PARLIAMENT OF INDIA
RAJYA SABHA

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

TWENTY EIGHTH REPORT

ON

THE SUPREME COURT (NUMBER OF JUDGES) AMENDMENT BILL, 2008

(PRESENTED TO HON'BLE CHAIRMAN, RAJYA SABHA ON 4th AUGUST, 2008)

RAJYA SABHA SECRETARIAT
NEW DELHI
AUGUST, 2008/SARVANA 1930 (SAKA)

C O N T E N T S

COMPOSITION OF THE COMMITTEE (2007-08)

(Constituted on 5th August, 2007)

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SECRETARIAT

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Shri K.P. Singh, Joint Director

Sh. K.N. Earendra Kumar, Deputy Director

Smt. Niangkhannem Guite, Committee Officer

INTRODUCTION

I, the Chairman of the Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee to submit this Report on its behalf, do hereby present its Twenty Eighth Report on the Supreme Court (Number of Judges) Amendment Bill, 2008. The Bill seeks to augment the strength of the Judges in the Supreme Court by increasing their number from the present twenty-five to thirty excluding the Chief Justice of India. For the purpose, the Bill seeks to amend the Supreme Court (Number of Judges) Act, 1956 by substituting the word "twenty-five" with the word "thirty" in Section 2 of the said Act.

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha in consultation with the Hon'ble Speaker, Lok Sabha referred ♣ the Bill, as introduced in the Lok Sabha on the 29th April, 2008 and pending therein, to this Committee on the 9th May, 2008 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communiqué to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. Accordingly, a press communiqué was issued in response to which memoranda containing suggestions were received by the Committee.

4. The Committee considered the Bill in three sittings and heard the oral evidence of the Secretary, Department of Justice, Ministry of Law and Justice in its meeting held on 27th May, 2008. The Committee also heard the oral evidences of the representatives of the Bar Council of India and the Supreme Court Bar Association. The Committee also discussed the Bill with the Bar Councils/Bar Associations of the respective States during its study visit to Chennai, Kolkata and Mumbai in July, 2008.

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

(i) Background note on the Bill;

(ii) Comments of the Department of Justice on the views/suggestions contained in the memoranda received from various organisations/ institutions/individuals/experts on the Bill; and

(iii) Information/data furnished by the Department of Justice, Ministry of Law and Justice.

6. The Committee held clause-by-clause consideration of the Bill on the 17th July, 2008.

7. The Committee adopted the Report in its meeting held on the 1st August, 2008.

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;
1st August, 2008

E. M. SUDARSANA NATCHIAPPAN
Chairman
Committee on Personnel,
Public Grievances, Law and Justice

REPORT

1.0. The Supreme Court (Number of Judges) Amendment Bill, 2008 *(Annexure A)* introduced in Lok Sabha on 29th April, 2008 seeks to augment the strength of the Judges in the Supreme Court by increasing their number from the present twenty-five to thirty excluding the Chief Justice of India.

1.1. To attain the objective, the Bill seeks to amend the Supreme Court (Number of Judges) Act, 1956 by substituting the word "twenty-five" with the word "thirty" in Section 2 of the said Act. The Bill was referred by the Hon'ble Chairman, Rajya Sabha, in consultation with the Hon'ble Speaker, Lok Sabha to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on 9th May, 2008 for examination and report within three months.

1.2. The statement of objects and reasons appended to the Bill elucidate the reasons and the need for bringing forth the present Bill. It states as under:-

> *"The pendency of cases in the Supreme Court of India has constantly been on the rise largely due to higher rate of institution of cases. As on the 31st day of March, 2007, 41,581 cases were pending in the Supreme Court. The Chief Justice of India has intimated that the Judges in the Supreme Court feel over-burdened and have been working under acute work pressure. It has also not been possible for the*

Chief Justice of India to constitute a five-Judge Bench on a regular basis to hear cases involving interpretation of constitutional law as doing that would result in constitution of less number of Division Benches which in turn will result in delay in hearing of other civil and criminal matters".

1.3. The statement of objects and reasons further states:-

"Suitable steps are, therefore, required to be taken to augment the strength of the Judges in the Supreme Court so that it can function more efficiently and effectively towards attaining the ultimate goal of rendering speedy justice to the litigant public".

"It is, therefore, proposed to amend the Supreme Court (Number of Judges) Act, 1956 to increase the number of Judges in the Supreme Court from twenty-five to thirty, excluding the Chief Justice of India".

2.0. While considering the Bill, the Committee decided to invite views/ suggestions from various individuals/organisations/stakeholders on the subject matter of the Bill. The Committee, accordingly authorized the Secretariat to issue a press release for inviting views/ suggestions on the Bill. Accordingly, the Secretariat issued a press release on the Bill on 24th May, 2008 which was published in the major English and Hindi dailies and vernacular newspapers all over the country. In response, thereto, a number of representations/memoranda were received.

3.0. The major points raised in various representations/memoranda (total 27 memoranda were considered, a list of individuals/organisations who submitted the memoranda is at *Annexure B*) are summarized as follows:-

(i) The present structure of jurisprudence should be changed to democratic structure and all the existing cases in the courts at lower and higher levels should be disposed of through persuasion, mediation and fraternal settlement. Only complicated cases where the state is involved as one of the litigants should go to the courts.

(ii) It is a welcome move to enhance the strength of the Supreme Court judges to ease the burden and pendency of the cases to deliver speedy justice to the litigants.

(iii) The appointment of the Supreme Court and High Court judges is based on a collegium which consists of Judges alone. As the higher judiciary and for that matter the judiciary itself requires highly integrated, qualified worthful, unbiased and humane personnel with full sense of devotion to the profession, the new law should have a provision for constitution of a collegium consisting of the professionals having the above qualities and the political element should be eliminated from it in future appointments. The said amendment should have a provision for constitution of such a collegium.

(iv) Till now, the Judges of the Supreme Court are not from all parts of the country and thus they are not representing India in *toto*. The new judges may be selected from those states and regions which are not represented in the Supreme Court till date.

(v) The Social composition of the Supreme Court Judges is heavily in favour of the ruling classes, castes and influential segments of the society. The weaker sections especially OBCs do not have any representation in the Supreme Court and hence their concerns, problems and demands are not heard. Therefore, the five new judges may be reserved for OBC category. This is justified as reservations are already

provided for OBCs in the Central Government establishments including in the higher educational, technical and scientific institutions. This will take away the unhappiness of the OBCs, for at least, providing this opportunity after 60 years of independence, who consist of more than 50% of India's population and will bring harmony in the society.

(vi) This opportunity may be utilized to constitute a Supreme Court Bench in South India which is a long pending demand so that the time, money and energies of the litigants is reduced drastically which in turn will facilitate speedy disposal of the pending cases.

(vii) As time passes on, cases are becoming complicated due to changed socio, economic, political, cultural, environmental and scientific scenarios and they require specialized knowledge of the laws. The opportunity may be used to appoint the new judges with specialized knowledge and skills for easier understanding, assessment and disposal of technically oriented litigations.

(viii) The proposed Bill will help the litigant public to get justice without delay thus reducing the pendency of cases considerably.

(ix) Justice delayed is justice denied. How India can compete global competition with other countries in the absence of fear of law and order. There is an urgent need to increase the strength of the Supreme Court Judges form 25 to 30. Similarly, the strength of the judges in all the High Courts should also be increased without any delay.

(x) The increase in the number of Judges of the Supreme Court is a welcome step as the population has increased manifold since 1956. The increasing crime rate has

contributed to pendency of cases.

(xi) While the proposal to increase the number of Judges in the Supreme Court is a welcome step as it will help in reducing the pendency in the Supreme Court, it is sad that nothing is being done to reduce the pendency in lower Courts.

(xii) Vacancies at all levels of the judiciary should be filled up expeditiously to reduce the pendency of cases especially in the High Courts.

(xiii) The present number of Judges in the Supreme Court is quite high. There should not be any further increase. Increasing the number of judges will make the Court unwieldy and increase its mediocrity, at a time of declining standards, and when it is becoming increasingly difficult to find judges of high caliber and impeccable professional integrity, increasing the number of judges will definitely dilute the high standards of judicial scholarship desired and expected of the Supreme Court Judges.

(xiv) The proposed amendment is a step in the right direction and it would certainly go a long way to contain the backlog of cases pending in the Supreme Court. Similar provisions need to be made by the States in the case of respective High Courts and Lower Courts as well, as the backlog of pending cases there is of more concern. It is suggested that each Bench in Supreme Court take up at least one pending case in each sitting, after the proposed amendment is enacted and additional Judges are in position. One factor that contributes in a big way to backlog of pending cases in courts is adjournments and stay orders frequently sought by the parties to suits. This needs to be controlled.

(xv) Summer vacation in courts is a colonial legacy of the past and courts should

ponder over this matter. If judiciary takes a conscious decision to forgo these vacations, it would help matters. Judiciary is very much needed for all the 12 months.

(xvi) The very pendency of different sensitive cases, that antagonizes the common civilians and they tend to loose the faith in judiciary. Inadequacy of judges in the judicial system leads to the prolongation of the true judgment and thereby lucifying the merit of the cases. The proposed increase in the number of judges in the Hon'ble Supreme Court is a brighter step. Judges to be appointed through meticulously systemized screening and the appointment should not be shrouded with political maneuver.

(xvii) Re-connectability of the judges is more important than increasing their numbers.

(xviii) Increasing the number of judges is only a remedial step and not a complete solution for reducing the pendency of cases.

(xix) The Supreme Court can take measures at its own level to solve the problem of arrears such as curbing the tendency of preferring cases of rich and corporate bodies, discouraging public interest litigation, lengthy arguments, medical, educational, fee regulation, environmental, mining, river cleaning, religious disputes cases etc.

(xx) Sanctioning of more posts of the Judges in the Supreme Court will not reduce or clear the backlog of cases. More alarming is the backlog of cases in various High Courts which needs to be addressed urgently. One solution is to appoint additional judges in the High Courts for a period of two years under article 224 (1) of the Constitution of India, exclusively for clearing the backlog of cases.

(xxi) The system of setting up the Constitution Benches in the Supreme Court of India has also not stood the test of time. If the judgment of a Constitution Bench, comprising nine judges, is to be reviewed, in that situation, a Bench of eleven judges would be constituted. Thus, setting up of Constitutional Benches is a drain on the limited number of judges available in the Supreme Court of India. The need of the hour is that there should be a cap on the maximum number of judges comprising a Constitution Bench, and a formula should be devised for evaluating the requirement of the judges that may comprise a Constitutional Bench.

(xxii) Increasing the number of posts of the Supreme Court Judges, is not the only alternative or criterion for reducing the piling of cases, but simultaneously the factors of flow of cases and the filing in the Supreme Court may also be considered. In case of cases, being filed directly under Article 32 of the Constitution of India, this aspect involves an important role of the Executive Government because, when any urgency arises, and when there is a tug of war between the cause of action and relief for justice, the litigants are required to approach the Supreme Court. If the executive functionary acts with proper caution, vigilance and adhere to the rules laid down, the justice seeking persons would be satisfied at that stage only. Failure of which leads them to approach the Supreme Court directly.

(xxiii) Increase in the strength of the judges from 25 to 30 is inadequate as the increasing population, enactment of acts by Parliament and State Legislatures along with the flow of cases coming to the Supreme Court from various High Courts puts strain on the judiciary thus delaying the dispensation of justice.

(xxiv) The increase in the number of judges should be linked with the efficiency also.

(xxv) The accumulation of cases cannot be solved merely by increasing the number of judges in the Supreme Court. The cases must be fixed for a specific period and accountability fixed on the judicial officer at the originating stage of the case.

(xxvi) Before increasing the number of Supreme Court Judges, the Supreme Court should simplify the filing procedure, provide for guidance and counseling facility for common people in the Supreme Court registry and adhere to strict working schedule along with setting up of commission/council for judges' accountability.

(xxvii)There are various irregularities such as inefficiency, corruption, nepotism, biasness, undeserving behaviour etc. in the present legal system that delay the rendering of speedy and proper justice to the people. Rather than increasing the number of Judges in the Supreme Court, the focus should be on reforming and improving the functioning of the judicial institutions, transparency in the selection and appointment of judges in the Supreme Court, High Courts and subordinate judiciary.

(xxviii) Judges strength in the Supreme Court should be according to the population. Some formula needs to be worked out to keep judge population ratio adequate.

(xxix) Judges in the Supreme Court enjoy summer/winter vacations along with other holidays which needs to be curtailed to increase working days/hours to clear the cases instead of increasing the number of Judges in the Supreme Court.

(xxx) Of late, the variety and volume of litigation has increased manifold in view of the tremendous socio-economic advancement and on account of globalization. The judge – population ratio has also been far below the desired/optimum level at which justice can be rendered to the common man. As a necessary corollary and

concomitant, the number of judges in various Courts should be increased so that there are no delays in the dispensation of Justice.

(xxxi) It is high time that a Bench of the Hon'ble Supreme Court of India is set up and constituted at Chennai so that the litigant public, living in the southern States of India, have access to justice. The reason for setting up a Bench at Chennai is that Madras has been the seat of the only Chartered High Court in Southern India and that excellent facilities are available here with good infrastructure.

(xxxii) It is a well known fact that on account of awareness of the public about their rights, expansion of commercial activities on account of modern facilities like Roads, Communications and transport involving the Government controls and the invasion into their rights by the administrators and Beaurecrats, they are forced to seek their remedy in a Court of Law leading to a large number of cases particularly in the High Court under Art. 226 of the Constitution and subsequent appeals under the Letters Patents to the appellate Bench and ultimately to the Supreme Court. The disposal of the cases at every level is not commensurate with the filing of fresh cases. Therefore, there is a need to appoint more Judges at every level both in the High Courts and in the Supreme Court.

(xxxiii) The litigants in Southern State in general and Tamil Nadu in particular have to incur large expenditure in being able to have access to the Supreme Court on account of the distance and Cost involved in the process. Therefore a Bench of the Supreme Court should be established in Tamil Nadu to meet the needs and expectations of the innumerable litigants in the Southern Region.

(xxxiv) The present proposal for increase of strength of the judges would pave

way for the clearance of back log of cases there enabling the litigant public to have easy access to justice, which will fulfill the dreams of the framers of the constitution who had foreseen the administration of justice for the betterment and transformation of the Indian society.

3.1. The memoranda received from various individuals/ organisations/stakeholders were forwarded to the Department of Justice, Ministry of Law and Justice for their comments. The Department of Justice furnished their comments on the points/issues raised in the memoranda. The comments are summarised as under :-

(i) The increase in judge strength is expected to help in early hearing and disposal of pending cases.

(ii) The Bill is restricted to the increase in judge strength of the Supreme Court.

(iii) Increase in number of pending cases is due to filing of more cases, general awareness among the masses, more cases being disposed of by the High Courts etc.

(iv) The increase in judge strength is expected to liquidate arrears to some extent.

(v) The judges in the High Courts are appointed only after giving due consideration to the laid down guidelines about their qualifications, experience, temperament etc.

(vi) The Chief Justice of India is empowered to decide about the number of working days in terms of the Supreme Court Rules, 1966.

(vii) The judge strength of the Supreme Court has been increased from 10 to 13 in 1960, to 17 in 1977 and to 25 in 1986 which is the present strength of the judges excluding the Chief Justice of India.

(viii) There are at present no criteria existing for calculating/fixing the judge

strength in the Supreme Court. However, pendency of cases has been taken into account while proposing the increase in the judge strength by 5 judges.

(ix) It is not possible to include the criteria of efficiency and time bound disposal in the proposed Bill.

(x) Various steps have been taken by the Government for the speedy disposal of cases which include setting up of fast track courts, amendment to the civil procedure code, permanent adalats for disputes relating to public utilities, increase in the number of posts of judges, establishment of special courts/tribunals, improvement in the standard of legal education, adoption of alternative modes of disputes resolution, such as arbitration and conciliation etc., judicial reforms is, however, a continuous process.

(xi) The Chief Justice of India has not proposed appointment of any *adhoc* judge in the Supreme Court to dispose of the pending cases.

(xii) There are no norms for increasing the strength of the Supreme Court judges. However, the pendency of cases in the Supreme Court has been taken into account while suggesting increase in judge strength by 5 judges.

3.2. The Committee heard the presentation of the representatives of the Department of Justice, Ministry of Law & Justice on the Bill on 27th May, 2008. The Committee was also enlightened by the views/opinion of Shri S.N.P. Sinha, Chairman, Bar Council of India and Shri P.H. Parekh, President, Supreme Court Bar Association. The Committee heard their presentation on the Bill on 10th June, 2008.

3.3. The Committee also discussed the Bill with the State Bar Councils/Associations at

Chennai, Kolkata and Mumbai during its study visit to these places in July, 2008. At Chennai, the Committee heard the oral evidence of Ms. K. Santhakumari, President, Women Lawyers' Association, Shri R. Krishnamoorthy, President, Madras Bar Association and Shri G. Mohana Krishnan, Secretary, Madras High Court Advocates' Association, The above stated associations also submitted their written submissions on the Bill to the Committee. Similarly, at Kolkata the Committee heard the oral evidence of Shri Arun Kumar Sircar and Shri P.R. Banerjee, Chairman and Secretary, Bar Council, Kollata and Ms. Tanushree Ghosh, Executive Committee Member, Kolkata Bar Association. At Mumbai, the Committee heard the oral evidence of Shri Rajiv Patil, representative, Bar Council of Maharashtra and Goa and Shri Shashi Kumar Nair and Shri D. Jariwala, representatives, Bombay Bar Association along with the representatives of the Advocates Association of Western India.

3.4. The Committee took the clause-by-clause consideration of the Bill in its meeting held on 17th July, 2008.

3.5. The Committee considered and adopted its draft report on the Bill in its meeting held on 1st August, 2008 and adopted the clauses of the Bill as under :-

Clause-2

3.6. Clause 2 of the Bill provides for amendment in the Supreme Court (Number of Judges) Act, 1956 by substituting the word "twenty five" with the word "thirty" thus increasing the strength of the judges of the Supreme Court from present 25 to 30 excluding the Chief Justice of India.

3.7. The Clause was adopted without any change.

Clause-I

3.8. Clause 1 states the title of the Bill and the enacting formula.

3.9. The Clause and the enacting formula were adopted without any change.

LONG TITLE OF BILL

3.10. The long title of the Bill states that the Supreme Court (Number of Judges) Amendment Bill, 2008 is a Bill to further amend the Supreme Court (Number of Judge) Act, 1956.

3.11. The long title of the Bill was adopted without any change.

3.12. The Committee approves the Bill and recommends that while passing the Bill due consideration be given by the Government to the suggestions of the Committee on the issues discussed in the succeeding chapters.

CHAPTER II

PENDENCY OF CASES

4.0. The problem of pendency of cases at all levels of the judiciary has engaged the attention of all. In fact, the pendency of cases has been a much debated and discussed matter at various forums. This Committee also has all along been expressing its serious concern at the arrears of cases pending in the Supreme Court, High Courts and the subordinate courts. The Committee has felt that inordinate delay in delivering justice to the people defeats the very purpose of the judiciary as an institution. The magnitude of the problem of pendency of cases at various levels in the judiciary must be understood in the context that the people resort to judicial remedy as a

last resort for the redressal of their grievances and to get justice. This is so because the people have reposed their ultimate faith and trust in the judicial system above the legislature and the executive. In this context pendency of cases hits the common man, seeking justice, the hardest. Perhaps, that is the reason that it is said justice delayed is justice denied. However, inspite of the various measures taken by the Government and the judiciary itself, it is a matter of serious concern that the pendency or arrears of cases has been increasing steadily over the years bringing the judicial system as a whole to near stagnation. Further, the pendency of cases in the Supreme Court is very reflective of the delays in the judicial system thus a cause of extreme concern requiring immediate remedial steps.

4.1. That the pendency of cases in the Supreme Court is the prime reason which has led to the introduction of the Bill, is amply illustrated in the background note of the Department of Justice which states that:-

> *"In the Conference of the Chief Ministers and the Chief Justices held in September, 2004, it was observed that there is need to strengthen the Supreme Court Bench to expedite the disposal of cases, to enable the setting up of larger benches and to facilitate the functioning of the Constitution Bench".*

The background note of the Department of Justice on the Bill further states that:-

> *"The Chief Justice of India has informed that there were 41,078 cases pending in the Supreme Court as on 1st March, 2007 and the Judges feel over-burdened and have been working under acute work pressure. He has further stated that despite a satisfactorily high rate of disposal, the pendency of cases in the Supreme Court has constantly been on the rise due to comparatively higher rate of institution of cases. Pendency of cases in the Courts could be directly ascribed to complex*

factors, with inadequate judge strength coming at the top."

4.2. The Committee also noted that the pendency of cases in the Supreme Court is a prime reason necessitating the introduction of the Supreme Court (Number of Judges) Amendment Bill, 2008 by observing that ***"we have gone through the Bill and we could find that the justification for this increase is pending cases".*** The representative of the Department of Justice, while making a presentation on the Bill before the Committee stated that *"the primary reason for proposed increase is to address the problem of increasing pendency of the cases in the Supreme Court. Successive Chief Justices of India have strongly felt that the number of judges in the Supreme Court needs to be increased to address the problem of increasing pendency in the apex court".*

4.3. During the course of examination of the Bill, the Committee took note of the status of pendency in the Supreme Court since 1950 (*Annexure C*). The Department of Justice was requested to furnish the said information to assess the effects of increase in the number of judges on the cases pending and disposed off by the Supreme Court. The following table provides the details of the number of Judges and the cases pending before the Supreme Court :

Year	No. of Judges	Total No. of cases pending
1950	7	690
*–1956	10	1,722
*1960	13	2,656
1970	13	8,663
*1977	17	19,773
1980	17	37,851
*1986	25	85,899
1990	25	1,09,277
2000	25	22,145
2008	25	46,374

4.4. It is, however, pertinent to mention here that the strength of the Supreme Court judges was originally fixed at 7 by the Constitution of India excluding the Chief Justice of India. This number has been increased four times since then through legislation. In 1956, the number of Supreme Court judges was increased from 7 to 10 for the first time. Thereafter, through the amendment of the Supreme Court (Number of Judges) Act, 1956 in the years 1960, 1977 and 1986 the number of judges in the Supreme Court was increased to 13, 17 and 25 respectively excluding the Chief Justice of India.

4.5. As regards the reasons which contribute to pendency in the Supreme Court, the prime reason appears to be higher number of institution of cases i.e. admission cases being filed in the Supreme Court each year. Till the year 1977, the number of both the admission and regular cases in the Supreme Court was less than 10,000. However, this number increased 2.4, 1.3 and 2.4 times in the next three decades from 1977 *viz.* 1987, 1997 and 2007. It is discernible from the figures given below that there has been a constant increase in the number of admission cases being filed in the Supreme Court each year thus adding to the total pendency inspite of regular disposal of cases. However, for the decade from 1987-1997 inspite of the increase in the admission cases, the total number of pendency had gone down considerably. It is interesting to note that a year before the decade 1987-1997 i.e. in 1986 the Judges strength was raised by a maximum number i.e. 8. Decade-wise figures of institution of cases, disposal and pendency are as given in the following table:-

Year	Institution		Total Disposal	Total Pendency
	Admission	Regular		
1977	9,251	5,250	10,395	19,773
1987	22,234	5,806	21,807	92,132
1997	27,772	4,584	36,569	19,032
2007	62,281	6,822	61,957	46,926

4.6. Apart from the high rate of institution of cases another reason which has contributed to

the pendency in the Supreme Court is the increase in the strength of the High Court judges resulting in more number of cases being taken up and decided by them. This consequently causes increased flow of cases from the High Courts to the Supreme Court thus adding to the institution of cases. The Department of Justice in their background note on the Bill also raised the issue by stating that *"the Chief Justice of India is of the view that to keep pace with the growing litigation, the total judge strength of the High Courts which was 424 in 1985 had gone up to 725 in 2003. The strength has again gone up by 152 judges to make a total of 877 judges after the review of judge strength was undertaken in the years 2006-2007. The inescapable fall out of the growing number of High Courts and their judges would be greater disposal at the High Court level, and in turn, larger number of appeals to the Supreme Court, worsening the docket explosion. The Chief Justice of India has expressed the view that if judge strength in the High Courts can be enhanced triennially, it can definitely be done in the case or Supreme Court too, at least, once in a decade."* The Department of Justice further emphasized on the issues by stating that *"the appointments to the Supreme Court are made from amongst the Chief Justices and the Judges of the High Courts all over the country and if the size of the feeding cadre increases the number of posts in the Supreme Court deserves to be increased proportionately."*

4.7. Further, pendency in the Supreme Court is also associated with quite a large number of laws being passed by the Parliament and the State Legislatures each year. Still another reason which is internal to the Supreme Court is the constraints in constituting a 5 judge bench on regular basis in the Supreme Court resulting in the pendency of cases. How this constraint results in pendency was amply illustrated by the Department of Justice in their background note by stating that *"The Chief Justice of India has also pointed out that under compelling circumstances, it has not been possible to constitute a 5-Judge Bench on a regular basis to hear*

cases involving interpretation of Constitutional Law as doing that would mean constitution of fewer number of Division Benches which in turn would result in delay in hearing of other civil and criminal matters. This vicious circle has led to an accumulation of huge arrears of cases."

4.8. Apart from the above, there are certain Acts which provide for filing of the Appeal directly to the Supreme Court which again contribute to institution of cases in the Supreme Court which increase the pendency. These Acts and their relevant provisions are as under:-

- Section 130E of the Customs Act;
- Section 35L of the Central Excise and Salt Act;
- Section 23 of the Consumer Protection Act, 1986;
- Section 19(1)(b) of the Contempt of Courts Act, 1971;
- Section 38 of the Advocates Act, 1961;
- Section 116A of the Representation of People Act;
- Section 10 of the Special Court (Tribal of offences relating to Transaction and Securities) Act, 1992;
- Section 55 of the Monopolies and Restrictive Trade Practices Act 1969;
- Section 18 of the Telecom Regulatory Authority of India Act 1977;
- Section 15(z) of the Securities and Exchange Board of India Act, 1992;
- Section 261 of the Income-tax Act 1961; and
- Section 19 of the Terrorists and Disruptive Activities (Prevention) Act, 1987.

4.9. Evidently, appeals writs and Public Interest Litigation make a substantial contribution to the number of cases pending in the Supreme Court. While, the filing of appeals and writs in the

Supreme Court, is understandable for the final settlement of a dispute and dispensation of justice, whether the public interest litigation also serves that purpose is a debatable question. The Public Interest Litigation was initiated as a tool to provide justice to the people who were unable to have access to the judicial system due to poverty, illiteracy, or any other social economic disability. However, later this tool came to be used to gain publicity or to drag civil authorities, executive and the legislature in the Court of Law. Such matters have only added to the Pendency of cases in the Supreme Court. A statement of institution, disposal and pendency in respect of PIL matters along with direct and indirect tax matters in the Supreme Court of India for the years 2006 and 2007 is at *Annexure D.* Similar data regarding civil and criminal matters being instituted, disposed and pending in the Supreme Court for the years 2006 and 2007 is at *Annexure E.*

5.0. Thus, there are various reasons for the huge pendency of cases in the Supreme Court. Further, there are arrears of cases at the High Courts and subordinate courts level also, a considerable number of which might also go to the Supreme Court latter. If there are inadequate number of judges in the Supreme Court to handle the flow of cases the problem of pendency might further aggravate shaking the faith of the people in the judiciary. Therefore, it would be appreciable to ensure that inadequacy of the judges does not become one of the reasons for the pendency of cases and if by increasing the strength of the judges in the Supreme Court, pendency could be reduced it would be an appreciable step to take. **In the light of the foregoing the Committee strongly feels that the Government should take every conceivable step/measures to reduce the pendency of cases not only in the Supreme Court but also in the High Courts and the subordinate courts so that delays occurring due to pendency of cases in the dispensation of justice are reduced.**

5.1. Further, the increase in the number of judges in the Supreme Court has always resulted in the increased disposal of cases thus making a dent in the pendency or arrears of cases in the Supreme Court. This is evident from the figures listed below:-

Year of augmentation of S.C. Judges	Institution		Disposal		Pending	
	Admission	Regular	Admission	Regular	Admission	Regular
1956	1732	630	1720	258	627	1095
1960	1971	1276	1910	1271	706	1950
1977	9251	5250	8714	1681	5271	14,502
1986	22,334	5547	17,881	12,819	46,293	39,606

5.2. Evidently, in the years in which the strength of the Supreme Court judges is increased, the disposal rate both in the cases of admission and regular cases has always gone up thus reducing the pendency. Remaining pendency may be attributed to the accumulation of cases over the years and also to the fact that the inflow of cases is also on the rise constantly. The increased inflow of cases could be attributed to the fact that the people have become more aware of the laws and the justice delivery system. **The other important reason, the Committee feels is the enactment of new legislations by Parliament and state legislatures, in addition to the executive orders which add to the flow of cases.** The representative of the Supreme Court Bar Association while making a presentation before the Committee on the Bill made a strong case for increasing the strength of the Supreme Court judges by stating that *"Look at the arrears of cases. In the Supreme Court, we have 45000 cases pending. As far as the High Courts are concerned, thirty seven lakhs sixty four thousand five hundred sixty five (37,64,565) cases are pending. In fact, when foreigners come to invest in India, they are very happy with our democracy, they are very happy with out independent Judiciary, but they are all quite upset about the disposal rate of cases, which is very bad. It is good that there are more cases because people have confidence. But making cases linger on for 40 years, 50 years or 60*

years, people really lose confidence in the administration of Justice".

5.3. The Committee, in the light of the above deliberations is of the opinion that the very purpose of this sanctified institution *viz.* the judiciary shall be defeated if timely justice is not delivered to the people who look at this institution as a last resort of redressing their grievances and to get justice. In this context, the Committee observes that to reduce pendency in the Supreme Court and to enable the people to get timely and speedy justice, it is absolutely necessary to devise various mechanisms and to take corrective and other measures to ensure timely justice to the people.

CHAPTER – III

ISSUES REQUIRING CONSIDERATION ALONG WITH INCREASE IN THE NUMBER OF JUDGES

6.0. While considering the Bill and its purpose *viz.* increasing the strength of the Supreme Court judges to reduce pendency of cases in the Supreme Court, the Committee members' raised many issues connected with the pendency of cases in particular and with the judiciary in general and Supreme Court in particular. The Committee was of the unanimous opinion that the pendency of cases not only in the Supreme Court but also in the High Courts and the Subordinate Courts has acquired a menacing proportion threatening to collapse the entire judicial system.

6.1. Therefore, the Committee being concerned about the huge number of pending cases observed that immediate corrective measures were required to be taken to reduce pendency at various levels in order to facilitate timely and speedy justice to the litigant people. The Committee agreeing that one of the immediate corrective measures could be the increase in the

strength of the judges, however, raised concern if whether by increasing the number of judges alone in the Supreme Court pendency could be reduced. While debating on this particular point, the members' raised various issues and concerns, which actually contribute to pendency at various levels. These included appointment of judges and the mode of appointment, judges' accountability, measures of control and regulation existing within the judiciary, vacations and holidays being observed in the Supreme Court, increase in working hours, setting work norms *etc*. along with the reforms in the criminal procedure code, alternative dispute redressal mechanism which the Committee felt should be considered earnestly for reducing pendency along with the increase in the strength of the judges.

APPOINTMENT OF JUDGES AND THEIR ACCOUNTABILITY

6.2. In fact on the issue of appointment of judges and their accountability one of the Committee members referring to the Committees' earlier report on the judges (Inquiry) Bill, 2006 observed *"That is an important Bill because as per the provisions of the Constitution, only one impeachment proceeding is available. If a Judge commits a minor irregularity, he cannot be punished. We are in such a position that even for dereliction of duty, the only proceeding is impeachment under the provisions of the Constitution. We thought it better to bring in a new legislation to seek remedies in those matters…….. The Bill is important so far as higher judiciary is concerned regarding enquiries about the Judges of the Supreme Court and High Courts……..In India, the present situation is that it is the only country in the world, where Judges appoint themselves and are not appointed by any other authority....."*

6.3. The Member further observed that *"Now, by this amendment, you want to increase the number of Judges from 25 to 30. We do not stand in your way but priority should be given to the other Bill. Priority should naturally be given to the Judges Inquiry Bill, which has already*

been submitted".

6.4. It is stated that in the year 1997, the Supreme Court with a view to devise a control and regulating mechanism within the judiciary had passed two resolutions dealing with the judicial accountability *viz.* the Restatement of values of Judicial life and an in-house procedure to address to the instances of complaints against the members of the higher judiciary. This in-house procedure to be devised by the Hon'ble Chief Justice of India, is essentially meant for disciplining the judges against whom complaints of judicial misconduct and misbehavior are received. The Committee feels that for maintaining the faith and trust of the people in the judicial system, strict adherence to these two measures of accountability is the need of the hour.

6.5. In the light of the above, the Committee expressed unanimous opinion that its recommendations as contained in its report on the judges (Inquiry) Bill, 2006 be given thoughtful consideration by the Government as they pertained to very important issues of appointments, mode of appointments, accountability and control in the judiciary. Concluding on the point the Chairman of the Committee observed that *"we did a lot of research on that particular subject. We called even the former Chief Justices of India and others. On that basis, we have made some recommendations, till now, that Bill has not seen the light of the day……. The recommendations made by this Committee should be considered whole heartedly to see that the judges are properly regulated……When the executive is not ready to come forward with a regulation how are you going to control the judges by adding the numbers."* On the specific point of appointment of the judges in the Supreme Court and the High Courts the Committee was for restoring the pre 1993 position and desired that the Government should follow the recommendations made by the Committee in its Report on the Judges (Inquiry) Bill, 2006. The Chairman of the Committee summarised the observations of the Committee as

under:-

"I would like to conclude by saying that the Government should expeditiously see to it that appointment of judges in High Courts and Supreme Court are done in a transparent way. We have recommended in two ways: One is, we have to see to it that the collegium system has to be done away with. Instead we have suggested that an Empowered Committee, which comprises representative of the Judiciary, the Executive and Parliament, should be set up. That was our recommendation in the Judges (Inquiry) Bill. And, subsequently, since appointments will be delayed, we have said that from the very beginning of identifying the eligible persons, the various places of recommendations, be it at the level of the High Courts, or, at the Governor's level or at the level of the Departments, and finally be the Supreme Court, should be transparent, and this should be put up in the web site then and there so that the person, who is going to occupy the Constitutional place, is known to the public, and their background should be allowed to be discussed by the public and, finally, it has to go through the process of issuing warrant by the President of India. But, what is happening presently is that from the day one of identifying the person till the issuance of the warrant, nothing is known to anybody except to the persons who are involved in it. Even the persons, who are identified and who are going to be made as judges of the High Court or of the Supreme Court, may not know about it. This type of secrecy is not good for democracy. We have already mentioned about it; we wanted to stress it again here."

The Committee endorses the observations of the Chairman of the Committee and impresses

upon the Government to ensure their compliance in regard to the appointment of the judges of the Supreme Court and the High Courts.

FINAL VERDICTS/JUDICIAL PRONOUNCEMENTS AND THE APPOINTMENT OF QUALIFIED AND EFFICIENT JUDGES.

6.6. One of the Hon'ble Member observing on the pendency of cases stated that the judges prefer not to give final verdicts thus leaving the question/point of dispute open to be decided again by a larger bench. The Committee feels that the Judges should try to give conclusive/final verdicts taking into account every fact, circumstances, evidences adduced before them. This essentially means application of judicial tenets in the discharge of judicial functions. The Committee's observation rests on the premise that for hearing a matter at any stage at any judicial level considerable expenses in terms of judicial infrastructure, legal/judicial procedure administrative machinery, time and money is incurred. Taking this point further another Hon'ble Member observed that *"it is not the quantity or number of judges but the quality and efficiency of judges in the pronouncement of judgment which is very important. The Ministry should strictly pay attention to the quality and efficiency of the judges more than the number of judges."* Another Member observed *"The number of judges requires to be increased; there is no question. But the problem is not merely about increasing the number. The problem, today, is finding competent and honest judges……there are judges who know nothing of criminal laws but they are deciding cases everyday and deciding questions of life and death."* Taking this point further another Member suggested that *"only those people should be appointed as judges who at least, know the criminal law."*

RETIREMENT AGE OF THE HIGH COURT JUDGES

6.7. The Committee in its twentieth report on the Demands for Grants pertaining to the

Ministry of Law and Justice had recommended that there was a need to bring about uniformity in the retirement age of the Judges of the Supreme Court and the High Courts. The Committee had recommended so on the ground that the mode of appointment and removal of the Judges of the Supreme Court and High Courts being the same the Judges of the High Courts should also retire at the age the Judges of the Supreme Court retire *i.e.* 65. Since, this issue has also been discussed in the Conference of the Chief Ministers and the Chief Justices of the High Courts held in March 2007 **the Committee recommends that the issue be given consideration and the retirement age of the Judges of the High Courts be increased to 65 years. This will also facilitate the availability of experienced Judges for elevation to the Supreme Court**.

BENCHES OF THE SUPREME COURT

6.8. The Committee in its Second, Sixth, Fifteenth, Twentieth and Twenty Sixth Reports on the Demands for Grants pertaining to the Ministry of Law and Justice has impressed upon for setting up of benches of the Supreme Court in Southern, Western and Eastern parts of the country. The Committee's recommendation rests on the premise that it is not possible for the people living in far-flung and remote areas to come to the national capital for seeking justice for various reasons. **The Committee reiterates this recommendation**.

SOCIAL JUSTICE AND EQUITY AT HIGHER JUDICIARY

6.9. While deliberating upon the Bill, the Members' raised a concern about the inadequate representation of the weaker sections viz., SC, ST, OBC and women in the higher judiciary. The Members' observed that because of the inadequate representation of the weaker sections, in the Supreme Court and High Courts, the judiciary is unable to comprehend the social flavour of the legislations passed by Parliament and the State Legislatures. Further when the Executive and the Legislature, under the constitutional provisions, are required to provide adequate

representation to these sections of the society there is no reason that the higher judiciary should also not come under that ambit to address the issue of social justice and equity. Accordingly, the Committee recommends that the Government should ensure adequate representation of the weaker sections and the women in the Supreme Court and High Courts. More so when the number of judges is increased in the Supreme Court this social justice and equity should be ensured.

DIFFERENTIAL FEES FOR COMMERCIAL AND CORPORATE CASES

7.0. While deliberating upon the Bill the Committee discussed the issue of differential fees for commercial and corporate cases. The Committee seized the issue for discussion in the context of globalization and corporate/commercial competition being observed during the recent times. In this era of globalized economy and free flow of trade and commerce, many multinational companies of Indian and foreign origin make huge investments in India and outside. Within the country, Indian commercial and corporate sector is making huge strides and contributing to the Indian economy. Foreign companies and multinationals are also being drawn to India. The attraction for the foreign companies to invest in India is its vibrant democracy and inbuilt independent judicial system. The Indian and foreign commercial sector has intense faith on both the democracy and the independence of the judiciary for protection of their commercial and corporate interests. With growing competition in the commercial/corporate sector within and outside these Indian and multinational companies often take recourse to judicial remedy for settlement of their claims, right and liabilities arising out of their contractual and other commercial agreements.

7.1. While discussing the issue of litigation being conducted by these commercial/corporate

sector companies, the Committee observed that these companies under the relevant Supreme Court, High Court and other rules are required to pay very less amount as court fees for settling their disputes worth crores of rupees. The Committee specifically inquired from the Department of Justice, Ministry of Law and Justice on the issue of maximum and minimum court fees levied in the Supreme Court for any suit, appeal or other proceedings the Department of Justice replied *"the Supreme Court has informed that the maximum prescribed court fees is Rs. 250/- if the value of the subject matter is upto Rs. 20,000/- and Rs. 5/- per thousand for every additional value of Rs. 1000/- or part, thereof in excess of Rs. 20,000/- subject to a maximum of Rs. 2000/- in case of civil appeal by certificate of fitness under article 132(1) and 133(1) of the constitution and appeal under section 18 of the Telecom Regulatory Authority of India Act. The minimum prescribed court fees is Rs. 10/- in case of appeal under section 38 of the Advocates Act. However, no Court fees is levied in the case of special leave Petition (Criminal), writ Petition (Criminal) etc."* The Committee further inquired from the Department of Justice whether separate court fee is applicable for commercial/corporate institution/bodies Government or private such as SEBI, TRAI etc. The Department of Justice replied that *"the Supreme Court has informed that there is no separate court fees applicable for commercial/ corporate institutions/bodies whether government or private such as SEBI, TRAI etc."*

7.2. The Committee infers that a large number of cases are filed in the Supreme Court and the High Courts by the Corporate Sector. Further there are cases filed by the statutory institutions/ bodies created by the Government of India such as the Securities and Exchange Board of India, Telecom Regulatory Authority of India, Competition Commission etc. for getting their commercial/corporate interests/disputes settled. Invariably the value of such corporate/ commercial interests/disputes filed by these corporate/statutory institutions/bodies runs into

crores of rupees. However, these corporate statutory bodies are required to pay a very minimum amount as court fees for settling their disputes worth crores of rupees. For going in appeal to the High Courts in such matters these companies/commercial corporate/ statutory bodies have to pay only an amount of Rs.250 as court fees and Rs.2000 maximum court fees for going to the Supreme Court for getting their disputes redressed.

7.3. The Committee further taking note of the facts observes that the time spent by the courts at various levels and the expenses incurred by the judicial infrastructure and government exchequer, while settling such disputes has never been taken into account resulting in allowing the corporate, commercial/statutory bodies making use of the judicial infrastructure at the minimum expenses on their part within a short duration as such matters are invariably listed for early hearing and disposal because of their commercial/contractual nature.

7.4. The Committee has made a comparison between the corporate/ commercial litigation and ordinary litigation by the Common man and noted that the ordinary citizens have to spend a lot of money and time to get justice whereas the corporate/statutory bodies are able to approach the Supreme Court by paying a very minimum amount of fees. The Committee also noted that this situation was very depriving for the common man. The concern of the Committee on the issue was voiced by the Chairman of the Committee by observing that ***"the ordinary citizens, the poor people, who are living on their own income, have to pay more and spend more time and they do not have accessibility to justice when you compare them with corporate bodies or other companies."***

The Committee therefore observes that it is high time that a differential court fees system for the corporate sector is considered on the following lines :-

(i) The present system of court fees of Rs.250/- to Rs.2000/- for all cases of

civil and criminal nature needs to be reviewed urgently. For the poor, illiterate people who have no access to justice the Court fees should be waived altogether *i. e.* there should be no court fee for such litigants.

(ii) Corporate Commercial bodies have huge financial resources at their disposal and invariably their disputes are worth crores of rupees. Accordingly, it would be reasonable if they are required to pay the court fees as per the value of their dispute on ad-valorem basis which should extend from 1 percent to 5 percent of the total value of the dispute.

(iii) There are certain Acts which enable the companies to go directly to the Supreme Court for getting their disputes resolved. These Acts include the Customs Act, the Central Excise and Salt Act, the Consumer Protection Act, the Monopolies and restrictive Trade Practices Act, the Telecom Regulatory Authority of India Act, the Securities and Exchange Board of India Act and the Income Tax Act. The Committee feels that a maximum fees of Rs.2000 in terms of the Supreme Court Rules, 1966 is grossly inadequate and should, therefore, be revised accordingly.

(iv) The corporate matters going by the very nature of the dispute, the companies desire for early settlement or speedier disposal by the Court, therefore, if they are required to pay higher court fee, it would only be reasonable.

(v) It is the common man, an ordinary citizen who waits for justice for years. Early hearing and disposals of cases by the courts in corporate cases only

delay the cases of ordinary citizen as they take valuable court time within minimum court fees, therefore, there is a strong case for a differential court fee for the corporate sector. In any case the corporate sector makes use of the legal facilities/judicial infrastructure for which they should be required to pay as the expenses for creating & maintaining the judicial infrastructure are borne by the State.

(vi) The differential court fees will only add to the revenue of the Supreme Court which could be utilized for creating further judicial infrastructure for the judiciary.

(vii) As per the information furnished by the Supreme Court, the total stamp/ court fees collected by the Supreme Court in the years 2006 and 2007 is 1,20,40,382 and 1,17,15,951 respectively. The Supreme Court generates revenue of more than Rs.1 crore by way of stamp/court fee. If the differential court fees is applied for the corporate cases that will only add to the Supreme Court revenue. As per the Constitution of India all moneys and fees collected by the Supreme Court forms part of the consolidated fund of India. Hence, the money so accrued to the consolidated fund of India could be used by the State for fulfilling one of its obligations as envisaged under Article 39A of the Constitution which directs the *"State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denies to any citizen by reason of economic or other disabilities."*

(viii) The operation of judicial system should not result in any disadvantage to the common man or ordinary citizens. However, the present judicial system operates in such a manner that the citizens have to wait for years to get justice in both civil and criminal matters. Cases linger on for years making public lose their faith in the administration of justice. In criminal matters delay in the operation of judicial system sometimes renders the appeal against the conviction infructuous as the convict might have completed the term of conviction in prison while his case completes trial. In this scenario when the judicial system is clogged by the huge number of cases, preference to corporate cases that too on minimum court fees may amount to taking away the time mean for the common man who has no other alternative remedy or recourse open to him. This situation also makes out a case for differential court fees.

(ix) The corporate bodies could easily get their disputes resolved through the methods of Arbitration and Conciliation. However, Arbitration may involve higher cost. For this reason also the corporate bodies make use of the judicial infrastructure. However, while recourse to judicial infrastructure cannot be denied there is no harm if higher court fees is levied because the state incurs huge expenses in maintaining the entire judicial infrastructure.

(x) The Committee therefore draws the attention of the executive and the judiciary to arrive at a decision regarding the differential court fees for the commercial/corporate/company matters immediately; and to amend the Supreme Court Rules, High Court Rules and other court fees Acts accordingly.

INCREASED IN-FLOW OF FINANCE TO THE JUDICIARY

7.5. The Committee feels that there could be an added advantage of levying a differential court fees for the corporate sector. As per the information made available by the Supreme Court, it earns about Rs. 1 crore by way of court fees/stamp fees in a year. By applying the ad valorem court fees for corporate cases, the Supreme Court can add to its revenue manifolds. This revenue so collected could be flowed back to the Judiciary in the form of higher grants. This could also change the peoples perception about the judiciary being a financial burden on the state as the grants given to the Supreme Court and other Courts come under the head "expenditure". The people perceive that the Government of India in order to give grants to the judiciary mobilizes the finances from other sources. However, levy of differential court fees both in the Supreme Court and the High Courts for corporate cases could make these institutions "revenue generating" also which could go a long way in tiding over the financial crunches in the judiciary by flowing the same finance to the Supreme Court and High Courts. **Therefore, the Committee is in favour of levy of differential court fees and recommends that amendments be carried out in the relevant rules in terms of Article 145 of the Constitution of India**.

EMERGENCE OF ARBITRATION AND CONCILIATION AS A SERVICE INDUSTRY IN INDIA

8.0. The additional benefit that might accrue to the judicial system as a result of differential court fees and separate benches for the corporate cases could be the emergence of arbitration and conciliation as a method of dispute resolution and as a service industry within the Indian judicial system. It is a well known fact that commercial, mercantile or corporate contracts have shorter life span and with changing circumstances these contracts undergo many changes also. If the litigation for such matters has to drag for years, the litigation itself becomes infructuous.

Therefore, the corporate sector may prefer arbitration and conciliation as a method of dispute resolution in place of the conventional, time consuming, complex judicial procedure, which in Indian context is characteristically slow leading to delays and pendency. Once separate benches are constituted, judges experienced in commercial/corporate laws could conduct arbitration and conciliation not only between the Indian parties but also between the multinationals, commercial/corporate institution of foreign origin. The benefit of such a system would be that the arbitration and conciliation, hitherto a least preferred mode of dispute resolution because of absence of an institutionalized mechanism within the judiciary, will slowly get institutionalized in the Indian Judicial system as well.

8.1. The Committee's above inference is based on the premise that the Indian judicial system, in spite of being slow have a distinct advantage of being structurally institutionalized with the Supreme Court at the Apex then the High Courts at middle level and the Subordinate Courts at the lowest level. In addition the system has a tremendous advantage of English as a working language and a very intelligent and knowledgeable Bar throughout the country. Thus there are very conducive circumstances existing within the Indian judiciary which can institutionalize the Arbitration and Conciliation as a method of dispute resolution in the way it has been institutionalized in Singapore. In such a scenario the multinationals/international parties can opt India as a venue of arbitration thus saving and earning foreign exchange. Therefore, there is no reason that Arbitration and Conciliation can not emerged as a Service Industry in India.

VACATIONS AND HOLIDAYS OBSERVED IN THE SUPREME COURT

9.0. Vacations and holidays being observed in the Supreme Court was one of the issues that came in for some debate during the course of examination of the instant Bill. It was observed in the Committee that the system of vacations is a colonial legacy that has no relevance today.

In fact some Committee Members were of the view that given the huge pendency existing at various levels including at the Supreme Court level, vacations is a privilege that the judicial system could hardly afford. Whereas some witnesses were of the opinion that the judges also work at their residences for studying the cases, writing judgments etc. after the office hours and even on holidays so vacation should not be treated as privilege. The Committee inquired about the vacations and holidays being observed in the Supreme Court. The Supreme Court informed the Committee as under :-

"the vacations and holidays in the Supreme Court are governed by the Supreme Court Rules, 1966. "As per Order II Rule 4(2) of Supreme Court Rules, 1966 the period of the summer vacation shall not exceed 10 weeks."

"As per Sub Rule 3 of rule 4 of Order II, the length of the summer vacation of the Court and the number of holidays for the Court and the offices of the Court shall be such as may be fixed by the Chief Justice and notified in the Official Gazette so as not to exceed one hundred and three days (excluding Sundays not falling in the vacation and during holidays.

As per Rule 5 of Order II, the Court shall not ordinarily, sit on Saturday, nor on any other days notified as Court holidays in the Official Gazette.

With effect from the year 2006, the Summer Vacation of the Court has been reduced from eight weeks to seven weeks and number of working days has been increased from 185 to 190 days. The Courts sit from 10.30 A.M. to 4 P.M. on Tuesday, Wednesdays and Thursdays and from 10.30 A.M. till the work is over on Mondays and Fridays. The Courts do not sit on Saturdays and holidays except to

hear the matters of urgent nature. Since 2006, a Bench consisting of two Hon'ble Judges sits regularly during Summer Vacation for hearing urgent miscellaneous matters on Mondays and old regular matters from Tuesdays to Fridays. Additional Benches as per availability of Hon'ble Judges are constituted to hear old regular matters in Summer Vacations.

Except on Sundays and holidays, the offices of the Court remain open from 10.00 A.M. to 5.00 P.M. from Monday to Friday and from 10.00 A.M. to 1.00 P.M. on Saturday. If so directed by the Hon'ble Chief Justice of India, the office remains closed on Saturdays during Summer Vacations."

9.1. Regarding the number of holidays being observed in the Supreme Court, the Committee was informed that a total number of 45, 44 and 45 holidays were observed in the Supreme Court in the years 2006, 2007 and 2008 respectively.

9.2. However, the Committee taking note of the information furnished by the Supreme Court feels that given the huge number of cases pending in the Supreme Court, the system of lengthy vacation is better done away with. Reduced vacations will automatically add to the number of working days. The Committee, accordingly, recommends for increasing the number of working days in the Supreme Court to accord speedy justice to the people and to break the vicious circle of pendency.

INCREASE IN THE WORKING HOURS IN THE SUPREME COURT

9.3. Another issue which invited Committee's attention was the feasibility of increasing the working hours in the Supreme Court. The Committee felt that by increasing the working hours, it is possible to take up more matters for hearing thus contributing to reduction in pendency.

The Committee desires that the Supreme Court should explore this possibility in the interest of justice.

ALTERNATIVE DISPUTES REDRESSAL MECHANISM

9.4. While considering the Bill, the Committee also deliberated upon the issue of alternative dispute redressal mechanism in the Supreme Court in the context of the pendency of cases. The Committee was of the opinion that these methods were of great importance to reduce the pendency while disposing of the litigations within a short duration. On this particular issue the Supreme Court had informed the Committee that *"in the year 2006, several attempts were made to hold Lok Adalats in the Supreme Court by giving notice and publication in the newspapers. However, no favourable response was received. Further, efforts in this direction were made in the year 2007, as a result of which a Lok Adalat was held in the Supreme Court on 3rd May 2008 and 25 out of 45 matters referred to the Lok Adalats were disposed of."* The Committee in the light of the above is of the considered opinion that efforts should be made through press and media to educate people about the alternative methods of dispute resolution. The Committee is of the view that the Supreme Court should organise seminars, workshops and publish write ups etc. on the efficacy of the alternative methods of dispute resolutions and their benefits in terms of saving time and money so that the people resort to these methods for settlement of their disputes over conventional method of going to the courts through long procedures.

9.5. In the light of the above deliberations, the Committee, observes that it is not against increasing the number of judges in the Supreme Court but it directs the Government that issues discussed in the report and recommendations/observations of the Committee thereon should also be given thoughtful consideration so that there is no pendency of cases

in future, and the objective of this Bill is achieved.

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[*] To be appended at printing stage

[♣] Rajya Sabha Parliamentary Bulletin Part-II (No. 45132) dated the 12th May, 2008.

[*] Years in which number of judges in the Supreme Court was increased.