commercial District Courts for commercial matter such as Debt Relief, Intellectual Property, SEBI, Income Tax etc. can replace the tribunals with full District Commercial Judges for quicker and fast track remedy with statutory one appeal to Division Bench in High Court. This will attract the investors to choose this 'Fast Track' courts rather than expensive international Arbitration. The Committee in its Seventy-fourth Report on the Tribunals, Appellate Tribunals & Other Authorities (Conditions of Service) Bill, 2014 had noted that many posts in various tribunals are lying vacant leading to huge number of pendency of cases. The Committee feels that once commercial courts are created, there is no need for the tribunals system of deciding high value commercial disputes.

Enhanced Court Fee or Cost of Litigation in Commercial Suits

53. The resolution providing forum for a dispute is no doubt is a sovereign duty of the State but court fees have to borne by parties to civil disputes under the Code of Civil Procedure 1908. Sometimes, parties cleverly resort to higher judicial forum under Public Interest Litigation by paying minimum court fee to get their dispute resolved. The Committee in its Twentieth Report on the Supreme Court (Number of Judges) Amendment Bill, 2008 dealt with the issue of court fee in details and observed that the time spent by the courts at

various levels and the expenses incurred upon the exchequer while settling such disputes has never been taken into account and thereby allowing the corporate, commercial/ statutory bodies making use of the judicial infrastructure at the minimum expenses for settling their disputes worth crores of rupees.

54. The issue of court fee was dealt by the Law Commission of India in its Fourteenth Report on Reforms of the Judicial Administration (September, 1958), One Hundred and Twenty-eighth Report on Cost of Litigation (1988), One Hundred and Eighty-nine Report on Revision of Court Fee Structure (February, 2004), Two Hundred and twentieth Report on Need to fix Maximum Chargeable Court Fees in Subordinate Civil Courts (March, 2009), Two Hundred Thirty-first Report on Amendments in Indian Stamp Act 1899 and Court-Fees Act 1870 Permitting Different Modes of Payment (August, 2009), Two Hundred Thirty-sixth Report on Court Fee in Supreme Court vis-à-vis Corporate Litigation (December, 2010) and Two Hundred and Fifty-third Report on Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (January, 2015). In its Fourteenth Report on Reforms of the Judicial Administration (September, 1958), the Law Commission of India was of the view that India is the only modern country to impose a tax on legal remedy. The Commission in its One Hundred twenty-eight Report on 'Cost of Litigation' (1988) has stated that administration of criminal justice is the obligatory duty of the State as part of its sovereign function; no fee can, therefore, be levied for performing the same. But, the civil justice system is a public service and fees for that service is chargeable by the court system. In its One Hundred Eighty-ninth Report on the Revision of Court Fee Structure (February, 2009), the Commission recommended that rate of court fee may be enhanced by linking it to devaluation of rupee, as it has not revised for a long time. However, the Commission was of the view that high court fee must not become a barrier to access to justice. In the same Report the LCI has observed that high cost of litigation is one of the impediments in access to justice. In its Two Hundred and Twentieth Report on Need to fix Maximum Chargeable Court Fees in Subordinate Civil Courts (March, 2009), the Commission was of the view of having a fixed maximum chargeable court fees in the country. In Two Hundred and Thirty-sixth Report on Court Fee in Supreme Court vis-à-vis Corporate Litigation (December, 2010), the Commission was of the view that court fee should be based on the value of the suit and may be charged on *ad valorem* basis subject to a reasonable ceiling limit. In its Two Hundred and Fifty-third Report on the Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (January, 2015), the Commission was of the view that court fee needs to be linked with the time consumed by the litigants in the conduct of their case, so as to discourage frivolous litigants.

55. Frequent adjournment sought by the clever parties is the main cause of judicial delay and pendency in courts. LCI in its Two Hundred and Fifty-third Report (January, 2015) has observed that present culture of charging fees per hearing incentivise the lawyers to delay the cases. The apex court in Subrata Roy Sahara vs Union of India 2014(8) SCC, 470 has observed that

> *"....The Indian Judicial system is grossly afflicted with frivolous litigation ****. There are some litigants who continue to pursue senseless an ill-considered claims to somehow or the other to defeat the process of law *********. When the litigant party understands that it would have to compensate the party which succeeds, unnecessary litigation will be substantially reduced. At the end of the day court time lost is direct loss to the nation...."*

56. The LCI has also felt that litigation culture in our country needs to be shifted from 'litigant managed' to 'court-managed' litigation process. In UK, the Civil Procedure Act, 1997 and Civil Procedure Rules, 1999 governs civil justice procedures which have been framed on the basis of reforms proposed by Lord Woolf which has entailed sharp drop of cases from 10,000 to 2,000 in a month, affording more time to judges to dispose-off pending case.

57. The LCI has also observed that existing cost regime and court fee regime does not deter litigants from filing false and vexatious claim or seeking adjournment to delay the proceedings. Litigants who prolong matter and abuse the court's process pay the same court fee as the litigants who do not indulge in such practices. To remedy such situation, the court fee will need to be related to time consumed by the litigants in the conduct of their cases. Singapore model has been quoted by LCI. In Singapore, no court fee is chargeable for first three hearings; SGD 8000 is payable for first five hearings, SGD 20,000 is payable for first ten hearings. That increases by SGD 5000 per hearing from eleventh hearing onwards.

Observations/Recommendations of the Committee

58. **The Committee, however, feels that establishment of Commercial Courts will, in no way, infringe the rights of common/ poor litigants and will not violate their human rights as part of judicial reforms. Specialised courts and institutions similar to the Commercial Courts are already established and functioning for different matters like Family Court, CBI Court, Lok Adalat, Nyaya Panchayat, etc. The Committee recognises that it is our constitutional obligation to provide free legal aid to poor which is enumerated under Article 39A under Part-IV - Directive Principles of State Policy of the Constitution. An individual can file 'Pauper Suit' under Order XXXIII, Rule 1 of Code of Civil Procedure, 1908 to avail justice without paying any court fee. National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to fulfil the constitutional objective which provide panel of lawyers to economically handicapped litigants**.

59. The Department of Legal Affairs, Ministry of Law and Justice submitted that **t**he subject matter of court fee falls within the exclusive domain of State Legislatures, except the Supreme Court. Any Change in the law will be required to be undertaken by the States and not by the Central Government. However, the Law Commission in its Two Hundred and Fifty Third Report (January, 2015) proposed a re-look of the court fee regime by State Governments.

60. The observation of Hon'ble Justice M. Seetharama Murti of High Court of Judicature at Hyderabad on the Bill is as under:-

> *"…Lis valuation Rules and Court fee structure shall be uniform in the entire Country and Jurisdictions of Courts for entertaining the disputes shall be well defined without any vagueness or uncertainness to avoid Forum Shopping and to prevent orders of Remands and rehearing of the matters on technical issues…."*

61. Registrar-General of Calcutta High Court in his written submission to the Committee on the Bill stated as under:-

> *"…. simplified system of valuation must be adopted otherwise valuation itself will be cumbersome process and will invite interference of the proposed adjudicatory bodies on additional issues of valuation…."*

Observations/Recommendations of the Committee

62. The Court fees in various States are governed by separate Acts which are also very low and have not been revised for a long time due to various reasons. The minimum court fee for filing Special Leave Petition (SLP) in the apex court is Rs. 5000 only as prescribed by Supreme Court Rules, 1950 (Amended in 2014) . The Committee is of the view that the present court fee structure is encouraging litigants to go for appeal, thus leading to pendency and arrears in cases. The Committee feels that initial court fee should be lower and the fee may be hiked at each stage of appeal, as in the case of Singapore where the cost increases at each stage of appeal, to discourage unnecessary appeal.

63. The Directive Principles of State Policy under Article 39A of the Constitution provides equal justice and free legal aid. It reads "State shall secure that the operation of legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". For fulfilling this Constitutional obligation, the State has been providing accessibility of justice to economically unaffordable litigants through Legal Aid schemes of Lok Adalat set-up under the 'National Legal Services Authorities Act, 1987' and such other enactments by Parliament and State Assemblies in addition to provisions of Civil Procedure Code, 1908 enabling the Court to give exemptions of all costs of suit on proof of inability of the party. Hence the persistent perception of judiciary and public activists that the entire cost of running of judiciary is met by the tax payers' money also needs to be clarified to the effect that the sovereign duty of providing Criminal Justice is different from that of Civil Dispute Resolution system for economically affordable persons in the "Globalised Economy". There are sections of people ready to incur the actual cost of justice delivery system, provided there is transparency, reliability, accountability and fast tracking of the Civil Dispute Resolution. The Committee, therefore, recommends for institution of "Professional Cost Accountants Wing" in the Supreme Court and High Courts to prepare a "Cost Impact" of establishing and running the Commercial Courts, Commercial Benches in High Courts and Supreme Courts to fix the court fee. Accordingly, the courts should manage the "Justice Delivery System" by gradually reducing "Demands for Grant" from the Consolidated Fund of India. This will lead to real "Financial Independence" to judiciary as enjoyed in developed countries.

Case Management Hearing and Imposition of Cost

64. The Code of Civil Procedure, 1908 is proposed to be amended to introduce 'Case Management Hearing' for the purpose of setting time lines for the following:-

- Filing of Written Statement (WS) by the defendant within 30 days from the date of service of summon and within 120 days with the payment of cost as the Court may deem fit. However, the defendant shall forfeit the right to file the WS after the expiry of 120 days from the date of summon.
- Written argument containing the provisions of laws being cited and citations of judgment relied upon by the party, within four weeks prior to commencement of oral argument.
- Completion of oral argument within six months from the first case management hearing.

- Commercial Court/Commercial Division/Commercial Appellate Division/to pronounce judgment within 90 days from the conclusion of argument.

65. In the "case management hearing" the court shall decides the timeline for filing affidavit of evidence by parties, dates on which evidence of witnesses to be recorded, etc. Generally, no adjournment of "case-management hearing" to be made due to absence of Counsel but exceptionally it can be granted by the court on the payment of cost. The court may impose exemplary cost upon the defaulting parties who wilfully or negligently failed to disclose all documents under their possession, custody and control, pertaining to the suit. The court may order to the unsuccessful party to pay reasonable cost inter-alia including fees and expenses incurred on the witnesses, legal fees and other expenses.

66. The Registrar-General of Madras High Court in his written submission to the Committee on the Bill has stated as under:-

> *"…. to restrict the length of pleading as adopted by various commercial courts elsewhere in the World. Likewise, the Rules can provide for restriction of time granted for arguments, subject of course to, the discretion of the Courts concerned. This will enable to substantially reduce the number Court hours spend on each case…."*
>
> *"… till the pleadings are complete, Annexure and documents filed, the matter shall not be listed before the Court for hearing. This would ensure that the parties to the litigation do not adopt dilatory tactics by filing affidavit or documents across the Courts when matters set down for hearing. In fact, in the Original Side of the High Court of Madras, a Judicial Officer in the cadre of 'District Judge is appointed as a Master of the Original Side before whom the cases are listed for the purpose of complying the requirement regarding Pleading, service of notice on the Respondents/Defendants, Miscellaneous Applications such as to bring on record the Legal Representative of the deceased parties etc., Apart from the Master in the Original Side, Additional Masters have been appointed to record evidence. Hence on constitution of Commercial Division/Appellate Division the duties which were hitherto dealt by Master/Additional Master shall be assigned to an exclusively Master Court could be termed as Commercial Division Master who shall deal with cases which are heard by the Commercial Division/Appellate Division…."*

Observations/Recommendations of the Committee

67. The Committee is of the view that best international practices in 'Case Management System' needs to be introduced for ensuring expeditious disposal of commercial disputes. Case management system should enhance the quality, responsiveness and timeliness of Court and trained personnel may be provided to manage these courts so as to fast track the resolution of commercial disputes. The Committee is also of the view that adjournment should be a matter of last resort and unnecessary adjournment should not be granted to the parties to delay a dispute resolution. The Committee, however, suggests that there should be a provision of a fee/cost to be paid by the party seeking adjournments beyond a definite limit and such fee/cost should progressively increase for subsequent adjournments.

68. Under Section 35 (A) of the Code of Civil Procedure, 1908, court can impose cost for filing vexatious cases/claim in the courts which consume time of the courts. The Committee feels that amount of imposition of cost should be clearly mentioned in the

Act to discourage the parties and their counsel abusing judicial processes and wasting the time of the court on tax payers' money. It is the duty of High Courts and Supreme Court under Articles 145, 146, 227 and 229 of the Constitution.

69. The Constitution of India has given the power regarding the case management, cost management, time management by delegating rule making powers under Articles 145, 146, 227 and 229 to the Supreme Court and High Courts. The Code of Civil Procedure, 1908 Order XXXVII provides for a summary procedure. Similarly, Commercial Courts can have Order XXXVII A by incorporating Schedule in the present Bill under Clause 17. These are under the domain of Judicial Management and Accountability to the People of India. Parliament need not take over the Judicial Administrative Powers by making many provisions in every legislation by giving detailed procedure creating doubts to the people with multiplicity of procedures. British Government, Ministry of Justice, has updated till 13th November, 2015, the Civil Rules of Practice including Digital filing. In the United States of America, Federal & State Courts formulate Rules of Civil Procedure. The Supreme Court of India and High Courts are already publishing the rules of procedure. In such circumstances, it is better to leave the domain of laying procedures and accountability to the disposal of cases on time bound case management and cost management to the judiciary and on their request, the Parliament can bring accreditation under Art 145 of the Constitution. The Supreme Court may be requested to formulate rules of procedure for Supreme Court and all High Courts should have common Rules of Procedure and Practice.

Institutional Arbitration in Commercial Dispute

70. During its study visit the Committee interacted with representatives of High Courts of Calcutta and Hyderabad, wherein they suggested that mediation as an alternative dispute resolution mechanism as provided in Section 89 of Code of Civil Procedure, 1908, may be introduced to reduce pendency of cases and save money and time of both the court and litigants.

71. The Committee during its visit to the High Court of Delhi was apprised of the excellent work done by 'Samadhan', its Mediation and Conciliation Centre in the field of mediation. The Banglore Mediation Centre of the Karnataka High Court is also doing excellent job in the field of mediation.

72. The Registrar-General of High Court of Madhya Pradesh in his written submission to the Committee on the Bill has stated as under:-

> *"….under the Arbitration and Conciliation Act, 1995, no appellate jurisdiction under Section 37 has been conferred to the "Court" defined under Section 2 (1) (e) thereunder. Therefore, reference of "Appeals" under Sub-clause 3 of Clause 10 of the Bill, 2015, as referred above may be deleted as it is not necessary…."*

Observations/Recommendations of the Committee

73. The Committee notes that National Legal Services Authorities Act, 1987, Chapter VI A, provides for Pre-Litigation Conciliation and Settlement with permanent Lok Adalat by voluntarily surrendering right of appeal. The Committee feels that Government may contemplate a similar provision for the Commercial disputes.

74. The appeal against the award of domestic as well as international arbitration in high value Commercial dispute will lie to Commercial Appellate Division of High Court

under Clause 10 of the Bill. The arbitration system is a parallel to the regular courts and the commercial entities prefer the arbitration route for expeditious disposal of commercial disputes even though that system is highly expensive. Most of the commercial entities prefer International arbitration available in Singapore, London, Dubai, etc. The Committee observes that the award of the arbitration should be binding on the parties without giving the option to the parties to challenge the same in the court of law. The parties should decide *ab initio* to take the route of Commercial Court or arbitration on the commercial disputes. The Committee, therefore, feels that institutional arbitration with accredited arbitration may be provided to the commercial entities so that, they can avail either of those two institutions. The Committee takes this opportunity to urge upon the Government to develop India as a hub of institutional arbitration which can attract foreign investors to invest or even settle their dispute within the country in a faster and reliable manner. Therefore, Clause 10 of the Bill needs revision accordingly. The Committee further wishes that the Government should also look into the Committee's suggestions / recommendations made in its earlier Report viz., the Ninth Report Of This Committee On The Arbitration And Conciliation (Amendment) Bill, 2003, presented to Parliament on 4th August, 2005.

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OBSERVATIONS/RECOMMENDATIONS AT A GLANCE

1. The Committee feels that the definition of commercial dispute under Clause 2 (c) of the Bill may lead to multiple interpretations and confusion as these provisions have already been defined in their parent Acts. Therefore, to allay the apprehensions expressed by stakeholders on the said Clause, the Committee feels that instead of inserting all the items in the Bill, having the provisions of commercial angle, it would be appropriate to include in the Schedule, the list of Acts which deal with commercial transaction(s). The Union/State Government may add any exact statute which it feel to be having commercial transaction in the Schedule of the Bill. [Para 26]

2. The State of Sikkim and Uttarakhand are having one and twenty five commercial cases in total, respectively. The Committee is, therefore, of the view that Government should establish Commercial Courts/ Divisions on a pilot basis in some States where commercial disputes are large in number and thereafter, it be replicated in remaining States depending upon its requirement. The Committee feels that the Government should have collected statistical data regarding the number of commercial suits, applications, appeals, petitions pending before the various courts in the Country to determine the financial implication on the exchequer. The Committee recommends that data of pendency of commercial cases be obtained and financial implications on the exchequer be calculated during the pilot phase of the execution of the Bill so as to better equip it in respect of the logistical and financial implications once the Bill is executed.

[Para 27]

3. These pilot courts should be provided with adequate funds, state of the art infrastructure and human resource including judges and staff members. A model court fee structure may be worked out factoring into the recurring cost of those Courts. It should clearly indicate that the resolution of a commercial dispute is a service provided by the State to a section of litigants who can very well afford the cost of such adjudication. Such a revised court fee structure is the need of the hour. The Committee feels that such a super specialty facility to be rendered by commercial courts could be competitive with international institutional arbitration. [Para 28]

4. The Committee feels that the transfer of all pending commercial disputes to the proposed Commercial Court/Division may overburden the said courts and defeat the very purpose of establishing them. There may not be requirement of Commercial Courts in some States as they have limited number of such cases. The Committee recommends that instead of transferring the pending cases to Commercial Courts, a sunset clause may be inserted in the Bill whereby only fresh cases with a pecuniary limit may be transferred to Commercial Courts. However, the litigants may be given a choice to move Commercial Courts if the pending dispute is of commercial nature as per the Schedule of the Bill. [Para 34]

5. Since the pecuniary jurisdiction of High Court of Delhi has been enhanced to rupees two crore from rupees twenty lakhs, the Commercial Division of High Court of Delhi may not entertain commercial disputes upto the value of rupees two crore. Therefore, the value of dispute to be entertained by the Commercial Division of High Court of Delhi should be more than rupees two crore. This calls for harmonisation between the provisions relating to pecuniary jurisdiction in the Delhi High Court (Amendment) Act, 2015 and the Commercial Courts, Commercial Division and

Commercial Appellate Division of High Courts Bill, 2015. Moreso, the valuation of property in metro cities has increased and the cost of a two bedroom flat in those cities are generally above rupees one crore. The Committee, therefore, feels that specified value of the commercial dispute should not be less than rupees two crore. [Para 35]

6. The Committee also takes note of the apprehension that many cases pending in District Courts may be transferred to the designated Commercial Court as a result of which many District Courts may be having limited number of cases and a designated Commercial Court may be overburdened with commercial disputes particularly when the value of commercial disputes is rupees one crore. The Committee has been apprised by the Registrar, High court of Delhi that a designated Commercial Court in Tis Hazari Court Complex has been made functional from 1990s. The Committee notes that the High Court of Delhi has created a Commercial Court in Delhi on need based to fast track those cases. Even after creation of such Commercial Court in Tis Hazari Court Complex, pendency in six other District Courts has not been reduced. Therefore, the interest of practising advocates would not be affected in the event of creation of designated Commercial Court. Further, increase of specified value of commercial dispute from rupees one crore to two crore would also allay the apprehension expressed by the legal fraternity. [Para 36]

7. The Committee observes that the power of appointment of person to the post of District Judge in State lies with Governor of that State who exercise that power in consultation with the High Court of the State concerned. The Clause 5(3) of the Bill, however, gives that power to Chief Justice of the High Court concerned. This is not in conformity with provision under Article 233 of the Constitution. The Committee feels that the appointment of judges of Commercial Courts by the concerned High Court will encroach upon the powers of the State Government and infringe upon the federal structure provided under the Constitution of India. The Committee, therefore, recommends that appointment powers of the State Government should be left as provided in the Constitution. The Committee also takes note of the Clause 3(3) of the Ordinance issued by Government on the 23rd October, 2015. The said Clause empowers the State Government in consultation with the concerned High Court to appoint judges of Commercial Court from the Higher Judicial Service of the State. The Committee feels that this Clause is in conformity with the constitutional scheme. [Para 44]

8. The Committee notes that as of 1st September, 2015, out of 1017 sanctioned post of judges, 392 posts are lying vacant in various High Courts of the Country. The Committee feels that without filling-up of these existing vacancies, the present Bill, may prove counter-productive far from achieving its objective. Therefore, the Committee recommends to the Government to fill-up the existing vacancies in these High Courts taking into consideration the specialised knowledge and experience requirement for appointment. [Para 45]

9. Jurisdiction of regular courts are ousted in the commercial disputes by the specific statute. Commercial Court is also a regular civil Court; jurisdiction thereof may be ousted by invoking Section 18 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in the debt related cases. The Committee, therefore, feels that harmonisation between the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is required so far as commercial dispute relating to banking sector is concerned. [Para 49]

10. The decision/orders of six tribunals/Boards mentioned under Clause 14 of the Bill are appealable to Commercial Appellate Division of concerned High Court. Three Tribunals viz., Securities Appellate Tribunal, Competition Appellate Tribunal and Telecom Disputes Settlement and Appellate Tribunal are headed by sitting or retired judges of Supreme Court of India or the sitting or retired Chief Justice of High Courts, whose decisions are appealable in Supreme Court. Therefore, the Clause 14 of the present Bill is in contravention of Section 15(z) of Securities and Exchange Board of India Act, 1992, Section 53(T) of the Competition Act, 2002 and Section 18 of The Telecom Regulatory Authority of India Act, 1997. Suggestions have been received that creation of so many tiers of appeal in the case of tribunals referred to in the Bill have been increased to four as the decision of appellate tribunals would now lie to Commercial Appellate Bench of High Court. The cases which are fast tracked may be stuck up in appeals. Therefore, the Committee feels that tiers of appeal should not be more than two including tribunal also. [Para 50]

11. The Committee also notes that the Ordinance issued by the Government has omitted Clause 14 of the Bill and thereby excluded all the six Tribunals/Boards from the appeal to be heard and disposed by the Commercial Appellate Division of the concerned High Court. The Committee is in agreement with such exclusion. [Para 51]

12. The Commercial District Courts for commercial matter such as Debt Relief, Intellectual Property, SEBI, Income Tax etc. can replace the tribunals with full District Commercial Judges for quicker and fast track remedy with statutory one appeal to Division Bench in High Court. This will attract the investors to choose this 'Fast Track' courts rather than expensive international Arbitration. The Committee in its Seventy-fourth Report on the Tribunals, Appellate Tribunals & Other Authorities (Conditions of Service) Bill, 2014 had noted that many posts in various tribunals are lying vacant leading to huge number of pendency of cases. The Committee feels that once commercial courts are created, there is no need for the tribunals system of deciding high value commercial disputes. [Para 52]

13. The Committee, however, feels that establishment of Commercial Courts will, in no way, infringe the rights of common/ poor litigants and will not violate their human rights as part of judicial reforms. Specialised courts and institutions similar to the Commercial Courts are already established and functioning for different matters like Family Court, CBI Court, Lok Adalat, Nyaya Panchayat, etc. The Committee recognises that it is our constitutional obligation to provide free legal aid to poor which is enumerated under Article 39A under Part-IV - Directive Principles of State Policy of the Constitution. An individual can file 'Pauper Suit' under Order XXXIII, Rule 1 of Code of Civil Procedure, 1908 to avail justice without paying any court fee. National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to fulfil the constitutional objective which provide panel of lawyers to economically handicapped litigants. [Para 58]

14. The Court fees in various States are governed by separate Acts which are also very low and have not been revised for a long time due to various reasons. The minimum court fee for filing Special Leave Petetion (SLP) in the apex court is Rs. 5000 only as prescribed by Supreme Court Rules, 1950 (Amended in 2014) . The Committee is of the view that the present court fee structure is encouraging litigants to go for appeal, thus leading to pendency and arrears in cases. The Committee feels that initial court fee should be lower and the fee may be hiked at each stage of appeal, as in the

case of Singapore where the cost increases at each stage of appeal, to discourage unnecessary appeal. [Para 62]

15. The Directive Principles of State Policy under Article 39A of the Constitution provides equal justice and free legal aid. It reads "State shall secure that the operation of legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". For fulfilling this Constitutional obligation, the State has been providing accessibility of justice to economically unaffordable litigants through Legal Aid schemes of Lok Adalat set-up under the 'National Legal Services Authorities Act, 1987' and such other enactments by Parliament and State Assemblies in addition to provisions of Civil Procedure Code, 1908 enabling the Court to give exemptions of all costs of suit on proof of inability of the party. Hence the persistent perception of judiciary and public activists that the entire cost of running of judiciary is met by the tax payers' money also needs to be clarified to the effect that the sovereign duty of providing Criminal Justice is different from that of Civil Dispute Resolution system for economically affordable persons in the "Globalised Economy". There are sections of people ready to incur the actual cost of justice delivery system, provided there is transparency, reliability, accountability and fast tracking of the Civil Dispute Resolution. The Committee, therefore, recommends for institution of "Professional Cost Accountants Wing" in the Supreme Court and High Courts to prepare a "Cost Impact" of establishing and running the Commercial Courts, Commercial Benches in High Courts and Supreme Courts to fix the court fee. Accordingly, the courts should manage the "Justice Delivery System" by gradually reducing "Demands for Grant" from the Consolidated Fund of India. This will lead to real "Financial Independence" to judiciary as enjoyed in developed countries. [Para 63]

16. The Committee is of the view that best international practices in 'Case Management System' needs to be introduced for ensuring expeditious disposal of commercial disputes. Case management system should enhance the quality, responsiveness and timeliness of Court and trained personnel may be provided to manage these courts so as to fast track the resolution of commercial disputes. The Committee is also of the view that adjournment should be a matter of last resort and unnecessary adjournment should not be granted to the parties to delay a dispute resolution. The Committee, however, suggests that there should be a provision of a fee/cost to be paid by the party seeking adjournments beyond a definite limit and such fee/cost should progressively increase for subsequent adjournments. [Para 67]

17. Under Section 35 (A) of the Code of Civil Procedure, 1908, court can impose cost for filing vexatious cases/claim in the courts which consume time of the courts. The Committee feels that amount of imposition of cost should be clearly mentioned in the Act to discourage the parties and their counsel abusing judicial processes and wasting the time of the court on tax payers' money. It is the duty of High Courts and Supreme Court under Articles 145, 146, 227 and 229 of the Constitution. [Para 68]

18. The Constitution of India has given the power regarding the case management, cost management, time management by delegating rule making powers under Articles 145, 146, 227 and 229 to the Supreme Court and High Courts. The Code of Civil Procedure, 1908 Order XXXVII provides for a summary procedure. Similarly, Commercial Courts can have Order XXXVII A by incorporating Schedule in the

present Bill under Clause 17. These are under the domain of Judicial Management and Accountability to the People of India. Parliament need not take over the Judicial Administrative Powers by making many provisions in every legislation by giving detailed procedure creating doubts to the people with multiplicity of procedures. British Government, Ministry of Justice, has updated till 13th November, 2015, the Civil Rules of Practice including Digital filing. In the United States of America, Federal & State Courts formulate Rules of Civil Procedure. The Supreme Court of India and High Courts are already publishing the rules of procedure. In such circumstances, it is better to leave the domain of laying procedures and accountability to the disposal of cases on time bound case management and cost management to the judiciary and on their request, the Parliament can bring accreditation under Art 145 of the Constitution. The Supreme Court may be requested to formulate rules of procedure for Supreme Court and all High Courts should have common Rules of Procedure and Practice. [Para 69]

19. The Committee notes that National Legal Services Authorities Act, 1987, Chapter VI A, provides for Pre-Litigation Conciliation and Settlement with permanent Lok Adalat by voluntarily surrendering right of appeal. The Committee feels that Government may contemplate a similar provision for the Commercial disputes. [Para 73]

20. The appeal against the award of domestic as well as international arbitration in high value Commercial dispute will lie to Commercial Appellate Division of High Court under Clause 10 of the Bill. The arbitration system is a parallel to the regular courts and the commercial entities prefer the arbitration route for expeditious disposal of commercial disputes even though that system is highly expensive. Most of the commercial entities prefer International arbitration available in Singapore, London, Dubai, etc. The Committee observes that the award of the arbitration should be binding on the parties without giving the option to the parties to challenge the same in the court of law. The parties should decide *ab initio* to take the route of Commercial Court or arbitration on the commercial disputes. The Committee, therefore, feels that institutional arbitration with accredited arbitration may be provided to the commercial entities so that, they can avail either of those two institutions. The Committee takes this opportunity to urge upon the Government to develop India as a hub of institutional arbitration which can attract foreign investors to invest or even settle their dispute within the country in a faster and reliable manner. Therefore, Clause 10 of the Bill needs revision accordingly. The Committee further wishes that the Government should also look into the Committee's suggestions / recommendations made in its earlier Report viz., the Ninth Report Of This Committee On The Arbitration And Conciliation (Amendment) Bill, 2003, presented to Parliament on 4th August, 2005. [Para 74]

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PARLIAMENT OF INDIA
RAJYA SABHA

THE COMMERCIAL COURTS COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS BILL, 2015

EVIDENCE

(PRESENTED TO RAJYA SABHA ON THE 10TH DECEMBER, 2015)

RAJYA SABHA SECRETARIAT
NEW DELHI

DECEMBER, 2015/AGRAHAYANA, 1937 (SAKA)

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(Constituted on 1st September, 2014)

1. Dr. E.M. Sudarsana Natchiappan — *Chairman*

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2. Ms. Anu Aga
3. Shri Majeed Memon
4. Shri Parimal Nathwani
5. Smt. Rajani Patil
6. Shri Sukhendu Sekhar Roy
7. Shri Ramchandra Prasad Singh
8. Dr. Abhishek Manu Singhvi
9. Shri K.T.S. Tulsi
10. *Shri Bhupender Yadav

LOK SABHA

11. Shri Suvendu Adhikari
12. Shri Subrata Bakshi
13. Adv. Sharad Bansode
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25. Dr. A. Sampath
26. Shri Bharat Singh
27. Shri Udhayakumar M.
28. Shri Varaprasad Rao Velagapalli
29. Dr. Anshul Verma
30. #Shri Tariq Anwar
31. $Adv. Joice George

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* Change in the nomination of Shri Aayanur Manjunatha w.e.f. 30th September, 2014.

\# Vacancy existing since the constitution of the Committee and filled-up on 11th September, 2011.

$ Change in the nomination of Shri Innocent w.e.f. 22nd December, 2014.

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19. Shri Santosh Kumar
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27. Shri Bharat Singh
28. Shri M. Udhayakumar
29. Shri Varaprasad Rao Velagapalli
30. Dr. Anshul Verma
31. *Shri Shanta Kumar

SECRETARIAT

Dr. D.B. Singh, Secretary
Shri K.P. Singh, Joint Secretary
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhannem Guite, Assistant Director

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* Resigned from Committee w.e.f. 9th October, 2015.

LIST OF WITNESSES WHO APPEARED BEFORE THE COMMITTEE ON THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS BILL, 2015

A. Department of Legal Affairs, Ministry of Law and Justice

1. Shri P.K. Malhotra, Secretary;
2. Shri D. Bhardwaj, Additional Secretary;
3. Shri M.K. Khandelwal, Additional Govt. Advocate;
4. Shri Rajveer Singh Verma, Deputy Legislative Counsel

B. Legislative Department, Ministry of Law and Justice

1. Shri G. Naryana Raju, Secretary;
2. Ms. Reeta Vasistha, Additional Secretary;
3. Shri R. Sreenivas, Deputy Legislative Counsel; and
4. Shri K.V. Kumar, Deputy Legislative Counsel.

C. Law Commission of India

1. Dr. G. Narayana Raju, Member Secretary;
2. Mrs. Dr. Pawan Sharma, Joint Secretary; and
3. Shri A.K. Upadhyay, Addtional Law Officer.

D. Supreme Court of India

1. Shri Chirag Bhanu Singh, Registrar;
2. Shri R.N. Nijhawan, Additional Registrar; and
3. Shri T.I. Rajput, Deputy Registrar.

E. Delhi High Court Bar Association

1. Shri Abhijat, Hony. Secretary;
2. Ms. Prathiba M. Singh, Senior Advocate;
3. Shri Asutosh Lohia, Treasurer;
4. Shri Sunil Mittal, Advocate - Member Executive;
5. Ms. Kaadambari Singh Puri, Member Executive;
6. Ms. Laxmi Chauhan, Member Executive ;
7. Ms. Kimmai Brara, Member Executive ;
8. Shri Pankaj Kapoor, Member Executive ;
9. Shri A.S. Chandhiok, Senior Advocate; and
10. Shri Rishabh Bansal, Advocate.

F. PHD Chamber of Commerce and Industry

1. Shri S. Ramaswamy, Co-Chairman, Law & Justice Committee, PHD Chamber of Commerce and Industry;
2. Ms. Kanchan Zutshi, Secretary, Law and Justice Committee, PHD Chamber of Commerce and Industry;
3. Shri Shamik Saha, Associate, MPC Legal, Solicitors & Advocates; and
4. Shri Mr. Sumit Lalchandani, MPC Legal, Solicitors & Advocates.

G. Confederation of Indian Industry (CII)

1. Shri Tejas Karia, Partner, Shardul Amarchand Mangaldas & Co.
2. Shri K.P.S. Kohli, Principal Associate, Shardul Amarchand Mangaldas;
3. Shri Sourabh Rath, Associate from Shardul Amarchand Mangaldas;
4. Shri Shreeram, Deputy Diector, CII;
5. Shri Babu Khan, Sr. Director & Head Public Policy; and
6. Shri Vikkas Mohan, Sr. Director, CII.

H. Non-official witness:

1. Shri A.K. Ganguli, Senior Lawyer, Supreme Court of India
2. Shri D. Sengupta, Registrar-cum-Additional Director, Indian Council of Arbitration, New Delhi.

THE PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE MET AT 3.00 P.M. ON MONDAY, THE 18TH MAY, 2015 IN COMMITTEE ROOM 74, PARLIAMENT LIBRARY BUILDING, NEW DELHI.

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(CHAIRMAN: DR. E.M. SUDARSANA NATCHIAPPAN)

List of witnesses:

Ministry of Law and Justice

1. Shri D. Bhardwaj, Additional Secretary
2. Shri M.K. Khandelwal, Additional Government Advocate and others.

CHAIRMAN: Good afternoon. I welcome Shri D. Bhardwaj, Additional Secretary, Department of Legal Affairs, and other officers of the Ministry of Law and Justice to this meeting of the committee. We have invited you to make a presentation on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015.

CHAIRMAN (CONTD.): A separate Bench in all High Courts of the country is proposed to be created for fast tracking of commercial disputes to make the economy investor friendly. The Commercial Appellate Division of respective High Courts would hear appeal against the orders of Commercial Courts, Commercial Division of select High Courts and select Tribunals. Commercial cases pending in High Courts would be transferred to Commercial Courts or Commercial Divisions of High Courts. As mentioned in the 253rd Report of the Law Commission of India more than fifty per cent of pending civil suits in High Courts of Delhi, Mumbai, Kolkata, Chennai and Himachal Pradesh are commercial disputes. The Additional Secretary in his presentation may apprise the committee the percentage of commercial suits to total pending cases in the remaining High Courts. It is also understood that arbitration - appeals and petitions under the Arbitration and Conciliation Act, 1996 would also be heard by the Commercial Appellate Division of concerned High Courts. The Additional Secretary may give break-up of the arbitration cases in pendency of civil suits.

Please also elucidate, whether it is legally feasible to set up Commercial Bench in High courts of Delhi, Madras and Himachal Pradesh without raising their pecuniary jurisdiction to rupees one crore; whether appointment of judges of the Commercial Courts by the concerned High Court as proposed under Clause 5 of the Bill is constitutionally sustainable as Articles 233 & 234 give power to Governor of the concerned State for appointment of District Judges, what would be the financial impact upon the Union and State Governments for creating infrastructure required for fast tracking commercial disputes, who will bear the cost of setting up and running such courts; whether video-conferencing facility would be provided for fast tracking of cases; whether Government proposes to amend the court fee structure so that the revenue generated by the courts supplement the operational cost of Courts; whether the court fee to be levied would be uniform throughout the country and what was the recommendation of Law Commission of India in that regard.

The Additional Secretary should make a comparison of commercial courts in the US, the UK and other South Asian countries with the provisions of the Bill during his presentation. After your presentation Hon. Members would like to seek clarifications.

Further, I would like to ask small questions, which are to be clarified by the Department. You know very well that, normally, there are four layers and the courts are created for that purpose. One is trial, then first appeal, second appeal and, finally, it ends up in SLP. According to Clause 2 (1)(c), the definition of 'commercial disputes', 'commercial dispute' means a dispute arising out of twenty-two items, which you have given under Clause 2 (1)(c). Take, for example, Debt Relief Tribunal. Debt Relief Tribunal is one and then it will go to the Debt Relief Appellate Court, which is second, and then it will go to the High Court, which is third and, then, it will go to the High Court Commercial Division Appellate Bench, which is the forth and then it will go to the Supreme Court. That means you are creating one more ladder. Is it necessary for that? Also, when you are creating it, already a public opinion is created that a lot of cases are pending and backlog is created for various reasons. One of the main reasons is non-filling of the posts of the High Court judges. We have already got 330 posts of High Court Judges, which have to be filled up. Now, you may justify that you are going to look after already existing disputes alone, therefore, any new burden will not be there. If you read and visualise these twenty-two items, then new items will also come to them. Are you in a position to create new posts, new judges in every High Court to increase the strength of the High Court and exclusively look after commercial benches? In addition to that, you are making a new structure of the dispute resolution. You are also bringing the arbitration inside. No doubt, it gives a very fast remedy. But it is not a sovereign duty to solve commercial disputes. It is a service matter. More or less, it is a service of the sovereign or by any other accepted statutory

body or the court to solve the disputes between the parties. That is why the court fee structure has been created. Now, the tribunals are enjoying of excluding themselves from court fee. From the tribunals you are taking it to the divisions of the High Court. Are you prescribing a separate fee structure according to the cost which you are going to incur by increasing the judges' number, infrastructure for them, human resources for them, making new buildings for them? Have you worked out all the costs? This Committee has repeatedly told you that when you are making a legislative piece, you should have a separate chapter on financial commitment. That is one of the main issues when you are initiating any Bill before the Parliament. You have to show to the Parliament that you are expecting this much of expenditure. But, here, nothing is said. Also, you have to visualise how many High Court Benches are going to be created. How much infrastructure expenditure is going to come? How many new judges are going to have a salary and how are you going to solve that financial commitment? It may be from the Consolidated Fund of India. States have to contribute for that in their budget provisions. Whether the States are ready to spend that money? This is one aspect. You have to go deep into it and give some data-supported reply to us. Similarly, if you see the other Clause, that is, Clause 5, you are giving the powers of appointment of the Judges of District Judges Cadre of the Commercial Court. Clause 5(2) gives the obligation of creation of the District Courts. Clause 5(3) gives qualification of the Judges. You know very well Article 233 says clearly that the Governor is empowered to recruit the District Judges. That means State has to be consulted. But here you have given all the power of appointment of the Judges of the District Judge level to the High Court. That means you are not involving the State Government at all.

CHAIRMAN (CONTD.): You are usurping the powers of State Governments. You are also saying as to what should be the qualifications. You already have a pool of judges recruited by the District Courts of the concerned State Governments. But you are not including them here. You want to have a fresh recruitment and you are proposing qualifications. That means you are excluding the State autonomy. The State's power to appoint District Judges through the Governors is now being given to the High Court Judges so that the High Courts can appoint their own people. They may be from other States but they would come as a District Judge here. You are totally usurping the powers of the States. How are you going to address this issue? Hon. Members of the Committee include eminent lawyers and experienced politicians. They may seek certain clarifications. I think you cannot answer them immediately because you may need some consultation in your Department and you may like to refer to some data. You may come up with a prepared reply. Now you may make your presentation.

SHRI K.T.S. TULSI: Sir, there are questions with regard to the constitutional validity of the provisions if you say that the High Courts will appoint them. The Constitution does not give this power to the High Courts. The power to appoint them lies with the State Governments. High Courts are only consulted. If you are going to make a provision which is at variance with the constitutional set-up, it will not work. You cannot take away the powers of the State Governments. Similarly, you are talking about additional infrastructure and additional judges. It needs to be reflected whether it will take five years or ten years to provide it.

SHRI BHUPENDER YADAV: Mr. Chairman, Sir, I agree with the issues raised by you. I only want to add certain points to it. The definition of commercial dispute is defined in clause 2(c). Is it not overreaching dispute under the rent court? There is an agreement relating to immovable property and exclusively in trade and commerce. I mean to say rent agreement where State law is there. Will it not overreach Company Law Board? Because Joint Venture agreements and shareholders' agreements are there. Then there is some dispute related to TDSAT and technology development agreement. Then intellectual property cases are also included in this list. Some IPR authorities are there. The Copyright Board is there. Where has it been clarified? You kindly provide us with a table mentioning Acts and their jurisdiction. What we have been doing for the last ten years is this. We exclude so many cases from the jurisdiction of civil courts or district courts. Rather than improving the infrastructure of district courts, we encroach upon their jurisdiction and make new tribunals and acts. After 1990, more than 20 new tribunals have come for commercial purposes. There is a tribunal for electricity. TDSAT is there. FEMA is there. After the liberalisation or globalisation policy, we created all these commercial courts. Will this Act not overreach all of them? We want a clarification on this.

SHRI SUKHENDU SEKHAR ROY: I will make only two points. In clause 2, 'Commercial Appellate Division' and 'Commercial Court' have been defined but 'Commercial Division' has not been defined. How it will be constituted and what it will comprise of have been given in clause 3. So my suggestion would be that in the definition clause, which is clause 2, there should be another sub-clause which defines the 'Commercial Division' of High Courts having Original Side jurisdiction.

Two, I fully endorse the views expressed by my learned senior lawyer, Tulsiji, that clause 5, which talks about appointment of Judges in the Commercial Courts, is about the power of the State Government. Therefore, this clause should be amended accordingly.

SHRI D. BHARDWAJ: Sir, I thank the hon. Committee in advance. We will be going by the wisdom of the Committee in considering all the provisions of the Bill which will come up for detailed scrutiny by this Committee.

Hon. Chairman and hon. Members, I thank you all for having given me this opportunity to appear before the Committee on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Bill, 2015.

Sir, as you are aware, this Bill was introduced in the Rajya Sabha on 29th April. This Bill provides for constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes and for matters connected therewith or incidental thereto.

Sir, the timely disposal of commercial disputes is the need of the hour. Most of the commercial disputes, especially of high value, involve complex facts and questions of law. It is therefore felt that there is a need to provide for an independent mechanism for early resolution which will also present a positive image to the world about the robust Indian legal system.

Sir, the Law Commission of India submitted its 188th Report in 2003. The Commission examined the issue of separate courts for disposal of commercial disputes and recommended constitution of Commercial Division in each High Court. It was recommended that commercial disputes of high value should be directly filed in the High Court and dealt with by the Commercial Division of that High Court to be constituted by the High Court itself. Some procedural changes were also recommended. The appeal against the order of a Commercial Division was to be preferred before the Supreme Court. At that time, the Government introduced the Commercial Division of High Courts Bill, 2009 in the Lok Sabha. The Bill was passed in December 2009. When the Bill was taken up in the Rajya Sabha, it was referred to the Select Committee for examination. The Select Committee examined the matter in great detail and after examination submitted its Report to the House in July 2010. During the discussion on the said Bill in the Rajya Sabha on 13th December, some hon. Members raised certain issues and the consideration of the Bill was deferred at the instance of the Minister. The matter was again referred by the Government to the Law Commission to resolve the difference and for further examination.

SHRI D. BHARDWAJ (CONTD.): The present Law Commission submitted its 253rd Report and also found that there were some lacunae in the earlier Bill and practical difficulties in its implementation. Thus, we see that the issue of commercial courts is pending since 2009. In the present report, the Law Commission has recommended that instead of filing of all the commercial disputes of high value in the High Court, these may be filed in the commercial courts which are supposed to be at the level of District Judge and are to be established for this purpose. The commercial divisions are to be established only in those High Courts which have ordinary original civil jurisdiction. These are the High Courts of Judicature at Bombay, the High Court of Judicature at Calcutta, the Delhi High Court, the Himachal Pradesh High Court and the High Court of Judicature at Madras which have the ordinary original civil jurisdiction. It is also recommended that commercial appellate division be set up in each High Court to hear appeal against the judgments of commercial courts and commercial divisions of the High Courts.

Sir, the Government has accepted the recommendations made by the Law Commission almost in toto except a small modification and after accepting the recommendation, the present Bill was introduced in the Rajya Sabha. The structure of the Bill is almost on the lines of the draft Bill prepared by the Law Commission except that the functions of issuing necessary notifications for constituting the commercial courts and commercial division in the High Courts have been assigned to the State Governments instead of the Central Government. Sir, the subject matter of the Bill falls within certain Entries of the Concurrent List of Seventh Schedule of the Constitution. Entry 11A deals with administration of justice, constitution and organisation of all the courts except the Supreme Court and the High Courts. Entry 13 relates to civil procedure. Entry 46 relates to jurisdiction and powers of all courts except the Supreme Court with respect to any matters in the Concurrent List.

Sir, now, I would submit the salient features of the Bill. 'Commercial dispute' is defined in clause 2(1)(c) of the Bill broadly to mean dispute arising out of ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, joint venture and partnership agreements, intellectual property rights, insurance and other such areas as have been defined in the Bill. The term 'specified valued' in respect of a dispute has been defined and explained in clause 2(1)(j) which means that it shall not be less than Rs.1 crore or such higher amount as may be prescribed. The specified value in respect of the subject matter of a dispute shall be determined in the manner provided in clause 12 of the Bill. All these suits, appeals or applications related to the commercial dispute of specified value are to be dealt with by the commercial courts or commercial division of the High Court. The commercial courts which will be equivalent to District Courts are

to be set up by the State Government for the entire State, however, in the States where the High Court has ordinary original civil jurisdiction, the commercial courts shall be established in respect of those regions over which the original civil jurisdiction of the High Court does not extend. Commercial divisions are to be set up in the High Courts which are already exercising ordinary original civil jurisdiction. The commercial divisions will have jurisdiction in respect of territory over which the High Court has such original jurisdiction. The commercial appellate division shall be set up in all the High Courts to hear appeals against the orders of commercial division of the High Court and also the orders of the commercial courts. The commercial appellate division will not entertain any civil revision applications or petitions against any interlocutory order of a commercial court including an order on the issue of jurisdiction which can be agitated only in an appeal against a decree. Appeals would lie only against the orders enumerated in Order 43 of the CPC and Section 37 of the Arbitration and Conciliation Act and against no other orders. The Chief Justice shall nominate sitting Judges of the High Court having expertise and experience in commercial disputes to the commercial division of the High Court and the commercial appellate division preferably for a period of two years. The commercial courts are to be manned by specially trained Judges appointed by the High Court from among advocates and Judges with demonstrable expertise and experience in commercial litigation.

Sir, I would like to clarify that for certain kinds of disputes, specialised mechanism is already in place and jurisdiction of the civil courts in such matters has been barred. As provided in clause 11 of the Bill, the commercial courts and commercial division shall not have any jurisdiction to entertain and decide any suit, etc. in respect of which the jurisdiction of the civil court is barred under any law. Sir, it is also proposed in the Bill to have a streamlined procedure for being adopted for conduct of cases in the commercial division and in the commercial courts by amending provisions of the Code of Civil Procedure for those cases so as to improve the efficiency and reduce delays in disposal of commercial cases. Sir, it is also proposed that the appellate divisions shall endeavour to dispose of appeals within six months from the date of filing. In order to avoid filing of frivolous cases, provision of costs under Section 35 of the CPC is proposed to be modified. For timely filing of reply and written statements by the defendants, it is proposed that on the expiry of 120 days from the date of service of summons, the defendant shall forfeit the right to file reply and the court shall not allow the reply to be taken on record. It is also proposed to have a chapter on summary judgments. The court may give a summary judgment in certain circumstances. The proposed case management system and the provisions for summary judgment will enable disposal of commercial disputes in a time-bound manner. The proposed Bill, the Government hopes, will ensure that the commercial cases are disposed of expeditiously, fairly and at a reasonable cost to the litigants.

Sir, before introducing the Bill in Parliament, the views of the High Courts on the recommendations of the Law Commission have also been obtained and most of the High Courts have recommended and endorsed the recommendation of the Law Commission.

Sir, there are some major differences in the present Bill as compared to the last Bill of 2009. I will just mention two or three of them. As per the 2009 Bill, all cases of commercial disputes of specified value were to be filed directly in the High Courts and to be dealt with by commercial division of the High Courts. In the present Bill, it is proposed that the commercial division is to be constituted only in those High Courts which are already having ordinary original civil jurisdiction. For rest of the States and areas, the commercial courts at the district level shall be established to try commercial disputes of specified value.

SHRI D. BHARDWAJ (CONTD.): The 2009 Bill envisaged that the Commercial Division shall consist of Division Benches. This suggestion is now omitted and in the Commercial Division, a single Judge of the High Court can try and dispose of the case.

In the 2009 Bill, there was a provision of appeal before the Supreme Court directly against judgement of the Commercial Division.

In the 2009 Bill, only few procedural changes were proposed whereas in the present Bill of 2015, quite comprehensive procedural changes have been proposed in the C.P.C.

The proposed Bill will ensure that commercial cases are disposed of expeditiously, fairly and at reasonable cost to the litigant.

Sir, you have raised certain valid points and I will try to respond to some of them, I can't respond to all of them. Regarding the definition of "Commercial Division", it has been provided in clause 2(1) (d) "Commercial Division" means the Commercial Division in a High Court constituted under sub-section (2) of section 3;"

Sir, you have asked whether the court fee would be uniform, and what was the recommendation of the Law Commission. The Bill does not deal with court fee directly. The cases before Commercial Courts or Commercial Divisions will be either in the form of civil suit, or, any application of the same kind. Regarding the court fee,

the Law Commission has also recommended in its report, "The Law Commission proposes a re-look of the court fee regime by the State Governments in the light of their legislative domain under Entry 3, List II of the Seventh Schedule of the Constitution of India." In this report the Law Commission has also mentioned the example of the Singapore Commercial Courts where the court has got the power to decide about the court fee depending on the number of hearings of the case which is proposed, and it keeps on increasing as the number of days of hearings increase. It is mentioned that initially for the first three days, I think, it will be free, and after everyday of hearing, it increases at expeditious speed. So, the parties are forced to conclude the arguments and complete the hearing within the limited time. So, the State Governments can think of having similar court fee structure for specific courts.

Sir, you have also asked about the pendency position. We have not approached the Law Ministry to get the statistics. However, some of the statistics have been mentioned in the Law Commission report. In Tables 2.2 and 2.3 mention about courts having original jurisdiction, not about other courts. It also shows the comparison between different High Courts, and also a percentage of commercial disputes vis-a-vis the total cases pending in High Courts.

The point raised by the hon. Member, Mr. Tulsi and the hon. Chairman was about the consanguinity of the provision giving power to the High Court to appoint Judges of Commercial Courts is well taken. I think by further deliberations by us as well as by the Committee we will be able to do it. I can further mention that even the Law Commission has made a recommendation like this that appointment of Judges of Commercial Courts shall be made by the relevant High Court in accordance with such rules as may be prescribed by the High Court.

CHAIRMAN: Normally, you are answerable to the Parliament. Nowadays you want to incorporate what is available there. But we have to do certain exercise.

SHRI VARAPRASAD RAO VELAGAPALLI: You have suggested it in an unscientific way, in the sense, that court fee will increase by the number of hearings of the parties.

SHRI D. BHARDWAJ: I have suggested about the Singapore model.

SHRI VARAPRASAD RAO VELAGAPALLI: Do you propose that model? Why did you mention that in this context?

CHAIRMAN: Actually, I also have the same thought. You have referred to the Law Commission's report which in turn referred to the Singapore model. You should incorporate it in the Bill. You are enacting the Bill for all the States which is also the subject of the Central Government. All the 22 items which you have initiated, it covers both the List I, List II and List III. All the things are covered there. Then, you have every right to say that court fee structure will be like this, according to the sitting, according to the advalorem value, these are the things to be worked out by the cocerned State Government. You have to give the guidelines, which guidelines Jharkhand State can do it, which guidelines Chhattisgarh State can do it, which guidelines Tamil Nadu State, Karnataka State and Andhra Pradesh State can do it. Tamil Nadu, Karnataka and Andhra Pradesh States have different types of commercial activities. You need to have uniformity on that. You should work more on this. We can't depend on the Law Commission's Report. The report is only a very broad aspect of certain things we will give it. We can't depend upon fully on the Law Commission report. We have to go into the details. We are answerable to the Parliament.

SHRI VARAPRASAD RAO VELAGAPALLI: I have one more point. You have mentioned about the Commercial Court and the Commercial Division, whether both are equal levels, or, one would be at the district level. The other one is High Court. Is it only the location point of view, or, do they vary in their powers also? The next one is Appellate, so, it is obvious. As far as their powers are concerned, what is the distinction? I just want to know, is it for name sake?

SHRI D. BHARDWAJ: All the High Courts which have ordinary original jurisdiction, they will be dealing with the cases up to certain value in original, or, other places like where the High Court doesn't have original civil jurisdiction, like those cases, Commercial Courts at the level of the District Courts will be adjudicating the commercial disputes.

SHRI D. BHARDWAJ (contd.): And appeals against the orders and judgements of the Commercial Courts as well as the Commercial Divisions, both, shall go directly to the Commercial Appellate Division.

SHRI VARAPRASAD RAO VELAGAPALLI: We are not commenting on the appellate courts. Do you mean to say that in States where the High Court has the original jurisdiction, you would not have a District Court? That would mean you would have just one court.

SHRI D. BHARDWAJ: Yes, Sir; there would be one Commercial Division of the High Court or a Commercial Appellate Division.

SHRI A. SAMPATH: In the Lok Sabha, the Standing Committee had discussed a Bill for amendment in the pecuniary jurisdiction of the Delhi High Court. That Bill was actually listed for discussion in the Lok Sabha in the last Session, but somehow it was not discussed. It is still the property of our House and not the Rajya Sabha. There was some agitation by lawyers also; they went on a strike. Advocates of the District Courts went on a strike and so did Advocates of the High Courts. It was only on the question of pecuniary jurisdiction. Now, as you have stated here just now, the High Court of Delhi, since its inception, has had original jurisdiction, unlike the High Court of Kerala. The Chennai, Kolkata, Mumbai and Delhi High Courts have original jurisdiction. But here, a question arises, and this point was also raised by the learned Member here and Mr. Tulsi. Now, we are bringing in a separate category in the High Courts. In my State, the High Court does not have original jurisdiction to entertain civil suits. My fear is that if this Bill is going to be implemented in its present form, we would be taking away some of the rights of the concerned State Governments, as suggested by Mr. Tulsi.

SHRI VARAPRASAD RAO VELAGAPALLI: Do you mean to say that you will have only one commercial court in each State? How else would this be done? It could be either one of these; it would be either the Commercial Division or the District Court.

SHRI D. BHARDWAJ: Sir, let me give you an example. In Maharashtra, we have The Bombay City Civil Court Act. This Act gives jurisdiction to the High Court only in respect of certain areas of Mumbai and not other cities like Pune and Satara. So, in such areas there would be these Commercial Courts. In other districts, the number would be decided by the State Governments, like in how many districts they want it, which jurisdiction should be there in each district, and so on. But this High Court would have jurisdiction only in the city area of Mumbai.

SHRI VARAPRASAD RAO VELAGAPALLI: Do you mean to say that even if there is just one Commercial Division in a State, there won't be any District Courts in that State?

SHRI D. BHARDWAJ: Sir, in States where the High Courts have original jurisdiction, there won't be district courts or a special Judge for commercial disputes. At other places, they would be there.

SHRI VARAPRASAD RAO VELAGAPALLI: That means both exist in each State.

CHAIRMAN: You should have clarity on this issue. Every District Court has jurisdiction in certain areas. For example, the District Court of Chittoor has jurisdiction on patent or trademark issues. Now, will it lose that jurisdiction to a new court set up nearby. Do you want to say it would be the discretion of the State Government? You cannot delegate that power. Every District Court has its own powers. We have enacted a law where the powers are conferred on a District Court if jurisdiction is over certain areas. Therefore, before making a provision for that, you have to get the consent of the State Governments on how many district courts would exist in the category of commercial district courts. Only then can you have a clear picture. You must find out how many appeals are likely to come at the first level of the High Court. Then you have to see how many appellate cases would come to the High Court and anticipate how many cases would come to the Supreme Court. Then, side by side, you must build a structure that would fast-track the cases. Just as the Government wants to have fast-running trains and better facilities everywhere, you are planning a fast-track for the court system. So, you must visualize how this is going to be done. You must show how you would incur the cost of creation of a district commercial court, who would bear the cost of building the structure, what would the cost incurred for constructing the court, paying Judges their salary, maintenance of support staff and other facilities. You must work all this out. As it is, State Legislatures do not care about the Judiciary. The Executive does not care about it as it is not a vote-catcher. As it is, local courts in the States are being neglected by all the State Governments, and you want to burden them with another division and incur expenditure! The Consolidated Fund of India has the contribution of both the States and the Centre, but when you make this provision, the State Legislatures will have to present a Budget, saying that these many numbers of district commercial courts would be set up and therefore, this much of expenditure would be drawn out of the Consolidated Fund of India. Are you making any provision for that? How much money are you going to allocate for this purpose? If you go on creating courts, who would bear the burden? We may have ambitions but we must have a clear vision as well.

SHRI VARAPRASAD RAO VELAGAPALLI: Sir, I wish to make one more point here. There are already civil courts handling these cases. How do you distinguish between cases and say which case goes to which court? In other cases, for instance, let us say the administrative tribunals, there is a specificity and clarity about the kind of cases that would go where. Here, the scope is too broad. How would the clients choose between the already existing district civil courts and the proposed courts? We need to have some clarity here. It is agreed that we should have an additional number of courts so as to reduce the number of cases, but unless you have specific

cases which could be tried only in commercial courts, the purpose of setting up these commercial courts would not serve any big purpose. That is my opinion. We leave the decision to the Chairman and you.

SHRI P. P. CHAUDHARY: Sir, I am on the question of legislative competence. I think you were referring to Entry No. 11A of the Concurrent List of the Constitution of India. Can you tell me under which provision we are having a legislation on this issue? If you look at the earlier Acts, since the adoption of our Constitution, legislative competence was mentioned at the beginning of each Bill. Now, gradually we are undermining its importance. We are not required to say under what provision a law is being legislated upon by the Parliament. It should, in fact, be there right at the beginning because when we bring any Bill, we say that the Parliament has the power to legislate such-and-such Bill under such-and-such provision, mention the Entry, etc. That should also be there in the present Bill.

SHRI D. BHARDWAJ: Sir, as we mentioned, whenever there is a proposal from any Ministry that comes to us, it is basically examined by the Department of Legal Affairs, to which Entry it relates, whether Parliament has the power to pass the law or not, etc. That is the first thing that we look at.

SHRI P. P. CHAUDHARY: You may be doing that, but why has that not been done in this Bill?

CHAIRMAN: It is very much indicative. With regard to items in Lists I and III, you can have your own course of action. But when you usurp the powers with regard to items in List-II, then you should have the concurrence of the State Governments. Otherwise, you don't have any jurisdiction to enact the law.

SHRI P. P. CHAUDHARY: To my mind, any Bill, whether it concerns the State Legislature or the Parliament, whenever a Bill is proposed, they must say under which provision, under which Entry and article of the Constitution, they are doing it. It should be mentioned at the beginning. Initially, it was there in all the laws. But gradually, that has stopped; it is not being provided for. What is the reason for not mentioning under what powers and in which Entry the Parliament is legislating the law, at the beginning?

SHRI D. BHARDWAJ: Sir, that is a good suggestion. This can definitely be considered by the Government and by the Parliament when they pass the law. There is no problem in that.

SHRI P.P. CHAUDHARY: Just you please tell me the Entry and then we have to see the other provisions of the Constitution as to how we have to recall it.

SHRI D. BHARDWAJ: Sir, it is 11(A).

SHRI P.P. CHAUDHARY: It is 11(A). Is this Concurrent List?

SHRI D. BHARDWAJ: Yes Sir. It is administration of justice, constitution and organization of all courts.

SHRI P.P. CHAUDHARY: This is only under this provision.

SHRI D. BHARDWAJ: Yes Sir. Then, Entry no. 13 of this Concurrent List. It is Entry no. 46 Sir.

SHRI P.P. CHAUDHARY: So, Entry Nos. 11(A), 13 and 46 are related to legislative competence. So far the State competence with respect to the same subject matter under the State List, if you see with respect to the district courts and all. So, I think under the State List, it is Entry no. 3. It is regarding the State Officers and Servants of the High Court. This is regarding the High Court and what about the subordinate courts?

CHAIRMAN: Read with Article 233.

SHRI P.P. CHAUDHARY: Exactly. I want to know can the State Legislature legislate with respect to subordinate courts or not?

SHRI D. BHARDWAJ: They can**.**

SHRI P.P. CHAUDHARY: Whether under Article 233.

SHRI D. BHARDWAJ: All in all, there are only parts.

SHRI P.P. CHAUDHARY: So, the States can legislate under Article 233!

CHAIRMAN: Then, you have to include the appointment of Judges of the district court is to be done by the Government and not by the High Court lobby. It is given here as the High Court. If you make it as a Governor then you are addressing the issues of that State List and you are also addressing the issues of Concurrent List.

SHRI P.P. CHAUDHARY: Exactly, you have to read these provisions of the Concurrent List along with the provisions of the State List and Article 233 because the power to appoint the subordinate judges is with the

Governor under the State List, and the Concurrent List, there is no power either with the State Government or with the Central Legislature.

CHAIRMAN: Kindly have some discussion within yourselves, some in-house discussion you can have. You have to formulate as to how many cases are pending, how much benefit is going to be accrued by that and how much court fees you can have. You have referred to the Law Commission's reference in the Singapore Court. You know very well that one of the Judges of the Supreme Court is sitting in the Singapore Arbitration Court itself. They are disposing of the cases immediately. If there is an appointment of Arbitrator or any other issue is comes up, immediately a Judge of the Supreme Court is sitting especially for this. A Commercial Judge is sitting, a Supreme Court Judge is sitting in the Singapore Arbitration building itself and they dispose of the case. Are you going to do it? You do it and we are happy about it.

SHRI VARAPRASAD RAO VELAGAPALLI: You cannot compare it. Our people are different.

CHAIRMAN: You have got the powers under the Constitution to increase the Supreme Court Judges according to the powers conferred to the Government of India. You have to see as to how many appeals or revisions or SLPs will go to the Supreme Court. You have to stipulate the court fee also. You are taking away the arbitration work along with that. People will be very happy to use this fastrack, provided you charge for it. Fortunately you have not asked retired people to manage and we are very happy about it. You have made it as a new recruitment but the pool of judges has to be done from that. Kindly visualize that you are creating a parallel structure, till the Supreme Court, you have to see that how the cost of the human resources is going to be incurred and who is going to pay and whether you are going to earn revenue from the commercial dispute resolution system itself. You cannot ask a common man to pay for that. A trader's dispute need not be paid by a common man by way of taxation. It is a service and when you are using a service, the service provider has to charge from the service receiver. Why to ask a common man who is on the street to pay for the fee for the creation of the Supreme Court bench or the High Court bench or a district court. When you copy the system of America, then you copy the system from the American Federal Court. Then you copy the same system regarding court fees also. They have to pay the money. Now, the Supreme Court is giving a lot of corporate remedies that is disputes worth Rs. 10,000 crore were solved by Rs. 215. Who will pay the money to the sitting Judges say for one month they are hearing the cases? The common man on the street is paying the tax and through that you are paying. But the corporate bodies are enjoying it. Why? We are fully agreeing with it. We are supporting this Bill. We want to see the Bill but it should be a vibrant mechanism by way of which the commercial track will be an excellent way. People and investors must be happy. People of our country would be happy that there is a transparent system of dispute resolution. Do not allow the State Governments to play a game and stop everything. Many village courts are stopped by many of the courts. This Committee has observed in that Report also. You have to stipulate the money forever if you want to have a village court system. You should not stipulate only for five years, or only one time money you can give. This system has not worked. The Act is not only defective, it is defunct also. The system is defunct. Why we have to create new-new Acts and make it defunct. It is really a good effort. Kindly have a small cell within yourself and get some expert opinion, give it a formula by which these issues are going to be addressed.

SHRI VARAPRASAD RAO VELAGAPALLI: Sir, another information that I want to have is that you have been mentioning about the high value on the one side and on the other side, you say rupees one crore and above, and these days in any case it will be rupees one crore and above. How do you distinguish? No, I am just suggesting. These are all ideas to think over because these days rupees one crore has no value. The second point you have mentioned is about fastrack. Are you indicating any time limit when you say fastrack? These are points that you must take into consideration. That is all.

CHAIRMAN: You visualize the things on the basis of the data and create a formula.

SHRI P.P. CHAUDHARY: You see Entry no. 65 of the State List. Jurisdiction and powers of all courts except the Supreme Court with respect to any of the matters in this List. So, basically, just to reconcile this State List and Concurrent List. Power to create a court is one aspect and providing a provision for appointment is another aspect. Article 233 specifically provide for appointment of the subordinate judges by the Governor of the State. So, can we read in between these lines something which is not there, which is specifically provided in the Article 233? Although in all the entries, nowhere, it is specifically provided with respect to the appointment of the subordinate judges. It may be with respect to the ancillary matters not connected with the appointment because the Entry no. 65 of the State List provides for jurisdiction and powers of all courts. This is with respect to jurisdiction and powers. Again, there is no provision for appointments. The provision for appointment is dealt only by Article 233. So, in any of the entries either under the State List or under the Concurrent List, no power is there. So, first, we have to find out the legislative competence and then we can proceed further clause-by-clause.

CHAIRMAN: Kindly go through it and we will take up the other witnesses and you try to send it to the Secretariat, at least at the Joint Secretary level so that other things can be noted. We want to quicken this so that we can submit the Report in the coming Session itself. Because of that another Bill is also pending. Therefore, we want to give priority and conclude it and let both the Bills be passed. The next meeting will be on 26th May, 2015 at 3.00 o'clock. Thank you very much.

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(The witnesses withdrew and the Committee then adjourned at 4.12 p.m.)

THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE MET ON TUESDAY, THE 2ND JUNE, 2015 AT 2.00 P.M. IN COMMITTEE ROOM 'D', PARLIAMENT HOUSE ANNEXE, NEW DELHI-110001.

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CHAIRMAN: DR. E.M. SUDARSANA NATCHIAPPAN

WITNESSES:

Department of Legal Affairs, Ministry of Law and Justice:

Shri D. Bhardwaj, Additional Secretary

Shri Joice George, ADV.

Shri M.K. Khandelwal, Additional Government ADV.

CHAIRMAN: I request you to see the definition in clause 2(c) regarding 'commercial dispute'. It prescribes 22 different items which come under the definition of 'commercial disputes'. But they have made a very vague definition. This is only for our internal discussion and also for their working. You take, for example, clause 2(c)(xvii). It says, "intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;". This is already based on some enactments. There are Acts relating to patent, design, copyright and geographical indication. Very easily, we can put it in the Schedule. We can say that these are the Acts and if the dispute is above Rs.1 crore, then it will go to the Commercial Bench. It will be easy for looking into the very purpose of the Act, the cause of action and dispute. We can very easily go into it. Otherwise, in any case, which is filed before a particular Commercial Court, first objection will be of jurisdiction. They will take it up for appeal. They will take it up for revision and everything. There will be total diversion. The purpose of making it fast track will not be fulfilled. Also, if you see the words, 'joint venture agreements', 'shareholders agreements', 'franchising agreements', 'carriage of goods', etc., for them, the Acts are there, for example, the Sale of Goods Act, the Contract Act, the Partnership Act and then you have got the Companies Act.

So, what we have to decide is that instead of having a very vague definition, we can make a separate Schedule, where they can mention the Acts. Then, automatically, by definition, that will become a commercial dispute. And, it will be easy for classifying the commercial disputes. Otherwise, they will go for everything. They will put first preliminary objection to the jurisdiction that how a particular case can be taken up in the Commercial Court. Normally, as lawyers, this is the way we are dragging on the cases - the jurisdiction question. First you have to frame the issue and then you have to go through it and then against that, you can go for appeal. Then, the purpose of making it fast track itself will be failed.

SHRI K.T.S. TULSI: This is a heaven for the lawyers.

SHRI (ADV.) JOICE GEORGE: Jurisdiction issue can be adjudicated only at the final stage. It cannot be taken as a preliminary issue as per the provisions of the IT Act. There is a provision in this enactment.

CHAIRMAN: But what is the purpose of having fast-track court?

SHRI K.T.S. TULSI: Sir, the principal objective of this Bill is to bring *'achche din'* for the lawyers.

CHAIRMAN: That is true. Therefore, what we thought is why not we have a definition and put it in the Schedule. Take, for example, it is a very interesting one. Clause 2*(1)*(c)(iv) says, 'transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters including sales, leasing and financing of the same'. There is an Aircraft Act. In that Act, everything is controlled by the Government. If this definition does not include spacecraft, tomorrow, then, you have to bring in 'spacecraft' by an amendment. Every word will have its own meaning then automatically. Then, there will be a prolonged discussion at the first level of the trial itself and it will be delayed.

SHRI BHUPENDER YADAV: Clause 2*(1)*(c)(xxii) also says, 'such other commercial disputes as may be prescribed'. What is 'such other'? What does 'such other' mean? Then, who will decide?

CHAIRMAN: Who will decide and how to decide it? Also, if you see, every enactment has three portions. One is purpose of the Act. If you see all the enactments, Clauses 1-5 contain why an Act has come up for enactment. After Clauses 1-5, if it is a Regulatory Authority, they will say how the Chairman and Vice-Chairman are elected, what their powers are, what the conditions of service are, how they are removed and other things. It is common for everything. Finally, they will give how the dispute resolution will be there. That is also cut and

paste. Therefore, if you take an enactment, there are three layers. If we make a common regulatory authority court, then you can suit it. You can remove about ten sections out of it. Later part is for dispute resolution. We can make it also common like this.

WITNESSES:

Delhi High Court Bar Association:

Shri Abhijat, Hony. Secretary, DHCBA

Ms. Prathiba M. Singh, Senior Advocate

Shri Asutosh Lohia, Advocate, Treasurer, DHCBA

Shri Sunil Mittal, Advocate, Member Executive Committee, DHCBA

Ms. Kaadambari Singh Puri, Member Executive Committee, DHCBA

Ms. Laxmi Chauhan, Member Executive Committee, DHCBA

Ms. Kimmai Brara, Member Executive Committee, DHCBA

Shri Pankaj Kapoor, Member Executive Committee, DHCBA

Shri A.S. Chandhiok, Senior Advocate

Shri Rishabh Bansal, Advocate.

CHAIRMAN: A very Good-afternoon to hon. Members and welcome to this meeting of the Committee. Today, we have invited Delhi High Court Bar Association. I welcome Shri Abhijat, Secretary and other members of the Bar Association of Delhi High Court to this meeting of the Committee. As you are aware that we have invited you to make a presentation on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015. The objective of the Bill is to set up Commercial Courts at district level except for the territories over which High Courts are having original extraordinary civil jurisdiction. High Courts of Calcutta, Madras, Bombay, Himachal Pradesh and Delhi have original pecuniary jurisdiction and Commercial Divisions in these High Courts are proposed to be set up for fast track resolution of commercial disputes of Rs. 1 crore and above. Is Sikkim also having it?

SHRI A.S. CHANDHIOK: That proposal is pending. Sikkim has made a request. That proposal is pending.

CHAIRMAN: But it is not available now.

SHRI A.S. CHANDHIOK: Sir, Jammu & Kashmir is available. But Sikkim is pending.

CHAIRMAN: Okay. Commercial Appellate Divisions in all High Courts of the country would be set up to hear appeal against orders of Commercial Courts, Commercial Divisions of aforesaid High Courts and certain tribunals. We would like to have your views on various provisions of the Bill. In particular, we would like to have your opinion as to whether it is legally feasible to set up Commercial Bench in High courts of Delhi, Madras and Himachal Pradesh without raising their pecuniary jurisdiction to rupees one crore; whether appointment of judges of the Commercial Courts by the Chief Justice of concerned High Court as proposed under Clause 5 of the Bill is constitutionally sustainable as Articles 233, 234, 236 give power to Governor of the concerned State for appointment of District Judges. After your presentation, hon. Members would like to seek clarifications. I would like to inform you that, the proceedings of this meeting are treated as confidential and it shall not be permissible for a Member of the Committee or anyone else who has access to its proceedings to communicate, directly or indirectly, to the media any information regarding its proceedings including its report or any conclusions arrived at, finally or tentatively, before the report is presented to the House.

Normally, the questions which are raised by the hon. Members are not on the basis that we have come to a conclusion. We are asking it for clarification only. Conclusion will be arrived at only at the final stage of formulating the draft Report. Till then we will be open. All suggestions can be accepted. Here, I hope, you can understand that there is a small deviation of taking away the powers of the State Governments by appointing the Commercial District Courts by the High Court alone. The provision says like that. Regarding that also we would like to have your opinion. Also, in which way it is going to have a fast track possibility and Clause 2, which is a definition Clause, is very elaborate. It has more than 22 entries. Therefore, how to make it possible by making some other alternative way of indication of the definitions? One of the suggestions is that we can make it as a separate Schedule of the enactment so that that enactment can indicate it. For example, if you take Clause 2*(1)*(c)(xvii), it says 'intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits'. Specific words were used as a part of the Definition Clause. But if you look at this particular provision, you can very easily find that a Patent Act is already there, a Copyright Act is there, a Geographical Indication Act is there, a Semiconductor Act is there. Therefore, we can even put it as a Schedule so that we can very easily avoid the

disputes. As lawyers, we can also understand that we can have the objection to the jurisdiction saying that this will not cover here. On that basis, we can go for appeal and second appeal and other things. Therefore, we would like to have your input on the very purpose of having a fast track system. If you feel that you need some more discussion, you can have it and then you give it to us in writing also. Thirdly, we would like to get your sense of it. You know very well that the blame for delay in disposal of the cases is put first on the Bar, secondly on the Bench. But, actually, the real thing is that sufficient infrastructure availability is not there and more financial independence is not there for judiciary. The court fee structure is gradually waning away. In that place, free justice is given in civil disputes also by the tribunal system.

CHAIRMAN (CONTD.): Now free justice is given in civil disputes by the tribunals. There is a feeling that there should be a clear court fee structure so that it can look after the needs of the dispute resolution mechanism. If you want to have a modern court hall, you need money. If you want good lawyers to become judges of district courts or Commercial Division Bench in High Courts, you need to pay them well so that they are attracted towards that. For that, you need money. If you ask the State Governments for that, they will say that they cannot grant so much money for the judiciary. They can grant a small amount for that. Infrastructure is very poor. I am not talking about Delhi. As far as District Courts in Delhi are concerned, they have good infrastructure. But other District Courts, throughout India, do not have sufficient infrastructure. When you create a District Court, you have to think about the availability of human resource. Non-judicial officers have to be appointed. They have to be trained in a modern way. All the subjects covered under entry 22 involve modern systems. They have to update their knowledge. We need efficient staff for that. You need to equip them with the knowledge of modern systems. You need money for that. It is the sovereign duty of the state to provide for free justice in criminal matters. Civil disputes need not be the sovereign duty of the state. It is part of the service which it has to render. This can be rendered on payment basis. We also need to generate revenue through dispute resolution mechanism. For example, your Delhi High Court Bar Association is conducting mediation in conciliation centres excellently. But we do not know how much you are charging for that. We want to visit your place. We do not know how much you are earning through that. Similarly, arbitration brings high revenue for arbitrators and the lawyers who are practising there. But it is not there in courts. In the Supreme Court, you pay Rs.250 and you can have a case conducted for two weeks. But it involves a huge expenditure from taxpayers' money. We have to see how you generate revenue when you are going in for civil dispute resolution. How can we structure that revenue mechanism? New Bills are coming but they are not looking into the financial aspect. Now the judicial system is overburdened. We would like to have your views on it. You are the people who are practising there and you know the climatic condition of the judicial system. We need inputs from you on this.

We are very happy to see your documents with graphical presentation which you have circulated. The data is very useful for us. It can be used in our Report. We request you to dwell upon it so that the Government gets a focussed view in order to have the best system of fast track commercial dispute resolution mechanism which is the need of the hour. With this observation, I request you to make your presentation.

SHRI K.T.S. TULSI: Sir, I want to say something before they make their presentation.

I know that the Chairman is also a lawyer. But this impression that lawyers are responsible for delay is not a correct statement. Of course, there is one party which gains through delay. But there is a party which loses because of delay. One of the two parties is invariably moving heaven and earth for speedy disposal of the case. To lay the blame for delay on lawyers is not correct.

Sir, on mediation in the Delhi High Court, they are not making money through mediation. They are spending money. They are paying a nominal amount as honorarium to the mediators and they do not charge any of the parties.

CHAIRMAN: Very good.

SHRI ABHIJAT: Sir, the Delhi High Court Bar Association is immensely grateful to the hon. Committee for giving us this opportunity. I am joined by various members. We will be led by Mr. A.S. Chandhiok. He is the former Additional Solicitor-General of India. If memory serves me well, he had been the President of our Bar Association for three or four terms. He will be leading us.

Now I request Mr. A.S. Chandhiok to address the Committee.

SHRI A.S. CHANDHIOK: Hon. Chairman and hon. Members of the Committee, let me add to what Mr. Tulsi has said. A lot has been said with respect to the Bench and the Bar being responsible for delay in disposal of cases. There are two problems. This matter is a little different from what we came for. Since this issue has been raised, I thought I must dwell on it. The system of education that we have today is in turmoil. We are allowing institutions after institutions being created in almost every sphere without paying any attention by any

Government so far to create teachers. In the absence of teachers, you do not have an institution worth its name. That is one part.

There is no check what we are doing. The basic problem that we are facing in this country, so far as judicial system is concerned, is that we have not been able to appoint people with eminence or those who have enough experience to man the Bench. We opened our economy in 1991. Since then, there has been so much of change in the country. The last one year has seen so much of change in this country. If you look at the intricacies of law, you will find that we need somebody to jolt that position. We need to see what kind of people we are appointing there.

My first submission is this. I agree that my efficiency needs to be upgraded both after being a lawyer and before being a lawyer. Everybody cannot become Mr. K.T.S. Tulsi who has upgraded himself. So I need somebody to look at it.

Secondly, we are losing sight of merit. Unless we bring in merit back into the position, we will not be able to succeed. When the Government looks at this part, it must ask itself how it can ensure merit to come to Bench. The Bar has extremely good people but, unfortunately, nobody looks at them for reasons which I don't need to specify here.

Coming to the second question that you have raised today with respect to service being rendered on the civil side and that it must be commensurate with the court fee that we charge, Sir, allow me to bring history to your notice. The Court Fee Act was first enacted in 1872. I think two years later in 1874 or 1875, the Court Fee Act got amended because we thought that people would not come to court at all with that high court fee. So the Court Fee Act was amended to reduce the quantum of court fee being charged.

Thirdly, as per the Constitution, it is the sovereign duty of the state to not only provide for criminal justice but also civil justice.

SHRI A.S. CHANDHIOK (CONTD.): I did not know that this question would come up. We will take time and come back to you and show you the court fee being recovered as on date by the courts and the tribunals, not being used for the justice delivery system. In fact, not even 25 per cent of that is being used. So, 75 per cent is being deflected elsewhere. So, even if the court fee charged today is taken back and kept apart and utilized for the infrastructure to be created or payments to be made to the hon. Judges or to do something else, I can assure you that it will be surplus in hands. If my memory is not failing me, about four years ago at the Conference of the Chief Justices of the High Courts, we had a resolution passed by them to say that we need financial autonomy. Its purpose was that whatever the State collects or the Centre collects towards the court fee must be put separately and the courts themselves should be allowed to operate that so that they can create the infrastructure. That is the submission. Therefore, I did not look at that part whether the court fee is the minimum today and I need to enhance it. I, as a State, owe a duty to the citizens of this country to see that we do that. Therefore, fortunately -- I will circulate it to the hon. Members of the Committee -- the collections that we have done, even till last year, are more than sufficient to create any infrastructure. The fourth and the most important point is, and I must concede that it is a deficiency on our part, that our CPWDs and our PWDs in States or Union Territories are not equipped. They are still creating the infrastructure in the same way as they were creating twenty or thirty years ago. They do not have the modern technology at their instance. Therefore, if they were to use that then the cost would come down on creating infrastructure and everything would come down. Today, I can assure you that we have gone into that question. We have a new building that is coming up now. We are creating a green building in which everything would be provided for it and, in fact, I can share one thing. I have a report prepared by one of the persons who was working with me when I was heading the Bar Association where we said one pole would service you five things. It will be helpful in rain harvesting and it will be helpful in solar system and will provide air purifier for the pollution system of Delhi. That is the situation but unfortunately, Sir, nobody looks at this situation and we are still moving in the same direction. As for the fourth question that you have raised, our first request to you is to look at this Bill in a different context. If you put your eye through, right from the United States to the places like UAE, Philippines, Singapore, in all of these places, the jurisdiction of the commercial court is the High Court. In fact, to be honest, I find Germany making a departure today. It is changing its language from German to English in the Commercial Court only to ensure that the commercial work moves faster and moves in dignity with the entire world. So, the first and the most fundamental thing is that divisions must be created in the High Courts. So, we have four advantages, to my mind. First, your infrastructure is already intact. Since most of the High Courts already have infrastructure, I need not even look at more revenue to come in. I already have hon. Judges. There may be some vacancies which can be filled up subject to the new problem that has come up. But, by this time, we could have done that. In fact, two years ago on representations being made by various High Courts, the strength of each High Court, after the 188th Report of the Law Commission, if I am not wrong, was increased. For example, in Delhi, we had an approved strength of 48, it is 60 today. The only thing that we needed was that we needed more infrastructure

and I am happy to inform you that the Delhi High Court had that vision before and today, in the next few months, you will have 15 courts added to the infrastructure that we have so that we can accommodate all 60 of them. So, the submission that I am making is that we must consider that in every part of the world, it is the High Court which has the commercial division and the commercial appellate division and we may consider providing the same in this country for a few reasons. First, there will be uniformity all over the country. Notwithstanding, if you see the provision, it says, "No revision would lie to the High Court against an Order from a Commercial Court." I would not need that provision. Those provisions will become redundant so that your need to fast track it would only be, if the first Commercial Court Division decides and then it goes to a Division Bench and after that only comes the SLP which in any case is a discretionary matter with the Supreme Court, which can come under Article 136 or need not come. So, the finality gets attached immediately thereof. The second question is when the person is appointed as a Judge of the hon. High Court, he would reach a certain stage, whether he comes from the district bar, District Court or is appointed directly. In both the cases, you will find that they have enough experience at their command. Therefore, these Commercial Courts would require maturity. It will require mature hands and minds to deal with it. Therefore, it will be necessary for you to consider that with the experience at your command and you would see what is happening. The fourth issue is on the question of appointment. Now, the High Court judge is always appointed in consultation with the Chief Minister as well as in consultation with the Governor. So, there should be no problem with the President of India proclamation part. So, all those provisions that we are looking at would automatically get streamlined once we look at this fundamental question in this case. That is the submission that I am making. On the question of human resources, in fact, there is already a proposal pending with the Government for quite some time now; probably, it was made to UPA-1, requesting that there should be an All India Judicial Service. The time has come when it is really required. In fact, many High Courts may not have commercial experience to that extent. Therefore, you may rotate your Judges so that you can fulfill this part. A question was raised with respect to mediation and Shri Tulsi has already said it and I want to reiterate that. We started with a mediation centre in two rooms as a challenge in 2006. Today in 2015, I am proud to tell you that we have 35 rooms and we now want to add to those rooms. We have 60 matters a day with all lawyers doing that and most of the people, as I know, are actually providing *pro bono*. They have not taken a single penny. We have done our courses, advance training of these mediators outside Delhi at Manesar and the seniors have borne the brunt of paying to them so that they can have youngsters with them. We are providing stipend to youngsters of Rs. 750/- and that also if he does 10 or 12 mediations, if I am not wrong. So, all this is provided for. But from where do I generate that fund? I must confess that we generate that fund this way. If a commercial dispute like this gets settled in mediation at the end of the day, the parties themselves come forward to say, we will like to donate something to the mediation centre so that you can make good. So, the parties have made that contribution to it voluntarily. There is no compulsion. We do not charge anything for mediation and we have not done anything till date. We have also taken positions; we have been able to get some aid from some places, like some seniors have contributed. Suppose Shri Tulsi is there. We know that he can afford it and if we request him, he would provide us funds. You would be able to provide us funds so that we can utilize it for creation of mediation centres. But, yes, it is part of the court. So, the court itself has spent that money, by and large, for the purpose of establishing it. That is the position. I am proud to tell you that after seeing the success of Delhi mediation centre, today, we have been approached by the Chambers of Commerce from Bombay and Chambers of Commerce from Kolkata that we should collaborate with them and there is already an association formed with respect to which we are now wanting to collaborate and take up those mediation centres there so to say that we can do it. In these 60 matters a day, 62.5 per cent is my success rate. Now that is decreasing the workload on the court. There is nothing else that can be done.

Coming to arbitration, we have been pressing hard that arbitration must be institutionalized. We have now created an arbitration centre also in Delhi High Court. Now, it will become an international centre. There also a very nominal fee is charged in comparison to what the arbitrators charge outside. Therefore, once the institutionalization of arbitration takes place, this would also be taken care of. One of the points was that the lawyers are charging too much.

SHRI A.S. CHANDHIOK (contd.): But I am pained to tell you that on a survey conducted by me, when I was the Law Officer of this country, we found 63 per cent of my fellow beings were below the poverty line in the Supreme Court, which is the highest court of the country, and we had fixed a ratio of Rs.7,500 per month if a person was a bachelor, Rs.15,000 if he was married, etc. This was the criterion, and we found that 63 per cent of them below the poverty line, that is, of the margin which we had given. So, the impression that people all over are, probably, thronging and that the system is crumbling is not true. Having said that, I must also confess that my system is crumbling today and, therefore, I need to strengthen the system. And we need to strengthen the institution with respect to that. It was only on this outlook that we suggested High Courts have these two divisions which would help us in doing that.

Sir, you must have seen the One Hundred Eighty Eighth Report of the Law Commission, Report of December, 2003, which we have circulated to you. I just want you to turn to Page 2 of the Report, which will show you what the Law Commission is looking at. There is a letter to the then hon. Law Minister who is, actually, today the Finance Minister, the Minister of Corporate Affairs and the Minister of Information of Broadcasting. The first part of it speaks about proposals for constitution of high-tech fast track Commercial Divisions in High Courts, which I was emphasizing. Please see Para 2 of this letter. It says, "Once Commercial Division is established in each High Court, consisting of as many Division Benches as may be necessary, there will be a clear message that such high value commercial disputes will be disposed of quite fast in India. In this context, I may bring to your kind notice that there is a recent spate of judgements of the U.S. and the U.K. Commercial Courts declaring that the Indian Court system has 'collapsed' because there are delays up to twenty years or more, and that, therefore, Indian defendants can be sued in the U.S. and U.K. Commercial Courts, even if there is no cause of action in those countries, provided the Indian defendant has a branch or local representative in that country or is trading in the stock exchange of that country. This trend has to be immediately reversed by bringing in fast track high-tech Commercial Divisions in all the High Courts. The Commission is of the view that the overall benefits that may accrue by way of increased investment in India, both from domestic and foreign investors, will be in hundreds of millions of dollars and the expense in constituting these fast track high-tech Divisions in High Courts will only be a very small fraction thereof". This was in 2003 and we are today in 2015, and still discussing before this hon. Committee with respect to the same. We have today seen the need that we need investment into this country for various reasons. Therefore, the submission is that this recommendation of the Law Commission made way back in 2003 may kindly be considered by your goodself. This will bring me to the next part of this Report which is 'Introductory'. Para 2 says, "With such rapid increase in commerce and trade, commercial disputes involving high stakes are likely to increase. Unless there is a new and effective mechanism for resolving them speedily and efficiently, progress will be retarded. Foreign investors in India must be assured that the Indian Courts are as fast as the courts in the most developed countries of the world and that there are no longer any long delays in the judicial process." I do not know whether the hon. Members would agree with me. The unfortunate thing on our part is that we have lost our self-confidence. Whenever we do something, they speak only negative towards us. I can assure you that if we see our statistics all over the country, notwithstanding the fact that there is no fast track courts, this concept of twenty years being taken on civil suits would, probably, be on one out of 500 cases. Normally, a case duration on the original side in Delhi cannot exceed five years. And I can only tell you, just by way of an example, that as an expert witness from India, when I filed my affidavit in New York, with this statistics from India, the first Court rejected it but the Federal Court accepted it and that affidavit, today, forms a part of the Judgement where, of course, the affidavit of a very eminent former Chief Justice was rejected and mine was accepted because that did not have particulars and there were particulars in mine. Consequently, to have this, let us start looking at ourselves to say, "We are the best in the world and we are doing better than others." Only then we will be able to move. Of course, I am not saying that we do not have deficiencies. But we must cover them up. We must do something for it.

Now please turn to the next page. It says, "The purpose of this Report is to recommend the creation of 'Commercial Division' with high-tech facilities like video-conferencing, on-line filing, etc., in each of our High Courts so that they may handle 'commercial cases' of high threshold value". Now, this part of video-conferencing, to my knowledge, is available, definitely, in Delhi – online filing is available in Delhi -- and it is available in two other High Courts today. So, all these are already available for us to look into. Consequently, the submission is that once this Act is brought in, it would, certainly, take care of that. Now, please see Page 10, "Forum Non Conveniens' which also reiterates the position of Chapter I of the Commission that high-tech commercial cases must be done. Para 2 says, "The Commission, with its overall view of the administration of justice in this country can assert that thousands of cases, particularly, those relating to commercial disputes are, in fact, resolved by Indian Courts much faster, some within even one year, and many in two or three years, and that, therefore, the characterization of the Indian justice system by the foreign courts as being in a deplorable state or that it has collapsed appear to us to be highly exaggerated". As I said it in my words, I see the Commission reiterating that here.

SHRI K.T.S. TULSI: Can I ask a question? Are we reversing the priorities, Constitutional priorities? The Constitutional priority was that the poor man's case must be decided first because he won't be able to survive otherwise. And here, we are only trying to give priority to the corporate sector. Is that in accord with the Constitutional objective?

SHRI A.S. CHANDHIOK: Let me answer that. Truly, I was going to come to that. That is the submission which I am making. The moment we create these Commercial Divisions in High Courts and the Appellate Divisions, the ordinary Courts, which are vested with this jurisdiction, would be comfortable, will have lesser number of cases before them so that, as you rightly said, a poor man will not have to wait even for days. The

question is: How do I bifurcate that situation? How do I bring cases out of those Courts? To borrow your words, for the sake of violating copyright to that extent, I am not looking at the corporate world, I have to balance the situation in the world. If a Commercial Court in the UAE, where there is hardly any law, is established in Dubai and Qatar or in various other parts of the UAE, if Philippines today has a Commercial Court, then, I have to look at what I am doing because I have to also compete in the world and put my judicial system at par, if not better than them, and, therefore, I need to do that. Having said that, once I take that case out of the jurisdiction of the ordinary court, I leave that court with more time and more energy available to meet the needs of the poor. And, I think, that is the way we need to look at this Bill instead of looking at it the other way round. I am not looking at the corporate world. I am looking at two things to balance it. I must ensure that my hon. Judge has time to look at that poor man who is knocking at my door. I have to also look at that corporate world which is internationally giving a dispute, bringing in money in this country which will generate funds, jobs and so many other things. I need that technology to be able to meet the demands of the world today. So, I have to balance it, and that is why, I started by saying, it is time that we relooked at it to provide that Division so that once all those disputes are before a specialized commercial court, the ordinary court will have enough time available to meet the needs of the poor. And I can assure you, Sir, that with your experience and acumen available, we shall be able to achieve it once you pass this Bill.

SHRI SUKHENDU SEKHAR ROY: To supplement the views of Shri Tulsi, I would like to mention that probably in all the High Courts, particularly in Kolkata High Court, I have seen that there are several benches. Some benches are looking after the criminal cases. Some are looking after civil suits, commercial disputes, patent, designs and constitutional jurisdiction also. Therefore, once the judges are entrusted with different types of cases and the jurisdictions have been determined by the hon. Chief Justice of the respective High Courts, where is the need for a separate Commercial Division? Then, there will be a similar demand, as Mr. Tulsi has rightly pointed out, that for commercial cases, for Constitutional writ cases there should be another division also. So, in every High Court there should be so many divisions, once this mechanism is put in the High Court by introducing Commercial Divisions. So, presumably this is meant not only for the corporate world, but it is more broad-based, I believe. Even the person who is having a commercial dispute of a particular pecuniary stage, then, he can go to the High Court or to the Commercial Division. Therefore, how do you justify this separate commercial division in the High Court?

SHRI A. S. CHANDHIOK: There are two justifications, (a) the normal Civil Procedure Code does not get made applicable to this commercial dispute. The new procedure gets enacted by this statute itself. Under the Schedule itself, if you see, Sir, the Schedule of the Act, a procedure making a departure from the Civil Procedure Code is brought in. The Second part is that the others will also demand similar divisions in the High Court and I thought I don't even need to stress it, but we have already, Sir, in almost every other field in this country, over the last few years, have actually created specialised courts, whether in terms of tribunals or otherwise, we have Appellate Tribunals, company law boards, family courts, etc. We have already done that. Consequently, I do not think there could be anything possible. I must stand today to salute my Prime Minister who has said on record, 'Are these tribunals deterrent to the justice delivery system?'. We need to re-look at it. That is why I am saying, Sir, a time has come when we must look at two things. (a) Am I able to reach to that person whether he is a corporate, whether he is a poor man or an individual? Am I able to give justice to him? Because it is the consumer of justice which is very important and I take those words of Shri Tulsi on that ground. I have to balance that position. Therefore, a special procedure gets created when it comes to commerce. If we go back to the first fundamental common law principle of letter of credit, bank guarantee, in all those commerce situations, you will find ever since then commerce is always treated at a different footing than a normal dispute. Once we are creating that division in the High Court we are utilising that experience of the High Court to do fast track situations. I need not go to a tribunal to create them because unfortunately, and with all humility at my command, this county must change its policy of rehabilitation. I have enough youngsters available in this country who are capable, who have the capacity to deliver things, whether it is law or anywhere else. Therefore, this rehabilitation of, unfortunately, the bureaucrats or the hon. Judges must stop. You may provide them whatever facilities that the Government wants to provide them. They must be debarred, in fact, from presiding over these tribunals because that is where the whole system is crumbling today and I can give you one example, Sir, to share that with you and I am sure hon. Chairperson and Shri Tulsi are here, at least, I know two of them being eminent lawyers here. If you see, Sir, for example in London, it is very rarely that a retired judge becomes an arbitrator. It is always the Queen's Counsel or eminent counsel like Ms. Pratibha who sits on as an arbitrator, who has done work in IPR, who would know the niceties of arbitration and IPR. Therefore, in sittings which take place with a retired judge probably, or with a retired somebody else in 20 hearings, the arbitration gets over in six days of continuous hearing. It starts on Monday at 9 o' clock. I have seen most integrated arbitrations getting over on Friday and we deserve our awards and I must also tell you, Sir, in a lighter vein, when we had that arbitration and when the treaty was invoked after the so-called Enron situation and when I was taken from here and I argued that it was a commercial dispute. The United States'

lawyers took an adjournment saying that we don't think we should have answered that and the matter got settled. So, these are issues that we require. Therefore, the submission that I am making to you is that we have already created that situation. We already have family courts; we have created tribunals; we have created other things. Our experience has not been very happy. Therefore, I said I must salute my Prime Minister because the High Court Bar has been following this problem to say we need to curb this tribunalisation, restore the glory of our courts, whether it is the High Court or the district court. I can assure you that if you have a tribunal sitting, if a judge has to be nominated as a tribunal even in a district court, how does it matter? In Delhi for example, we have two tribunals, Sir, under the municipality as well as rent control. Both are sitting as district judges. There is no problem on that. You may term them as tribunal. But they still are the sitting judges in the court. Therefore, my submission is that, having gone to that, if you come back to the situation, all that you find in para 11 is that UK decisions are given. I need not trouble you. You can have a look at the Report of the Law Commission and see why the need for Commercial Division has come up. In fact, from pages 11-23 gives you the reason why it should be done. We have now seen two maids in the US against our own bureaucrats who are entitled to take a maid from here. They are suing them in the United States of America and compensation being sought. Therefore, that is the position. Sir, page 24 starts with the commercial courts in UK, USA and 12 other countries. I need not trouble you with everything. Normally, Pakistan is not mentioned in communication, but please see even Ireland has that, even Scotland has that and, of course, Pakistan also has that. Therefore, we say, taking a view of all this, including Singapore at page 49 -- Romania also has, even Kenya, Ghana and all these South African countries also have, if you see page 61 and 62 -- we request that you look at it. The summing up comes at page 63. "It would be seen that several countries have introduced the concept of 'Commercial Division' in their judicial decision-making process. There may be differences in certain details but what is important is the introduction of the very concept of Commercial Division. Mostly, these are not Courts outside the existing judicial system but of a new Division in the existing system. They deal with cases of high pecuniary value and are Courts at a higher level than where the actions would otherwise have been normally filed. These Courts in various countries are manned by Judges with special experience in commercial matters". Sir, at page 64, Delhi High Court is taken note of and everything is done. The rules are at page 75 of Delhi High Court and the summary is drawn at page 78.

CHAIRMAN: We have already gone through the Law Commission Report.

SHRI A. S. CHANDHIOK: Fine, Sir, then, I need not trouble you.

CHAIRMAN: If you come within the Bill, then, that will be very focussed.

SHRI A. S. CHANDHIOK: I am going there only. Sir, please see page 13 of the compilation.

SHRI VARAPRASAD RAO VELAGAPALLI: While I am personally very much in favour of establishing the Commercial Division, the term 'commercial' by itself is very broad. Its specification is relatively easier. In that case, maybe, some selfish guys, where the interest is more, want to push it to fast track. How to distinguish that?

SHRI VARAPRASAD RAO VELAGAPALLI (CONTD.): The term 'commerce and commercial', particularly 'commercial', is broader. This is my apprehension which, I thought, I should bring to the notice of the Chairman.

SHRI A.S. CHANDHIOK: Sir, I am just coming to that section to give a reply to your question. Sir, please look at section 2(1)(a)(i) at page 14. My colleague will dwell with it in detail. But, I am just giving reply to you. The word used is 'ordinary transactions.' You would change it to 'commercial transaction'.

MS. PRATHIBA M. SINGH: Or, Sir, the other option given in this presentation is this. At second page, the definition says 'ordinary transactions'. We can narrow it down to say 'transactions made in the course of trade'. What does it mean? It means, suppose a merchant entered into a rent agreement, under the old definition, it may become an ordinary transaction. But, if you make it 'in the course of trade', it would exclude normal transactions outside the scope of commercial transaction.

SHRI A.S. CHANDHIOK: Therefore, if you omit the word 'ordinary' with 'others' or 'trade', it takes care of it. It will narrow down the scope. And, this will answer your question.

You look at page 14 of the Memorandum and we have the Bill introduced in the Rajya Sabha before us. I said that the Preamble would get changed and the word 'commercial courts' get deleted. Subject to what I have said, Sir, if the word 'commercial court' goes, it takes care of what I have submitted earlier with regard to heading and other things.

Please turn to page 14. The second proviso says, 'provided further that no notification under this sub-section shall be issued in relation to a High Court unless the Central Government has consulted the Chief Justice of the concerned High Court and the concerned State Government or the State Governments'. You read it with the earlier one. It says, 'provided that different dates may be appointed for different High Courts and for different provisions of this Act and any reference to any such provision to the High Court or to the commencement shall be construed as reference to that High Court or commencement of that provision'. So, Sir, the first proviso, in my submission, has implicit consultation to be done. The second, actually, will be an impediment in doing certain things keeping in view the political scene. Therefore, our request is that the second proviso may kindly be deleted. It would not serve any purpose. My friend will dwell upon your commercial dispute. I have given only one answer to you.

Now, look at section 2(c)(i), for example. It says, "ordinary transactions of merchants.." -- we have already suggested changing the word 'ordinary' -- "...bankers, financiers and traders where the commercial dispute...". Here the definition starts. Here, it should say 'includes a dispute arising out of commercial or trade transaction in merchant finance and traders', instead of the word 'means.' Here, again, the word 'such as' to be deleted and include 'including those relating to the mercantile documents...' Therefore, these three words get replaced. Sir, 'means' get 'includes'; 'ordinary' gets 'commerce and trade or commercial transactions of merchants'; 'includes' get 'as though relating to mercantile documents, including enforcement and necessary documents'.

Similarly, at 7 -- agreements relating to immovable property -- the user cannot be important, because a residential property may be put to commercial use or a commercial can be put to some other use. So, we are requesting the word 'used' may be done away with. I am saying this because we have already put that embargo in (c) (i) of commercial transactions. Therefore, we are saying that agreements relating to immovable property pertaining to commercial transactions as detailed above. This is the same thing of what we have done earlier. It will narrow down that position.

Sir, look at page 15 where we are dealing with specified value. It is 2(i)(j) which says, 'Commercial dispute...' -- commercial disputes already defined -- '...shall mean the value of subject matter in respect of a suit as determined and in accordance with section 12 which shall not be less than rupees one crore.' We don't need anything else to be prescribed thereafter. Otherwise, it creates ambiguity in the whole thing. Therefore, rule or prescription by a circular, notification cannot overrule the statute. Therefore, we have to confine it to not less than Rs. 1 crore.

Please, now, see section 12 before I come to anything else. It is about valuation. We are talking in specified value at page 15 gets covered with section 12. The suggestion is that section 12(c) gets amended and it must say that the relief sought in a suit/appeal or application relates to immovable property or a right therein, the suit/appeal or application would be valued in accordance with the provisions of the Suit Valuation Act and as provided in law for the time being in force. The reason is -- Mr. Tulsi would now bear with me as I am replying to his question -- if a person is asking for $1/20^{th}$ of his property or a small flat in a project, then he cannot be asked to pay the market value of the whole project. Then, the poor chap will never be able to file his petition. So, if there is a commercial dispute with respect to deficiency, for example, of ten flats that we have taken, then he is talking about something different. Then, the market value cannot be the subject matter. Supposing his agreement is today and the dispute arises after ten years, the market value will be of the document which he has executed, it cannot be anything else. So, the law has already prescribed the valuation when a particular valuation has to be done, the valuation has to be as per the Suit Valuation Act or any other law for the time being in force. That is the submission that I am making.

Hon. Members would agree with me on the question of the High Court. Then, sections 4 and 5 would become redundant and will have to be deleted. It is at page 16.

SHRI A.S. CHANDHIOK (CONTD.): Please also consider that it may also suffer the situation where in one court there is the district level situation, while in the other it is High Court. It may not create uniformity and consequently**,** Section 12 (3) also will get deleted**,** if we accept that proposition. So there cannot be any revision from a High Court inter-division. To answer the question of hon. Member**,** Mr. Roy**,** Section 17 provides the special procedure to be put in the Schedule and filing of a suit in respect of that is provided for there. Sir, it stands amended, in the specified schedule. The Schedule is at page 21. My friend will deal with it in detail. Sir, this is after 2002 Amendment of CPC, which was done in 2002 last. This is after that. In Section 16**,** for example, once the Commercial Court takes note of this arbitration, the normal arbitration court which is dealing with that case would get enough time to do its normal arbitration, small valuation**,** etc**.,** the disputes which are not commercial in nature. It is already provided for. "Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force..." So the submission is that Section 22 already takes care of what the hon. Chairman was referring to.

Once we read this with Section 14, then it takes care of the provisions as to what will apply in so far as the commercial disputes are concerned. Sir, only in two pages we have circulated the amendments that we have suggested and after that we have submitted the memorandum to your goodself.

MS. PRATHIBA M. SINGH: Good afternoon, hon. Members. My name is Prathiba M. Singh and I am a senior counsel in the Delhi High Court. I practise primarily on the original side and on the appellate side of the Delhi High Court. My main area of practice happens to be intellectual property law. After my designation, I have also started doing different commercial matters as well. We are really honoured and privileged to be here in front of you to speak on the Commercial Courts Bill. If I say it in one sentence, I think the Commercial Courts Bill brings about the necessary equilibrium. About what Mr. Tulsi and other hon. Members have said, what is the reality today, I would just like to spend two-three minutes to understand as to what is the reality of the original side of the High Courts or the District Courts which deals with original side matters. The reality, today, is that a large amount of time in our court is spent on, for example, starting with the service of the defendant, admission denial of documents, exhibiting of documents, denial of documents, issues being framed, interrogatories, discovery proceedings, settling of issues, fighting on what the issues should be, amendment of issues, then going into the trial and in trial list of witnesses, summoning of records, summoning of private records, summoning of official records. Then, making them file affidavits, then cross examination and then, the docket of the judge being crowded for not being able to do final matters after the trial has concluded. This is the reality of our original side in most of the courts. There are some High Courts which have devised novel methods to get over this situation. For example, in Delhi High Court, on a daily basis, what we do is, the court has devised a method of using retired district judges and senior counsels who are kind of semi-retired to record evidence. So, by doing that we are speeding up the record of evidence. However, that still does not take away the clogging at the post-trial stage in the High Court. One major thing that this Commercial Courts Bill does is to do away with all the unwanted procedures in the case of commercial disputes. In the small spiral which the High Court has provided today, if you look at pages 52 to 55, it details all the procedures starting with one and running to 46. In my view, the Commercial Courts Bill brings about a transformation in this by reducing 46 steps to, maybe, five steps. That, according to me, is the big revolution that the Commercial Courts Bill intends to make. Therefore, we believe that this Bill will not just be pro-corporates, but what it is going to do as an overall message is, it will boost up the investors' confidence in the country, on the one hand, and also maintaining the equilibrium for making sure that the poor man's cases get enough time in our courts to be heard. I think, I need to address what Mr. Tulsi asked as a query. He being a senior Member and I have had the opportunity of working with him as the Secretary when he used to be the President of the Asian Patent Attorneys Association. Sir, what you have raised in terms of what happens to the poor man's disputes, please see the reality today in our courts. The commercial cases are heard by the very same courts who hear the disputes of individual litigants. For one reason or the other, the reality is, they are able to hire the best counsels. They are able to hire the best law firms and, in effect, what happens is, the normal courts, today, give more preference to commercial disputes than the individual disputes. That is the harsh reality today. The harsh reality in our courts is, for want of, maybe, finances or whatever reason, the individual litigants are not able to hire the best and the most famous senior counsels. So what happens is the commercial cases get a preference today than the individual litigation cases. In my view, dividing the courts would ensure that the equilibrium is brought back and the poor people, the individual litigants get the normal courts to deal with their matters and the Commercial Division to deal with the commercial disputes.

SHRI K.T.S. TULSI: Sir, can I ask a question?

CHAIRMAN: Yes, please.

SHRI K.T.S. TULSI: Sir, it is a matter of fact that 75 per cent population of the country consists of undertrials. We are telling the High Courts to accord higher priority to corporate disputes or commercial disputes and forget about the people who are locked up. Is their liberty less important than speeding up justice for corporates?

MS. PRATHIBA M. SINGH: Sir, I appreciate what you are saying. In fact, in so far as the undertrials are concerned, I think, not a single member of the Delhi High Court Bar Association is here to say that the undertrials should not get their preference. The undertrials have to get their preference and that is the reason almost one-third of Delhi High Court, today, is dealing with criminal cases. That is the truth.

Secondly, what I am trying to say is, if out of fifty or sixty judges of the High Court, only five or seven are allocated to decide commercial cases, all the remaining get de-clogged to decide the individual litigant cases. That is what will happen in the Commercial Courts Bill. Right now what is happening is actually skewed. We are there in these courts every day, on a daily basis, and we realise that the commercial disputes get higher preference to the disadvantage of the individual litigants and undertrials.

MS. PRATHIBA M. SINGH (CONTD.): So, the segregation would help and would help in a very big way to ensure that the individual litigant cases are not ignored and that they get their due and the majority of the judges are dealing with the individual litigant cases. That is my submission, Sir.

DR. A. SAMPATH: Sir, may I have a question?

CHAIRMAN: Yes, please.

DR. A. SAMPATH: I am also a lawyer, and I am having my doctorate in law also. It is simply academic in type. I want to know whether anyone of you have been undertrial before in your life?

MS. PRATHIBA M. SINGH: Thank God, we are all non-undertrial.

SHRI SUNIL MITTAL: I was.

DR. A. SAMPATH: For how many years?

SHRI SUNIL MITTAL: I was an undertrial during the Emergency.

DR. A. SAMPATH: For how many months or years?

SHRI SUNIL MITTAL: The case was dropped, and I was there for one-and-a-half month.

DR. A. SAMPATH: I want to know whether you got acquitted.

SHRI SUNIL MITTAL: The cases were withdrawn by the State.

DR. A. SAMPATH: I am saying this because I was imprisoned more than once, and I was an undertrial, and I have represented many who are behind the bars. This is just for your information.

SHRI A.S. CHANDHIOK: Sir, as Ms. Prathiba has already said, there is no such situation that we want to make a Commercial Division at the cost of the undertrials. As a matter of fact, we did not know that this issue would come up and I can share it with Mr. Tulsi as a representative of the Bar. It is a matter of fact and you can check it from your own resources that we had one Division Bench dealing with criminal appeals, we, today have two, and the third one of it is dealing half of it; they too are dealing with disputes. There are seven more judges dealing on the criminal side. Looking at the strength that we have, which is 48 approved -- of course, now we are 60 -- we did not have those judges and, as I said, we need to appoint those judges. We have 37 sitting judges, and still we have given those benches. If fact, you would recall, Sir, about eight months ago, we had to sacrifice the original bench because we needed the undertrial procedures to go on. The purpose is, we are not wanting in any way to undermine the situation of an undertrial who is locked up there. We are looking at how we can balance the situation. The need of the hour is, yes, it is; and we have said that. And we are again reiterating that we need eminent people to come on the bench, we need fast appointments to be done rather than going up and down, one to another. We have seen now what has happened today. We are not able to put our people on job. So, if you put those meritorious people, it would help. Especially if I have not done criminal work at all, and if you put me in the criminal bench, then, I will have to learn it. So, somebody who has experience of criminal law should be on the bench.

CHAIRMAN: Mr. Chandhiok, we are very happy that you could address our hon. Members' questions on the social issues also. But now we are dealing with a fast track architecture. We are now dealing with a Bill which is having many steps for the past ten years. As you correctly indicated that the Law Commission has made recommendation, and also subsequently another Bill was placed before Parliament. Then, it was referred to the Select Committee. The Select Committee made certain recommendations. Taking into consideration all these issues, now the Bill is before us. Therefore, this architecture which is built up from the District Court to the High Court and High Court Appellate Bench and, without saying, it goes to the Supreme Court also. Now, our hon. Members' thinking is that we are not addressing the actual people who are in need, but we are addressing the issue of the commercial disputes alone. That has to be addressed properly. It is correct that you tried to address their queries. But here for the purpose of preparing a Report, we have raised certain questions. Therefore, you kindly have those questions in your mind, and prepare the data. For example, in the initial stage itself, you commented that the court fees are already available, huge money is there, and even 25 per cent of that is not utilized. So, where does that money go? We are also searching these questions for answers. If you have got the data, then, you can give us. For example, how much the Delhi High Court earns per year, and how much is its expenditure. If you can make the empirical data, that will be useful. Similarly, wherever it is possible, you can cull out the information. That can be done. Naturally, our Department ought to have done it, but they have got a system of totally independent State Judiciary and independent national level Judiciary. Therefore, we feel that we need supporting data so that it can help us in preparing our Report. Actually, our hon. Member, Mr. Tulsi, is also very much interested in addressing the social issues. But, our information from other sources is,

though we have not visited you, he knows very well about your Mediation Centre, that you mediate rich people's disputes also. If it is so, what we are thinking is, if you want to have a social aspect side by side, that track has to go with the normal court system, then, you have to earn and pay to that system also. Now, we are thinking about the *crorepati*, who is having a dispute of more than Rs.1 crore. Therefore, for disputes worth less than Rs.1 crores, we have to compensate it by earning from here and put it in another track so that this track also goes faster. It should be speeded. We cannot say that only the commercial disputes should come first, and other disputes have to go back. Therefore, what we are stressing in this matter is this. Kindly give us some more emphatic justification that how you are going to earn more revenues, and, at the same time, the savings would be utilized for the other track, that is, the social track. You have already said what the Mediation Centre of Delhi High Court is doing for social aspects. Similarly, we can also utilize that fund for the social cases which are already pending and lingering on. Dr. Sampath has already indicated how the undertrial prisoners are suffering. Those issues can be addressed. Now, we are just going around and around, blaming each other, and we are finally ending up with nothing. We are the people who have to address these issues. Therefore, we have to come out with a solution. We want to try to come out with a solution so that the Government should act upon it. Hundreds of reports are there on every issue, but there is no solution at all. At least, in this particular Report, we want to come out with a solution. We want to look at the solution, solve it and act on that. This is the way we want to put it. If you read our Reports also, we are following that method rather than going on, compiling and filling up the Library with so many reports. We want to act upon the issues. I am very happy that you are all activists in various issues, and, I am sure, you will give it in writing after having discussions with the Core Group and others. You can send it within two weeks. We are going to other locations also. We are visiting Kolkata. Similarly, we are going to Mumbai, Hyderabad and Chennai. Then, we will be going to other High Court locations also and discuss with the Bar and other stakeholders so that we can have a better Report on which the Government can act immediately. We cannot waste more time. Already we have wasted a lot of decades, and we should not further waste our time. I am very happy that you have come out with well-documented submissions, and kindly add more, and send it to us within a fortnight.

MS. PRATHIBA M. SINGH: Sir, with your permission, can I just point out two things? In the small PowerPoint that we have given, there are two suggestions that we have. Firstly, on Clause 2, Sir, you had asked whether it should be included as a Schedule or it should be a kind of enumerative as it is today.

MS. PRATIBHA M. SINGH (CONTD.): There are two ways of doing this. One, it could just be an inclusive definition and have a Schedule to the Bill itself. That is one way of doing it, which could also reduce the disputes. If it is an inclusive definition, then, fight in the court about jurisdiction would be reduced to a very great extent.

CHAIRMAN: The earlier Bill, which was also referred to the Select Committee, has got only one paragraph for the definition.

MS. PRATIBHA M. SINGH: Correct, Sir.

CHAIRMAN: You correctly said that if we make it a Schedule, then it can fill up the gap.

MS. PRATIBHA M. SINGH: Sir, it could be an inclusive definition with a Schedule. That is the first thing. Then, as the hon. Chairman rightly said, in clause 2(1)(xvii), which is on intellectual property, there is no need to mention all of this separately in this manner. It could simply be like this, 'intellectual property rights governed by the various statutes for the time being in force.' Instead of mentioning all this, even that should be sufficient, because IPRs are specifically governed by the Trade Mark Act, the GI Act, the Patent Act and the Plant Varieties Act. A lot of them are missing here. So, we can make it in one line and say, ' Intellectual property right related disputes governed by various statutes for the time being in force.' That would take care of almost all the IPR related disputes which would be there.

Secondly, there was a concern which was being raised that whether this kind of a law would go beyond the specialized statutes. That already has been taken care of in clause 11 of the Bill, page 17 of the compilation. It clearly says, "Notwithstanding anything contained in this Act, a commercial court or a commercial division shall not entertain or decide any suit, application of proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred.....". Therefore, if there is any specialized statute where the civil court's jurisdiction is barred, then, commercial courts would, automatically, be barred. So, clause 11 takes care of the specialized statutes which exist in our country. So, there is no apprehension in so far as the specialized statutes are concerned. Clause 11 takes care of that quite well.

CHAIRMAN: I feel that, more or less, they are addressing the tribunal system. You indicated that also.

MS. PRATIBHA M. SINGH: Yes, Sir. In fact, the recent judgment of the Chennai High Court has struck down several provisions of the Intellectual Property Appellate Board.

SHRI (ADV.) JOICE GEORGE: By virtue of clause 11, if something is barred under a special Act, they cannot be brought in under this particular Division also.

MS. PRATIBHA M. SINGH: Yes, Sir. That is what the clause 11 says.

SHRI (ADV.) JOICE GEORGE: That will defeat the very purpose and purport of enacting this particular Bill.

MS. PRATIBHA M. SINGH: Sir, I think we need to read clause 11 and also clause 14. Clause 14 clearly says, "An appeal or a writ petition filed in a High Court against the orders of the -- Competition Appellate Tribunal, Debts Recovery Appellate Tribunal, Intellectual Property Appellate Board, Company Law Board, Securities Appellate Tribunal and the Telecom Disputes Settlement and Appellate Tribunal....". So, the manner in which this Bill has been structured is not to replace those specialized Tribunals, but in a way that those Tribunals will work under the Commercial Division in the High Court. The Commercial Appellate Division of the High Court will act as an appellate forum for these Tribunals. That is how this Bill has been, actually, structured.

CHAIRMAN: You are correct. There are some contradictions.

SHRI (ADV.) JOICE GEORGE: Sir, there are contradictions and some overlapping is also there.

CHAIRMAN: If you read clause 14 and also the definition given in clause 2, they are totally contradictory. These are all jurisdictions, which are already there. They are bringing them again and again.

SHRI (ADV.) JOICE GEORGE: What is the purpose of establishing these kinds of particular divisions-- Commercial Divisions in the High Court or Commercial Original Jurisdiction Divisions-- there? This is only to speed up the trial. Tribunal system is also there. Nobody is happy with the tribunal system. We are also not happy with the existing tribunal system there. On the one hand, we have the tribunal system, but, on the other, we have the division system also. There should be some clarity. Either we should go by the commercial court system alone or we should go by the existing system; otherwise, there will be some confusion. Some lacunae will be there.

MS. PRATIBHA M. SINGH: On this specific issue, can we come back with a proper slide presentation, Sir? Actually, we need to clarify on that. We will come back on this.

CHAIRMAN: Actually, there is a zig-zag way of architecture.

SHRI (ADV.) JOICE GEORGE: Madam, we can bring all these things through the appellate forum.

MS. PRATIBHA M. SINGH: Yes, Sir. It can be done through Commercial Appellate Division.

SHRI (ADV.) JOICE GEORGE: Bypassing the original jurisdiction, we can bring all these things under the very same Division. Of course, that is there.

SHRI A.S. CHANDHIOK: Actually, the intent is a little different. The intent is that since the tribunals are presided over by a retired judge of Supreme Court, the appeal goes to the Supreme Court. That is making a departure here. The Chairman is absolutely right when he says that there seems to be a zig-zag here. Therefore, instead of what they are saying now they should say that an appeal would lie with the Commercial Division.

SHRI (ADV.) JOICE GEORGE: The advantage is that they will get more forums to adjudicate their issues. In some other cases, they will not get that much forums.

SHRI A.S. CHANDHIOK: We will be happy to assist you, Sir. Kindly see the old Act which was passed by Lok Sabha.

SHRI (ADV.) JOICE GEORGE: In other cases, they will have only the forum of original jurisdiction.

CHAIRMAN: That route gives one more forum to go about it. That is one contradiction.

SHRI (ADV.) JOICE GEORGE: This is my apprehension.

SHRI A.S. CHANDHIOK: That is why I am saying we need to clarify in clause 13 on that part. Agreed. I was only answering the first question. In clause 2 of the old Bill, which was passed in 2009, you will find that there are three explanations. Those three explanations themselves were contradictory to the Act itself. Therefore, there was a need to amend it and bring clause 2 in this form. If you see the old Act passed by the Lok Sabha, it said, "A dispute, which is a commercial, shall not cease to be a commercial dispute merely because it also involves action for recovery of immovable property....". Therefore, you are negating the first part. That is why there is a need to clarify that. That is one part.

The second part is, the intent seems to be that from these tribunals, instead of appeals going to elsewhere, the appeals will, actually, come to the Commercial Appellate Division. I agree that it needs to be worded properly.

SHRI (ADV.) JOICE GEORGE: I am afraid that even if this Bill becomes an enactment, this will also be going to delay the litigations.

SHRI A.S. CHANDHIOK: We are happy to say that these tribunals will have no jurisdiction over commercial, and everything may come to the Commercial Courts. We are happy with that position. In fact, it solves many problems. That is why I said in the beginning that if you have a commercial dispute, it will come to the Commercial Division of the High Court, it goes to the appellate and attains finality, unless it is a question of law which goes to the Supreme Court.

SHRI (ADV.) JOICE GEORGE: We should have more clarity on this issue also.

SHRI A.S. CHANDHIOK: That is right. So, we are suggesting something.

CHAIRMAN: Actually, you have to choose between clauses 14 and 2.

MS. PRATIBHA M. SINGH: Sir, clause 22 also.

CHAIRMAN: If you go on adding that you have got multiple rules to go away, then, what is the purpose of creating another structure?

SHRI A.S. CHANDHIOK: Sir, we need to amend this to say that all commercial disputes should come to Commercial Courts with one appeal and nothing else. That is it.

SHRI (ADV.) JOICE GEORGE: Leaving room for more interpretation will create more problems. So, we should be specific.

SHRI A.S. CHANDHIOK: Sir, we will prepare a comprehensive position. Just give us time. We will come back and explain what we have to say.

CHAIRMAN: Surely. We will request you to come back, but the point is that it is totally in a zig-zag manner. Multiple rules are going around. Just like in Shanghai city, if you stand in one location, you will have seven rounds of bridges going. Similarly, we are having different routes there. We have to find out a single route.

MS. PRATIBHA M. SINGH: Sir, there is just one last thing that I would like to add. The Schedule to this is a very well-written Schedule in terms of admission, denial, case management, interrogatories, discoveries, etc. It is providing a very good and streamlined procedure.

MS. PRATIBHA M. SINGH (contd.): So, I think, that part, the Schedule, is the strength of this Bill. It is a very good Schedule because it is taking care of the best practices from foreign jurisdictions. So, this Schedule, in this procedure, would make commercial disputes quite fast in adjudication, provided we sort out the issue which has been raised by the hon. Member and the hon. Chair, in terms of the architecture of the Bill. If we are able to assist the Committee in doing that, I think this Bill can do a great service to commercial disputes in India.

CHAIRMAN: Kindly don't take it otherwise; we are giving you some more homework to do.

SHRI A. S. CHANDHIOK: Sir, we would be happy to do that.

CHAIRMAN: Look at clauses 12 and 14 also and see if, from your Bar Associations or any other source, you could collect information like how much they are expending on establishment of such tribunals, with retired people, etc.

SHRI A. S. CHANDHIOK: Sir, we would submit those details to the Committee. We have information related to some of the tribunals. We may not have it for the particular tribunal that you wish to know about. For example, there is a tribunal which is part of clause 14.

CHAIRMAN: Here, six tribunals have been mentioned. The same jurisdiction is also given to the Commercial Courts.

SHRI A. S. CHANDHIOK: Sir, I am only suggesting to you that I have already provided data at 'F'.

MS. PRATIBHA M. SINGH: Sir, I have given it at 'C'.

SHRI A. S. CHANDHIOK: Sir, we already have the information relating to two-three tribunals with us. We would compile it all and submit the information, on the expenditure, etc. That is why we said that creating new infrastructure itself would create problems.

SHRI (ADV.) JOICE GEORGE: I am afraid we would be creating separate compartments. A fortunate few can straightaway come to the High Courts with their disputes, but others can come only through the tribunals and only with an appeal. These are larger issues. Please work on them.

MS. PRATIBHA M. SINGH: Sir, this needs to be sorted out.

SHRI A. S. CHANDHIOK: Sir, everything has to be part of the Commercial Division and Commercial Appellate Division.

SHRI (ADV.) JOICE GEORGE: Some fortunate people can straightaway go to the High Court with their disputes while others can only come through tribunals. These are all issues that we need to address.

SHRI A. S. CHANDHIOK: Sir, we would do that.

MS. PRATIBHA M. SINGH: Sir, by what time can we submit these details?

CHAIRMAN: You could take some time to submit those details. We have to submit the Report before the next Session. You could take three weeks' time. Work on those details. We would finish with our discussions in the meanwhile.

SHRI A. S. CHANDHIOK: Sir, everything is closed today because of the summer vacations. So, to get the data would take time. We would get it.

CHAIRMAN: I feel that we could make good use of your enthusiasm in getting more data from you, and that would be cited in our Report. Try to authenticate it too because in our Report we can include only data from authentic sources. Please take care of that too.

Thank you very much. The meeting is adjourned. Hon. Members, we would now meet on the 9th of June.

(The witnesses then withdrew and the meeting adjourned at 3.53 p.m.)

THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE MET ON TUESDAY, THE 9TH JUNE, 2015, AT 3.00 P.M. IN COMMITTEE ROOM 'D', PARLIAMENT HOUSE ANNEXE, NEW DELHI-110001.

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CHAIRMAN: DR. E.M. SUDARSANA NATCHIAPPAN

WITNESSES:

Supreme Court:

Shri Chirag Bhanu Singh, Registrar

Shri R.N. Nijhawan, Additional Registrar

Shri T.I. Rajput, Deputy Registrar

PHD Chamber of Commerce and Industry:

Shri S. Ramaswamy, Co-Chairman, Law & Justice Committee

Ms. Kanchan Zutshi, Secretary, Law & Justice Committee

Shri Shamik Saha, Associate, MPC Legal, Solicitors & Advocates

Shri Sumit Lalchandani, MPC Legal, Solicitors & Advocates

Confederation of Indian Industry (CII)

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CHAIRMAN: Good afternoon, hon. Members and I welcome you to this meeting of the Committee. Today, we have invited the representatives of the Supreme Court, the Confederation of Indian Industry, and the PHD Chamber of Commerce and Industry to present their views on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015.

I welcome the representatives of the Supreme Court, the Confederation of Indian Industry, and the PHD Chamber of Commerce and Industry to this meeting of the Committee. As you are aware, we have invited you to present your views on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015.

The objective of this Bill is to set up Commercial Courts at the district level except for the territories over which the High Courts are having original ordinary civil jurisdiction. High Courts of Calcutta, Madras, Bombay, Himachal Pradesh and Delhi have original pecuniary jurisdiction and Commercial Divisions in these High Courts are proposed to be set up for fast-track resolution of the commercial disputes of Rs.1 crore and above. The Commercial Appellate Divisions in all High Courts of the country would be set up to hear the appeal against the orders of the Commercial Courts, Commercial Divisions of aforesaid High Courts and certain Tribunals.

The CII has submitted their written comments, especially on staggered implementation of the provisions of this Bill, need for inclusive definition of the commercial disputes, levy of mandatory cost on the party delaying the proceedings of the court beyond certain stipulated period to be included in the Bill, inconsistencies between the provisions of the Bill with certain provisions of SEBI and TRAI Acts, periodic mandatory training of Judges of the Commercial Courts and the amendments proposed to the Code of Civil Procedure in the Bill, etc. The same has been circulated to the hon. Members.

We would like to have your views on various provisions of the Bill. In particular, we would like to have your opinion on whether it is legally feasible to set up Commercial Benches in High Courts in Delhi, Madras and Himachal Pradesh without raising their pecuniary jurisdiction to Rs.1 crore; whether the appointment of Judges of the Commercial Courts by the Chief Justice of the concerned High Court, as proposed under clause 5 of the Bill, is constitutionally sustainable, as Articles 233 and 234 give power to the Governor of

the concerned State for appointment of the District Judges and subordinate Judges. The representatives of the Supreme Court may specifically respond as to whether the District Courts in the country have been modernised to fast-track commercial disputes to be transferred to that forum with the enactment of the proposed legislation. After your presentation, the hon. Members would like to seek clarifications. If you have answers, you may respond now or you may send written submissions with more data and supporting available materials.

I would like to inform you that the proceedings of this meeting are treated as confidential and it shall not be permissible for a Member of the Committee or anyone else, who has access to its proceedings, to communicate directly or indirectly to the media any information regarding its proceedings including its report and any conclusions arrived at, finally or tentatively, before the report is presented to both the Houses of the Parliament.

CHAIRMAN (CONTD.): First of all, I would like to ask the representatives from the Supreme Court whether they want to be heard exclusively or with other organizations sitting here.

SHRI CHIRAG BHANU SINGH: We have no problem, Sir.

CHAIRMAN: Okay. Let me add certain questions specifically for the representatives from the Supreme Court. With our experience, we find that the court fee structure in the Supreme Court is a very simplified one and it is the minimum. Now only, the Supreme Court has come forward with certain level of increase in the court fee. Even that was opposed by certain sections of the Bar. But taking into consideration the commercial disputes, the definition clause 2 of this particular Bill has got 22 different categories of issues, which are classified as commercial disputes. If you go through all the 22 categories, it encompasses many of the statutes and many of the cases having high stake disputes, and, therefore, it needs a lot of modern infrastructure, human resource and the Judges should also be well-versed in that particular type of category of cases. The Bill contemplates that the High Court can appoint the District Judges; the High Court can make special provision for designating the commercial bench; and, the High Court can designate a Division Bench for the Appellate Commercial Division. But, at the same time, there is no provision for the Supreme Court. When it comes to the Supreme Court, the workload of the Supreme Court will be much more. How are you going to address this issue? You are having only 32 Judges and the number of disputes is very huge. According to the Bill, which is now before the Committee, the fast track channel is very fast. Suppose, this system starts working properly, then, it will end up at the level of the Supreme Court and the Supreme Court will have to contemplate as to how they are going to address the issue as a flood of appeals and SLPs will be coming before the Supreme Court.

Secondly, you know very well that there is one perception that civil dispute resolution especially commercial dispute resolution, more or less, can be classified broadly as a 'service'. Dispute resolution is a service industry. When you go for arbitration, they are paying huge money to the arbitrators. They are paying on hourly basis. For the locations and other things, they are bearing costs. In the court system, except the other civil disputes which are under the State enactments where court fee is levied according to the State Legislature enactments, how are you going to address these commercial disputes to bear the expenses which are incurred by the newly formulated fast-track commercial dispute system? Do you want to have a new structure or architecture to be created when the existing system is available? How are you going to make it?

Thirdly, as per the existing court fee structure, at the initial stage, where it is a civil court -- let us take the example of Tamil Nadu -- 7.5 per cent court fee is to be paid. At the level of first appeal, they have to pay the same amount. At the time of second appeal, they have to pay half of it, and, when they come to the Supreme Court, for the SLP, etc., they have to pay Rs. 250 or so. Now, you want to have a fast-track modern system with more resources. You cannot expect the State Governments to share that money, and, therefore, you have to generate your own money for meeting the expenditure which is going to be incurred. We would like to have your views on this issue. If you feel that you need to have some more data to be collected from various District Courts regarding 22 categories, pendency of the cases, or, the time taken by them, you can collect the same from the High Courts as you have got a system of Annual Reports being submitted by every High Court on levels of disputes as also on how fast enough the cases are being disposed. We need some more details on this issue. Kindly take the floor and make your presentation, and, then, we will hear the other witnesses.

SHRI CHIRAG BHANU SINGH: Mr. Chairman and Members of the Committee, before I actually embark on the question, I would like to bring to your kind notice that having gone through the proposals in the draft Bill, it goes without saying that as of now, the Bill does not contemplate bringing the Supreme Court into the ambit of the Bill. It only envisages the composition of courts either at the District level or the High Court level. At the High Court level, apparently, there will be a Commercial Division and a Commercial Appellate Division.

For whatever reasons, the Supreme Court, as of now, does not fall within the purview of the proposed draft Bill. Before going into the merits of the Bill, it would be worthwhile to mention that the comments of the

respective States in regard to the High Courts as stakeholders will be very, very relevant as far as the present draft Bill is concerned. Apart from that, I believe, the suggestions from the Bar, the High Court and the States would be welcome because having gone through the various provisions -- though it is a novel idea and it is a welcome step -- we did find that there are certain points, which need to be canvassed strongly. For instance, let us take clause 3(1)(b). Though the intention of the draft Bill is that where the High Court has original jurisdiction in the civil side, the composition of the courts would be such that, in the first instance, it would either be Commercial Division, and, then, a Commercial Appellate Division. In case the High Court does not have original jurisdiction, in that eventuality, the Commercial Courts would be set up at the District level. In this regard, let me quote, clause 3(1)(b), "In all States or Union territories where the High Court has ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts..." Let me pause here. In fact, here, it should be Commercial Division Courts because here we are talking about the original side jurisdiction of the courts. The High Courts with original side jurisdiction will have only Commercial Division Courts whereas the High Courts which do not have original side jurisdiction will have Commercial Courts at the District level. So, probably, it should be "...Commercial Division Courts as it may deem necessary, for the purpose of exercising the jurisdiction conferred on those Courts by the Act."

Likewise, let me go to sub-clause (2) of the same clause. Mr. Chairman, Sir, in case we have to use the pre-existing Judges in the hon. High Courts, then, the situation may be slightly different, and, in case, we have to constitute new Benches for fast-tracking the commercial litigation, then, the situation may be slightly different.

SHRI CHIRAG BHANU SINGH (CONTD.): Sub-clause (2)(a) *per se*, if we see, envisages that in all High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute a Commercial Division of that High Court. So, the draft Bill supposes that in case in a High Court a Commercial Division has to be created, the State Government shall issue the notification. If the Commercial Courts are to be created at the district level, yes, the State Government may have the power to issue the notification regarding appointment but, I am afraid, in case we have to make appointments of Judges to the Commercial Division Bench of the High Court, probably, the notification of the State may not suffice. The Central Government may have to issue the requisite notifications, and the other part of it may be that we authorize the hon. Chief Justice of the respective High Court to constitute special commercial benches for the purpose. So, probably, we may have to have a relook at this. Then, Sir, in sub-clause (3) of the same clause -- for establishing a Commercial Division we have a consultative process with the High Court -- unfortunately, for creating a Commercial Appellate Division, that consultative process, I feel, is missing because sub-clause (3) says that the State Government shall immediately, after issuing notification under sub-clauses (1) and (2), constitute a Commercial Appellate Division of that High Court. So, even the consultation is missing and, as I just submitted earlier, probably within the pre-existing set-up, the High Court itself can issue a notification saying that there will be a Commercial Bench and the Commercial Appellate Division Bench. Otherwise, the State in itself *per se* may not be competent to issue a notification creating these benches. Another aspect of the matter, Sir, is relating to clause 5. The draft Bill does envisage the process of appointment and qualification of judges to the commercial courts. We believe, if it is a pre-existing set-up in the High Court, we need not really go into this but in case appointments have to be made afresh, then clause 5 does come into play and as we see the existing provisions of the draft Bill, this really talks about the appointments to be made to the district level. There, probably, it has been reported to be a Principal District Judge. However, in sub-clause (4), the terms and conditions of service of the Judges of the Commercial Courts have been provided to be 'as may be prescribed'. If we go to the provisions of clause 2(1)(c)(h), which defines the word 'prescribed', it says, 'prescribed' means prescribed by the rules made by the Central Government. Mr. Chairman, Sir, if we are to work in pre-existing set-up, we have an independent mechanism where we have the division system in vogue; we have a new system. One can understand the concept of, say, making a new set of things, totally independent of the judicial system in vogue, but here, probably, either we are trying to merge or because the terms and conditions of the service, if it is for the district level, I am afraid, it is governed by the rules which are framed by the respective State Governments and as far as High Court Judges are concerned, the terms and conditions of appointment are under the High Court Judges (Conditions of Service) Act. So, in any case, the provision will have to be revisited because for the Commercial Division and Commercial Appellate Division, probably the Central Government may not be in a position to prescribe rules for the appointments since they are governed by set rules and Acts. Likewise, even for the States, I am afraid, this may have to be revisited.

Then, Sir, there are certain things which, I believe, will have to be ironed out. The role of the States and the High Courts would be much more important than us. As being in the Supreme Court, no doubt, we would be there to assist this Committee. But I still believe that the views of the respective Governments and the High Courts would actually be very relevant to make this Bill work in a proper way because as we see, it is not even

an independent mechanism. We are trying to have a system within the pre-existing system. If it has to work, within the pre-existing system, we have special benches or if we have to create posts, we will have to do it right from the Supreme Court to the lowest rung. Then we will have to create special courts and have an independent mechanism. But I believe, as the intention of the draft Bill goes, we are trying to use the optimum services from the pre-existing judicial structure. If that is so, Sir, I believe, we will have to have a dialogue with the stakeholders which, undoubtedly, are the States and the High Courts and even the Bar.

Likewise, there are certain other provisions which we felt would require to be deliberated. The other inconsistency which, to some extent, can be bettered is, say, in clause 14. We have proposed an appeal or a writ petition in the High Court against the order of the Competition Appellate Tribunal, the Debt Recovery Appellate Tribunal, the Intellectual Property Appellate Board, the Company Law Board or the National Company Law Tribunal, Security Appellate Tribunal and the Telecom Disputes Settlement Appellate Tribunal. As per the draft provisions, the appeals from these Tribunals are to be heard by the Commercial Appellate Division of the High Court alone. The entire reading of the draft Bill shows that as of now we have not been able to really distinguish because there could be a situation where the appeals may be coming from the Commercial Courts which are of the district level. So, as it stands, it might happen that even an appeal from the district level will be heard by the Appellate Division Bench and even the other authorities. So, this also requires to be relooked. And the Bill does not presuppose whether the Commercial Division would be a single-bench composition or a division bench because, in any case, if we have a Commercial Appellate Division, it will have to be a two-judge bench. So, in that, probably, the Commercial Division Bench will have to be a single-judge bench. So, these are the few things and with the help of deliberations we could really iron out these creases.

Likewise, there are certain issues regarding determination of the specified values. Sir, while going through the draft provisions, it is noticed that in clause 12, while specifying the value of the subject matter, the draft Bill says that even the interest would be inclusive of the relief sought. In fact, it says that the specified value of the subject matter of the commercial dispute in a suit, appeal or applicant shall be determined in the following manner where the relief sought in a suit or application for recovery of money, the money sought to be recovered in the suit or application, inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such specified value. These are very small issues but I believe they will have far greater repercussions. Suppose the interest is calculated on the compound interest basis, it can well be perceived that even an amount of, say, fifty lakh may end up, while it is put in the court, to be quantified as one crore just to show that it would come within the domain of commercial as we have defined in the draft Bill.

SHRI CHIRAG BHANU SINGH (CONTD.): Clause 20 of the Bill says that the State Government shall provide necessary infrastructure to facilitate the working of a Commercial Court or a Commercial Division of a High Court. I believe that the Commercial Appellate Division has been left out. The State Governments should be taken on board.

As far as training and education are concerned, after the Thirteenth Finance Commission, I believe almost all the States have their own State Judicial Academies in place. We have the National Judicial Academy in place. We can put these academies to good use because crores of rupees have already been spent on creation of these academies throughout the length and breadth of the country. My suggestion is that we can use the services of these academies to train and educate judges of every rung of the hierarchy.

I earlier referred to clause 23. There is a discrepancy regarding notification to be issued. I am afraid in the case of High Courts, it will be the Central Government. In the case of appointments to District Judiciary, State Governments can issue notifications. In case it is within the existing system, then we can even authorise respective Chief Justices of High Courts to nominate Benches as has been desired in the Bill.

The Schedules have procedural requirements. We have gone through them. There are a few welcome steps in it. This we can take on subsequently after we have finalised the substantive provisions of the Act.

I may also bring to the notice of the Committee that a few days back, the Supreme Court has created a Commercial Bench which, I believe, shall start functioning from first of July immediately with the opening of courts.

On the administrative side, we have categorised certain cases to be part of Commercial Bench. This is for your information that we have about 47 subject categories in the Supreme Court. Out of that, we have identified nine. We have decided to place them before the Commercial Bench which will start functioning from first of July. This is about matters relating to Company Law, MRTP Act, TRAI, SEBI, IRDA, RBI, etc. In the second category, we have civil matters arising out of the Securities Act, 1992. The third category has appeal under section 10 of Special Courts and trial of offences relating to transaction covered under the Securities Act,

1992. Fourth category relates to appeals under section 53T of the Competition Act, 2002. In the fifth category, we have cases covered under Mercantile Laws and commercial transactions, including banking. In the sixth category, we have cases covered under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. In the seventh category, we have simple money and mortgage matters. In the eighth category, we have matters pertaining to lease, Government contracts and contracts by local bodies. And in the ninth category, we have added cases relating to State Excise, trading in liquor, privileges, licences, distilleries and breweries. A small beginning has already been made by the Supreme Court on its own. We hope and believe that we will improve upon it and see how better we can run the Commercial Bench which we will have with effect from first of July.

Sir, you put three questions before us. In fact, commercial litigation has been part of the system right from its inception. Even today, the Supreme Court and other courts throughout the country are dealing with commercial matters. It is only that we are now trying to fast-track these matters. There will not be much of a difference procedurally except that we will have a fast-track lane for such matters. It is not that we have to prepare ourselves for that. We are all prepared. The Supreme Court itself has already made a small beginning. There are certain subject categories which we already have. These subject categories already deal with matters pertaining to commercial transactions. All the courts right from the magistracy to the Supreme Court are dealing with commercial matters. It is just that we have to now fast-track the entire system. Within the existing system, we can do it. The only thing is that as a help from the Centre, we may get a few judges across the hierarchy which will be a welcome step. I think even by creating Special Benches or Special Courts, we should be able to do it. There should not be much of a problem.

We would still like to collect the data from various States and other stakeholders. We have already made a small beginning. We will give a detailed reply to the Committee. As an institution, we will try our best to see that we are able to fast-track cases involving commercial transactions.

CHAIRMAN: Thank you very much. We appreciate your effort to have a Commercial Bench in the Supreme Court which will start functioning with effect from 1st July, 2015. We have already sent letters to the Registrar Generals of the High Courts, the Chief Secretaries and Law Secretaries of different States to understand their position. As you correctly said, they are the stakeholders who have to respond to it. At the same time, we want information on these issues from you.

SHRI CHIRAG BHANU SINGH: We will do that, Sir.

CHAIRMAN: You have just informed us about the category of cases. It has been done by the administrative side of the Supreme Court. We would like to have the entire list before us. What is the justification for such classification? We have two doubts. Can we classify specific cases? Or should we classify them on the basis of specific enactments? Instead of defining 22 items again in clause 2, we can make a separate schedule of Union and State enactments. We would like to have your suggestions on it.

SHRI CHIRAG BHANU SINGH: Sir, we will work on it and send it to the Committee.

SHRI BHUPENDER YADAV: It was a very nice presentation. You said that there is no mention of Supreme Court in the definition. Under Article 136, SLP is there. Articles 141 and 142 provide the Supreme Court with inherent powers. Is it really necessary to mention Supreme Court here? Whether High Courts do not have original jurisdiction or have original jurisdiction, a judge is appointed as a High Court Judge as per the appointment process of the High Courts and when he sits on the Commercial Division Bench of the High Court, he would be appointed according to the process.

SHRI BHUPENDER YADAV (CONTD.): So, there is no need to define a specific type of appointment. These are my two clarifications.

SHRI CHIRAG BHANU SINGH: Sir, that is what I also intended to say that we need not have a special appointment because we already have pre-existing judges. In that case, the hon. Chief Justice of the respective High Courts would be competent to create a Special Commercial Bench or a Commercial Appellate Division.

CHAIRMAN: You better note down the points and reply collectively.

SHRI P.P. CHAUDHARY: Mr. Registrar, there are two expressions. One is under clause 4 and another is under clause 5. We cannot mix up both. One is regarding nomination on Commercial Divisions or Commercial Appellate Divisions. Another one under clause 5 is for Commercial Courts. For Commercial Courts, the word 'appointment' has been employed. For Commercial Division or Commercial Appellate Division, the word 'nomination' is there. So, at High Courts level, there is no question of appointment. I think the expression is very clear and it relates that the existing judges are required to be nominated and not to be appointed. If we see

clauses 4 and 5, both clauses have different expressions. Clause 4 has the word 'nomination' and clause 5 has the word 'appointment'. So, for Commercial Courts, it is the High Court which is competent to appoint. For the Commercial Divisions or the Commercial Appellate Divisions, it is for the Chief Justice to nominate and not to appoint. So, this is the difference.

Secondly, I come to clause 5. Hon. Chairman has also mentioned it. Clause 5 says that the judges of the commercial courts shall be appointed by the concerned High Court. Now, if we see clause 5 and we read Articles 233 and 234 with respect to appointment of District Judge, we find that the judges of the Commercial Courts are akin to the District Judges. So, here, in one way, we are saying that the appointments are to be made by the State Governments and at the same time, we are saying that the appointments for Commercial Courts are to be made by the High Courts. So, you have to address this problem. Hon. Chairman, in the first instance, has asked this. We want to have your view on that.

SHRI CHIRAG BHANU SINGH: If the hon. Chairman permits me, I will clarify it right here. In fact, that is what I was intending to say. Sir, clause 3(2)(a) is not required. Straightaway, clause 3(2)(b) will serve the purpose. That suffices the requirement and clause 3(2)(a) is not required to be there because here we are working on a pre-existing structure. It is not that we have to appoint new judges. State Governments, in any way, would not be competent to issue notification. Likewise, when we go for the Appellate Division, straightaway, we can go to clause 3(3)(b) and clause 3(3)(a) is not required. So, we do not have clause 3(2)(a) and clause 3(3)(a). It brings consistency to all clauses 3, 4 and 5. You are right. In clause 5, there is no issue. The only issue is that there is a very small hiccup here. We can straightaway say that the Commercial Bench has to be from the pre-existing judges on our roll. It will straightaway be given by the Chief Justice that so and so would constitute the Commercial Bench and so and so would be the composition of the Commercial Appellate Division. I think that would suffice. In fact, that is what I also wanted to say.

SHRI P.P. CHAUDHARY: That is, as far as the constitution part is concerned. There is a difference. As far as constitution part is concerned, it is with the Government. As far as appointment part of the Commercial Courts is concerned, it is with the High Court. Again, the constitution part in the Commercial Division or the Commercial Appellate Division is with the State Government, but the nomination part is with the High Court. So, for consideration of these provisions, we want a clarification from you. Constitution part of the Commercial Division or the Commercial Appellate Division is with Government and the nomination part is with the High Court. In respect of Commercial Courts, the appointment part is with the High Court if we read Articles 233 and 234 together. Would you like to clarify that?

SHRI CHIRAG BHANU SINGH: Constitution is not required. If you have to constitute, you have to constitute courts. We are working on pre-existing judges. It is not that we are actually appointing new judges for commercial bench or Commercial Appellate Division.

SHRI P.P. CHAUDHARY: For Commercial Court, there is a provision to appoint. There is no provision for nomination.

SHRI CHIRAG BHANU SINGH: Sir, section 5 will suffice. There is no issue except that sub-clause (4) of clause 5 will not be required. That serves the entire purpose. If sub-clause (4) of clause 5 goes and if we can synchronise, I think that would be clear. Anyway, Sir, we will submit this in writing.

CHAIRMAN: Your view can be taken. You just give it in written form.

SHRI CHIRAG BHANU SINGH: Yes, Sir, we will give it in writing.

SHRI K.T.S. TULSI: Sir, I am in complete agreement with Mr. Chaudhary that the provision, perhaps, needs to be read in a manner that Commercial Division in the High Court shall consist of the existing High Court judges and that is why, for Commercial Division of the High Court, the Chief Justice of the High Court has the prerogative. The Chief Justice of the High Court in any case has the Constitutional prerogative of constitution of benches. The Chief Justice will determine how many benches are required and that will be the Commercial Division. The Supreme Court is doing the same thing, but I would like to ask the Registrar whether there is also a criminal division in the Supreme Court and whether the commercial matters get precedence over the criminal matters for decision, particularly for people in jail.

CHAIRMAN: You can note down all the queries and then reply.

SHRI SUKHENDU SEKHAR ROY: Sir, Mr. Chirag has raised many vital points in regard to clauses 3, 5, 14, 20, 12(b), Schedule, etc., and also supplied very vital information that the hon. Supreme Court has already constituted a Commercial Bench which will be effective from 1st of July this year. I have two simple questions. I would appreciate if you could kindly submit your response in writing, if possible in bullet-point format. First

question is: Who will constitute the commercial courts, the Commercial Divisions and the Commercial Appellate Divisions? Who will issue notification in regard to the constitution of these three fora – the respective State Governments or the Central Government or the Chief Justice of respective High Court or the Chief Justice of the Supreme Court? That is a very specific question. Second and the last question is this. There are two nomenclatures used – one is nomination and another is appointment. Who will nominate or appoint – the respective State Governments or the Central Government or the Chief Justice of respective High Court or the Chief Justice of the Supreme Court? Who will nominate or appoint the judges of the respective fora?

SHRI VARAPRASAD RAO VELAGAPALLI: Sir, my first question is purely of academic interest. Is the Registrar the head of the administration in the Supreme Court or is there anybody between the Registrar and the Judges? That is the first point.

SHRI VARAPRASAD RAO VELAGAPALLI (CONTD.): The second is, you said that only existing Judges will be handling all these cases which are likely to come up in these Commercial Courts. In that case, how does it impact the total number of cases? The whole idea is to bring down the number of cases pending in the courts. In effect, if the number of judges is not increased, how does it help bring down the number of cases?

SHRI (ADV.) JOICE GEORGE: Mr. Chairman, thank you. This is also rather an academic interest question. We are having a lot of specific Divisions like the Green Bench and other Benches are there in the Supreme Court. Do you think that constitution of this particular Bench would help in the disposal of cases in a speedy manner? Even in the Green Bench we are seeing that cases are pending. There are a number of cases in that Bench. I do not know when they are going to take them up. Will it suffice to handle these cases and expedite them?

DR. A. SAMPATH: Mr. Chairman, Sir, thank you. This question has come from Adv. Joice George to the Committee because he has appeared in a lot of cases before the Green Tribunal. He is the person who has put forth a particular terminology in the Parliament of India "Environmental colonialism". Now, I will not take my time to talk about it. We can have a discussion on that in another meeting. As Tulsiji has stated, we are all proud of article 21 of the Constitution of India. "Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law." I, being a lawyer, would like to have from you, as you represent the Supreme Court of India, some information on this. We all know that the definition given to "Protection of life and personal liberty" has been expanded. Sometimes it is having much more value than the definition of the "Due Process of Law" given by the U.S. Supreme Court. Why I say so is because in the famous case of *A.K. Gopalan vs. Madras State* the SC was very much hesitant to interpret the life and personal liberty, etc., at that time. It was widened because of the Maneka Gandhi case. Here my learned senior friend, Tulsiji, has raised that question. I am associating myself with that case. May I know from you whether the Supreme Court has taken any steps to deliver speedy justice for under trials? With the permission of the Chair I want to say this. Various State Governments are in the process of enacting legislations. I will make it clear. Suppose I am implicated in a case under the Prevention of Destruction of Public Property. On this issue, various High Courts have given their judgements that you are an accused, you can be granted bail only if you get surety from Government employees or surety against immoveable property. But the amount which has been fixed as lost, the public property which has been damaged, and the statement is made by the police. Here a conflict happens between the life and liberty of a person, and the interest of commerce and industry, with due respect to the CII which is present here. As a layman, I would like to say, we are here to protect the interest of the common people, as a whole, not commerce and industry alone. You can put forth any suggestion for the speedy trial of those who are languishing behind bars. Well, we accept the concept of Commercial Division.

Point Number two, suppose I accept the establishment of Commercial Benches. There has been pressure upon our lawyer friends that some other nations have Commercial Divisions, and foreign lawyers should be allowed to represent the clients, especially the foreign clients, if Commercial Benches are established. I hope you have understood my point. I am having a foreign company. I am having litigation with an Indian company. My Registered Office is in Washington. But I submit myself before the Indian judicial system that I should be allowed to be represented by my own lawyer who is having a firm either in the U.S. or in the U.K. What should be our stand? Thank you.

CHAIRMAN: I hope you have noted down all the points. Kindly send written replies. Finally, how much court fee is collected for this type of commercial disputes in the Supreme Court? After the classification, how many cases are pending? What is the stake of those cases by pecuniary assessment? Finally, the money which is collected, are you depositing it in the Consolidated Fund of India, or, in which format are you giving it? Similarly, other fees which are collected by High Courts, are they deposited in the Consolidated Fund of India, or, given to the State Governments? You have given a lot of points to us. After consultation with hon. Judges, if you can give us the number of Judges required, other than 32 plus, for having this type of fast track system of criminal justice or for the commercial justice, it would be helpful to the Committee. I hope you can suggest

these things. If you want to remain in the Committee, when the CII and PHD Chamber of Commerce are going to make their presentation, you can do so. If you want to go, you can withdraw. It is your liberty.

SHRI CHIRAG BHANU SINGH: We will remain here.

CHAIRMAN: Okay. Now, we will take up CII and the PHD Chamber of Commerce and Industry.

CHAIRMAN (CONTD.): Who is going to represent the CII? Shri Tejas Karia.

SHRI TEJAS KARIA: Yes, Sir.

CHAIRMAN: We have already gone through your presentation. I hope you can highlight on the issues and in which way it is going to be a useful system. How is the classification of the commercial dispute giving a much more focussed way of dispute resolution? We would like to know about these issues.

SHRI TEJAS KARIA: Thank you hon. Chairman and hon. Members**.** I am a partner with Shardul Amarchand Mangaldas & Co. It is one of the leading law firms of India. We have circulated presentations on behalf of the CII. One presentation is based on the main body of the Bill and the other is on the Schedule which proposes the amendments to the CPC. Now, if we start with presentation on the main Bill, first recommendation that we would like to suggest is regarding provision for mediation process where the dispute is of a considerable size in terms of valuation. For example, it includes disputes exceeding amounts of Rs. 5 crores or Rs. 10 crores. So, if we can introduce a concept of pre-litigation mediation as a part of the process itself, that would result in minimizing those kinds of disputes which can take a number of months or years to get resolved. So, the suggestion that we would like to give is that if there is a Commercial Division, even before the case is registered and if it is taken up for the hearing, then there is a time-period which is given for the parties to explore a possibility of a settlement or a mediation. It may be by trained mediators who can assist the parties to come to a middle ground where they can resolve their disputes. This would save a lot of time and cost, as far as large commercial complex disputes are concerned, because, normally, we have seen that commercial parties have an on-going relationship and they would like to continue with their relationship but for the dispute. So, that would go a long way in resolving the dispute if we can introduce a concept of pre-litigation mediation.

Now, coming to the comments on the Bill, we have gone clause by clause and if hon. Chairman and hon. Members can have a look at our presentation, page 2 of our presentation deals with clause 1 which is with regard to 'the Commencement'. We have serious concerns with regard to the staggered commencement of the Act in regard to notification by the Central Government. If you can have a look at the provisos which are provided under clause 1, there are two provisos which are there and if they are compared to the draft which was recommended by the hon. Law Commission, these provisos are not mentioned in the draft which is circulated by the Law Commission. The concern that we have is that the Act will come into effect at various different levels and we have seen that for any Act to come into effect, it will take its own time. With that in mind, there may be a situation where one State has the Commercial Division or Commercial Court already functioning whereas the other may not. There may be a situation where there may be a jurisdiction of the court or there may be a concurrent jurisdiction between two courts where one is having Commercial Division and the other is not having. That would lead to forum shopping as the parties would again enter into resolving a dispute much before the dispute actually gets resolved with regard to the jurisdiction. That would also lead to a lot of confusion between the parties because there may be a situation where a party may be residing at one place or the defendant may be residing at one place and the cause of action would have arisen at another place. So, to avoid that situation, we would like to suggest that, at least, there should be a uniform implementation of the Act throughout the country. If that is not possible, then, at least, a time-bound consultation should be provided in the proviso so that there should be some timeline given, at least, for implementation of the Act.

Lastly, when the Civil Procedure Code (CPC) is getting amended, specifically for this particular Act, there may be a possibility that the CPC is amended completely, but it is not implemented throughout the country.

CHAIRMAN: This is not in the present Bill but, I think, you are suggesting it as a proposal.

SHRI TEJAS KARIA: Yes, Sir, it is a proposal**.**

CHAIRMAN: More or less, you want to adopt the American system of first selecting that whether you go for the summary judgment or you go for the trial. The American way of conducting cases is that first you have to choose yourself. Our Civil Procedure Code (CPC) is also giving that chance. The CPC also gives a chance to the party that you can go for a summary trial and then summary judgments will be passed restricting the time taken and other things. If you are not going for that, then there is a provision to go for further elongated trial system. It is already available in the CPC and the mediation process is also already available in the CPC.

SHRI TEJAS KARIA: Yes, Sir.

CHAIRMAN: You are correct in saying that we can make it as a part of the recommendation so that it should be indicated like that. Kindly try to focus on specific issues alone.

SHRI TEJAS KARIA: Yes, Sir. The specific issue on which I was trying to focus was regarding the implementation of the Act. We are suggesting that it should be uniformly implemented throughout India at one time as suggested by the Law Commission. Secondly, if it is not possible, then, at least, a timeline should be provided for consultation with the State Government and the Chief Justice of the High Court of each State, and, if that is also not possible then, at least, there should be a separate Bill to make amendments to the CPC because what would happen is that the CPC would get amended but the Commercial Court would not have come into place. So, to avoid that kind of a situation of forum shopping, the suggestion we would like to give is to have a uniform implementation of the Act throughout the country so that there is no ambiguity or a different kind of court created for the same kind of dispute because there may be a situation that both the courts may have concurrent jurisdictions. So, in that regard, our first suggestion is to delete both the provisos and then have a simultaneous notification throughout the country. If not, our second suggestion is that the provisos should be amended as per clause 1 to have a time-bound implementation. The third suggestion is that at least, the CPC amendments which are there by way of schedule and if we are maintaining these two provisos then it should be by way of a separate Bill where it comes into effect independently of this particular Act. So, the CPC Amendment Bill can be separate from the Act of Commercial Division. So, that is one suggestion that we have as far as clause 1 is concerned. As far as definition section is concerned, that is clause 2(1)(c), where the 'commercial dispute' has been defined, in our respectful submission; the definition of 'commercial dispute' is a key to this legislation.

SHRI P.P. CHAUDHARY: Do you want to say something about the Commercial Court also?

SHRI TEJAS KARIA: Sir, I will come back to that in a moment.

SHRI P.P. CHAUDHARY: Okay.

SHRI TEJAS KARIA: As far as definition of 'commercial dispute' is concerned, it says, " 'commercial dispute' means a dispute arising out of..". What we are trying to submit is that it is a restricted definition. It should be an inclusive definition rather than defining the commercial dispute as meaning and then providing various kinds of disputes. So, the suggestion that we want to give in this regard and which even the Supreme Court has held in several cases and we have also provided in our recommendation is that a restrictive definition is one which confines the meaning of the word 'define'. We do not want to make a restrictive definition. Therefore, the suggestion that we are giving is mentioned under the head 'Recommendations' in the last column and it is on page 4 of our presentation and which says, "A commercial dispute is a dispute arising out of the trade or commerce, including..." and then we can have (i) to (xxii) which is provided under clause 2(1)(c).

SHRI TEJAS KARIA (CONTD.): So, that is the suggestion as far as the definition of commercial dispute is concerned. Coming back to Clause 2(1) (b) "Commercial Court", the way it has been defined is, it is constituted under Clause 3(1). The learned Registrar pointed out that there is slight redundancy as far as Clause 3 is concerned. Clause 3 (1) (a) and Clause 3 (1) (b) essentially provide for the same language where the High Court does not have the ordinary original jurisdiction and where the High Court has the ordinary civil jurisdiction. In our respectful submission, both these clauses can be combined so that if we compare both the languages, it is identical as far as Clause 3(1) (a) and Clause 3 (1) (b) are concerned. The only anomaly is that if we compare this language with the language which is suggested by the hon. Law Commission the distinction is made very clear. First of all, the power is given to the State Government whereas the Act would come into notification by the Central Government. So there is a distinction between State Government and Central Government. Each State Government may or may not have willingness to implement the commercial court and we are leaving it to each State Government's discretion to implement the Commercial Division. So our first suggestion is that it should be Central Government.

SHRI K. T. S. TULSI: I hope you have seen the Constitution's List 3, Concurrent subject. Entries 6-15 which deal with commercial matters are in the Concurrent List. Therefore, the States can always amend that law.

SHRI TEJAS KARIA: Definitely. Since it is in the Concurrent List, our suggestion is that the right should be given to the Central Government for the sake of uniformity because the moment the Act comes into effect by way of a notification in official Gazette, the Central Government should be empowered to set up the Commercial Court in consultation with the State Governments and the High Courts. That is what Page 66 of Law Commission Report provided. In fact, there is a stark difference between clause 3 of Law Commission Report and Clause 3 of the proposed Bill. Secondly, in Clause 3 (1) (b) the High Court's original jurisdiction should be excluded otherwise, what would happen is that the language of Clause 3 (1) (a) and Clause 3 (1) (b) is

identical. So either both should be merged or Clause 3 (1) (a) and Clause 3 (1) (b) should be separated by excluding the jurisdiction of the High Court which would exercise the original jurisdiction. Therefore, we are suggesting that the definition of Commercial Court in Clause 2 (1) (b) should be restricted to only sub-clause (a); and sub-clause (b) should be either merged with sub-clause (a) or separately defined in a different way; and similarly sub-clauses (c) and (d) also can be merged because both are identically worded. Coming to Clause 2 (1) (c)(j), definition of "Specified Value", the difficulty which may arise is that the specified value is defined uniformly whereas various High Courts have a separate pecuniary jurisdiction. So, either we can align all the High Courts because in Bombay High Court, Rs. 2 crores is the original side jurisdiction whereas in Delhi it is Rs. 20 lakhs and in Himachal Pradesh it is Rs. 25 lakhs. So, in order to have a specified value we would need to realign the jurisdiction of the High Court by amending or providing certain provisions under the High Court rules so that it can be avoided because in Delhi when it was tried to increase there were a lot of protests and the Bill is still pending in the Lok Sabha. Rajya Sabha has already approved the Bill to increase the pecuniary jurisdiction of Delhi High Court. Just to make it practical, as far as the 'specified value' definition is concerned, there should be uniformity as far as the jurisdiction of each High Court is concerned. Coming to Clause 5, appointment and qualification of the judges to be appointed in a Commercial Court, there is also a slight anomaly with regard to the qualification in sub-clause (3). It says that "is qualified to be appointed as a District Judge", which is under Article 233 of Constitution is seven years, and then it says that "or has for at least seven years held a judicial office in the territory of India or the office of a member of a tribunal or any post under the Union or a State requiring special knowledge of law." Therefore, there are two "or" within sub-clause (b). So, either sub-clause (a) is diluted or sub-clause (b) has to be categorized. It is not clear. So, what we are suggesting is, the crucial purpose of this is to appoint right people to adjudicate the disputes and therefore, there should be clear, unambiguous qualifications provided under Clause 5 (3) rather than having multiple qualification which are mutually exclusive. So, we should have a clear definition where either of this should be clearly provided. Clause 5(3) is also contrary to Clause 23 because in Clause 23 (2) the Central Government by notification can provide the qualifications for the appointment of the judges whereas here the High Court can appoint the judges as far as Clause 5 (1) is concerned. So, there should be reconciliation between the rules framed by Central Government as far as the appointment made by the High Court is concerned.

SHRI P. P. CHAUDHARY: About Clause 23, "The Central Government may, by notification, make rules for the purpose of carrying out the provisions of the Act." You want that the qualifications have to be laid down by the notification issued by the Central Government. So, there are two jurisdictions. One is laying down the qualification and another is making the appointment on the basis of that qualification. So it is not within the domain of the High Court to lay down the qualification. So, there are two different things. Section 23 says it is within the domain of the Government of India. By notification lay down the qualification and thereafter on the basis of that qualification it is for the High Court to appoint the candidates.

SHRI TEJAS KARIA: If I can read Clause 23 (a), it does not use the word 'qualification'. It uses the word 'manner'.

SHRI P. P. CHAUDHARY: This manner of appointment is providing the procedure and rules. The rule framing authority is the Central Government; implementation authority by way of providing appointment under Clause 5 is with the High Court. It is not with the Central Government.

SHRI TEJAS KARIA: So, what we are saying is that in Clause 5(1) the qualification is provided and, therefore, once the qualification is provided and the power is given to the High Court in such manner as may be prescribed, the 'manner' is now provided under Clause 23(1).

SHRI P. P. CHAUDHARY: Clause 5(1) says, "The Judge of a Commercial Court shall be appointed by the concerned High Court in such manner as may be prescribed." Prescribed under rules...

SHRI TEJAS KARIA: Prescribed under Clause 23 (2) (a).

SHRI P. P. CHAUDHARY: So, both the things are different, the framing of the rules and appointment according to the rules by the High Court. So, that is why the word 'prescribed' is there. 'Prescribed' means prescribed by rules. Who is the authority to frame the rules? It is the Central Government. Who is the authority to make appointment according to the rules? It is the concerned High Court.

SHRI TEJAS KARIA: You are absolutely right, Sir. We are only on the qualification. The qualification should be prescribed under Clause 5(3) and it should not be left open for the manner to be decided by the Central Government because we don't want a qualification to come in the manner of the rules.

SHRI P. P. CHAUDHARY: So, you want the qualification to be prescribed in the Act itself and not in the rules?

SHRI TEJAS KARIA: Yes.

SHRI P.P. CHAUDHARY: It is very difficult for the Parliament to prescribe everything. The purpose of the Act is to be carried out by the Central Government. For Parliament, prescribing the qualification in the Act is not an easy job. It goes on changing and everything cannot be placed every time before Parliament.

SHRI TEJAS KARIA: But these are the fundamental things.

SHRI P.P. CHAUDHARY: It is not a constitutional appointment like the appointment of Supreme Court and High Court Judges. So far as the qualification part is concerned, it can be provided under the rules.

SHRI TEJAS KARIA: Sir, if we see Article 233 of the Constitution, it deals with qualification of a district judge, which is, at least, seven years as a pleader or an advocate, if he is not already in the service of Central Government. Therefore, we are suggesting that minimum seven years qualification should be there. You cannot dilute that by saying 'or the office of a member of a Tribunal or any post under the Union or a State requiring special knowledge of law'. If somebody is an OSD, having two years of experience, we do not want that person to be appointed as a Commercial Judge because it is so wide in its terms that it has three 'ors' within one sentence.

CHAIRMAN: Article 233 is also violated by this particular provision. It is the power of the State and only the State people can be appointed as the district judge, not the people from other States. It is a violation; we can rectify it. There is no problem.

SHRI P.P. CHAUDHARY: From the very beginning hon. Chairman has suggested to you to clarify as to how it will work, because Article 233 says that it is within the domain of the State Government to make the appointment of the district judges. But at the same time this Bill says that it is the High Court. It is, basically, conflict of jurisdiction.

SHRI TEJAS KARIA: That is why it is conflicting with clause 23, clause 5 and the qualification aspect.

SHRI P.P. CHAUDHARY: Under Article 233, the power is with the State Government. Here the power is being given to the High Court. Basically, they are the District Judges. So the question is whether the High Court is competent and whether this provision can be provided under this Bill or not. That is why we want your clarification and input on this issue.

CHAIRMAN: The hon. Member wants to indicate that it is better if you confine your points to this. It is made geographically an all India process and it is the zone of consideration. That should not be there. Article 233 of the Constitution is very clear that the district judges can be appointed only by the Governor. Subordinate judiciary can be appointed by the State Government in consultation with the State Public Service Commission. Here they have given the powers to the High Court. It is against Article 233 and 234. Therefore, we have to confine to that. There is no problem. You can go to the next point. He wants to indicate only that point. Sometimes we recommend it directly, sometimes we need somebody to say. Then we quote it. That is the problem.

SHRI P.P. CHAUDHARY: Basically, this is the core issue and we want your input on this issue.

SHRI TEJAS KARIA: Definitely, Sir. We are absolutely on the same page, as far as this issue is concerned, because it cannot be that there are two different provisions in the same Act which is not inconsistent with the Constitution.

CHAIRMAN: It is against the federal set up also.

SHRI P. P. CHAUDHARY: It is not in the Act alone. It says in one way. The Constitution says other way round. That is the whole thing. It is not between the two Acts, but it is Constitution versus this Bill.

SHRI TEJAS KARIA: The validity of this Bill may be challenged on the appointment aspect.

CHAIRMAN: You can go to the main points because we have to give some time to others also.

SHRI TEJAS KARIA: I will finish in another five to ten minutes. As far as clause 8 is concerned, there is jurisdiction of Commercial Court. Then, there is clause 7. There is clause 8 which was there in the Law Commission, which provided jurisdiction of the Commercial Appellate Division, which is missing. We suggest that it should be inserted which will clearly provide the jurisdiction of the appellate tribunal. As far as clause 10 is concerned, again we are connecting this to the commencement. As far as arbitration matters are concerned, every sub-clause of clause 10 says, 'where such Commercial Appellate Division has been constituted in such High Court'. We do not want this particular phrase to be there in clause 10. It should be uniformly implemented

in all High Courts at the same time, because we do not want to have a situation where you can select a forum in arbitration matters by selecting a seat. The hon. Supreme Court in a number of cases has held that the court, where the seat of arbitration is decided by the parties, can have the jurisdiction to decide the issues arising out of this. This kind of option which is provided under the Act itself, is given to the State Government or Central Government, whether to constitute the Commercial Division or not, should not be available to the States. It should be uniformly implemented to make this Act successful. Otherwise, only few States will get benefited and the litigation will get piled up in those High Courts where, otherwise, the jurisdiction may not be there. By selecting the seat of arbitration, the courts will be conferred with the jurisdiction where the Commercial Division has been set up and if the State Government or the Central Government has not set up the Commercial Divisions those High Courts will not have it. For equal distribution of the matters, we suggest that all the optional language under clause 10 should be deleted.

SHRI P. P. CHAUDHARY: This is a very important issue and we want your inputs on this. We are having a federal structure and the subject is in the Concurrent List. The Government of India cannot say to a particular State to constitute a particular court. Keeping in view the federal structure and as the subject is in the Concurrent List, how can we resolve this issue? We want your inputs on this issue. You can give it in writing.

SHRI TEJAS KARIA: Sir, we will give it in writing. The same issue arose in Real Estate Regulatory Bill also where we had suggested the Ministry of Urban, Housing and Poverty Alleviation that it is again in the Concurrent List. So, how would the Central legislation come? We have the note ready on that aspect and we will circulate it. As far as clause 11 is concerned, it says, 'notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred.' Our concern is, if it is impliedly barred, that itself is a question of interpretation. For example, in Part 1 of the Arbitration Act, there is a dispute whether that could be expressly or impliedly excluded. In those circumstances, a dispute may arise, as far as what is implied exclusion or implied bar is concerned. Therefore, we suggest that it should be clarified that it should have been expressly barred and not impliedly barred.

SHRI P. P. CHAUDHARY: Can we delete this word 'implied'?

SHRI TEJAS KARIA: Yes, Sir. The word 'implied' may be omitted. Now, coming to clause 14, this is again a concern as far as the language is concerned because the way it is drafted, it says, an appeal or a writ petition filed in the High Court against the orders of 'a', 'b', 'c', 'd', etc. We are concerned that an appeal or writ petition can be filed in the High Court against the orders of various tribunals. These tribunals are set up under special legislations and the legislations themselves provide for an appeal provision under those legislations either before the Supreme Court or, take for example, NCLT, which once is formed will be National Company Law Board or the National Company Law Appellate Tribunal (NCLAT). In Securities Appellate Tribunal under the SEBI Act, there is a provision for direct appeal before the Supreme Court. In our respectful submission, this will lead to an anomaly. The way the clause is drafted, it says, 'an appeal or a writ petition filed in the High Court'. That means if it is already filed at the time of commencement of this Act, then it would be heard by the Commercial Appellate Division. If it is to be filed, then there are already appeal provisions which are already provided under the legislations in which these tribunals have been constituted. What we are suggesting is, if a writ petition is there under Article 227 against the orders of these tribunals, that can be transferred to the Commercial Appellate Division of the High Court.

SHRI TEJAS KARIA (CONTD.): Under Article 136, again, there will be an appeal. So, if there is a statutory appeal provided to the Supreme Court, then, you don't have a right to go under the Special Leave Petition, under Article 136. But by providing clause 14, we are adding one more layer of appeal, and, in addition, we would also have Special Leave Petitions under Article 136. Therefore, this will lead to ambiguity and anomaly. It should be clarified that only the writ petition would be transferred. Under Article 227, the High Court has inherent powers to have a supervisory jurisdiction only in the case of non-exercise of powers by tribunals, whereas the order is passed on merits of the case and in the individual case, it should be as per the legislation under which these tribunals have been constituted and not by way of appeal to the Commercial Appellate Division of the Court. So, that is something which we can clarify, as far as this is concerned.

Coming to clause 15, it says, "The Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of appeal." Sir, this is, again, a wishful provision. There should be a consequence provided in this. It is mentioned that they will endeavour to dispose of appeals. But if they don't, then, what will be the consequences? They should record the reasons in writing as to why they were not able to dispose of within six months. No consequences have been provided under clause 15 for non-compliance of the strict timeline which is provided, which is the core of this legislation, that is, to expedite the commercial disputes.

As far as clause 21, which is about training and continuous education, is concerned, that should be made compulsory. Here, the word used is 'may' and it is not directly for the State Government to establish necessary facilities. It has already been commented that a lot of money has gone into establishing the judicial academies. Providing training facilities for judges should be made compulsory.

SHRI P.P. CHAUDHARY: About clause 15, you have suggested that the Commercial Appellate Division shall endeavour to dispose of the appeal filed within a period of six months. It is the duty of the court to decide it within a period of six months. If it is not decided, then, what is your suggestion?

SHRI TEJAS KARIA: Sir, our suggestion is this. I will give you an example. In the TRAI Act, the appeal should be decided within a period of 90 days and if they have not been able to decide the appeal, then, they have to record the reasons in writing for not being able to decide within the prescribed time. So, we want to have a check and balance within the legislation itself, whereby it is the duty of the court to decide it and if they don't decide it, they have to give reasons why they have not been able to decide it.

SHRI K.T.S. TULSI: The election petitions are supposed to be decided within six months but they are, invariably, decided after the term is over.

SHRI P.P. CHAUDHARY: In some of the cases, the people approach against the orders of the High Court and the Supreme Court issuing a direction that so and so matter be decided within the stipulated period, but that is not being done. So, you suggest something on this.

SHRI TEJAS KARIA: We will, Sir.

CHAIRMAN: Okay. I feel that with regard to the second part, which is the procedural part, you have made a lot of suggestions. We will go through it. If necessary, we will call you again for certain clarifications.

SHRI TEJAS KARIA: Sir, we are grateful for the opportunity given.

CHAIRMAN: Yes, yes. Always, we want to have consultation with all the Chambers of Commerce wherever they are the stakeholders.

Now, I request PHD Chamber of Commerce and Industry, Mr. Ramaswamy, to take the floor.

SHRI S. RAMASWAMY: Good evening hon. Chairman and Members of the august Committee. Sir, without taking much time of the Committee, I would say that our endeavour today is more to bring about some recommendations which could be incorporated within the existing framework. Sir, we seek the liberty of coming back point by point on the Bill for which we will take a week or ten days.

CHAIRMAN: Okay, no problem. You would have observed what the sense of the Members of the Committee is. We are going to give you some more 'homework', so that you can come out with certain things. For example, some of the hon. Members have raised the issue of criminal justice and also the commercial justice. Why are you giving importance to the commercial justice? If you pay court fee accordingly, then, in which way are you going to manage the situation? Because if you go for arbitration, you have to pay more. If you seek remedy through public interest litigation, you need not pay huge money, but you can call all the Secretaries of different States and also of the Government of India to appear before the Supreme Court, take one month or two months to hear the cases and get the justice. Disputes worth lakhs and crores are resolved like that. That is why there is a feeling that you avoid the criminal justice system to have the backlog. The people who are convicted have been waiting for 10 years or 20 years without getting justice. There are people who have got the acquittal, but they are waiting in the queue to have the final verdict. Then, why do you worry about the commercial aspect? This is the main argument. In sociological way, people are having this kind of a thinking. For that, only one thing we can say; you invest money and you want to get the money quickly, but you have to pay for that. This is, more or less, a service for that. If you are not providing it in the civil courts, you are going for arbitration. Nobody can stop it because, already, arbitration is allowed in India. Therefore, we want to find out what is the justification for having fast tracks. Many of the provisions are culled out from the Arbitration Act and they have again put them here regarding international commercial arbitration, how to make it, how to get permission and other things. You know very well about the Singapore arbitration where the Supreme Court Judge himself is having a separate Chamber. If you want to have any nomination or anything to be challenged, you can get the verdict within a week's time. No need for waiting for two years, three years or five years for getting an arbitrator being cleared in a particular jurisdiction. Therefore, we want to have some more thinking from the Chambers of Commerce to have clarity on this issue. You go through each and every clause. As Mr. Tulsi has indicated, CPC has already got a lot of provisions but they are not acted upon. Even adjournment of a case cannot be allowed unless you file a petition for that with a reasoning and also an affidavit. You have to pay the cost for

adjournment also. These all are already provided, but nothing is implemented. If you go for fast track, then, you will have to justify those things.

SHRI S. RAMASWAMY: Absolutely, Sir.

CHAIRMAN: Kindly go through that. Also give us a detailed note. If we need some more clarifications from your side, we will call you again, so that we can appreciate your clarifications also.

SHRI S. RAMASWAMY: Sir, I will just take a minute, Sir. Enshrined in the letter itself what Justice Shah had written to the hon. Minister-- I am just quoting it -- it says, "The suggestions are aimed at ensuring disposal of cases expeditiously, fairly and at a reasonable cost to the litigants." Keeping that objective in mind, PHD is wanting to give some practical suggestions which could be incorporated within the Bill to ensure that finally it is the litigants and speedy disposal of cases which have to be looked into rather than creating a structure which will add more confusion.

SHRI S. RAMASWAMY (CONTD.): So, that is what we wanted to say, and it would even include how we can imbibe the technology today. For simple example, say, why can't we issue summons through electronic means?

CHAIRMAN: Those things are also there in the Schedule. You go through the Schedule.

SHRI S. RAMASWAMY: We will go through the Schedule.

CHAIRMAN: Yes, you go through the Schedule and come out with the suggestions.

SHRI S. RAMASWAMY: Absolutely, Sir.

CHAIRMAN: Thank you very much. We are very happy that Chamber of Commerce is taking interest to engage the consultants to give evidence before the Committee. Actually, you need to become a Member of Parliament to be a part of the legislative process. You are part of the legislative process now. Kindly propagate how the Parliament is working. It is not adjourning alone every day but it is also working very hard to sit and have research on various issues. Kindly join us for a cup of tea. The meeting is adjourned.

SHRI S. RAMASWAMY: We are honoured, Sir, to be a part of this exercise. Thank you.

(The witnesses then withdrew and

the Committee adjourned at 4.51 p.m.)

THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE MET AT 2:00 P.M. ON THURSDAY, 16TH JULY 2015, IN COMMITTEE ROOM NO. G-074, PARLIAMENT LIBRARY BUILDING, NEW DELHI

Chairman: Dr. E. M. Sudarsana Natchiappan

WITNESSES:

Shri A.K. Ganguli, Senior Advocate, Supreme Court of India

Ministry of Law and Justice, Department of Legal Affairs:

Shri Dinesh Bhardwaj, Additional Secretary

Shri M. Khandelwal, Additional Government Advocate

CHAIRMAN: I welcome Shri A.K. Ganguli, Senior Advocate, Supreme Court of India, to this meeting of the Committee. We want to have your views on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 which is being examined by the Committee.

The objective of the Bill is to set up Commercial Courts and Commercial Benches in the States and the Union Territories to fast-track commercial disputes of value of Rs.1 crore and above. The appeal against high value arbitration cases will be heard by Commercial Appellate Benches of the High Court. The Court Management System proposed in the Bill intends to fast-track high value commercial disputes. The Committee wants to know about the court management system and court fee structure of commercial courts in other countries and whether a different court fee structure can be proposed for the settlement of high value commercial disputes. You may also express your views on institutional arbitration existing in other countries for settling commercial disputes in a time-bound manner and whether such a provision would be beneficial in our country. Do you feel that it should be included in the Bill?

The Karnataka High Court and the Delhi High Court have mediation centres. Do you want a similar provision in the Bill? We want to have your views on it. We are very much interested in knowing about the court fee structure. You are a senior advocate. You have rich experience. For a commercial transaction, you have to pay *ad valorem* fee in a District Court or a Civil Court. But the High Courts have their own fee structure. They have *ad valorem* fee only in certain cases. For other cases, they have a fixed court fee structure.

CHAIRMAN (Contd.): If you see the definition Clause 2 (c) of this Bill, it has got 22 different items attracting cause of actions. Every cause of action is having different types of cases being dealt with by tribunals also. Take, for example, banking cases. They have got their own tribunals. If the same case comes before the Civil Court, they have to pay *ad valorem*, but if it goes to the tribunal system, then they are satisfied with the system of fixed court fee. That means, richer people are benefited by paying less of the court fee but the poor people have to pay large amount or they have to part with a large amount but, at the same time, disposal of their cases is very, very poor. It takes too much of time.

Number 2, in this aspect of court fee structure, what we understand is that even in the Supreme Court you have to pay only a fixed court fee of Rs. 210 or something like that, whatever may be the value of the case. That means, everybody now comes to the Supreme Court directly one way or the other. They are getting the justice quicker. When you compare with the normal course of action, these people, who come from the bottom level, have to pay the *ad valorem*. Overall, the Civil Procedure Code, 1908 says that when you want to have a civil dispute to be resolved, the Government or the sovereign country has to provide a judicial system but whatever the expenditure it incurred has to be borne by the parities to the dispute. The same concept is now in the arbitration also. But, at the same time, we are blaming the court system that there are arrears of cases, 2.5 crores are pending because of the judges, because of the non-filling of the vacancies, because of the non-cooperation of the advocates, etc. These are the things happening. But actually we feel that the issue of court fee structure is not at all addressed by any of the Commissions or anybody who has done in-depth research on this aspect as to why the court system is gradually failing. It is because of not updating the court fee structure as it is in the hands of the State Governments. State Assemblies have to fix the court fee structure. Therefore, they feel why they have to increase the structure. The people may blame them. Therefore, they are not ready to touch this; High Courts are not ready to touch this; Supreme Court is not ready to touch the matter. In simple way, they feel that justice should be accessible to the people. But in actual practice what is happening is, ordinary persons are paying more money but richer people are coming within the fold of getting quicker justice in different forums so that they can get the disposal as quickly as possible. This is overall a big concept, but you can very easily address that issue. If you feel that you want to make an elaborative presentation you can given in writing also.

You can make it like that. But we want to complete this process by submitting the Report in the coming Session itself. Therefore, you may take a week's time and make a write-up also on this issue. That will be very useful for us to make a proper Report to the Parliament on this court fee structure also. We have already been benefited by going through many of the High Courts. We have visited the Calcutta High Court and we have got presentations of the Registrar Generals of different High Courts like Mumbai, Hyderabad, Chennai and Jammu & Kashmir and also the Bar Associations and Bar Councils. Therefore, we would like to have your opinion as a senior lawyer of the Supreme Court. Now I request Mr. Ganguli to make his presentation.

SHRI A.K. GANGULI: Thank you, Sir, for giving me this opportunity to address you on some of the vital questions which you have posed. But, at the threshold, I may clarify that the invitation that I received from this Committee limited my contribution to, I would read that portion what you have said, "In the course of the examination it has been observed that when the Bill comes into force, it will have some bearing on the arbitration mediation process. At this stage, the Committee desires to be benefited by the views of your expertise in the field of arbitration". So, I thought that you have confined my presentation only to arbitration. So, I have prepared on that, but I would definitely address the questions which you have raised, which I can do extempore and I can simply give you a written note on all these issues which you have raised. Now, at the threshold, let me point out what is my view with regard to this Act. This is a very good effort to designate the Commercial Courts and the Commercial Appellate Divisions of the High Courts for specialised subject matters. There are a number of advantages. First thing is that you will be able to create a specialised Bar and a specialised Bench if you designate the Courts with specific types of issues. So, that by itself is an advantage to the litigants, because the litigants go to a commercial lawyer practising in a Commercial Court or Commercial Divisions of the High Courts. They are familiar with the subject matters, what they are doing. Equally, advantage will be for the High Court, for the Judges concerned, and also the Commercial Court Judges would be well trained in the subjects since they are dealing with those cases day in and day out. Likewise, in the High Court also once you create the Division, those judges; who will come to preside on the Commercial Divisions or the Appellate Divisions, as the case may be, would also gain expertise and experience over a period of time. So, that will help a quicker disposal of those cases and with consistency. There are these two things. They will be able to do it faster because they are doing those cases on a day-to-day basis. Secondly, they would also be maintaining some kind of a consistency. There will not be possibilities of conflict of views, etc. It can possibly come but it cannot be totally ruled out but. By and large, it cannot be by ignorance that some judgement, which is of a precedence value, is missed out by a Court and, therefore, that creates a conflict and it now requires to be resolved by a larger Bench or you are going to the Supreme Court, etc. So, that is all a time-consuming process which could be avoided.

Now, coming to the specifics of the proposed Act which is in the form of Bill, I have a few comments and I have made a very short written note on this topic which I want to hand over to you. Sorry, I have only a few copies, not too many.

CHAIRMAN: It is okay. We can make the copies.

SHRI A.K. GANGULI: This is all confined to the proposal on what you have asked me, specifically of the impact on arbitration and mediation. Mediation I have not dealt with much because there is nothing. There is no impact at all on mediation. Mediation can be introduced at any stage, in any proceedings except, of course, which involve public law policies, public issues, etc. So, those are different. What I have said is that, at the beginning, since this is a specialised jurisdiction you are going to create in the Commercial Courts and so also of the Commercial Divisions of the High Court, you are conferring a special jurisdiction on them because you have defined what is called a 'commercial suit' in Section 2(c). You have defined what a commercial dispute is. A very large number of subject matters have been included. Almost 22 items have been introduced. If you want to give them a special jurisdiction to deal with these subjects alone, then necessarily you must exclude the jurisdiction of all other courts dealing with the subjects. Then only would the purpose of creation of a specialised Court be achieved. Now, I have found that there is no express provision contained in this Bill which confers an exclusive jurisdiction on the Commercial Courts to the exclusion of all other Courts. Therefore, it could be inferred. I have mentioned that in my note. It is implicit. By reading Section 6 with Section 2(c), one may imply that there would be an exclusion of jurisdiction of all other courts with regard to the subject matter which falls within the purview of this Act.

CHAIRMAN: Which Clause are you mentioning?

SHRI A.K. GANGULI: I am mentioning Section 6 read with Section 2(c), you can draw that inference. Sorry, I should not have said it as 'Section'; it is not an Act as yet. It is Clause 6.

SHRI P.P. CHAUDHARY: From the Bill, Clause 6.

SHRI A.K. GANGULI: These are clauses. All these comments are on the clauses of the Bill. If you read 6, it says "Commercial Courts shall have jurisdiction to try all suits, an application relating to a commercial suit". That is true. But that is a profound statement you have said what they will deal with, but you do not say the other Courts will not deal with this.

SHRI A.K. GANGULI (CONTD.): You can look at clause 7 also. This again is an affirmative statement. If you read this along with the definition, you may infer impliedly that jurisdiction elsewhere is barred. My suggestion is that you can make an express provision saying that for matters which fall within the jurisdiction of the subject matter of this Act, when it is passed, the jurisdiction of civil courts will be barred. That is what I have suggested to make it explicit and not leave it just to be inferential.

SHRI P.P. CHAUDHARY: You want to convey that these commercial courts will be in addition and parallel to that, civil courts also have that jurisdiction. That is why we must have a notwithstanding clause.

CHAIRMAN: Exactly. I have suggested a clause. You can modify. The idea is that you expressly bar that so that you avoid any controversy. The courts have taken a view that normally, the ordinary remedies are never barred unless a law specifically provides for that. Ordinary remedies available to the parties under the Civil Procedure Code are never barred unless you say so. Courts have taken a view that impliedly sometimes they are barred. So, you may fall under that category. But, do you want to leave it to the interpretation of the courts or do you want to provide for it expressly here? You have a chance to do that. It is my suggestion. That is the first point.

Then, I come to the second most important question that I have raised for your consideration. Please have a look at clause 2(1)(c)(xix). It deals with exploration of oil and gas reserves or other natural resources including electromagnetic spectrum. I have brought it to your notice although it does not deal with this particular field. But, if you want this subject matter to be dealt with by the commercial courts, then you must also take a considered view whether this should also be a subject matter of arbitration. I have given a number of judgments and references. The Supreme Court has taken a view in two or three judgments like Reliance, Gujarat gas matter, etc. that all natural resources are the properties of the people of India and they vest in the people. Therefore, when the Government deals with natural resources, it deals in the capacity of a trustee of the people. That being the nature of rights and obligations of the Government to deal with it, questions have arisen and they would arise in future also. When you deal with natural resources where the Government itself is a trustee, can a trustee do away with the rights of the people by contract? A contract will have to be given for exploration of natural resources. The Government is not in a position to make such huge investments which are required for exploration of oil and gas. A huge cost is involved. But, it is a moot question whether these particular subject matters should be left to be decided by the arbitral forum or by the public forum like the commercial courts. The reason why I am saying this is that once it is a subject matter of adjudication by a public forum like a commercial court, then there is transparency in such proceedings. In any proceedings in any court, everything is transparent. Once you make this to be subject matter of contract, then by contract, arbitration can come in and the adjudicatory forum will be a private forum. Private forum need not necessarily be public forum. The decisions of that may become public. It may come to public knowledge at a much later stage after the award is given and it is brought for enforcement or is challenged, if a challenge is permissible. Then, at that stage, those questions will come up whether this was in conformity with the spirit of the Constitution, doctrine of public trust, etc. By that time, it will be too late. Sir, I have made this suggestion for your consideration. You may consider that. Other subject matters are all right. They are covered under the commercial disputes. But, the point is whether you would like this subject matter to be kept exclusively within the domain of commercial courts or you would also leave it to be the subject matter of contract and being dealt with by a private adjudicatory system like arbitration. I have given all the references to judgments, etc. From my note, you will get that.

CHAIRMAN: Don't you think that every commercial dispute which is defined under a particular clause is more or less between two parties or multiple parties? They have got their own commercial interest, as you correctly indicated. It need not be in a public domain. It can have some confidentiality till the final judgment or award is given.

SHRI A.K. GANGULI: Sir, you have asked a very good question. Now, if you look at Section 24 of the Indian Contract Act, it declares that any contract which forbids a party from seeking a legal remedy through the normal course of procedure or courts, which is the procedure laid down, would be void. So, you cannot enter into an agreement with somebody and say that I undertake not to go to court in the event I have a right to enforce against you a breach of obligation or contract. This is void. The only exception that Section 28 has made is arbitration. The only remedy where you can avoid a court or you can oust the jurisdiction of a court is by a private treaty or agreement. You can go in for private adjudication like an arbitral forum. This is good. I am not saying that arbitration is bad or that, in all cases, it should come in and be open to public. No. In fact, one of the advantages of arbitration is that it is not open to public. Therefore, parties would like to have their disputes

settled by a private forum. That is one of the advantages which parties have. So, arbitration serves that purpose as well.

CHAIRMAN: As you correctly said, it has to be part of the contract.

SHRI A.K. GANGULI: That is right. The only question which I have raised is with regard to the natural resources where the Government is the custodian and it acts as a trustee. I am raising a point only in respect of that and not all other cases. Other cases are fine.

CHAIRMAN: Naturally, it will go for minerals, coal, water, etc.

SHRI A.K. GANGULI: This all is covered under clause 2(1)(c)(xix) very widely. They are all natural resources. It is an option for you. You apply your own discretion. I have only given a thought.

CHAIRMAN: You are correct. We appreciate that point very well.

SHRI A.K. GANGULI: This is because of the judgment of the Supreme Court. I have had some experience of handling complicated international arbitration including matters with the Government which involves not millions, but billions of dollars and I know what happens in those private forums. At times, you are helpless because there is a contract. Now, I cannot go and say something contrary to the contract that the Government has entered into. Contract binds everybody. So, there are situations where one may feel somewhat uncomfortable, if I may put it only that much, in such cases.

SHRI SUKHENDU SEKHAR ROY: If your suggestion is accepted, would explanation (b) in clause 2 be required to be removed?

SHRI A.K. GANGULI: It says that it shall not cease. You have only explained that although one of the contracting parties is State or its agencies or instrumentalities for carrying out public functions, that by itself would not disqualify it to be a commercial dispute. That is perfectly right. That explanation is okay.

SHRI SUKHENDU SEKHAR ROY: In relation to (xix), what would be the impact of explanation (b)?

SHRI A.K. GANGULI: As it stands, even these will be arbitrable. The matters which are covered by clause 19, as the Bill stands, would be arbitrable. I am only giving food for thought that in view of the law laid down by the Supreme Court in a large number of judgements and the concept of public trust that has been evolved, it is for you to consider whether you would keep these as commercial disputes covered by this Bill or you would like to bar an arbitration on this. I will leave it only to the Commercial Courts and the Commercial Divisions of the High Courts to decide. If you would like to keep exclusively within the public fora for adjudication, leave it to the public fora for adjudication by way of arbitration.

SHRI P.P. CHAUDHARY: According to you, we should encourage arbitration.

SHRI A.K. GANGULI: We should encourage, but in certain matters like these cases, where the Supreme Court has said that because you are governed by a public trust doctrine, by contract you can't give away which you couldn't give otherwise.

SHRI P.P. CHAUDHARY: As on today, we have arbitration post-litigation. We don't have a system of pre-litigation arbitration. In European countries and in the USA, they have pre-litigation arbitration.

SHRI A.K. GANGULI: It is not arbitration. It is mediation.

SHRI P.P. CHAUDHARY: I stand corrected. It is mediation. We must also have the system of pre-litigation mediation.

SHRI A.K. GANGULI: Yes, always.

SHRI P.P. CHAUDHARY: We are having post-litigation mediation under Section 89 of the C.P.C.

SHRI A.K. GANGULI: Not post litigation. After the litigation has commenced, it is a beginning.

SHRI P.P. CHAUDHARY: Once you bring the matter before the court, we can say that it is a post-litigation mediation.

SHRI A.K. GANGULI: I agree with you. We should encourage mediation even before we start arbitration process.

SHRI P.P. CHAUDHARY: We have seen the experience of other countries that 70 per cent of the litigation has been reduced only on account of pre-litigation mediation and the post-litigation mediation. So, we should encourage this, and make a provision in the Bill itself.

SHRI A.K. GANGULI: Quite right. I would always encourage mediation for all kinds of disputes. That is safe and it saves time, and it is a win-win for all.

CHAIRMAN: Do you feel that on the basis of the proposal you have given in your note Section 10 can be made?

SHRI A.K. GANGULI: I will come to that. That is the third point.

CHAIRMAN: Similarly, do you like to have mediation also as a part of the proviso?

SHRI A.K. GANGULI: I think you should have that proviso. I say, in every case you should have mediation.

SHRI P.P. CHAUDHARY: Even the pre-litigation mediation can be included as a provision in the Bill itself. Before approaching the court, we must have a pre-litigation mediation. That is number one. There must be certain provision for that. After pre-litigation mediation, they come. Again in the second stage we may make a provision also, the post-litigation mediation.

SHRI A.K. GANGULI: I have only one comment to make on your suggestion. If you say that pre-litigation mediation is compulsory, then, you need to have a mechanism where you can have mediation before the litigation. You need to have an established mechanism. Now what has been done in places like Delhi High Court and some other High Courts, they have adopted it, even in the Supreme Court we have a mediation centre. Most of the cases come here after the parties have filed their cases. Matter goes to the court. Then, the court refers the parties to the mediation centre for a resolution. Now, if you have to introduce a concept of pre-litigation mediation, then, you have to put in place a mechanism for pre-litigation mediation.

SHRI P.P. CHAUDHARY: Has there been any conference, or, literature on pre-litigation mediation?

SHRI A.K. GANGULI: There are a number of them.

SHRI P.P. CHAUDHARY: Is there any thinking on this outside?

SHRI A.K. GANGULI: In some of the developed countries like the West, for example, Switzerland, it is very popular. In the US and in France almost 90 per cent of the cases go for mediation before they go to court. All these countries have done it. What they have done is not by a formal system introduced by a law. These are all done informally. People are informed. There are agencies. Many, many lawyers practise as mediators.

CHAIRMAN: There is no legislation on that. Bar Councils and Bar Associations might have created it.

SHRI A.K. GANGULI: By word of mouth and by way of advertisement we can't do it in our country.

CHAIRMAN: If we provide some proviso in the Bill telling that they have to go for pre-litigation mediation, and if it is not possible, at least, after litigation is filed, it can be referred to the mediation centre. If there is a proper institutional support in that particular location, it will be helpful.

SHRI A.K. GANGULI: Quite right. You can provide something like this that every person before instituting proceedings under this Bill in any court has to make a statement whether this is preceded by a mediation, and if so, result thereof. They have to give such a statement. Suppose you do that, then, that becomes a condition for filing a suit. If you go to the Commercial Court in one of the clauses you can insert the format. Did you go through a process of mediation before coming to the court? If so, what is the mediation process? What has happened? What is the net result of that? You have to put a cover sheet. For the first appeal you have a cover sheet. You give all the details. In a revision, which court, what value, what subject, what questions, like that you can give a format. You can prescribe it by rule.

CHAIRMAN: Do you want to comment on this?

SHRI DINESH BHARDWAJ: Something you put in a law, you need to have some mechanism for introducing mediation. You can't leave it, in general, to the parties and different fora. It is not clearly available with us.

CHAIRMAN: We are thinking of globalised economy. The initiative by the Government itself is to accommodate at the parameter of the international court system, dispute resolution system. Unless a proviso is made, unless a format is made, whether you have gone for a mediation, people will not come out and have a formal system of mediation centres. This is one way of encouraging fewer disputes before the court system.

That is what we are contemplating. We want to avoid more and more cases coming to the courts, rather settle among themselves at the threshold.

SHRI A.K. GANGULI: What Mr. Bhardwaj is saying is right. You introduce a proviso in the law and say that a litigant before he approaches a court must go through the process of mediation; and also disclose to the court what the result is. He is trying to suggest a mechanism in place. Everywhere mediation centre should be made available. That is what he means.

CHAIRMAN: That is why we are suggesting if you provide a proviso like that, then, every court will encourage mediation. This is not a new concept. It is already there in the C.P.C. You have to follow it. But you have not followed it simply because you felt that there is no organisation, no institution. But now the Government is compelled to come forward with a fast track dispute resolution for commercial disputes, then, you have to put a window of opportunity for creating such a mediation centre, and encourage the provision in the contract itself for mediation and arbitration before going to the civil court. That is our thinking.

SHRI A.K. GANGULI: That should be done. Mr. Bhardwaj, thanks to your Legal Services Authority which is functioning in all the High Courts. You are also operating in all the districts. You have only to extend that.

CHAIRMAN: Here we can officially record also. When we met the Chief Justices of different High Courts for informal discussion, the Chief Justice of A.P. High Court told us why we couldn't try for mediation before bringing it to the court. This is one of the motivations which is driving us to think on those lines.

SHRI P.P. CHAUDHARY: Even Mr. Bhardwaj is saying that we have to provide a provision and infrastructure. I don't think we need it. If we are doing it, then, there is a difference between pre-litigation mediation and post-litigation mediation. We have not developed a mechanism in our Bar Councils. You have said that in America and European countries they have developed a mechanism. They are informing other parties to go in for mediation.

CHAIRMAN: Please give a small note on this, and compare it with other countries.

SHRI A.K. GANGULI: As I said, it is doable. Now, you have a Legal Service Authority which has spread its tentacles all over the country and in almost all the courts. So, they can always initiate a move for a mediation centre. I would like to give one more example to Mr. Chaudhary. What you have said is right. You can have mediation centre, post-litigation. The same centre will cater to the pre-mediation effort also.

SHRI P.P. CHAUDHARY: But without the help of the court.

SHRI A.K. GANGULI: Yes, of course. Parties know that they have to go first and report to the court whether they have had a mediation or not, then, what is the result of it. They would first go to the mediation centre. They will write whether they have gone to the mediation centre. Then say, yes or no.

SHRI A. K. GANGULI (contd.): "What is the result?" "Nothing."

SHRI P. P. CHAUDHARY: And from our experience, we can say that even with pre-litigation mediation, we can solve the matter within five days. And in the case of post-litigation mediation, it took, at least, one year or even more to resolve a matter.

SHRI A. K. GANGULI: No, it is not all that easy. Let me give you a very practical example. Let me tell you the ground realities. Pre-litigation mediation will go into a lot of rough weather, for this simple reason. Supposing you, as a litigant, go to a mediation centre and you tell them 'look, I am contemplating a litigation against x, y or z, but I have to go through the process of mediation because I cannot go to a court right away; now, there is a law which compels me to go through this process. So, I need to be helped to go through mediation". Now, how would that mediation centre, since it is informal discussion, secure the presence of the opposite party? Suppose, they write to them, 'please come'; they may come or they may not come. Therefore, you have to also provide for a sanction for the opposite party too. This is a small practical way of doing it. Automatically, anybody who initiates a mediation action, whether it is through a mediation centre or a private lawyer -- anybody can act as a mediator if they are properly trained -- then he should have the authority, I mean, in an informal way, to call for the participation of the other party and they may take into account this aspect. If they, other party, did not join the mediation, then the court can say, 'all right, now you go for pre-litigation mediation. You have come to us, all right, but we will not touch your case unless you have gone through this'. The court can summon. So, it will require a little bit of stepping, one by one, on how you do it. But it is certainly doable and I would very much welcome it. Once people know that without going to court, like the hon. Chairman has said about the court fee issue -- we would come to that immediately -- everybody would be scared to pay an *ad valorem* court fee if you have to put that as a burden on the litigant. He would run for a settlement rather than going through that process. But as you know, our litigants have a different attitude. A defendant in a

suit or in a proceeding would like to delay the proceedings as much as possible. He takes advantage of the delay in the laws because he knows that the courts have no time; they would take up this matter after ten or twenty years. Till that time, he would like to enjoy the fruits of the money which belongs to the plenty but not to pay the other party. So, he would get an opportunity to drag. Some mechanism will have to be provided by which the defendant must have an incentive in carrying it out. That is one factor which you have not taken into account. A very important factor that must be in-built is the cost factor in a litigation. The cost must be very clearly spelt out. Simply saying that the cost would be provided is not enough. You must provide that anybody who succeeds ultimately would get the particular cost of the opposite party that he is entitled to. Recover all the court fee that he has paid. Recover all the expenses that he has incurred in terms of engagement of counsel, etc. It must be spelt out compulsorily. This is why in the Western or developed countries people run for mediation. They don't run to the court, because they think a hundred times that if they have to go through the process of litigation, at the threshold they would have to deposit what is called the cost of the litigation of the opposite party; they need to deposit it upfront. If you file a case and the other party says, 'I doubt about the solvency of the plaintiff; why should I come and defend myself in a litigation; ask him to cover my cost'. The court would say, 'All right. Pay so much; this is his cost. He has given an estimated cost. Pay it in the court." And then you start the litigation. Now, if you put the same burden on the respondent, if the respondent knows that the dependent knows that eventually if he loses a case, he is to pay up all these monies, he would also not like to go for litigation and delay. Another important facet of all this is to bring in the cost component. Then only would you have a genuine litigation.

SHRI P. P. CHAUDHARY: So, we can also provide that once the litigation is over, then the agreement is required to be registered. So, it can also be provided here.

SHRI A. K. GANGULI: But do look up for this cost component, because this is the only way you can bring genuine litigations to courts. The time of the courts would come down automatically and people would run for mediation where the cost is free. Pre would be more preferable then. The defendant must know that he can't get away by not coming. If he has not come, the court would say on the first day when it summons him, "All right. Deposit 20 lakh rupees. There is a claim against you for Rs. 20 lakh. Deposit in the court. We would see it." It would come under an exclusive account and it would earn interest.

SHRI P. P. CHAUDHARY: Otherwise, in the present situation, we cannot clear our backlog in the next 30 years.

SHRI A. K. GANGULI: This is the only way to do it. Only a genuine litigation should be entertained.

SHRI VARAPRASAD RAO VELAGAPALLI: It is very nice to hear a very senior lawyer like Mr. Ganguli. As our Chairman says, to reduce the number of litigations in the court, we are trying various methods and this is one such method. There is no accountability as far as the person who is doing the mediation is concerned, like the Judge here. The countries that we are comparing ourselves with are very advanced countries where literacy is very high; here the literacy rate is quite low. We must take into consideration things like, with the person who is doing the mediation if there is a collusion, etc., to what extent could justice be delivered, and so on.

SHRI A. K. GANGULI: Since it is a process of mediation, the very concept is that it is a voluntary act. Although you may provide in a law that it is compulsive so far as the procedure is concerned and you have to go through it, what the result of the mediation was , whether the mediation was properly conducted or not -- those would be the subject matters that could not be basically investigated and gone into. If the court is eventually satisfied that this process of mediation has failed, if the mediator has failed to achieve a consensus among the people, then eventually it would be a litigation. There cannot be any other responsibility thrust upon a mediator. Otherwise, nobody would come to mediate. Mediation is quite a tough job; let me tell you that.

CHAIRMAN: Sir, we actually visited the Mediation Centre at the Delhi High Court also and we felt that mediation was at a nascent stage in India, but people who want to invest in India want to have all the systems provided before they invest here. That is why we are suggesting that mediation should also grow. I feel that we have given you a lot of work to do, Sir.

SHRI A. K. GANGULI: I would go through all this and come back. Then, if you look at Section 10, I have a few suggestions. These are on the structuring of the law as it is. If you look at clauses 10(1) and 10(2), both of them appear to me to be dealing with a situation where the cases are pending on the commencement of this Act and where they would go after the commencement. Now, it is the same subject you are dealing with in clause 16 – 'Transfer of pending suits'. So, I thought first of all, clauses 10 and 16 should be combined. You don't need it at two places. That is number one. Secondly, in clause 10 there is another anomaly that I have found. You are suggesting that the matters pertaining to arbitration should go to the Commercial Appellate Division. Why? Suppose there is an appeal from the order passed by the Commercial Court or an arbitrator. An arbiter has given

an award that is challenged, that is challenged, say, in the court of first instance, that is, the Commercial Court and the Commercial Court has given the decision either upholding or rejecting it. Supposing it has rejected it and an appeal lies, under Section 50 or 57, as the case may be, that is, there is an appealable order.

SHRI A.K. GANGULI (CONTD.): Then, the appeal from the Commercial Court which is a subordinate court must come only to the Commercial Division of the High Court and not to the Appellate Division. But, if that order is passed by the High Court in its Original Jurisdiction, then only will an appeal go to the Appellate Division. So, therefore, there is some anomaly.

CHAIRMAN: Can you reply to that?

SHRI A. K. GANGULI: I have mentioned about it in my note. This is an aspect which you can consider.

SHRI M. KHANDELWAL: The problem is that we have given the jurisdiction to the Commercial Appellate Division. In the other normal commercial dispute, all the orders of the Commercial Courts are appealed before the Commercial Appellate Division.

CHAIRMAN: Therefore, they treat arbitration also as one of the court system where you can go for the appeal to the Division Bench.

SHRI A. K. GANGULI: No that will not be proper because the appeal will come only to the Commercial Division, it will come before the single Judge and the Appellate Division normally constitutes of two Judges.

CHAIRMAN: Here the structure is like this. Where there is Original Jurisdiction available, there will be a single Judge sitting in the High Court as a Commercial Bench. If the Original Jurisdiction is not there, except five States the other States are not having it, then in those States, District Commercial Courts will be constituted and in response to the verdict, there will be an appeal to the Division Bench.

SHRI A. K. GANGULI: All right, that is one.

CHAIRMAN: Similarly, they may treat it as a power and if it is an arbitration matter, then it can go to the Bench consisting of two Judges.

SHRI A. K. GANGULI: So even if it is a first application before the court, that also goes before the Appellate Division.

SHRI M. KHANDELWAL: It would depend upon the definition of the court under the Arbitration Act.

SHRI A. K. GANGULI: Now, that is a different question which you will again have to answer. I although suggested that the definition will have to undergo a change because you have to synchronize between the two. You cannot have two different courts. One court dealing with the arbitration and another is a Commercial Court. This will lead to conflict. Anyway, I have suggested that. Here what I am suggesting is that if you look at the clause about International Commercial Arbitration, any application is not an appeal. Such application will go to the Appellate division. Why so? It is the first instance that such a matter has been dealt with by the High Court. It is not an appeal, but applications also. Appeal is all right. I understand that.

SHRI M. KHANDELWAL: But, Section 34 is only an application.

SHRI A. K. GANGULI: Yes, but why should that go before a Division Bench?

SHRI M. KHANDELWAL: Suppose, it is an application before the High Court.

SHRI A. K. GANGULI: The challenge under Section 34 is by an application. Why should it go before an Appellate Division Bench? Suppose this order is heard by a single Judge, that is, the Commercial Division, then it will go and appeal before the Division Bench. There is a provision of inter-court appeal under the Arbitration Act.

CHAIRMAN: No, what you are thinking is after the award being passed. What Ganguli ji is saying is that when the issue of appointment of arbitrator is already there in question, then why do you go to the Division Bench instead of going to the single Judge Bench?

SHRI M. KHANDELWAL: So far as the application for appointment of arbitrator under the Arbitration Act is concerned, it goes under Section 11 directly to the High Court.

CHAIRMAN: It is a High Court, but it is not before the Division Bench. It is before the single Judge also.

SHRI A. K. GANGULI: Yes, I have said something about it.

SHRI M. KHANDELWAL: Apart from Section 11, only application under Section 34 goes before the Division Bench.

SHRI A. K. GANGULI: Even under Section 34, why should we go before the Division Bench as there is an intra-court appeal provided under Section 37?

CHAIRMAN: Just work out on that.

SHRI A. K. GANGULI: Kindly consider that. What I have suggested is that Clause 10 can be re-structured and you can take Clause 10(3) alone. Clause 10(1) and Clause 10(2) are not necessary as they can be taken under Clause 16 and what we have is Clause 10(3) which declares who has the jurisdiction in the matters of arbitration. This is for international arbitration. You can also provide similar provisions for matters other than the international arbitration. I have said that in my comment. So that comes under re-structuring. Then under clause 16, I have suggested that you have some ambiguous provisions in language. You must rectify that. For example, you have said that under Clauses 16 & 16 (3) regarding provisions of commercial disputes 'shall apply to those procedures'. Now, what is that procedure? It must be proceedings, not procedures. It is related to all pending proceedings, suits, applications. They are all proceedings, not procedures. That is one point. Secondly the words "that were not complete". That makes no sense because what is not complete, you can say it is not disposed or which is still pending. So, I have suggested my point. Then, I have suggested one more thing. There could be cases where a commercial dispute may involve relief other than damages, compensation, etc. Like in some cases, the relief could be only specific performance of the contract. Now, the court will not be in a position to give unless you confer that specific powers of the Specific Relief Act should also be made applicable to them. Sir, for example, for a specific performance of the contract or in the case of a permanent injunction somebody is perpetually violating a trade mark or any other IPR rights, then you need to permanently injunct him. That power would be missing here.

CHAIRMAN: Actually, now the designated court is named as District Commercial Court.

SHRI A. K. GANGULI: But you need to give them express power of Specific Relief Act for these types of remedies. And they will not recur as Specific Relief Act does not apply to all courts except where you specifically confer that power. Civil courts have that power. So, I have suggested and you kindly consider giving that power as there will be many cases.

CHAIRMAN: Actually, this is also part of the Civil Court but it is designated court. That is all.

SHRI A. K. GANGULI: But you are defining their powers, you are amending the Civil Procedure Code also.

CHAIRMAN: Think about it because you have excluded the CPC in many of the provisions.

SHRI A. K. GANGULI: You have not excluded. Another thing that I want to say is that in this case you have to say expressly, "CPC as amended under Schedule so and so shall apply". That is also not mentioned.

CHAIRMAN: Therefore, you have to see that what are the powers by enactments just like the Specific Relief Act. These powers have to be specifically mentioned otherwise you have, in certain cases, excluded in the CPC also. You have got your own case management system. So, when you are making a case management system, then specifically it has to be followed. You have to tell in a very transparent manner as to what are the things that are needed to be done.

SHRI A. K. GANGULI: Now, one more point in the context of arbitration and then I go to two more issues that you have asked me to say. I will indicate it briefly. Now in the context of arbitration, Section 2(e) of the Arbitration Act would also require to be amended along with this Act. There are two reasons for it. The Supreme Court has now in the BALCO (Bharat Aluminium Company Limited) Judgment, which was in the context of international arbitration, unfortunately in one paragraph, they have given an example of dealing with the issues of jurisdiction of courts. They have brought in a concept of what is called "seat of arbitration" even in domestic arbitration. Now, domestic arbitration seat has no meaning. Here, the seat means place of arbitration. It has no meaning at all. The seat of arbitration has a consequence and significance only if it is in the context of international arbitration. Why? Because the seat determines as to what would be the applicable law to the procedure of arbitration that is taking place in that case. Therefore, seat has significance. So, if you are holding arbitration in India, then you would apply the Indian procedural law for the purpose of arbitration. If you are holding arbitration in London, then you would apply the English Law. Like that, seat has a very great significance in the international arbitration and that was the case before the court. They were not dealing with the international arbitration. Unfortunately, in one paragraph in the Judgment, dealing with which court we want jurisdiction, they have given an example of Indian scenario. Like in the case of two parties, one is in Mumbai and one is in Kolkata and they decide to go and say that arbitrations will be held in Delhi or in Timbaktu,

wherever it is. According to the court, the Delhi Court will have a jurisdiction which is absurd and to the exclusion of the other two courts.

SHRI A.K. GANGULI (CONTD): See, holding of proceedings is for the convenience of all parties and the Tribunal. It has got nothing to do with conferring the jurisdiction to that area.

CHAIRMAN: You also think about it.

SHRI A.K. GANGULI: I will quickly say a few things. I would like to talk about the court fee aspect which you have pointed out. It is a very important aspect that you have touched upon. You are right that most of the States are a little reluctant. But I must say that your own State, Tamil Nadu, has been a pioneer. They did a large scale revision in court fee several years ago. I had the privilege of defending your State in the Supreme Court with some success.

CHAIRMAN: Yes, you are defending Tamil Nadu in many cases.

SHRI A.K. GANGULI: It is a very difficult task because we have got to balance a number of things. As you have rightly said, we have to keep in mind that the courts are meant for rendering justice. People would come to the courts for seeking justice. If you do not make justice delivery system available to people, if you do not provide access to justice, people will decide cases outside the courts, which as you know is happening in many places.

CHAIRMAN: That is true. We want to have your advice. We are already having *ad valorem* fee structure at certain limits. But when you create these designated courts and special courts, you are foregoing that. That means you are helping the rich people, and, at the same time you are taxing the poor people. How do you differentiate it?

SHRI A.K. GANGULI: There is no reason to differentiate on that ground. All that we are trying to do is we are converting an existing civil court into a fast track court dealing only with commercial disputes.

SHRI P.P. CHAUDHARY: I want to ask a larger question. What you have said is one part. We want to use your rich experience as a lawyer. What is your opinion about it? You have said that creation of commercial courts is a very good move by the Government. But why not civil and criminal courts also? That is number one. Secondly, we are in an era of specialization. In all the systems, in all the branches of democracy, in education, in medical sciences, in technical education, etc., only the specialized people are being appointed. In our court system, right from the beginning to till now, has any person been appointed, who is having specialized knowledge? I think you are facing some problems. Suppose a new subject is there before the court. You will take days to understand that subject. Why don't we have this system initially in the criminal courts, civil courts and commercial courts? Then there are subordinate courts, High Courts and the Supreme Court. At every stage, we must have a separate recruitment system. Again, whether it is promotion or appointment from High Courts to the Supreme Court and from subordinate courts to High Courts, we must have a separate list.

SHRI A.K. GANGULI: I have followed you. What you are emphasizing is that this is an era of specialization and super specialization and why should it not be implemented in courts. Sir, I have a two-fold answer for this. I am not exaggerating but it is true that the courts and the laws are not comparable to medicine and other subjects. They are not comparable at all. I will give you the reasons why. When you go to a criminal court, a judge who is sitting in the criminal court has to be well versed in criminal law and also the procedure. But, at the same time, just look at the variety of cases that come before him. Every single statute that the Parliament and the various State Legislatures have enacted, has a penalty clause, prosecution clause for any violation, etc., etc. All of them result into, ultimately, criminal proceedings. For example, take any case of violation of excise duty or customs duty or income tax. They are all subject matters of prosecution in a criminal court. When you go to the criminal court, the magistrate who is trying, has no clue of what is Central excise as a concept. He does not know why it is leviable and who is responsible and in what manner it has to be done. But he will be trying an offence which essentially is defined under a legal regime, which he will have to dispose of. In what subject does he have to specialize? Then you have to have hundreds of criminal courts, like criminal courts dealing with IPC offences, criminal courts deal with revenue offences, etc., etc.

SHRI P.P. CHAUDHARY: That is why I have said in the first phase we can only have criminal courts, dealing with all the criminal cases.

SHRI A.K. GANGULI: We have that.

SHRI P.P. CHAUDHARY: But we do not have judges who are specialized in that field.

SHRI A.K. GANGULI: Let me just give you one more example. Many, many years before, we had a distinguished visitor in our country, the Lord Chancellor. He was the first Scottish to become the Lord Chancellor of England. He came here as an invitee. In a luncheon meeting, I was introduced to him by the then Attorney-General because I was one of the invitees in that meeting. He said, "Meet one of our youngest QCs". I was fairly young at that time. He introduced me by saying that he was one of our youngest QCs. Lord Chancellor looked at me and said, "Yes, indeed you are very young". The next question that he asked was, "What is your specialization?" That was a very normal question which had been asked. I told him if you do not mind I have a question to ask you first before I answer you. I told him that you have had a huge experience at the Bar and you have become a Lord Chancellor now. I asked, "How do you evaluate the arguments addressed by a counsel in a case before you which involves multi-disciplinary subjects?". There were so many subjects involved in it. They were so complex, they were so intertwined. The counsel addressing you would be an expert in one of those branches. I asked, "How do you evaluate his argument? What is the benchmark of yours to give credibility to what he is saying?". He thought for a while and said you do not have to answer my question. So I did not have to answer his question.

Let me tell you that a judge who is sitting on the criminal side of the court, has to have good knowledge of the civil law, if he has to effectively deal with the criminal cases. There are a number of such issues which will be involved, which will have to be decided from that perspective. That clear-cut division is not there. But I take your point and I myself have said that there is an advantage of having a specialized court like the commercial court, because you need specialization. But that does not mean that they do not have to know other subjects.

SHRI A. K. GANGULI (CONTD.): They know, but they also specialise in it. In fact, they do it better.

CHAIRMAN: Thank you very much for your time taken for this presentation. We feel that you can find some time to give some more details in a written format within a week's time.

SHRI A. K. GANGULI: Sir, on two aspects; on mediation and court fee.

CHAIRMAN: We feel that the overall impression is like that. Gradually we are helping richer people and we are neglecting the poor people by asking them to pay the court fee.

SHRI A. K. GANGULI: There is no need. You are right.

CHAIRMAN: That is one aspect. Another aspect is none of the Commission's Report or Law Commission's Report has looked into the issue. Unless civil jurisdiction is taken care of by cost bearing by the parties, Government cannot spend the money, the tax payers' money to individual's dispute resolution system. We have forgotten that totally. Therefore, we are over-burdened with the work of the civil disputes and courts are blamed and the Bar is blamed. Public is also disenchanted with the court system available in India. We want to know this aspect. Thank you very much.

SHRI A. K. GANGULI: Can I take leave of you?

CHAIRMAN: Yes.

(The witness, Shri A. K. Ganguli, then withdrew.)

* * *

(The witnesses withdrew and

the Committee then adjourned at 4.52 p.m.)

THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE MET AT 3.00 P.M. ON MONDAY, THE 10TH AUGUST, 2015, IN COMMITTEE ROOM NO.63, PARLIAMENT HOUSE, NEW DELHI.

CHAIRMAN: DR. E.M. SUDARSANA NATCHIAPPAN

WITNESSES:

Representatives of the Department of Law and Justice:

Shri P.K. Malhotra, Secretary

Shri M. Khandelwal, Additional Government Advocate.

CHAIRMAN: Good afternoon, I am very happy that we are going to have a discussion and get the inputs from the Secretary, Department of Law and non-official witnesses on the Commercial Courts, Commercial Divisions and Commercial Appellate Division of High Courts Bill, 2015.

I welcome Shri P.K. Malhotra, Secretary and other officers of the Department of Legal Affairs to this meeting of the Committee. As you are aware, we have invited you to share your views on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 which is presently under examination of the Committee.

The Committee has interacted with several stakeholders and has obtained their views on the Bill. The Committee has also received several suggestions on the various provisions of the Bill which the Secretariat has already forwarded to you for your comments and suggestions. The Committee would like to have your views on the various provisions of the Bill; particularly, (i) definition of commercial disputes in Clause 2(c) and your views on mentioning statutes having provision on commercial transactions/nature in the Schedule. Instead of having a list of commercial disputes in the Bill, by simply putting the words, i.e., on the basis of the agreement or copyrights or trademarks, whether we can put as a separate Schedule in the same Bill mentioning the relevant Acts, for example, the Intellectual Property Rights Act, Trade Marks Act, Copyrights Act, and the Geographical Indication Act. That way, if we mention it, there is no need for interpretation whether it is within the jurisdiction of the Commercial Court or not. The only issue will be the pecuniary limits. Therefore, the court's time will be very much reduced in coming to the conclusion of how to define commercial disputes because the words alone are used; 22 different items were used for that purpose. On that aspect, we would like to have your opinion; (ii) revision of existing court fee structure and making the users of those courts to pay for the services availed in the commercial courts so as to make these courts self-sustainable as is the case in some developed countries; (iii) uniform court fee structure in commercial courts throughout the country to discourage bench-hunting; (iv) limiting the tiers of appeal to expedite litigation and to avoid unnecessary delays; (v) appointment of the judges of the commercial courts in the light of Articles 233 and 234 of the Constitution and financial implications of this Bill on the exchequer; and (vi) the issue of raising the specified value from Rs.1 crore to Rs.2 crore particularly in the light of passing of the Delhi High Court (Amendment) Bill, 2014.

Here, actually, I would like to have some more elaboration on the issue of court fee. You know very well that from the initiation of the Civil Procedure Code, 1908, the Britishers have made us to think that in the case of criminal jurisdiction, the sovereign country has to pay for that.

CHAIRMAN (CONTD.): There should not be any expenditure for anybody. It is part of the sovereign duty. But in the case of civil jurisdiction, only facilitation part is for the Government. Therefore, whatever remedy you want to get, you will have to pay for that. Therefore, the court fee structure was formulated as early as in 1908 and, subsequently, powers were devolved to the States. States have been given the power in the Constitution to frame the court fee structure in consultation with the relevant High Courts. As usual, the Supreme Court has got its own power for fixing the court fee in consultation with the Government of India. We have gone to many of the locations and your officials would have given you a briefing on with whom we had the meeting. Especially, we had a meeting with the Registrars of High Courts and we had also a meeting with the Chief Secretaries of the State Governments, Law Secretaries of the State Governments, Revenue Secretaries and in certain cases, the Finance Secretaries. We had discussions with them because an illusion is created that if you increase the court fee, people will oppose it. You are making a barrier so as not to enter into the court system for dispute resolution. We traced the history to know how we could address that aspect. In the Civil Procedure Code, there is a provision given that if the presiding Judge finds that the litigants are poor, they cannot afford court fee or any summons or any procedural aspect, then the court can allow the parties to have the legal aid by the legal aid system, where the Government bears all the cost of litigation. Subsequently, there was a Twenty-point Programme under which the executive orders were issued to care about the litigants, their witnesses and their documents. So, everything is to be borne by the executive expenditure. Subsequently, there was an enactment of Lok Adalat Act by which the dispute itself was shifted from the courts and it was solved by conciliation, mediation and arbitration clubbed together, by the retired judge as the President, one member from Law or from experienced legal services and one individual jury type of person. Then, law has come to the level of having National Legal Services Authority by which the entire expenditure of one who is in need of access to the legal system, which is a guarantee of the Directive Principles of State Policy, is incurred by paying fee and other things. Therefore, we feel that, apparently, there is a system in operation to look after the needs of the people who cannot afford to carry on with the litigation. At the same time, our thinking is why you don't make the affordable people to pay the court fees. If you take into consideration the overload on the judicial system, more and more courts are required to be opened up, more judicial staff and non-judicial staff have to be appointed, infrastructure like buildings have to be constructed, digitalized communication has to be developed, etc. Now, what is happening is, there is no calculation at all as to how much is the cost that a judge or a court is incurring for clearing a particular case, how much revenue is generated, etc. There is no data at all. We had

requested all the Registrars of High Courts, the Department of Justice, the Department of Legal Affairs and others to give us some data on how they are incurring the expenditure and how much of it goes by revenue, through the court fee system, which is now available. That means we are not at all worried about the expenditure. Who is paying that expenditure? It is the person who is not at all going to the court, who is not at all needed any access to the legal system. That is, the main Budget provision has to be given by the person, the tax payer, who is not using this service at all.

CHAIRMAN (Contd.): Why does that have to happen? It is high time that a rich person, who can afford it and who has a stake in a Rs. 10 crore dispute, is made to pay. Why is he made to pay just a small amount of the court fee while the rest of the cost is made to be borne by the taxpayer, who is not at all interested in the resolution of his dispute? Therefore, we are overburdening the legal system, without taking into account the fact that there is a cost burden as well. There should be revenue sharing by the litigants themselves just like in the arbitration system where the litigant has to bear the arbitration cost from the first to the final level. Why don't we stipulate something like that? This Committee has been saying repeatedly that when you come up with a legislation, whatever be the nodal department, there should be a financial statement as well. You know very well that it is a part of the legislative process. Every legislation must also have a financial statement mentioning details like the expected cost that is likely to be incurred by bringing that law into force, what is going to be the source of revenue, how you propose to meet the capital expenditure or the current expenditure, etc. How are you going to do that? That part is totally absent. We have repeatedly asked your department to furnish some of these details, but they could not provide the data. We understand that this could be because the High Courts could not gather this information from the District Courts and the District Courts have not bifurcated cases into commercial disputes and civil suits. What we could understand is that there are just categories nowadays -- now it has been extended to the Motor Vehicles Act also -- one is the civil cases and the other is the commercial cases. Therefore, the High Court could not help us differentiate between civil cases and cases that could be included in commercial disputes, or tell us how much revenue is being generated, how much expenditure is being incurred in conducting the court system, etc. These are some of the details that we needed. Therefore, this aspect also needs to be looked into. Otherwise, we are also creating another forum which is going to be idle, just like many of the tribunals which are now lying idle. Now, the tribunals are under the control of the nodal ministry. If there are many orders against the nodal ministry, then they are not interested in filling up the posts of the Presiding Officer or Members of the tribunal. Therefore, tribunals become defunct and cases get piled up there. We were told by the Appellate Tribunals on Taxation that cases worth more than rupees four lakh crores were pending for dispute resolution. These are the things that need to be considered because it is a commercial court system. We have been putting these questions to you and we have put the same questions to various stakeholders. We feel that you need to do some more research on this. If you feel that you could give us some write-up on this, you may kindly pass it on to us within a period of two weeks. We are seeking your opinion on this as we would like to frame recommendations and conclude the Report, so that we could go in for amendments, wherever necessary.

I have given this briefing to you so that you could address the questions raised. After you make your presentation, hon. Members would raise certain questions. Kindly reply to them if it is possible to be replied immediately; otherwise, you may note them down and send a written reply to the Committee. That would be very useful for us in formulating our Report.

With these observations, I would request Mr. P. K. Malhotra, Secretary to make a presentation on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015.

SHRI P.K. MALHOTRA: Sir, my colleague, Mr. Bhardwaj, who appeared before this hon. Committee last time, and who is actually handling the day-to-day working of this particular legislation, is down with typhoid. So, he could not join us today. Last time, he had made a presentation, and whatever I am going to say today would be supplementing the presentation which was made earlier, and also the reply which we have given to the questionnaire which we had received from the Secretariat.

Sir, before I make my presentation, I would definitely like to make a comment. I think, for the last three years, I have been Secretary and before that also, I have been coming before this hon. Committee. Many important questions are raised in this Committee and whenever I go out of this room, I go enlightened with more thought-provoking questions for doing something better and positive for the society, and it always helps me and assists me, and I must thank you for giving this kind of opening remarks which you have made. That really makes us work harder and we are trying to do that.

Sir, so far as this particular Bill is concerned, I would like to submit that timely and fair disposal of commercial disputes is the need of the hour. Most of the commercial disputes, especially of high value, involve complex facts and questions of law. It is, therefore, felt that there is a need to provide an independent mechanism for their early resolution, which will also present a positive image to the investor world about the

robust Indian legal system. Right now, it is said that we are not getting good foreign investment and we are not able to make India as a commercial hub because the litigation takes a lot of time. Therefore, this is one Bill the Government has brought before the Parliament, and another is the amendment in the Arbitration and Conciliation Act of 1996, for which the Bill is under consideration and will be brought before the House very soon. These two Bills, clubbed together, indicate the intention of the Government that commercial disputes should be resolved as early as possible so that international investors get a comfort and the image, which has been created in the outside world that litigation takes too long in this country, can be changed.

Sir, on the basis of 188th Report of the Law Commission, the Commercial Division of High Courts Bill, 2009, was introduced and passed by the Lok Sabha in December, 2009. Thereafter, it was referred to the Select Committee of Rajya Sabha for examination. With the dissolution of the Fifteenth Lok Sabha, the said Bill lapsed. The matter was again referred by the Government to the Law Commission for further examination. The Law Commission, in its 253rd Report, has again recommended the constitution of separate commercial courts at the district level. Further, the Commercial Divisions are to be established in those High Courts which have ordinary original civil jurisdiction. It is also recommended that Commercial Appellate Division be set up in each High Court to hear appeal against the judgment of the Commercial Courts and Commercial Division of the High Courts.

The Government has accepted the recommendations made by the Law Commission in its 253rd Report and based on the recommendations of the Law Commission, the present Bill is introduced. The structure of the Bill is almost on the lines of the draft Bill as made available by the Law Commission of India.

Sir, the subject matter of the proposed Bill falls within certain entries of the Concurrent List in the Seventh Schedule of the Constitution, such as Entry-11A which provides for administration of justice, constitution and organisation of all courts, except the Supreme Court and the High Courts; Entry-13 which deals with civil procedure; and, Entry-46 which deals with jurisdiction and powers of all Courts, except the Supreme Court, with respect to any matter in the Concurrent List.

Sir, I would like to highlight some of the salient features of this Bill and one is, of course, as the hon. Chairman has very rightly pointed out, with regard to the definition of 'commercial disputes', and we have said broadly to mean disputes arising out of ordinary transactions of merchants, bankers, financiers and traders, such as those relating to mercantile documents, joint venture and partnership agreements, intellectual property rights, insurance and other such areas as have been defined in the Bill.

SHRI P.K. MALHOTRA (Contd.): Then, we have also provided for the specified value of the commercial dispute. It says that it shall not be less than one crore of rupees or such higher amount as may be prescribed. So, it is not that we are fixing a limit. We are just fixing a threshold limit of rupees one crore. Thereafter, depending on the requirement, this threshold limit can be changed and it can be a higher amount than rupees one crore. The specified value in respect of the subject matter of dispute shall be determined in the manner as provided in clause 12 of the Bill. Therefore, all suits, appeals or applications relating to commercial disputes of the specified value are to be dealt with by the Commercial Courts or Commercial Division of the High Court. Commercial Courts, which will be equivalent to District Courts, are to be set up by the State Governments for the entire State. However, in States where the High Court has original civil jurisdiction, the Commercial Court shall be established in respect of those regions over which the original civil jurisdiction of High Court does not extend. And here, I can give the example of Bombay where in the city of Bombay the Bombay High Court has the original jurisdiction, but outside Bombay, there is no original jurisdiction. Therefore, the Commercial Division will be set up at the District level. Now, Commercial Divisions are to be set up in the High Courts which are already exercising ordinary original civil jurisdiction. Commercial Division will have jurisdiction in respect of territory over which the High Court has such original jurisdiction. And so far as the Commercial Appellate Division is concerned, it shall be set up in all the High Courts to hear appeals against two orders -- the order of the Commercial Division of the High Court, because they are enjoying original jurisdiction, and order of the Commercial Courts at the District level. Now, the Commercial Appellate Division will not entertain any civil revision application or petition against any interlocutory order of the Commercial Court including an order on the issue of jurisdiction which can be agitated only in an appeal against such a decree. Appeal would lie only against the orders enumerated in Order 48 of CPC and section 37 of Arbitration and Conciliation Act and, again, no other order. Sir, one of the important features of this Commercial Bill is the amendments which we are carrying out in the CPC. The allegation is that the existing procedure under the CPC is too lengthy, too cumbersome and a lot of time is taken in disposal of cases. We are shortening that period; we are revising that period, and if it successfully gets implemented in respect of disposal of commercial disputes, quite possibly, we may think of changing the system or making out certain amendments in the CPC in respect of other civil litigation also in future. As of now, because commercial disputes are very vital for the development of the economy, we are trying to change this procedure. So far as disposal of commercial disputes is concerned, the

Commercial Courts are to be manned by specially-trained Judges appointed by the High Court from advocates and Judges with the demonstrable expertise and experience in commercial litigation. Hon. Chairman has made a point with regard to appointment of Judges in the Commercial Courts. I will revert to that point later. That is with regard to clause 5 of the Bill. The Commercial Court and Commercial Division shall not have jurisdiction to entertain and decide any suit in respect of which the jurisdiction of the Civil Court is barred under any other law. Suppose a special Tribunal has been constituted to deal with a particular issue, that Tribunal will be dealing with it and that dispute will not be coming before the Commercial Court to have a streamlined procedure for the conduct of cases in the Commercial Division and in the Commercial Court by amending the Code of Civil Procedure, 1908, for those cases, so as to improve the efficiency and reduce delay in disposal of commercial cases. As I have already said, Sir, my Additional Secretary had last time made a presentation before this hon. Committee on 18th May, 2015, and I am told that this august Committee has visited various parts of the country for soliciting views of the stakeholders. A questionnaire was forwarded by the Rajya Sabha Secretariat and we have already tried to give a response to that. Of course, I will be responding in writing to the questions which have been raised by this hon. Committee through the hon. Chairman, but some of the suggestions which have been given, I think, are worth consideration and I can give my immediate observation to some of those comments which have been made. With regard to the definition of commercial disputes, our anxiety was that the definition clause should be self-contained and there should be no need to make a reference to any other provision of the Act or put it in a separate Schedule. But if this hon. Committee feels that that will be a better method of presentation, it is only a question of drafting, and not much issue is involved in that. If the Committee makes a recommendation, probably we will be willing to consider that suggestion.

SHRI P.K. MALHOTRA (Contd.): Sir, you mentioned special dispute resolution mechanism for commercial disputes. As you very rightly said, in common parlance, we say that there are civil disputes or criminal disputes. I think the time has come when there has to be separate recognition for commercial disputes because it constitutes a major chunk of it and a lot of revenue is involved in such disputes. It is felt that as per the existing procedure, the time taken to resolve the disputes will not give confidence to the international investors. Unless a special mechanism is prescribed for resolution of these disputes, we would not be able to see growth in the economy at the pace we want to have.

Sir, you talked about uniform court fee structure. I would draw your attention to the fact that the court fee falls in State List. Earlier my colleague might have drawn your attention to this fact. Entry 3 specifically provides for it. It says, "Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court". It falls in the State's domain. I remember hon. Chairman raised this point earlier probably when we appeared before the august Committee with regard to Demands for Grants relating to the Ministry of Law and Justice. We did some work on it. If I have to share my personal view, I am of the view that the cases under the Negotiable Instruments Act or commercial disputes where there are parties which are in a position to pay the amount, they should be asked to pay more in case they want to settle the dispute. But then you have to create a class and, within that class, you have to see whether that will be a justifiable classification under the Constitution. When the Constitution itself provides that it is under the State's jurisdiction to determine it, we have to see whether we are competent to lay down fee for the settlement of commercial disputes. We are deliberating over these issues and we have not yet come to a definite conclusion on these issues.

Sir, you raised a point with regard to clause 5 and Article 233 of the Constitution. Sir, your point is valid and I take note of it. In fact, we drafted this clause as per the recommendation made by the Law Commission of India. But our intention was very clear. Whatever appointments are to be made, they will be made as per the provision of the Constitution. Even with regard to commercial divisions, the appointment of judges will be made as per the procedure laid down in the Constitution. But it is only about the question of their posting. When we deliberated over it in the Law Commission, we thought that the High Court would pick up only those district judges who have an aptitude, knowledge, inclination and also the idea as to how to deal with the commercial disputes. Only such judges will be posted to these commercial divisions either in the district courts or in the High Courts. Since you have to carve out for them a specific jurisdiction from other courts, there is a need for this legislation. Otherwise, one can always say that even under the existing system, within the same district, one judge can be asked to deal with the commercial matter. Or as we have service matter Bench or tax matter Bench in the High Courts, similarly we can have a Commercial Division Bench there. That is possible. But when you are carving out a jurisdiction from other courts or other divisions of the same District Court and you have to decide their pecuniary jurisdiction also, then probably it is necessary to do it only by a law. It cannot be done by an administrative order.

Sir, with regard to pecuniary jurisdiction and more particularly with reference to the Delhi High Court Bill, which was recently passed by the House, let me make a small submission. As we have already said, this jurisdiction is not sacrosanct. We have laid down the limit of one crore rupees. It can be made more than that

depending upon the number of cases pending before any particular court. It is only with regard to the five High Courts that a difficulty will arise where they are enjoying original jurisdiction. In respect of all the other High Courts, they have appellate jurisdiction only. But there would be no conflict here because a commercial dispute has been specifically defined in this legislation. So far as pecuniary jurisdiction in respect of all civil matters is concerned, that has been decided under the Delhi High Court Act.

SHRI P.K. MALHOTRA (Contd.): So, even if jurisdiction of Rs.2 crore remained there, that is with regard to all other civil matters. But when it comes to commercial dispute and if a dispute falls within the definition of the "commercial disputes", the provision of this particular Act will be applicable because it prescribes a special procedure for settlement of the commercial disputes by the Commercial Division of the Bench of the High Court, as well as, at the District level.

Sir, I will read the definition, which itself provides specified value in relation to a commercial dispute, which shall mean the value of the subject matter in respect of a suit as determined in accordance with section 12 which shall not be less than Rs.1 crore or such higher value as may be prescribed. So, this provision has been made in the Act itself.

Sir, you also raised the issue with regard to the functioning of some of the Tribunals. Of course, it may not be directly relevant to this Bill, but once we are talking of the whole judicial system and dispute resolution that becomes relevant. Sir, I am happy to share with this hon. Committee that the Government is already considering merging these Tribunals and reducing their number. Wherever the Tribunals are working, dealing in the same field, probably, there is a proposal for convergence of these Tribunals so that the number can be reduced, and the infrastructure available for these Tribunals can be clubbed. For the purpose of uniform service conditions of the Members of the Tribunal and Presiding Officers of the Tribunal, this hon. Committee has already given a report which is under the consideration of the Ministry of Law and Justice. In this regard one thought process which is going on is uniform service condition, mergers and putting all Tribunals preferably under one Ministry or the Department of the Government of India so that easy access to justice can be provided to the litigants. That proposal is under consideration. I think shortly we will come out with a suggestion in this regard also. Sir, with this small presentation, I hope I have tried to deal with all the issues which have been raised by the hon. Chairman. I will be sending a detailed reply to all these questions within the time given to me.

SHRI SUKHENDU SEKHAR ROY: While going through the replies given by the Department in response to the questionnaire sent earlier, I find that in reply to question No.3, whether it would be advisable to provide original jurisdiction to all High Courts to try commercial disputes beyond a specified value -- the last line of the reply and I quote -- "253rd Report, the Law Commission has not favoured such a proposal". My question, through the Chairman, to the learned Secretary, Mr. Malhotra, is whether the Law Commission has dealt with the matter at all. After deliberating on the matter whether they have disfavoured such a proposal. This is a small query. This is number one. You may reply now or afterwards.

Number two is in regard to video conferencing, e-filing of suits and audio-visual record of the proceedings. We know that the main objective of this Bill is to dispose of commercial disputes as quickly as possible keeping in view the change in the commercial world and the legal framework all over the world. Keeping that in mind, this Bill has been introduced. Now, the reply is that the Supreme Court is looking after this. Possibly the Department is not in a position to make a comment on that. So far as my knowledge goes, the Supreme Court is looking after the introduction of e-court in all the High Courts and gradually in the District Courts. So far as this scheme is concerned, I have been told that the Supreme Court is looking into it. Now, the question is whether to make this Bill suitable for quick disposal of the commercial disputes; and whether it is advisable to introduce the e-filing, video conferencing and audio-video recording in the commercial courts. I want to know whether the Committee should suggest like that. I want to know the view of the Department on this.

SHRI SUKHENDU SEKHAR ROY (Contd.): The third question and the last one is that, as you have mentioned about certain institutions or the tribunals, they have a separate entity and the civil courts are barred to deal with the cases entrusted to the tribunals like the Debt Recovery Appellate Tribunals, the SEBI Tribunals, the Appellate Tribunals, the Competition Commission, etc., etc. Now, my limited query is: What is the position in regard to the BIFR and AIFR? I want to know if they continue to do whatever they are doing now or the disputes pending before them will come automatically to the commercial divisions. Thank you.

SHRI P. K. MALHOTRA: Sir, may I respond to the third question first? So far as BIFR and AIFR are concerned, already a new Companies Act has been enacted and the functions which are being performed by BIFR and AIFR are being transferred to the National Company Law Tribunal and the National Company Law Appellate Tribunal. Since, there is a specific provision in the Companies Act dealing with this particular issue; probably the jurisdiction with regard to those cases will remain under the Companies Act with the NCLT and NCLAT.

CHAIRMAN: There is a sunset clause also there to see that whatever cases are filed will be transferred and the cases have to be filed before the company court. I remember there is a sunset clause.

SHRI P. K. MALHOTRA: Sir, I will look into this because whatever I was remembering, I just shared that with the Committee**.**

CHAIRMAN: Yes, there is a sunset clause.

SHRI P. K. MALHOTRA: Sir, I will look into and come back to the Committee.

SHRI K. T. S. TULSI: I refer to your answer to question No. 7. You mentioned that the draft Bill submitted by the Law Commission in its 253rd Report, the intention is that judges for commercial courts shall be chosen from amongst the existing judicial officers, which means that the strength of the judicial officers for dealing with criminal cases will be further depleted and it will result in corresponding greater delay in the disposal of criminal cases**.** I want to understand what, according to the Government, the highest value of the Constitution of India is**.** Is investment environment and speedy resolution of commercial disputes going to enjoy a higher priority than liberty of individuals? Almost 70 per cent of the Indian prison population consists of undertrials and many of them served out the entire sentence sitting in prison waiting to know whether they are guilty or innocent. We need to divert more judges for dealing with criminal cases rather than further starving them of the availability of judges. What is the higher priority under the Constitution of India? I want to know that.

SHRI P.K. MALHOTRA: Sir, I am happy you have raised a very, very valid question. Rather, I was expecting this question from your goodself. So far as separate division for the commercial disputes is concerned, let me make it clear, Sir, even as on today commercial disputes are being disposed of by these Judges only. By carving it out, the only thing is that suppose in each Court there are two cases or five cases or ten cases, now all those will go to one particular person. This number will remain the same; Judges are the same; cases are the same. They will be filed in the same way. You are saying that personal liberty is not important. Personal liberty is also equally important. But here in one District, there will be only one Judge.

SHRI K.T.S. TULSI: Liberty is the highest prerogative of the Constitution according to the Supreme Court and we are not satisfied with saying that it is equally important. Liberty of an individual is most precious - life and liberty. We can't equate commercial disputes with the right of life or liberty.

SHRI P.K. MALHOTRA: There cannot be two opinions on this particular issue that personal liberty is sacrosanct and more important. And so, for that, this is only one judicial reform which is coming. With regard to criminal justice system also, the reform process is separately underway. The Law Commission itself is looking into this particular aspect and, I think, the Law Commission is working on this and even with regard to disposal of criminal cases, I think, administratively many times the Government takes measures, which, of course, I am not competent to comment on that because all those measures are being taken and administered by the Department of Justice of the Government of India. Maybe, if further details are needed, Department of Justice will be in a position to comment on that. But on the basis of the little input I have, I said that it is not an area which is being neglected. It is being looked into separately, not only by the Law Commission but by the Department of Justice also.

MS. ANU AGA: I am not a legal person, but I just want to know how much is the time period taken to dispose of commercial disputes and if we introduce this Bill, by how much this time period will be reduced. I want to know that. Secondly, it upsets me that the Government decides to bring this Bill to facilitate foreign investment. What about Indians who are suffering for long and, as Mr. Tulsi said, in criminal cases languishing in jail? So, don't we mobilise ourselves to serve the Indian community better than to facilitate the foreigners? To me, that seems not a good reason to do this.

SHRI K.T.S. TULSI: You have mentioned table 2.7, the exact period taken for civil cases. But I don't find the table in the papers given to us.

SHRI P.K. MALHOTRA: Sir, I think we had annexed a copy. If it is not there, maybe, I will send it again to the Committee. It can be circulated. But while dealing with this particular aspect, the Law Commission of India in its Report has mentioned about the pendency of commercial disputes in High Courts with original jurisdiction and it has given the data of these cases. In Mumbai, the number of total civil suits pending was 6,081 as on 31st December 2013. Total number of commercial disputes pending was 1,997 which constitute 32.83 per cent. In Kolkata, the total number of civil suits pending was 6,932, out of which, commercial disputes were 5,352, which constitute 77 per cent of the total disputes.

MS. ANU AGA: Sorry, my question is not how many disputes are pending or how many disputes are there. How much is the average time taken to dispose of the case and with this Bill how much do you hope to reduce? That is my question.

SHRI P. K. MALHOTRA: That was the next issue which I was coming to after this. In the Bombay High Court, as I said, there were 6,081 cases. There were cases which were less than two years. Dependency was 1,268. Between two and five years, it was 1,268. Between five and ten years it was 1,159 and more than ten years, it was 2,386. Similarly, in Kolkata also, 6,932 was the total pendency, out of which 787 civil suits were pending for less than two years. Between two and five years, it was 800. Between five and ten years it was 1,320 and for more than ten years, it is 4,025.

MS. ANU AGA: Can you give the figures for criminal law cases?

SHRI P. K. MALHOTRA: Well, I don't have the figures right now with me on that, but I think the situation is almost identical even with regard to criminal law cases also and, Madam, my respectful submission is, as I said, most of the time this pendency is because of procedural delays also and by prescribing another quick disposal system, we are changing the procedure of CPC also for resolution of these commercial disputes and, as I said, my personal opinion is that in case it becomes successful in commercial disputes we will try to implement it in all other civil disputes also. The other issue, Madam, which you said was with regard to the international commercial disputes. This law is not only applicable to international commercial disputes; this law will be applicable to the Indian commercial disputes.

MS. ANU AGA: You, in your justification said that you want foreign investment. Foreigners are not investing because judicial system takes a long time. So, we get spurred by foreign investment rather than helping our Indian citizens. This is my concern.

DR. A. SAMPATH: Sir, while associating with some of the queries raised by Shri Tulsi, I would like to get a clarification on one point. Whether I am in favour or I am not in favour is a different question. The question is, suppose we are going for commercial courts to attract foreign investment. Will the Indian investors also get the same preferential treatment in those countries? Will there be any reciprocal arrangement in that? We are simply opening the doors and windows under the guise that we are inviting more and more foreign investment. At the same time, we are not getting that type of treatment abroad. I think Chairman might remember that we had certain discussions with some of our CMDs of nationalised banks and insurance companies. In certain nations we are not treated at par with their own companies, when there is a dispute between the Indian companies and foreign companies. They are not in a level playing field when they engage in a dispute and when they opt for a dispute redressal mechanism in that country. This is one point. The second point is regarding CPC. Will it be advisable or will it be constitutional? We are amending some provisions. If not amending, some relaxation is being done for the time limit, the minimum time that can be taken or the maximum time that can be taken. If the Bill is being implemented as a law and if that becomes an enactment, will that type of difference be there? This is entirely a civil dispute, but this is considered as a commercial court case because of the volume of money involved in that and this particular court has that jurisdiction. But other civil disputes will be remaining. Just like you will have a particular type of justice for some people or some companies or some corporates or some industrial houses or some business houses, I would like to know whether there can be two types of *modus operandi* when we adopt the provisions of the CPC.

DR. A. SAMPATH (contd.): Is it constitutional? Please clarify that also. My fear is that this will definitely be viewed as an infringement upon the right to approach the court. One is getting one type of justice and another is getting another type of justice. Delay also happens. My neighbour is able to pay more, but I am not able to pay that much. What will be our option? Thank you.

SHRI P.K. MALHOTRA: Sir, I would like to make it very clear that this Bill deals with only settlement of commercial disputes and it does not deal with investment as such. That is one area which is governed by a different principle of how the investment will come and from where. Once investment comes into this country -- I am not talking of international investment; I am talking of commercial disputes -- commercial dispute has got a much larger connotation as compared to international investment. Sir, international investment is only one part and probably that has been highlighted beyond a particular limit. This Bill is more particularly to give a quotient to the foreign investors. That is not the idea. The idea is settlement of commercial disputes as expeditiously as possible. So far as having a separate procedure for settlement of commercial disputes in comparison to other civil disputes is concerned, I think, it is a reasonable classification which will stand the test or scrutiny by the courts of law. This is what my impression is, Sir.

SHRI (ADV.) JOICE GEORGE: I have read the answer to Q.No.6. As per clause 11 of the Bill, the matters coming under the jurisdiction of the particular tribunals of the Recovery of Debts Due to Banks and Financial

Institutions Act, the SEBI Act, etc., will not come under the jurisdiction of the Commercial Courts or Commercial Division. If you read appeal provisions of the Bill, Clauses 13 & 14, according to Clause 13, all appeals from the Commercial Courts or Commercial Divisions will go to the appellate division of the High Court. As per Clause 14, the appeals arising out of the orders from the appellate tribunals will go to the appellate division of the High Court. All orders arising out of the tribunals constituted under the special Acts, like SEBI Act or Recovery of Debts due to the Banks and Financial Institutions, etc., will go to the appellate authority. In other cases, the orders of Commercial Courts or Commercial Division of the High Court will be straightaway appealable before the appellate division only. Apart from tribunals, the litigants will lose a forum of litigation. That will create some constitutional issues. They will lose a forum.

SHRI (ADV.) JOICE GEORGE (Contd.): In other cases, they will get a further forum to litigate their grievances. I think this will offend the very scheme of our Constitution provided under Article 14. I am afraid, this may lead to some other litigation, and this will finally end up in prolonging the matter before the Supreme Court or High Court for deciding this particular constitutional issue.

The other thing is, here we have proposed amendment to the particular provisions of the CPC also. As per the scheme of the present Bill, it is only for the Commercial Courts and Commercial Divisions. I am afraid, we cannot amend the CPC only for the purpose of this particular Bill alone. Under this Bill, we are defining the commercial disputes on the basis of certain pecuniary jurisdiction. So, if a dispute is below Rs.1 crore, then, it necessarily has to go to the Recovery Tribunal or any other tribunal or some other forum. If it is above the particular limit, then, it will come before these Commercial Courts and Commercial Divisions. Here, if we are making a particular mechanism under the CPC also for the purpose of speeding up all these proceedings by making specific amendments to the CPC, then, that will also offend this particular scheme of our Constitution provided under Article 14. So, I wish to get some clarifications on these two issues.

SHRI P.K. MALHOTRA: Sir, responding to your second question first, I think, this is not for the first time that a special procedure is being provided for dealing with a particular type of dispute. Even in criminal law also, Sir, you may be aware that to try certain serious offences, special procedure is prescribed. So, similarly, here also, for resolution of commercial disputes, a deviated procedure is being provided. I think it will stand judicial scrutiny. That is my response to your second question.

Sir, with regard to your first question, my immediate reaction will be, of course, I will look into that, but the provision is very clear. So far as the settlement of commercial dispute is concerned, that will be done either by the Commercial Division at the district level or the Commercial Division in the High Court where they have the original jurisdiction. It is only when the appeal comes, at the appellate stage, certain tribunals are covered, i.e., instead of going to the normal bench, the appeal against the decision of this Tribunal will lie to the Commercial Division. That is the only distinction which we are trying to make.

SHRI (ADV.) JOICE GEORGE: There also the structure is there, i.e, Tribunal, Appellate Tribunal, and then it goes to the Appellate Division. In all other cases, it is the Commercial Courts or Commercial Divisions either at the district level or at the High Court level, then, straightway we will have to go to the Appellate Division. So, one forum is lacking there. We will lose a forum in the case of Appellate Courts and Appellate Divisions. That is my point.

SHRI P.K. MALHOTRA: Sir, I don't have the relevant Acts before me right now, but from my memory, what I recollect is, in respect of all the six Tribunals which are mentioned here, as on today, against the order of these Tribunals, appeal lies directly to the Supreme Court. Sir, in respect of the Competition Appellate Tribunal, in respect of Debt Recovery Appellate Tribunal, in respect of Company Law National Appellate Tribunal...

SHRI (ADV.) JOICE GEORGE: In the case of the Debt Recovery Tribunal, the appeal lies to the High Court only. I don't know about the other cases, but I am very sure about this case.

SHRI P.K. MALHOTRA: But, Sir, for sure, I remember, so far as the Securities Appellate Tribunal and the Telecom Disputes Settlement Appellate Tribunal are concerned, the appeal lies to the Supreme Court.

SHRI (ADV.) JOICE GEORGE: About the Debt Recovery Tribunal, I am very sure.

SHRI P.K. MALHOTRA: Sir, I will look into these aspects because I am not very clear on that. I will respond to it in my written reply.

CHAIRMAN: I would like to add here one thing. You are correct in saying this. On the question of writ jurisdiction, there may be some cases and questions, therefore, the pending cases will be transferred to the Division Bench, according to Clause 14. But, actually, as he said, you have already created a tribunal system for all these six items. Already, an original jurisdiction is there with the forum, and, then, there is appeal to the

appellate forum. Then, your Act says that the appeal can be preferred by an SLP or any such means. That is one channel you are allowing it. Actually, the thing is, now you are creating another District Court also.

CHAIRMAN (Contd.): When a District Court is created on the basis of pecuniary jurisdiction, whatever the limit at present is, matters of Rs.1 crore and above will be initiated only in the District Court; they will not come up before the tribunal system which you have constituted. Is it the case that you want to segregate it? The meaning of clause 14 is to segregate. That matters below rupees one crore, which are coming before the Tribunal system, are going to be dealt with by them as it is and matters above rupees two crores will go according to the newly created Commercial Court system, a three-tier system, that is, number one is District Commercial Court or the original jurisdiction; number two is Division Bench and, then, it will go to, if necessary, SLP, the Supreme Court. A small clash is there. That also has to be resolved. Because, more or less, the entire Tribunal system will be abolished in due course if clause 14 is in existence.

SHRI P.K. MALHOTRA: Sir, I will give a written response to this.

SHRI K.T.S. TULSI: I have a serious apprehension about the fact that the Constitution gives the power for creating different benches and allocation of business to judges, to different benches. Now the power of the Chief Justice, which is a Constitutional prerogative, is sought to be restricted by telling the Chief Justice that for these kind of matters, you will create another Division. We are telling him what is of greater priority to the Government of the day, priority not of the constitutional values, but priority of attracting investment, foreign investment, in particular. The question really is: Can the Parliament tell the Chief Justice that this is how you will have allocation of business? This really comes in the domain of allocation of business -- separate division, same judges, but they will hear a set of cases. So, we are taking away the discretion of the Chief Justice, which is vested in him by the Constitution, and, the Parliament is trying to allocate business inside the High Court. Is that permissible?

SHRI P.K. MALHOTRA: Sir, my understanding is, constitution of a Commercial Bench by an Act of Parliament will be akin to constitution of Special Benches for trial of criminal cases like we have CBI courts, we have Special Courts for trying cases under food adulteration and we have Special Courts for trying, say, rape cases. It is akin to that only. By an Act of Parliament, as we are doing it under criminal laws, similarly we are doing it here also. According to me, this is permissible under the Constitution.

SHRI K.T.S. TULSI: But that is in consultation with the High Court.

SHRI P.K. MALHOTRA: Sir, here also, it is in consultation with the High Court.

SHRI K.T.S. TULSI: Here, the Parliament is laying down a law.

SHRI P.K. MALHOTRA: Sir, the Commercial Division will be constituted in consultation with the High Court only. That is what clause 5 says. As I said, Sir, clause 5, probably, needs to be a little bit redrafted, because it sends a wrong signal. It says that, probably, appointment will be done by the High Court. It will not be done by the High Court; actually, the posting will be given by the High Court. There may be a need for a little redrafting of that particular section.

CHAIRMAN: Actually, what I could understand from his presentation, Mr. Tulsi is saying that the High Courts have got the mandate to allocate the business of their own courts, but now Parliament is making. If it is the commercial nature of cases, you allocate for the designated judges. He is not asking about the District Courts. He is asking about the High Court rules of business, how to allocate the cases to a particular Judge, etc. That is the work of the High Court. Already, the Supreme Court has started working on that.

SHRI P. K. MALHOTRA: Sir, I draw your attention to clause 4 of the Bill, which says, "the Chief Justice of the concerned High Court shall nominate such number of Judges of the High Court as required to be Judges of the Commercial Division or Commercial Appellate Division of such High Court."

SHRI K.T.S. TULSI: It says, 'shall nominate'. So, there would be a direction from the Parliament.

SHRI P.K. MALHOTRA: Sir, it is the Chief Justice who would be doing it.

SHRI K.T.S. TULSI: It is 'shall nominate'. The position of the Chief Justice has been whittled down. You say, "the Chief Justice 'shall nominate' such number of Judges…".

CHAIRMAN: The information that we have got is that the Supreme Court has started allocating cases of commercial nature to a designated bench from July 1st onwards. Similarly, wherever the Committee went, it could informally meet the Chief Justices of the High Court. They told us that they have started work, like the Kolkata High Court, the Hyderabad High Court, and so on. All High Courts have said that they have already allocated cases of 'commercial disputes' to a particular bench. This is normally the duty of a Chief Justice. My

senior friend here has asked as to why you were dictating to them by way of an enactment and a provision, as you rightly quoted, in clause 4. Why have you included clause 4? Am I correct, Sir?

SHRI K. T. S. TULSI: You are absolutely correct. That is exactly what I wanted to know.

SHRI P. K. MALHOTRA: Sir, even in my initial submission I have said, so far as the High Court is concerned, constituting a separate division by the Chief Justice himself may not be a problem. When you come to the districts, if you want, say, in Thane district of Mumbai, just one District Court handling all commercial disputes, can that be done under the existing legal framework? It can't be done, because each court has a territorial jurisdiction. As per that territorial jurisdiction, if a commercial dispute arises within that territory, it would go to a particular District Judge. You can't nominate one District Judge for handling all the disputes at one place.

SHRI K. T. S. TULSI: Let us not deflect the debate. The question is: Can the Parliament dictate to the Chief Justices of the High Courts that they shall nominate these many Judges for this particular activity? There is no law till now which tells the Chief Justice that this is how they would constitute their benches. It is an absolute prerogative of the Chief Justice. It will be for the first time that the Parliament would be interfering with the discretion of the Chief Justice. Please examine this. It is going to raise a constitutional issue.

SHRI P. K. MALHOTRA: Sir, I would revert back to the Committee on this. I would file a written reply.

CHAIRMAN: What we could understand from the Bill is that you want to have a separate fast track system parallel to the present High Court and District Courts system. But what about the constitutional mandate? We have a separate fast track system, but it is in the control of the High Court. This is the way you are looking at the issue. If it is so, then tell us that is the way you want to do it. To give you a simple example, when we visited the Kolkata High Court, Mr. Roy wanted to take us to the ancient building. We visited the place along with the Judges. The ancient building was totally hidden by the modern structure of an elevator. The old structure could not be seen at all from our side. Similarly, you wish to have a fast track system. Just as you have the Taj Expressway, where you have six and eight lanes, you want to have a fast track system for commercial disputes. You feel that China's investment is going down and since there is no dispute resolution system there, they are shifting to India and so, we have to provide them things. You are thinking on those lines. But do you want to have a separate system just like a fast track court, which is already in existence, by way of recommendations of the Finance Commission? Under the Twelfth Finance Commission you have made a separate provision for criminal jurisdiction, for cases to be disposed of by a fast track court, by appointing *ad hoc* Judges. The hon. Law Minister, two days ago, gave some statistics saying that about three lakh cases were disposed of by the fast track court system. We would like to have those details too, so that we could quote them in our Report. Do you intend to have, just like fast track courts, a commercial court system, which is not away from the constitutional mandate for a High Court, with jurisdiction of supervision and control of the court system? At the same time, you want to design a new architecture, besides the High Court but under the control of the High Court.

CHAIRMAN (Contd.): This is how we understand this Bill in a comprehensive way. You are stating that the Judges will be out of the present District Judges who have some proficiency on a particular specified law. They will be selected by the High Courts and they will be designated in the District Commercial Courts, but, unfortunately, what you have mentioned in clause 5(3) regarding qualifications is not like that. It is taking Judges from the Indian judicial system and from anywhere they can nominate a District Judge. Therefore, I feel that you want to bring some hybrid type of system. You don’t want to touch the existing system, but, at the same time, you want to have a separate architecture by which you want to test it as to how fast it can go. This is the way we could look at the clauses in which you are specifying the qualification for the District Commercial Court Judges. As the hon. Member correctly said, in clause 5, you are giving a certain direction to the Chief Justice of the High Court that he has to constitute a Division Bench. In that way, it goes on. Kindly tell us if it is like that. Then, we have to look at it from that angle. We cannot mix both. Already, we have mixed many of the things. When we were taking evidence of some judicial officers and also the Registrar of High Courts, they said that it should not be made as a professional group. They wanted to have a general pool of Judges to be appointed, selected by the High Courts as Commercial Courts. The other way of selecting the people who are professionally practising subjects like intellectual property rights was not acceptable to them. This is how different opinions are coming up. That is why, we are asking you if you are having that thinking, then we have to look at it through that lens also and make the Report properly.

SHRI P.P. CHAUDHARY: We know that 838 lakh cases are pending under Section 138 of Negotiable Instruments Act. It is a rough figure. You are saying that you want to include them as commercial disputes, but there can be a problem with respect to the validity of that provision because of non-examination of the other provision of the Act. I think, in this case, as per Article 14 of the Constitution of India, no doubt, discrimination can be made, but only a reasonable classification is permissible. So far as all the cases under Section 138 are

concerned, they constitute a class distinct from other classes. So, I don't think there will be any problem. Out of 2.80 crore cases, 38 cases are arising out of section 138 of the Negotiable Instruments Act. So, you can see as to how this modality can be adapted to include those cases under the jurisdiction of the Commercial Courts.

Secondly, you mentioned about the investments. I think a figure of 186 has been given somewhere. India ranks at 186 out of 189 countries in the category of 'enforcing contracts' in a report titled 'Doing Business, 2014' by the World Bank.

SHRI P.P. CHAUDHARY (Contd.): I think not only the commercial matters but the person who is investigating it in the country can also be subject to the criminal offences of civil nature and all these. If we are addressing only one part of that, only the commercial dispute, and we are not addressing the criminal law and civil law, it may create an imbalance because if some offence is committed, looking at the present scenario, how much time it will take to settle and adjudicate that by the court. Apart from that, as other learned Members have also stated, in our country, why are we putting the criminal courts at back foot? They should also come at the forefront and they should also be taken along with this. So, this move is a good move but, at the same time, we cannot ignore the civil and criminal courts. We are also required to examine these courts along with the commercial courts. Somewhere it is stated that it will be an improvement on the existing system of settlement of commercial disputes. But improvement of what percentage? I think we don't have any evidence to this effect that how much improvement will be there. So, if we create the commercial courts and, at the same time, there is not much improvement in the infrastructure created -- all of a sudden it cannot be created; it will take years to establish these courts -- we will be at the same point, delay in disposal of cases and all that. Both delay and quality of judgement are a problem in our country as on today. Delay is attributed to so many reasons and quality is also attributed to so many reasons. At the same time, in various fields, like science, various specialties are there. But with respect to the Judiciary, so far as lawyers are concerned, you can have specialized knowledge of a particular branch of that law, but so far as presiding officer of the court is concerned, we don't require that. A High Court Judge, if elevated from the Bench, all the time he practices under the Constitution of India. If he is asked to sit in the criminal jurisdiction, quality of judgement will also be affected and, at the same time, delay will also occur. So, is there any proposal with the Government that along with commercial courts we must also have the civil and criminal courts? The persons having the specialized knowledge must be there. Right from the commercial court and district level to High Court and to Supreme Court, all these three streams should run horizontally. In that case, we can reduce the delay and, at the same time, we can also have quality of judgement.

Two Acts have been referred -- Section 18 of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, that is barred, and another is Competition Act, 2002, no civil court has jurisdiction. So, once you bring in the commercial courts, is there any proposal with the Government or is the Government thinking that the necessary amendment is required to be carried out in these Acts so that the commercial courts may have jurisdiction with respect to these matters also?

Finally, I will talk about the uniformity. We have already given the recommendation in respect of Delhi High Court with respect to uniformity. I fail to understand why we have created this British time original jurisdiction in the High Court. What is the problem? Why cannot the uniformity be created? Suppose, in Delhi, original jurisdiction of High Court is there and all the District Courts situated in Delhi are not having the original jurisdiction. But if you go to Noida, Ghaziabad and Gurgaon, the courts have the original jurisdiction. So, for how long will we create this dichotomy? When we are creating commercial courts, at the same time, we have to revisit this aspect of the matter that why these High Courts must be having the original jurisdiction. There must be uniformity of the jurisdiction.

SHRI P.P. CHAUDHARY (CONTD.): As far as court fee is concerned, we think the amount incurred in the litigation would be recovered as court fee. You referred to the Schedule. Without amending the provision of the Constitution, you cannot do it, because the jurisdiction is with the State Government. How can we resolve this controversy? Once we create the Commercial Division Benches and, at the same time, decide the court fee, there will be another problem. How can we address them?

SHRI P.K. MALHOTRA: Sir, judicial reform is an ongoing process. In the past also, amendments were brought when ADR was introduced, when special courts were introduced and when speedy trials were introduced. It is an ongoing process. Setting up of Commercial Division Benches for settlement of commercial disputes is also a step in that direction. So far as reforms in civil and criminal laws are concerned, these are being looked after separately. As I earlier submitted, the Law Commission of India is looking into the criminal justice system reforms. When its report is received, maybe, the concerned Department will be taking care of it. With regard to other civil disputes, I have earlier submitted the changes that we have brought here. There should be a timeline by which the reply should be filed, the arguments should be completed and the judgement should be given. Once we feel that it has worked successfully, maybe, we will incorporate it for other disputes also in the CPC. But it will depend upon the successful working of this legislation. I think this is an ongoing reform.

This is just one area where we have come out with the reform. With regard to other areas, reforms had been brought in the past and they will be brought in the future.

SHRI P.P. CHAUDHARY: You are providing this provision of time-limit for disposal of cases. We have seen that in some cases when the Supreme Court directed that the matter should be decided within this time-limit, those matters could not be decided within that time-limit. I am citing Article 226 (3) of the Constitution. If any *ex parte* interim order is granted by the High Court, then it has to dispose of the application within a period of fourteen days. But it never happens that way. Sometimes it is not even done within fourteen years. You are providing it in the law without any consequences. The provision is given in the Constitution that it has to be disposed of within fourteen days. Why don't they dispose them of within fourteen days? There may be many reasons. It may be because of paucity of judges or too much burden on the judiciary. Providing it in the law but not providing the mechanism to dispose them of quickly is incompatible. We can provide it in the law. But the implementation part is equally important.

SHRI P.K. MALHOTRA: Sir, the hon. Members are not only people's representatives but also senior advocates. I would like to be guided and enlightened by them. There is a division of power between the legislature, the executive and the judiciary. How can we ensure that the time-limit given in the law is enforced? What is the best way to ensure that the time-limits prescribed under various legislations are enforced?

SHRI K.T.S. TULSI: The easiest thing is to prescribe a period. The Representation of the People Act says that the election petition will be decided in six months. It is not decided in six years. The Hindu Marriage Act says that the matter will be disposed of within six months. It is not disposed of within six months. You also have the experience. Laying down the time-limit means nothing. To think that we have laid down the time-limit and now the cases will be decided like that; it is not going to happen.

SHRI P.K. MALHOTRA: Sir, at least, it has a persuasive value.

SHRI P.P. CHAUDHARY: There are two things. We ignore them every time. One is laying down the time-limit and second is its implementation. We are very poor in implementation and we never think about it. We never visualise it. No infrastructure is created to see how time-limit fixed by a law can be implemented.

SHRI P.K. MALHOTRA: Sir, as far as infrastructure is concerned, I think a lot if improvement has been made.

SHRI P. K. MALHOTRA(Contd.): My information is in Delhi in District Courts Judges don't sit after 12 o'clock saying that they do not have pending cases with them.

SHRI P.P. CHAUDHARY: That is mismanagement. It depends on court to court. That is why case management system is not available properly. If cases are pending for the last 25 years, how can they say that they do not have cases before them?

SHRI K.T.S. TULSI: If you file a case under Section 138 today in Delhi, the first hearing will be after two years. Case under Section 138 was sought to be disposed of on second hearing. The realities are different. The Judge is running through his cause list without passing any meaningful order.

CHAIRMAN: Actually, I want to attract your attention to two or three issues. Actually Mr. Joice has taken up the issue of clause 14, the Debt Recovery Appellate Tribunal. "An appeal or a writ petition filed in a High Court against the orders", it covers the debt recovery and Appellate Tribunal also. When we examined the bankers, they told us that under the existing system the Debt Recovery Tribunal and the Appellate Tribunal are working very well. But when you are making jurisdiction for the High Court also, two versions are given. One is you better abolish the Appellate Tribunal and give it to the Division Bench because in many of the Appellate Tribunals retired Judges are sitting there and they are staying there by implementing the Securitisation Act. They grant stay. Bankers' huge money is locked. They can't go for auction or for sale or for any such thing. Mr. Joice was telling that you were reducing one forum like that. Here if you want to say that Debt Recovery Tribunal will be taken care of by the appeal before the Division Bench, some of the CMDs of banks, whom we have examined, preferred that one. Their experience with the Debt Recovery Tribunal is good. But when they go for appeal it is bad because a lot of cases are pending. They grant stay indiscriminately. Therefore, they are not able to recover the money. Unless they get the money back, they can't circulate it in the banking system. That is one of the examples we could understand from them.

Regarding the court fee structure, you quoted that the court fee is a State subject, therefore, we can't do it at the national level.

SHRI P.K. MALHOTRA: Sir, regarding court fee, what I quoted was that it is in State List, List-II of the Seventh Schedule, and clause 3.

CHAIRMAN: "Officers and servants of High Courts, procedure in rent and revenue courts, fees taken in all courts except the Supreme Court". If you see the State List, Entry 66,"Fees in respect of any of the matters in this List, but not including fees taken in any court". Similarly, if you see the Concurrent List, last Entry, Entry 47, there also it says, "Fees in respect of any of the matters in this List, but not including fees taken in any court". Therefore, that should be specific entry for the court fee.

SHRI P.K. MALHOTRA: Sir, according to me, that is Entry 3 only, "fees taken in all courts", except of saying court fee, they are saying 'fees taken in all courts'. It is a different terminology used. That is all. That is excluded in Entry 46.

CHAIRMAN: Yes, but, if you see the Concurrent List, your definition of 2(c) is more or less, almost 90 per cent, covered in the Concurrent List. You can just make a small homework. You can compare between what is in the Concurrent List and what is in the definition clause 2(c). Many of the cases are in the Concurrent List.

SHRI P. K. MALHOTRA: Yes, Sir.

CHAIRMAN: Now, you are creating a court for looking after the issues of Concurrent List. Therefore, we have to see how to go about it. After the Right to Information Act, we started to work only on that. We will frame the law. It is for the State Legislature to accept it or not. We will open it up and a uniform structure will be advisable just like GST. A uniform structure of the court fee is advisable. Gradually, we are coming and strengthening the federal system. That is different. But, for this purpose, you have to stipulate a certain court fee structure because you are creating a new architecture. I want to repeat it. You want to have a new architecture. That is there in your mind. But, you are bogged by the consultative system which is now available. Therefore, you do not want to accept that we want to have a simultaneous, parallel system of architecture. You could not come out with that. Because, you feel that the consultative system may question you tomorrow. It may set aside this particular law because it is the intention of the Executive and also the Parliament is to make the powers taken away from us. This is the way that we may be having some confusion. Kindly go to it. It is the bravest law that we can look at it.

SHRI P. K. MALHOTRA: Yes, Sir.

CHAIRMAN: If you make it proper, then it can be followed properly for all the matters that are relevant not only to the commercial courts but to other things also. We have already succeeded in giving access to justice for the poor people by making a national law. It is very well known to you about the creation of Lok Adalat by way of Parliament enactment but in consonance with the High Court and the State Government. You have already made the National Legal Service Authority similarly. You have already made the system under Debt Relief Act because you thought that bankers are dealt by Department of Financial Services, therefore, you are making a court system separately. You have taken away the civil jurisdiction that is already vested upon the States. Now you have taken it up. Similarly, you are taking one after another away from them. But, again you want to pull it down and put it in another track. Kindly, make it proper. It should not end up with a similar way of tribunal system. It should be workable. Just like creation of fast track court is a kind of experience for you as to how many criminal cases could be disposed of. That matter is one experience in your hand. Another experience is that of what you are now trying in the commercial court.

Finally, I would like to suggest that when we compare the Select Committee's Report on the previous Bill, that is, on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts, we find that they have never contemplated the district court system. They made every High Court to have the original jurisdiction. Why have you left it? Why are you giving only the powers as you correctly said in the Indian Courts Act of 1838 enacted by British Parliament which confers powers to the three presidential courts? You want to allow them to have the original jurisdiction. Why don't you allow the other High Courts also to have the original jurisdiction which was contemplated in the earlier Bill? But, you have left it. You now take another course to let us have commercial district courts for the rest of the country except these five High Courts which are having the original jurisdiction. Why do you differentiate them? We also need the justification for that.

CHAIRMAN (CONTD.): Thank you very much for your kind cooperation. We need some more things. After Chandigarh visit, we want to discuss the draft report. At that time also, if necessary, we will call you for final vetting with you, for making a proper report.

SHRI P.K. MALHOTRA: Sure, Sir. I will be sending my response within a week's time.

CHAIRMAN: Thank you very much.

(The witnesses then withdrew.)

Representative of the Indian Council of Arbitration, New Delhi:

Shri D. Sengupta, Registrar-cum-Additional Director

CHAIRMAN: Now, Mr. D. Sengupta, Additional Director, Indian Council of Arbitration, I request you to give us your opinion because you are already a joint creation of Ministry of Commerce and FICCI. From your experience also, you can throw some light upon this particular Bill.

SHRI D. SENGUPTA: Good afternoon, Mr. Chairman. You, perhaps, know that Indian Council of Arbitration was created by Government of India in the year 1965. This year, we are going to celebrate 50th year. So, it is a very good occasion that the Arbitration Act is also going to be amended very soon and commercial court is also happening. We have been in this arena for fifty years and because of our experience and tested mechanism of dispute resolution, we have got certain things to say. But independent of what discussion has already taken place, I would like to rather concentrate on questionnaires; at least, the questionnaires which are relevant to us.

Take for example, question number 1 which talks about whether we agree that there is a need for the present Bill. Now, I have consulted the business and industry. They are very empathic about this Bill without knowing the mechanism to adopt it, how to implement it. But at the very inception of this Bill, I would say the impact is very good. They are saying that such a Bill for commercial disputes is absolutely necessary to establish a speedy, cost-effective and efficient dispute resolution mechanism. What I found in my association with Indian Council of Arbitration is that business and industry want timely justice, timely adjudication of disputes. Time is the essence of arbitration or any kind of dispute resolution mechanism. So, whenever anyone talks about any mechanism that would speed up, that would expedite the dispute resolution process; they become gung-ho about it. So, this is the impact and this is the thing I would like to communicate to you.

Now, the question is that from the business and industry perspective, what is the necessity of setting up this commercial court. What does business want from this commercial court? They are saying that the existing mechanism is not able to cope with the ever-increasing commercial disputes with the volume of court work ever increasing. There comes the emergence of establishing commercial courts to not only ease the burden of judicial functioning but also to resolve commercial disputes in a speedy manner. Moreover, since commercial disputes are highly technical in nature, it requires specialised knowledge on the subject. On this aspect, the recommendation of the Bill for training of judges on latest trends and global good practices and commercial transactions are highly commendable. What I find in my association with Indian Council of Arbitration, there are so many disputes that are referred to Indian Council of Arbitration, so there are disputes of many nature. Some may have arisen out of construction contracts, some may have arisen out of some other technical dispute. Basically, public sector organisations have sort of a syndrome of biasness about appointment of judges. But what I find is that for adjudication of technical disputes, there should be some techno-legal person to adjudicate upon. There should be a separate mindset. If the commercial courts are set up with a separate mindset, with a separate mechanism or procedure with an intention to speed up the process, I mean the dispute resolution process, that would be the most welcome move, I would say.

SHRI D. SENGUPTA (CONTD.): Now coming to certain criticism...

CHAIRMAN: I see that you have given your views in a written format.

SHRI D. SENGUPTA: Yes, I have already given a written note.

CHAIRMAN: If you want to raise any issue other than these -- you were in the discussion earlier -- if you want to pinpoint any other issue, you can pinpoint it.

SHRI D. SENGUPTA: Sir, I have already given my views, but the thing is that commercial disputes are required to be arbitrated; these are required to be under the Alternative Disputes Resolution Mechanism. There is no doubt about it.

CHAIRMAN: Do you want to have a separate clause for this in the Act?

SHRI D. SENGUPTA: I would like to have a sort of recognition of institutional arbitration in the very Bill. From one particular threshold, the Court should recognise that the parties can have a sort of discretion not to go to the appellate forum but to go for some other forum. There should be a separate agreement between the parties that at this particular juncture we can adopt institutional arbitration. That is what I wanted to say.

SHRI P.P. CHAUDHARY: Basically, your idea is that we must have this arbitration clause and all that. Do you suggest that there must be a pre-litigation mediation -- nothing to do with this before court -- and thereafter commercial courts? So, we divide the mediation in two parts. If you suggest so, the first is pre-litigation

mediation and the second is, once petition is filed, post-litigation mediation and thereafter the Commercial Courts. If you suggest that, will it reduce the delay in disposal of cases?

SHRI D. SENGUPTA: May I elucidate this point? My point is that business and industry are very much perturbed about the period and the post Award period. Now any aggrieved party can go to the court challenging the Award under Section 34 and that particular case can go on for years. Now this particular period, this particular issue has to be addressed. Now, I am saying that having read this particular Bill, what I found is that there are enough provisions for the litigants to go for three forums to finally get the result, outcome. Now, first there is a two-tier system, then they can go to Appellate system. By the time they will go to the appellate system, appellate jurisdiction, they have already exhausted the two-tiers of adjudicating system. So, if the time is of the essence of arbitration or Dispute Resolution System, there should be some mechanism where I can find, or I want to find, that there is a speedy resolution process, there is a time-limit, there is a time structured process, that is, everything is structured. What I find in this Bill is there are loose ends in the entire Bill. Nothing is definitive. Now say, in the appointments of Judges, District Courts, Appellate Divisions, etc., there are so many cross-currents. I think it is yet to form the final structure. I think it demands a lot of debates before we go for a final kind of thing.

CHAIRMAN: That is fine. Thank you very much. If you have got any other suggestions you can give us within a week's time.

SHRI D. SENGUPTA: Can we have the minutes of this meeting so that we can go further?

CHAIRMAN: Actually the provision is like this. Till the final draft is prepared by us and submitted to both the Houses of Parliament, it has to be kept confidential. After the report is made then only we can circulate it to others.

SHRI D. SENGUPTA: So, I can add to it?

CHAIRMAN: It cannot be made the minutes of the Committee.

SHRI P. P. CHOUDHARY: The proceedings of the Committee cannot be divulged. It is only the Chairman who is competent to do.

SHRI D. SENGUPTA: Yes, Sir. That's the confidentiality.

CHAIRMAN: Thank you very much. The meeting is adjourned.

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(The witness withdrew and

the Committee then adjourned at 4.57 p.m.)

THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE MET AT 3.00 P.M. ON TUESDAY, THE 21ST SEPTEMBER, 2015 IN COMMITTEE ROOM 'D', PARLIAMENT HOUSE ANNEXE, NEW DELHI

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CHAIRMAN: DR. E.M. SUDARSANA NATCHIAPPAN

WITNESSES:

Dr. G. Narayana Raju, Member-Secretary, Law Commission

Shrimati Dr. Pawan Sharma, Joint Secretary

Shri A.K. Upadhyay, Addl. Law Officer

Shri Mahendra Khandelwal, Addl. Government Advocate, Legal Affairs

CHAIRMAN: A very good afternoon to the hon. Members and officials present here. Today, we have invited Member-Secretary, Law Commission of India to present views of the Law Commission on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015, as also on the existing Court Fee structure and to explore the possibility of levying differential Court Fee in the Country so that corporate sector and high net worth individuals pay higher for the services taken by them. We are confining ourselves to the Member-Secretary alone because the Law Commission of India is not reconstituted. The term of the existing Law Commission of India is over. Hence, there are no Chairman and Members.

We welcome Shri G. Narayana Raju and other officers of the Law Commission of India to this meeting. You are aware that we have invited you to know your views on the prevailing court fee structure in the country and as prevalent in other democratic countries like the United Kingdom, Singapore, Australia and Dubai and the possibility of levying differential court fee in the country for the corporate sector and high net worth individuals so that they pay the appropriate court fee for the services obtained by them. Actually, it is not just the corporate sector. Whatever high value matters are there, the litigants must pay. The pecuniary jurisdiction suggested in the Law Commission of India's 253rd Report is that. On that basis only, this Bill is drafted. The draft Bill was given by the Law Commission of India. We find that the Commission, in its 14th, 128th, 189th, 220th, 231st, 236th and 253rd Reports has examined the issues of court fee structure in the country. The Commission, in its 14th and 128th Reports opined that the underlying reason for enhancement of court fees appears to be the collection of more revenue by the States, which is not a sound public policy and it will discourage the honest, genuine and poor litigant. The Commission was of the view that any enhancement of court fee should not adversely affect the right of access to justice and the amount collected by way of court fee should not be more than the expenditure incurred in the administration of civil justice. In its 220th Report the Commission reiterated its view as in the 14th Report and recommended that there should be some measure of uniformity in the scales of court fees in the country and there is no justification for any differential treatment of different suitors in the matter of court fee. The Government should consider the feasibility of a fixed maximum chargeable court fee. In its 236th Report, the Commission was of the view that court fee should be based on the value of the suit and may be charged on *ad valorem* basis subject to a reasonable ceiling limit. In its 253rd Report, the Commission was of the view that court fee needs to be linked with the time consumed by the litigants in the conduct of their case, so as to discourage frivolous litigations and adjournments.

There was some input that the Supreme Court Bar too earlier opposed it and, subsequently, they came forward with certain suggestions for increasing the court fee. The overall picture is that, though the Law Commission of India has very much focussed on the poor litigants, we are now considering the Bill where the pecuniary limit is Rs.1 crore and above. Therefore, that issue would not come here. The poor litigants and the people who can't afford are already taken care of by the Constitutional direction in the Directive Principles of the State Policy; there were executive orders; there was a 20-point programme; the poor litigants were compensated of all the expenses. The CPC itself in Order 39 allows that poor people can file affidavits and get the consent of the court to exempt court fee and other expenses. Subsequently, there is a Lok Adalat Bill to look after the needs of the poor people. Then, there is the National Judicial Services Authority created to look after the needs of the people who can't afford; there were awareness camps which spread the message of Government taking care of all expenses while pursuing the litigation. Therefore, now, we are looking at the fast track dispute resolution system; it is one of the needs of the country now. It started in 2003 after the Law Commission of India gave its Report. Therefore, there is a feeling that we have to explore the entire world coming here for dispute resolution because we are experienced in the past 200 years unlike China which does not have any hierarchical structure of the Judiciary. We have everything in place. The only negative point on our side is the disposal is taking too much time. Therefore, the Government and the people felt of the need for a fast track dispute resolution system. When you go in for a fast track dispute resolution system, you need to pay just as you

pay the toll gate in an express way in transportation. Similarly, if you go in the normal system, whatever is the fee charged in the normal civil disputes resolution system is inbuilt. If you want to avoid the conventional court system, then you get the system of arbitration. International arbitration is very costly. For a single adjournment, the Singapore arbitration charges $ 1,000; for the second adjournment, it is $ 5,000; for the third, it is $ 25,000. That way, they have set up a system by which you confine within the specified period for quick disposal.

Therefore, we expect from the Law Commission of India some inputs on this aspect. You may present your views, you may add to it by way of a written note and we will circulate that among Members. Normally, you will be replying on the basis of the available Reports by the Law Commission of India. If you can present your views on the court fee structure, it would be nice. On State's power under the Constitution, the State Assembly decides on it. At the same time, when it comes to the High Courts, it is the High Court in consultation with the State Legislature. The Supreme Court comes up with the fee structure in consultation with the Parliament enactment or by exercising its own powers under the Constitution.

CHAIRMAN (Contd.): Therefore, what we would like to suggest is we can have a model court fee structure which was in existence before the powers were devolved to the State List. Earlier, the national court fee structure was there. Subsequent to the federal set up, that was transferred to the State List. Therefore, can we make a model court fee structure by which the States will have their own power to amend the court fee structure according to their needs, just like the CPC and the CrPC are providing? Even though it is in the Concurrent List, the State Governments have got their own right to amend the CPC or the CrPC according to the need. Similarly, can we make it as a model court fee so that there can be a single structure by which people can understand that if they go for this fast track system, then, they have to pay this much of fees? Can we do it? Kindly clarify that.

You know very well that the proceedings of this meeting are confidential and it shall not be permissible for the participants to reveal it in the media till the final report is submitted to both the Houses of Parliament. Now I request the Member Secretary, Dr. G. Narayana Raju to make his observations. After that, our hon. Members would raise certain questions and seek clarifications. If you can clarify it now, you can do so; otherwise, if you feel that it has to be supported with more data and presentation, then, you can send it in a written format. Now, Dr. Raju.

DR. G. NARAYANA RAJU: Thank you very much, Sir. Hon. Chairman and hon. Members of this august body, you have made my job very easy by saying it first that at present the 20th Law Commission's term is over, that was completed by the end of the last month i.e. August, 2015. The new Law Commission, i.e., the 21st Law Commission was constituted, but the Chairman and the Members of the Commission are not yet appointed. So, at present, there are no Members and Chairman in the Law Commission. My views are limited only to the Report submitted by the 20th Law Commission, which is known as the 253rd Report on the Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015.

Sir, actually, this issue of commercial courts was taken up by the Law Commission in 2003. The proposal in 2003 was for constitution of High Technology Fast Track Commercial Divisions in High Courts. Thereafter, based upon this proposal, the Government of India has prepared a Bill which is known as Commercial Division of High Courts Bill, 2009. That Bill was passed by the Lok Sabha. When it was transmitted to the Rajya Sabha, the Rajya Sabha referred this Bill to a Select Committee. The Select Committee gave certain recommendations. The Government has accepted all the recommendations of the Select Committee. The Government then re-drafted the Bill. When the re-drafted Bill came up for discussion in Rajya Sabha, certain concerns were raised by the hon. Members of Rajya Sabha saying that when the Government was making special courts for commercial disputes, why not such special courts be there for civil and ordinary disputes, and they want to make a special privilege for this. Some other issues were also raised by the hon. Members in Rajya Sabha. To address these concerns, the Government wanted to have some more time, and thereafter they referred this Bill to the Law Commission for a comprehensive research. The Law Commission, after making a comprehensive research, submitted this 253rd Report to the Government. Then, the Government, based upon this 253rd Report, made the present Bill, known as Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 and now it is pending before the Parliament.

Sir, actually, you know very well that the existing litigation system is very time-consuming and the litigants want to extend the proceedings in the court of law by taking more adjournments. So, the intention is to prevent these vexatious and frivolous litigations in the court of law. The Law Commission made a research on this aspect. It felt that we have to make cost imposition in every case and the court fee must also be enhanced depending upon the time consumed by the litigants. That was the issue. But when they were making special procedure, the Law Commission was of the opinion that the procedure laid down and recommended in the 176th Report relating to Arbitration and the Conciliation Act should be adopted for the commercial courts also. Then, the Law Commission, while preparing this 253rd Report, also based it upon the model court report. The Justice Department had constituted a Committee for Model Court under the Chairmanship of Justice P.V. Reddy, and

that Committee submitted a report on Model Courts to the Government. Based on this Model Court, the Law Commission has prepared this present Bill.

Coming to the cost as well as court fee structure, the Law Commission was of the opinion that in every case the court has to impose cost, except where the court was of the opinion that cost was not to be imposed. That means hitherto the procedure is that no cost was imposed, but imposition of the cost was an exception. The Law Commission wanted to shift that system. In every case the court has to impose cost unless the court feels that the cost is not necessary. So, they wanted to take the same procedure of arbitration and conciliation even for imposition of the cost.

Coming to the court fee structure, the main aim is to deter the litigants from making vexatious litigation and also prevent them from taking a number of adjournments in this regard. That is why they wanted to link this court fee structure with the time consumed by the litigants in the court of law. That is why they wanted to go for the U.K. model as well as the Singapore model. In U.K., there is the Civil Procedure Act, 1997, Civil Procedure Rules, 1999 and Part 58 of the Civil Procedure Rule lays down certain practice directions which are applicable only to the commercial disputes. They laid down a detailed procedure how to conduct the commercial disputes in courts.

Similarly, in Singapore, you already know that they want to relate the court fee structure to the time consumption. Say, for example, the first three hearings are free; up to five hearings, there is a fee of $1000; and up to ten hearings, there is an extended amount; and thereafter, the scale keeps on increasing like this. So, they wanted to link this enhanced court fee structure with the time consumed by the litigants. So, both the imposition of cost as well as the court fee structure is to deter the vexatious litigants from proceeding further. That was the intention. Once this system is successful in case of commercial disputes, then, the Law Commission was of the opinion that you may extend it to all other cases also in future. That means, they wanted to take this commercial disputes as a pilot project so that you can apply it to future disputes also.

Then, coming to the earlier Reports, Sir, I would like to say this. The Law Commission has given so many Reports. For example, it has given the 236th, 231st, 189th and 220th Reports. Though they have recommended for enhancement of the court fee, it was not directly related to the commercial disputes, I think. This is my view, but I have to check it. It appears that these Reports were not discussed in relation to the commercial disputes. They want to enhance the court fee structure in general. For example, as per the 236th Report, they want to enhance the *ad valorem* court fee structure because, at present, the minimum is only Rs.250 and the maximum is only Rs.2,000.

DR. G. NARAYANA RAJU (Contd.): It was made in the year 1950 and it is still as it is. So, they want to increase this 'minimum Rs.250' to some higher level and also to extend the 'Rs.2,000 maximum level' to the extent of 1 lakh rupees. In this regard, the Law Commission was of the opinion that instead of Parliament making a law superseding the earlier Supreme Court rules, the Supreme Court itself should address this issue so that the Supreme Court constitutes a Committee and it would raise the *ad valorem* fees. That was the crux of 236th Report.

The 231st Report only deals with the mode of payment of the court fees, i.e., payment by Demand Draft or Money Order etc. In other cases, it is relating to enhancement of the court fees in subordinate courts. However, in my opinion, all these Reports are not related to the commercial disputes. But, finally, the Law Commission in its 253rd Report opined or recommended to the State Governments to have a re-look into the enhancement of the court fees under their legislative domain of Entry 3 in List II of the Constitution. This is the main view taken by the Law Commission. This is only a recommendation to the State Governments to examine the enhancement of the fee under their legislative domain. That is all. This is relating to 253rd Report of the Law Commission.

SHRI P.P. CHAUDHARY: You are talking about the Supreme Court rules which provide the procedure for imposition of court fee, etc. But that is a subordinate legislation. If the Stamp Act and the Civil Procedure Code are amended, then respective changes are required to be carried out by the Supreme Court also. So, I don't think we are required to take the Supreme Court into confidence because that is only a subordinate legislation. So, they have to act in accordance with that. Once the relevant provision of the Civil Procedure Code as well as the Stamp Act, etc., are amended, then the respective changes are required to be carried out by the Supreme Court. These are only subordinate legislations.

DR. G. NARAYANA RAJU: Sir, Article 145 of the Constitution empowers the Supreme Court to make rules relating to the court fee structure. This Article 145 starts with 'Subject to the provisions of any law made by the Parliament...'.

SHRI P.P. CHAUDHARY: Yes; that is the point. It says, 'Subject to any law made by the Parliament'. The Constitution nowhere has directly empowered the Supreme Court. The Supreme Court can't make any law inconsistent with the law made by the Parliament.

DR. G. NARAYANA RAJU: Sir, the Law Commission's view is that since the Supreme Court has already made certain rules relating to court fees, instead of Parliament superseding these rules made by the Supreme Court under Article 145, give them a chance so that they will constitute a Committee and they will fix the court fees. That is the view of the Law Commission.

SHRI MAJEED MEMON: Would the Law Commission propose imposition of heavy costs with every adjournment, as they have spoken about Singapore and U.K., in our country and also fix the outer limit of the life of a litigation in commercial courts?

DR. G. NARAYANA RAJU: That means, you want to fix the time-period for completion of the litigation. Here, the Law Commission was of the opinion that the procedure before commercial courts should be the same as they recommended for arbitration and conciliation in their 176th Report. In 176th Report, whatever procedure they recommended for arbitration and conciliation, they want to adopt the same procedure even in the commercial courts also.

MS. ANU AGA: What percentage of the legal cost that a client pays to the lawyer should be the court fee? This is just to get a feeling.

CHAIRMAN: Madam, it is actually within the purview of the State Legislature. Every State imposes *ad valorem* fee. On the basis of the Tamil Nadu Court Fees Act, I can tell you that if you want to have a suit and if the value of the property is Rs.10 lakhs, then you have to pay 7.5 per cent of the value as court fee at the initial stage. In the first appeal also, you have to pay the same structure. Now, when you go to the second appeal, which is normally before the High Court, it will be half of it or according to the court fee structure which was made by the High Court. There will be a small differentiation. It will be lesser than that. If the same case comes as SLP before the Supreme Court, then it will be much more less. It will not be *ad valorem* fee. It will be only fixed court fee on which they are doing it.

SHRI MAJEED MEMON: Is there a maximum ceiling?

CHAIRMAN: Yes. Now they have raised the maximum ceiling. What we could understand from our overall simple research is that we are making the lowest level accessibility to the justice system very costly for the litigant. When you go to the higher level, it is costing comparatively less. It is a colonial system of working. You don't come to the court. Poor fellows go away. In that way, they have made it as *ad valorem*. But, on the other hand, they were having a thinking that 'why I have to resolve the dispute between the private individuals. They have got many systems within their own reach. They can do it.' But as a democratic country, under the Directive Principles of State Policy, we have to help the poor litigants to have access to justice.

SHRI PARIMAL NATHWANI: When we are talking about the adjournment and the court fees, normally, many times we have seen -- whether it is the lower court or the High Court or the Supreme Court -- that when our lawyer reaches the court, he comes to know that the matter is adjourned. Even no date is mentioned there sometimes and all of a sudden, just one day before, the matter would be listed on the board. Now, at that time, the lawyer is not prepared for that. He may be busy or he may be travelling to some other destination during that time. So, in that case, would this fee be applicable or not? This is what my thinking is, and this is normally happening. I am just facing one suit, the admiralty suit against the insurance companies, in the Gujarat High Court. It has not come up. We are trying and trying for more than 15 years. But it is not reaching to the board because in every two-three months, the Judge gets changed. So, all issues are like that. In that case, what is the position? When the Judges themselves are busy, when they are adjourning the matter or they are not willing to continue with the matter, in that case, what is the financial implication? This is what I would like to know.

SHRI MAJEED MEMON: To add to my friend's point, if the adjournment is forcibly granted to the litigants, the justice-seekers, who are not seeking adjournment, then should they be penalized?

CHAIRMAN: I would like to know whether any of your Law Commission Report has referred to this aspect.

DR. G. NARAYANA RAJU: No, Sir, that aspect was not referred to.

CHAIRMAN: Actually, the Law Commission is having a limited scope of looking into the issues. They are taking up for discussion only those issues that come before them. But from my knowledge, what I can suggest to the hon. Member is that even now the Civil Procedure Code, which was amended in 1973, expects that if the court feels that an unnecessary adjournment is there, then they can impose the cost. Those powers are given to

the courts. But they rarely apply it. Only by an affidavit, by filing the reasons, which can be accepted by the court, they can get the adjournment.

SHRI MAJEED MEMON: Sir, absence of Judge is not a vexatious adjournment.

CHAIRMAN: Yes. The law is very clear. We have got everything. But it is not properly followed. That is the only thing.

DR. VARAPRASAD RAO VELAGAPALLI: Sir, I have a few clarifications which I needed from them. The first is, whether there is any original jurisdiction in the High Courts, all Highs Courts. The second point is, since there is a pecuniary difference, jurisdictional difference in different High Courts, how are we going to deal with it?

SHRI VARAPRASAD RAO VELAGAPALLI (Contd.): The other point is, whether there is a possibility for direct appeal to the Supreme Court.

SHRI MAHENDRA KHANDELWAL: The last point you said is direct appeal to the Supreme Court. The Law Commission itself, in its 253rd Report, has stated that the provision in the earlier 2009 Bill was that appeal from the Commercial Division will directly go to the Supreme Court. The Law Commission examined this issue and said that it would not be proper to overburden the Supreme Court by taking direct appeal to the Supreme Court in every case. Legally, there is no bar. But the problem is that the Supreme Court is already overburdened. So, direct appeal to the Supreme Court is not advisable as the Law Commission in 253rd Report has said.

SHRI MAJEED MEMON: Is it the only argument that the Supreme Court is over-burdened? There could be another argument, which, you may correct me, is that the litigant may not be deprived of one tire in between. If there is a remedy that you can seek in the High Court, why should he be deprived of that benefit?

SHRI MAHENDRA KHANDELWAL: That is also one of the arguments, but we know that there is a provision of direct appeal to the Supreme Court in many statutes. For instance, TDSAT appeal goes to the Supreme Court; National Commission goes to the Supreme Court. So, there are provisions. In this particular case of Commercial Division, the Law Commission has categorically stated that it was not advisable.

CHAIRMAN: But the Hon. Member is correct. In the case of National Commission's appeal, it is the third tier that they are using. So, they cannot skip the second tier. You cannot go to the Supreme Court directly. Mr. Parimal, section 35B of CPC, “Costs of causing delay -- If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit fails...". In that way, it goes on giving the reason and the Court has got the power to impose the cost for every hearing. The provision is already there.

SHRI MAJEED MEMON: There are statutory provisions. For example, if you go to the Criminal Law, you will find that in stringent legislations like MCOCA or TADA, there is a straightaway appeal to the Supreme Court from the Trial Court. Of course, it was argued time and again why an accused or a litigant should be prevented from having the benefit of one tier in between. In economic offences like 2G trial, etc., which is going on before the Special Judge, CBI, after the trial court concludes, there is no appeal to the High Court. So, exclusion of High Court can only be expressly provided if the contingency demands.

SHRI VARAPRASAD RAO VELAGAPALLI: The other point is: Are you permitting the original jurisdiction in the High Courts?

SHRI MAHENDRA KHANDELWAL: Those five High Courts which are already having original jurisdiction, they will continue to have original jurisdiction.

SHRI VARAPRASAD RAO VELAGAPALLI: That is fine. But in rest of the courts, it is not there. What will happen to the Commercial Courts?

SHRI MAHENDRA KHANDELWAL: Actually, in the 2009 Bill there was a provision that all the commercial suits of specified value shall directly be filed in the High Court and shall be dealt with by the Commercial Division of that High Court. But the Law Commission in the 253rd Report has said that it is not legally correct to confer jurisdiction to the High Court.

SHRI VARAPRASAD RAO VELAGAPALLI: In case, it comes into implementation and if Parliament approves it, how do you handle this? It has to go from the Commercial Court, then the Division Court, then the Appellate Court or people can go directly to the High Court. What are we contemplating?

SHRI MAHENDRA KHANDELWAL: If the statute itself provides that the suit of specified value of commercial nature shall be filed directly in the High Court, it means the Parliament in its wisdom is conferring jurisdiction on the High Court to deal with such a situation.

SHRI VARAPRASAD RAO VELAGAPALLI: Kindly don't misconstrue me. I am just asking. What is your suggestion? Is it feasible or not?

CHAIRMAN: You are asking for original jurisdiction for all the High Courts. That was the earlier Bill. Now, we have taken it away. The proposed Bill has taken away that original jurisdiction. Original jurisdiction is now taken away. In that place, there is a constitution of District Commercial Court and the appeal will go to the High Court Bench of two Judges. Already, five High Courts have original jurisdiction. They will not have Commercial District Courts, but they will have the original jurisdiction. That is the proposed Bill.

SHRI VARAPRASAD RAO VELAGAPALLI: What about pecuniary jurisdiction variants in various courts?

CHAIRMAN: Now, what they propose is that they make it Rs.1 crore at bottom level and above it is uniform. You have to go to the regular civil court.

SHRI P.P. CHAUDHARY: Once this Commercial Court comes into force, then why this dichotomy with respect to some of the High Courts having original jurisdiction and some of them will not have? Is it not proper that we must also carry out the amendment in the respective provision that all the High Courts must have, once you implement the Commercial Courts Act, been governed by the Commercial Courts Act, not by their original jurisdiction? There must be uniformity on this issue. Once you go in for the Commercial Court and everything is provided therein, is it proper that some of the High Courts have Commercial Court and some will not have?

SHRI MAHENDRA KHANDELWAL: So far as the pecuniary jurisdiction of High Courts is concerned, these five High Courts have a different kind of pecuniary jurisdiction. But the problem here is that their pecuniary jurisdiction is decided in accordance with the Suit Valuation Act. Now, here, the specified value has to be determined in terms of clause 12 of the Bill. In some cases, both may be the same, but in some cases both may be different. According to Suit Valuation Act, pecuniary jurisdiction may be something different and according to clause 12 of the present Bill the pecuniary jurisdiction may be different. How to determine the specified value is given in clause 12 of the Bill. The details are given in clause 12 of the Bill, how to determine the specified value. The specified value is Rs.1 crore or above or whatever it may be, because there is an express provision in the Bill itself 'that any such higher amount as may be determined'. It may be possible that Rs.1 crore may be enhanced to Rs.2 crore or Rs.3 crore. The power is given in the Bill itself to the Government. For enforcing a Bill in a particular High Court, the concerned State Government and the High Court will be consulted.

CHAIRMAN: Your question is: Why have some courts original jurisdiction while others do not have?

SHRI P.P. CHAUDHARY: Once this Commercial Courts Bill comes into force, in case of conflict between the two enactments, given the fact that some High Courts have original jurisdiction, whose provision will have over-riding effect?

SHRI MAHENDRA KHANDELWAL: The provision is given.

SHRI P.P. CHAUDHARY: By this Bill itself, we can provide that there will be uniformity in all High Courts irrespective of any provision. Is there any proposal with the Government to this effect?

SHRI MAHENDRA KHANDELWAL: As of now, there is no such proposal.

SHRI P.P. CHAUDHARY: The Government is not thinking about it. Is there any logic for retaining the original jurisdiction?

SHRI MAHENDRA KHANDELWAL: That original jurisdiction has been given by different statutes.

SHRI P.P. CHAUDHARY: It has been given. But, is there any logic to continue with this? If you can tell us that these are the reasons why we want to retain the original jurisdiction, only then can one understand this. For the last so many years it is continuing; therefore, we are continuing. There is no logic in it.

SHRI MAHENDRA KHANDELWAL: Sir, this aspect has to be dealt with by the Department of Justice which deals with the jurisdiction of the High Courts. So, we can't comment on this.

CHAIRMAN: We are not discussing it for throwing the ball into someone else's court. If you have got any knowledge, tell us. You are the initiator of the Bill. If you have had any discussion with the Justice Department, what was their response to this particular issue? You know that five High Courts are chartered High Courts. Therefore, they have jurisdiction within them.

CHAIRMAN (Contd.): Territorially, only for metropolitan cities, it is available. Now, the hon. Member is saying that you are allowing original jurisdiction for five locations only, which also is confined territorially to metropolitan areas. But when you have got a dispute in an area other than the metropolitan area, then,

automatically, the District Commercial Court system has to come into play. Have you got that clarity in the Bill or not? This is the question of the hon. Member.

SHRI MAHENDRA KHANDELWAL: Sir, clause 22 says, "Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act."

SHRI P.P. CHAUDHARY: If the provisions of this Act have overriding effect, then, how can you continue with the original jurisdiction?

SHRI MAHENDRA KHANDELWAL: Sir, the original jurisdiction will be in respect of other cases.

SHRI P.P. CHAUDHARY: If the provisions of this Act have overriding effect, then, everything in the High Court will be governed by the provisions of this Bill.

SHRI MAHENDRA KHANDELWAL: It will be the case so far as it is related wto the commercial disputes.

SHRI P.P. CHAUDHARY: Yes. I am talking about the commercial disputes. Civil disputes are also there. When you are speaking about the original jurisdiction, you have to think over it. We are creating a conflict. Then, you cannot continue with the original jurisdiction. You have to save the respective enactments. If you are not saving them, then, they cannot operate. There must be a strong reason for saving it. If you do not have reason, then, there is no point in continuing with the original jurisdiction.

CHAIRMAN: Is there any relevant issue in the Law Commission's Report? If you have got anything to add, you can send the same to us so that we can conclude the evidence. Thank you very much. The meeting is adjourned.

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(The witnesses withdrew and the

Committee then adjourned at 4.03 p.m.)

THE DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE MET AT 4.00 P.M. ON THURSDAY, THE 26TH NOVEMBER, 2015, IN COMMITTEE ROOM NO. 62, PARLIAMENT HOUSE, NEW DELHI.

Chairman : Dr. E. M. Sudarsana Natchiappan

CHAIRMAN: Good evening. Today, we are going to have two separate sessions. One is for final consideration of the Lokpal and Lokayuktas and Other Related Law (Amendment) Bill, 2014. For that, we have requested for the appearance of representatives from Department of Legal Affairs, Ministry of Law and Justice and Ministry of Personnel, Public Grievances and Pensions. Even though this Bill is connected with the Ministry of Personnel, Public Grievances and Pensions, we requested the representatives of Legal Affairs and Legislative Departments to appear for discussing this issue because they should also give their opinion on certain things.

In the second session, after having heard these three Secretaries for around 45 minutes, we will take up the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015. For that, representatives from the Department of Legal Affairs and Legislative Department will be there and we will request the representatives from the Ministry of Personnel, Public Grievances and Pensions to withdraw. This is the way we are going to work.

Just for your recollection, we have already circulated one small note on certain perceptions of how to go about in these proposed Bills. Now, I will just explain the situation on the Lokpal. I will just brief it just for your recollection. We are having the areas of consideration on six points which were already circulated. This will be circulated to you now and I will explain the things before the Secretaries also so that you can observe it. If you want to have any clarification from their presentation, you can get the clarification. If you want to give your opinion, we will record it separately. It need not be a part of the clarifications with the officials.

Please call the officers now.

Representatives of Department of Legal Affairs, Ministry of Law and Justice:

Shri P.K. Malhotra, Law Secretary

Shri Dinesh Bhardwaj, Additional Secretary

Shri M. Khandelwal, Additional Government Advocate

Shri Rajveer Singh Verma, Deputy Legislative Counsel

Representatives of Legislative Department, Ministry of Law and Justice:

Shri G. Naryana Raju, Secretary

Ms. Reeta Vasistha, Additional Secretary

Shri R. Sreenivas, Deputy Legislative Counsel

Shri K.V. Kumar, Deputy Legislative Counsel

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CHAIRMAN: First of all, congratulations to Shri G. Naryana Raju, who became the Secretary for Legislative Department, Ministry of Law and Justice. Congratulations to you!

SHRI MAJEED MEMON: Best wishes from all of us!

CHAIRMAN: This Committee is happy to have the discussion with the Department of Legal Affairs, Ministry of Law and Justice represented by Shri P.K. Malhotra, Law Secretary and other officials; Legislative Department, Ministry of Law and Justice represented by Shri G. Naryana Raju, Secretary; Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training) represented by Shri Sanjay Kothari, Secretary and other officials.

We are going to have two sessions actually. One is for forty-five minutes where we will discuss about the Lokpal and Lokayuktas and Other Related Law (Amendment) Bill, 2014. Afterwards, we will have the discussion on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015. Why we have called all the three Secretaries together is because, first of all, we would like to have your opinion even though the nodal Ministry concerned with the Lokpal is the Ministry of Personnel, Public Grievances and Pensions alone. We suggested certain things on the basis of the earlier reports which were submitted to the Parliament by this Committee.

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(Some of the witnesses withdrew at this stage.)

CHAIRMAN: Now, we will take up the next issue, that is, Commercial Courts, Commercial Divisions and Commercial Appellate Division of High Courts Ordinance of 23rd October, 2015, to replace certain changes in the Commercial Courts, Commercial Divisions and Commercial Appellate Division High Courts Bill, 2015, which was promulgated by the hon. President of India. Since it is to replace the Act, we could take cognisance of it. There is a precedent also by the Committee on Home Affairs. When Mr. Venkaiah Naidu was the Chairperson, he had taken up a similar matter. The Committee on Home Affairs presented its 167th Report on the Criminal Law (Amendment) Bill, 2012, which was presented to the House on 1st and 4th March, 2013. Therefore, we would like to have your presentation on the issue because we have taken a lot of strain; we visited many parts of the country; we got the evidence of many of the State Government Chief Secretaries and the Registrar-General of High Courts; we had had informal talks with the High Court Judges and many of the High Courts, mentioning the judges' names, have sent us their Reports on this particular thing. We have consulted many of the Bar Associations and also Bar Councils. We do not want those inputs to be presented to the Parliament. Therefore, we would like to have your opinion on whether you would like to have our Report presented to the Parliament so that you can look into it and incorporate suggestions when you replace the Ordinance by way of Bill. If you would like to take cognisance of this Report, then, we can suggest certain things in this particular Bill, which has been referred to us.

Number two is that the intention of the Government and also of the Parliament is to have a quick remedy in the matter of commercial disputes. Many attempts were made but in every attempt a hurdle was there. Therefore, it could not come up. We do not want to be a hurdle again. We want to see that there is a commercial court system to expedite the dispute resolution of commercial nature and also arbitration matters, which is another Ordinance we have got through the President of India. Overall, this particular Bill which was referred to us is having two issues. One is the conventional court system, with the commercial court system being parallel to the regular court system. Another is, how arbitration matters be dealt with by the Divisional Bench, which is also referred to in this particular Bill. Therefore, we would like to have your preliminary opinion on that issue. Anyhow, we have to submit this Report by 30th of this month. Therefore, with the consent of hon. Members of this Committee, we have already sent a request to the Chairman of the Rajya Sabha to extend the time by at least one week so that we can get your inputs on this issue.

CHAIRMAN (CONTD.): Accordingly, we will go through that. We are also in the process of completing our draft report. Kindly make your suggestion on this issue.

SHRI P.K. MALHOTRA: Thank you, Sir, for giving me this opportunity to express my views on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015.

Sir, this Bill was introduced in the Rajya Sabha in the month of April, and the same is currently under consideration of this august Committee. Sir, as the Committee is aware, in the Bill, which is pending in the Rajya Sabha, all the suits, appeals or applications related to commercial disputes of a specified value, i.e., Rs. 1 crore or above, were to be dealt with by the Commercial Courts or the Commercial Division of the High Court. This Committee is also aware that by way of Delhi High Court (Amendment) Act of 2015, the Ordinary Original Jurisdiction of Delhi High Court has been increased from Rs. 20 lakhs to Rs. 2 crore, and there is a provision for transfer of pending cases from Delhi High Court to District Courts. When the Commercial Courts Division and Commercial Appellate Division of High Courts Bill, 2015 becomes Act, some of the commercial disputes which are to be transferred to District Courts from Delhi High Court due to change in the pecuniary jurisdiction of the High Court may again be required to be transferred to the Commercial Division of the Delhi High Court. It was likely to lead to delay in disposal of cases as well as cause inconvenience to the parties and the counsel, and may also result in confusion. A large section of advocates' community in Delhi was pressing hard to issue notification from bringing the Delhi High Court (Amendment) Act, 2015 into force. Therefore, it was felt necessary that provision of the Delhi High Court (Amendment) Act, 2015 and Establishment of Commercial Courts and Commercial Division of the High Courts may be brought on the statute book simultaneously. Since the Parliament was not in Session and urgent steps were required to be taken, the matter was taken to the Cabinet and the Cabinet took a decision; and I understand, in that respect, probably, the steps have already been taken. The decision taken was that the present Bill will be withdrawn. A request will be made to the Chairman seeking permission to withdraw the present Bill. The Ordinance may be issued and another Bill may be brought to replace the Ordinance by an Act of Parliament, and this Act has come into force; and the Delhi High Court (Amendment) Act, 2015 has also come into force from 26th of October, 2015. The idea is to cause less inconvenience to the litigant whereby disputes, commercial disputes, between Rs. 1 crore and Rs.2 crore first being transferred to the District Court and, again, on coming into force of this enactment, going back to the High Court. As inconvenience is not caused to the litigant, these two were brought together.

Sir, the provisions of the Ordinance are on similar lines of the Bill of 2015 pending in the Rajya Sabha. However, taking into account the views that emerged during the examination of the Bill by the Standing Committee, a few changes from drafting angle, specifically, in respect of constitution of the Commercial courts, Commercial Division and Commercial Appellate Division, that is, clauses three to five of the Bill, have been made, and I would like to highlight those changes which have been made in the Ordinance as compared to the Bill.

SHRI P. K. MALHOTRA (CONTD.): Now, in the Ordinance, a separate clause for the constitution of a Commercial Court at the District level and constitution of a Commercial Division and Commercial Appellate Division at the High Court level has been provided. The power to appoint judges to the Commercial Courts has been given to the concerned State Government. The State Government, in consultation with the Chief Justice of the concerned High Court, shall choose Judges from the existing cadre of higher judicial service from amongst persons having experience in dealing with commercial matters. It is also made clear that the State Government shall, by notification, also specify the local limits of the area for which the jurisdiction of the commercial court has been prescribed.

Sir, the power to constitute the Commercial Division and the Commercial Appellate Division has been given to the Chief Justice of the concerned High Court. It has also been made clear that the Commercial Division shall consist of benches of single Judge and the Commercial Appellate Division shall consist of a Division Bench. And, as provided in Clause 14 of the pending Bill, an appeal or a writ petition filed in the High Court against the orders of certain tribunals, such as the Competition Appellate Tribunal, Debt Recovery Appellate Tribunal, Intellectual Property Appellate Tribunal, Company Law Board or its substitute, that is, the National Company Law Appellate Tribunal, and the Securities Appellate Tribunal and the Telecom Disputes Settlement and Appellate Tribunal, was to be heard and disposed of by the Commercial Appellate Division of such High Court if the subject matter of such appeal or writ petition related to a commercial dispute. It was noticed that no appeal lies before the High Court against the orders of any Appellate Tribunal that I have just mentioned and only writ petition could be filed, because appeal in all these cases has been provided for in the Supreme Court. Therefore, the said Clause 14 has been omitted in the Ordinance. Further, Clauses 23 and 24 of the existing Bill are about the rule-making power and laying of rules before the Parliament. Primarily, rules were to be made for providing the manner of appointment of judges of Commercial Courts and their terms and conditions in terms of Clause 5 of the Bill. In the light of the changes made in respect of appointment of judges of Commercial Courts, Clauses 23 and 24 have been omitted, because these have become redundant. There is no other material change so far as the present Ordinance is concerned and now the proposal is that the Government will seek permission of the hon. Chairman to withdraw the pending Bill and introduce a fresh Bill to replace this Ordinance. Thank you, Sir.

SHRI K.T.S. TULSI: Which is the clause here which talks about the jurisdiction of disputes worth one crore rupees?

SHRI P. K. MALHOTRA: Sir, it has been specified there.

SHRI K.T.S. TULSI: That is Clause 7 – Jurisdiction of Commercial Courts. It says, "…of a specified value". Where is it specified? Where is 'one crore specified'?

SHRI P. K. MALHOTRA: Sir, it says, "Specified value", in relation to a commercial dispute, shall mean the value of the subject matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government."

CHAIRMAN: Are you reading from the Ordinance or the Bill?

SHRI K.T.S. TULSI: It is there in the Ordinance. Where is it mentioned in the Bill?

SHRI P. K. MALHOTRA: Sir, it is taken from the pending Bill.

SHRI K.T.S. TULSI: What clause are you reading?

SHRI P. K. MALHOTRA: Sir, it is clause 2(1)(i).

CHAIRMAN: Sir, he is reading from the Ordinance, but the pending Bill also has it. That is in clause of 'Definition'. Mr. Tulsi, you may look into (f), (i) and (j). "Specified value" in relation to commercial disputes shall mean…". It is on page 3 of the Bill.

SHRI K.T.S. TULSI: I want to understand the rationale. It seems the left hand of the Government doesn't know what the right hand is doing! The disputes up to Rs. 2 crores were ordered to be transferred by the Delhi High Court Pecuniary Jurisdiction Act. The ink has not dried on it when we reverse that decision, virtually, in respect

of almost all cases. The rationale of transferring these disputes was that on infrastructure the Government has spent more than Rs. 600 crores and infrastructure has been created in the District Courts. But, now, a subterfuge has been found to retain these cases in the High Court. There is a contradiction between the two. Why should this specified value not be of two crore rupees?

SHRI P. K. MALHOTRA: Sir, you have a point. Probably, a decision was taken when this was discussed as a matter of policy and based on the recommendation of the Law Commission, which said that throughout the country there should be uniformity and that to begin with, it should be one crore rupees, but if need be, this 'specified value' could be increased. That was the decision taken.

SHRI P.K. MALHOTRA (CONTD.): Initially, to begin with, it should be Rs.1 crore. If need be, this specified value can be increased also. That was the decision.

SHRI K.T.S. TULSI: The statutes are at war with each other. One says the pecuniary jurisdiction of High Courts will be Rs.2 crores and above and the other says, 'No, it will be Rs.1 crore.'

SHRI P.K. MALHOTRA: It is only with regard to the commercial suits.

SHRI K.T.S. TULSI: So, what is the purpose of it? The entire rationale of pecuniary jurisdiction has gone.

CHAIRMAN: We will discuss it later. Since we feel that we have to go on submitting the Report to the Parliament taking cognizance of the Ordinance also, we would like to have two clarifications. One is, you are creating a very broad structure of the definition clause, which we have already discussed with many High Courts and they have given their opinion also; we have circulated it to you. Certain High Courts have separate Benches for commercial disputes including the Supreme Court. They have got their own definition of the commercial disputes; it is not a defined one. But they have their own internal domestic administration. Based on certain cases, specified Acts and specified issues, they have allotted that work to the Supreme Court Bench which is constituted for commercial cases. Similarly, in the High Courts also, when we have gone for tour, we found out that they had also constituted a separate Bench. Therefore, this allocation of the business is already done by many of the High Courts. Now, we are giving a statutory support by way of an Act. That is a good thing. Secondly, you want to give original jurisdiction to certain High Courts which are already in existence for certain defined areas alone. I would take the example of Madras High Court. In Letters Patent Appeals and issues, they have given the jurisdiction in and around Madras City. Beyond the city, the District Courts are having the jurisdiction according to any Act. Take for instance, Multimodal Transport Act. You know very well the International Convention on Multimodal Transport. It stipulates two types of jurisdictions. One is domestic jurisdiction where the cause of action has arisen or where the defendant is living or where the registered office is there for the purpose of executing the degree. Secondly, by way of agreement or by way of contract between the parties, the arbitration clause mentions the domestic arbitration or international arbitration. These are the two ways of dispute resolution as mentioned in many of the Acts. Therefore, what we are suggesting or thinking is, let us have two systems. Already CPC in 1973 has made only two levels. One is fact finding court, that is, a trial court and another is fact and legal issues. If there is a legal error, then automatically under Article 133, the Supreme Court has got the power to have Special Leave Petition and it can be treated as an appeal. But it is not a statutory appeal. Therefore, three levels are already contemplated in CPC.

CHAIRMAN (CONTD.): Now, you are creating, for every Act, one level of the Court and another level of the Tribunal and another level of the High Court or the Supreme Court. Therefore, you are allowing the statutory appeal also at two levels. So, you are delaying the dispute resolution by way of providing a luxurious way of going for appeal from the Appellate Court also. Therefore, we think that if you want to have a quicker remedy in these matters, you have to restrain yourself by creating a sitting District Judge, who will, at the initial stage, look at the factual and the legal issues and they will have a choice under the summary proceedings or under section 37 of the CPC. If they find that the issue can be settled then and there itself, they can pass an order if both the parties agree to that. This is a summary proceeding. You have made it in your proposed Bill also. That can be further expanded by putting as a part of the CPC. I am suggesting this because if you put it as a part of the CPC, then you will be giving two rights. One is for the High Courts to make their own Civil Rules of Practice. Many of the High Court Judges, who have given their opinion to us, which we have already circulated to you, have said that they are having their own system of the Civil Rules of Practice and they are framing and the subordinate Courts are also controlled by those Civil Rules of Practice. Second is that the State Governments can also suggest through the High Courts that these are the ways by which the procedure can be done. These two rights can be given to the High Courts. Therefore, the major portion of your Bill speaks about the procedural part as case management. Why don't you delink that part and give it as a model piece and let the High Court take cognizance of it? You know very well that under Article 227, the Constitutional Courts have got the overall supervision of all the courts, subordinate courts and the tribunals, and they can come forward with framing of the rules. Similarly, you have got Article 145, where the Supreme Court can frame the rules accordingly. If they

want it, the Parliament can make it as an enactment. Therefore, we are gradually taking the position of the Courts to make their own Civil Rules of Practice and we are telling them, just like the Courts are telling how much Green Tax you can fix, which is an Executive work, but they are doing it. Similarly, we are taking judicial powers, or the judicial work power. We feel that you may create a Commercial Court with certain powers, with certain pecuniary jurisdiction. You can make a separate Schedule for fixing the cases in a pecuniary limit. For example, under the Multi-Model Transport Act, the issues, which are more than the stipulated pecuniary jurisdiction, will be attracted by the District Commercial Courts. They will dispose of the case. Quick disposal will be there. And, when the District Judges are recruited, the State Governments and the High Court can find out as to who are the experts from the candidates for the District Judge. They can choose people from that particular field as a District Judge. Then, you have got the Division Bench. From the Division Bench, the matter should be settled. Exceptionally, under Article 133, it can go for the SLP. Otherwise, it has to be settled. Why don't you think on that line? We think that if you want to have a fast track system, you should be bold enough to have the fast track system. Don't worry about other things, like whether it will be workable or not. For workable things our feeling is that let us have a tabulation of the special enactments which are having a stake of more than Rs.10,000 crores, Rs.1,000 crores or Rs.100 crores, which need to be implemented immediately, investment has to be attracted, or infrastructure has to be completed. These types of things can be tabulated and experimented for a certain period. You can ask the nodal Ministries to bring their own enactments within the Schedule so that the jurisdiction of the Tribunal can be abolished and the sitting Judge, as a Commercial Court, can go into it. This is the way we are thinking about it. You can supplement it if you want, but our feeling is that if you want to have a fast track system, have the boldness to have that system. Don't mingle it again with the conventional Court system and make it delayed. That is one aspect.

Another aspect is arbitration. Again, you want to bring arbitration within the system of civil courts. Kindly allow these arbitrations to be separate and it is a parallel system which, according to the choice of the parties, as they make it in the agreement or the contract, can be allowed like that.

CHAIRMAN (CONTD.): In that manner, we would like to request you. We want to suggest you to go in for quicker remedies for investors. Also, the dispute resolution system should be as quick as possible in a summary manner. You can bring up a model of the system, which can be adopted under the CPC provisions. It can be subjected or altered according to the concerned High Courts and the High Courts and the State Government can take advantage of this enactment and notify special courts for that purpose because many of the High Courts say that they are not having so many cases of the commercial nature. Many of the courts just like the courts of Mumbai, Hyderabad, Chennai and others say that they need it. Different opinions have come up. We will put everything in the recommendations part. You consider them, and, accordingly, you can make your propositions when you are making a new Bill to be introduced in the Parliament.

SHRI MAJEED MEMON: As regards arbitration, what is understood is that probably it is a settlement outside the court, or something like that. Litigation takes a lot of time. When arbitration takes place, the whole spirit of arbitration is to cut down time, and, decide it fast. As a businessman, I would say, I won't mind if I get 10 today instead of 20 after ten or twenty years. So, arbitration, by its very concept, is something which needs to be expeditiously worked out, and, it must assume finality. Therefore, the Chairman's suggestion is that when we should have arbitration, let us have arbitration at the highest level, appellate level, which assumes finality for all purposes. I think, we must have that kind of system.

SHRI SUKHENDU SEKHAR ROY: Now, I am a little bit frustrated because now I have come to know that this is going to be withdrawn, and, till such period this is replaced by another Bill, we shall have no other consideration with regard to this Bill. A new Bill is coming up.

CHAIRMAN: But before that, whatever experience we have got, whatever inputs we have got, must be given to the Government so that they can appreciate the previous position and come out with a proper Bill.

SHRI SUKHENDU SEKHAR ROY: In regard to this ordinance, kindly look at page 7, clause 12(1)(d). It says, "where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff, shall be taken into account for determining Specified Value."

My query is: what is this 'any other intangible right', how it is to be determined, and, who will determine it?

SHRI P.K. MALHOTRA: Sir, I think, you have to give some leverage to the person who is coming before the Court with respect to the manner as to how he is going to value his intangible assets or intangible rights. Maybe the court fee and other things will depend on the value which he determines. Because he has to pay the court fee also, he will not be unreasonable in determining the value with respect to his own rights. That is what our

intention was. Basically, it is based on the recommendations made by the Law Commission of India where the deliberation took place with the Judges, with the practicing Advocates and with the industry.

SHRI P.K. MALHOTRA (contd.): All three were consulted and then the provisions were incorporated, and our Bill is almost based on the recommendation of the Law Commission of India.

SHRI SUKHENDU SEKHAR ROY: I think that it requires re-thinking. Otherwise, there is a lot of scope of interpretation and misinterpretation.

CHAIRMAN: You think about that definition clause. We will suggest it. It is left to you, but I feel some High Court Judges have commented. We will quote that also that many enactments are coming but nothing is so effective that it can be practiced. We have to see that this enactment is in force and special enactments which are made should be made as a separate Schedule for which the court should have the jurisdiction. We will learn a lot of things within six months or one year and the Judiciary will also learn about it and automatically more and more special courts can be created, commercial courts can be created according to the discipline which they are having, according to the special enactments which we are adding in the Schedule. We found in today's newspaper that you have taken steps to reduce the number of Tribunals from 55 to 15 according to the Committee's report. We are happy about it. Similarly, we have to see a day where there should not be any Tribunal but, at the same time, there should be a live court which makes it expeditiously and there should be a single appeal. With that, the matter should be closed. We should not have the luxury of having too many Tribunals, too many ways of dragging on the matter. We want to have the investment to be protected. If that is so, we have to make a separate fast-track system within the system so that the court is also happy that we are not encroaching upon their duty. At the same time, with their consensus, we will create a system. We will make that report so that you can use it according to your necessity and also the way in which we look at the issues.

SHRI P.K. MALHOTRA: Sir, the suggestion which is coming from the hon. Chairman is a very, very valuable suggestion so far as I am concerned because I know all the hon. Members of the Committee, most of them, are legal experts themselves. They have deliberated upon this. Not only that, the expert evidence has been taken by this hon. Committee, and whatever suggestions are coming, they are all based on the inputs given by the experts as well as by the hon. Members. Sir, there may be many models available with us for implementation, and probably this is one of the good models which you are suggesting, but the model which we have adopted, as I have submitted earlier, is again based on the deliberations which have taken place before the Law Commission of India which was headed by a former Chief Justice of the High Court and had two Judges as Members. There also, the deliberations have taken place with the industry, with the practitioners, with the Judges. So, this is also a very good model which the hon. Chairman is suggesting. Maybe, once we get that report, we will definitely deliberate on this because, ultimately, we have to see that the last man on the ground must get justice. The very objective of passing these laws is welfare of the public at large, and so far as our economy is concerned, it should grow. If good suggestions are coming, we are definitely open to that and we will definitely consider it, Sir. Thank you.

CHAIRMAN: Thank you very much. The meeting is adjourned.

(The witnesses withdrew and the Committee then adjourned at 5.54 p.m.)