

Specialised Court Systems

Comparative paper analysing the possibilities of implementing a specialised court system in India

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1. Introduction

The judiciary is slow; the system is inefficient; cases are not handled justly. These are presumptions existing as regards the Indian judiciary. How can cases in court be handled in a quicker, more efficient way? Which mechanisms exist in order to improve India's judiciary and enhance the people's trust in its efficacy? Within Lok Satta's branch "Judicial Reforms", research has mainly focused on the following areas: 'Access to Justice' and, more specifically, 'Alternative Dispute Resolution'. There are however also other ways possibly leading to a better justice system, such as longer working hours for judges, emphasising the responsibilities of the lawyers or specialisation of courts. The latter issue will be the central issue for the present report.

In particular three kinds of specialised courts will be under consideration: a constitutional court, administrative courts and commercial courts. The Indian legal system will be compared to (parts of) foreign systems: the French, the English, the German as well as the Tanzanian and the US American. India's court structure differs from all the aforementioned in that it has one single stream of cases whereas in the other countries, there are different courts for different areas of law. The number of 'specialised' courts varies between the foreign legal systems. Following the evaluation of the different features of the court structures (Chapters 3-7), the possibility of implementing these features in the Indian system will be analysed in Chapter 8. First, in Chapter 2, a general outline of the advantages and disadvantages of implementing a specialised court system will be given. Since not all related questions can be answered in the present report, Chapter 9 and the conclusion (Chapter 10) will contain suggestions and guidelines for further research.

2. Specialisation – pro's and con's¹

In this chapter, general arguments in favour and against the introduction or maintenance of specialised courts will be outlined. Unless mentioned otherwise, these arguments are valid for all the systems under comparison.

2.1 Court specialisation – potential benefits

Generalist courts will be relieved which means that the mainstream of the cases will not be impeded. At these courts, efficiency will increase eminently.

If judges only handle cases within one particular field of law, time and resources will be saved thanks to the judges' bigger expertise. Since judges will have a more comprehensive understanding and are more familiar with the material surrounding of the case, core issues will be identified early in the proceedings. Another potential advantage of courts' and judges' specialisation is that the outcome of cases will be more predictable. Specialisation also leads to more support from the side of the litigants, or rather their lawyers.

2.2 Court specialisation – potential risks

Within the particular field of law which the court deals with, the specialists might lose a generalist legal perspective and that legal area might develop into a different direction than the general law. On the other hand, overlap with other areas of law might take place, leading to conflicts of jurisdiction between the different courts.

Since judges, lawyers, experts and other possible actors involved in litigation will grow to be familiar with each other, their way of dealing with each other will naturally become informal and they might thus exclude outsiders by presenting some kind of 'cosiness'. In the prolongation thereof lies the danger of corruption.

¹ Arguments drawn from the following sources: E. Cazalet, *Specialised Courts: Are they a "quick fix" or a long-term improvement in the quality of justice?*, to be found at: <http://www1.worldbank.org/publicsector/legal/Specialized%20Courts-Cazalet.doc> and: A. Altbeker, *Court specialisation in South Africa: The Case of the Specialised Commercial Crime Court*, Presentation at ISS (Institute for Security Studies), 28 November 2002, to be found at: <http://www.iss.co.za/Seminars/26Nov02.ppt>, last visited on Oktober 13th, 2005

Another problem will lie in the geographical accessibility of such a specialised court. Since there will be less courts of one type, distances for litigants will be longer, thereby increasing the price of litigation.

If the high case load appears to be of a temporary nature, meaning if there are fewer cases to cope with than at the moment of creating the court, a court would be a waste of human resources, money and time.

Regarding the quality and expertise of the judges and applicants, another concern has been expressed which comes from the experiences other countries have with specialised courts. In other countries, the image of judges in specialist courts is bad; South African academics fear that a bad image leads to a low quality and expertise.

An overall formal concern is that specialised courts are difficult to integrate into the general court system.

3. France: two types of cases

Within the French legal system, there is a fundamental distinction between ordinary and administrative cases. Administrative cases are all cases which involve the government in one way or another ('law of the government'). Under the ordinary court system, also called 'judicial order', private law cases are dealt with, and, even though that is formally incorrect, also criminal cases.²

3.1 Ordinary courts

Ordinary courts deal with all kinds of civil and criminal cases. Within this judicial order, different jurisdictions exist.

Depending on the amount which is at stake, civil cases are dealt with by the *Tribunal d'instance* or the *Tribunal de grande instance*.³ Specialised courts exist for commercial and social security disputes, as well as for disputes between employers and employees (industrial relations disputes).⁴

Criminal cases are divided into three subcategories: petty offences, misdemeanours and serious indictable crimes are solved by different courts.⁵ Aside from the worst criminal cases, which are not appealable, appeals in criminal as well as civil cases are referred to the *Court d'Appel*. For all ordinary cases, the *Cour de Cassation* functions as court of last instance.

3.2 Administrative courts (and 'constitutional court')

In France, the administrative order⁶ handles any kind of dispute a citizen could have with the public authorities, except for criminal cases. Disputes between a citizen and a public organ is brought before an administrative (appeal) court, while civil or military pension cases as well as social assistance cases are by way of an exception dealt with by the criminal court. For all administrative cases, the *Conseil d'Etat* (Council of State) serves

² Joy Stoddard, 'The French Legal System', Journal of the DuPage County Bar Association, DCBA Brief Online, April 2001, <http://www.dcba.org/brief/aprissue/2001/art50401.htm>, last visited on Oktober 28th, 2005

³ Mind that the French word *tribunal* should not be confused with the English word 'tribunal'.

⁴ <http://www.diplomatie.gouv.fr/venir/voicilafrance/gb/page02.html>

⁵ *Tribunal de Police, tribunaux correctionnels, cour d'assises*

⁶ Joy Stoddard (2001)

as last instance court. Aside from being a last instance court, the Council of State also advises the legislative branch on the constitutionality of draft legislation. Constitutional review only takes place before enactment of legislation, not afterwards.

3.3 Commercial Courts

Commercial courts are functioning as a joint regulation system.⁷ The State shares its judicial power with the local business community: the lay ‘judges’ are consular, and officially supported by employers’ associations. They perform their services for free – however, the company they work for pays their salary. Thanks to a low level of appeals, the joint regime has the advantage of being time and money saving. It serves the business community’s need for a high degree of neutrality because of the separation between politics and judiciary. Also, a person who comes from the business community is much better informed about the business customs. Business customs are often ignored by legislation and by installing a judge who is familiar with them, they will be preserved. For the employers’ association, the commercial courts are also a good way of promoting themselves.

⁷ E. Lazega, *Networks in Legal Organisations: On the Protection of Public Interest in Joint Regulation of Markets*, Inaugural Lecture of the Wiarda Chair, December 3, 2003, Utrecht University

4. England: divisions due to history

England's court system can be divided into two fields of law: a criminal law and a civil law branch. Criminal cases are all treated in the same way, whereas three different jurisdictions can be distinguished within the civil procedure.

Contract law cases and personal injury as well as general negligence cases fall within the jurisdiction of the Crown Court at first instance and are appealed to the Queen's Bench Division. Criminal cases follow that same path. The County Court deals with equity cases in first instance and appellants can refer to the Chancery Division, while family matters are dealt with by either the County Court or the Magistrates Court and in appeal by the Magistrates Court or the Family Division.

The term 'division' in the appeal courts indicates that these courts are part of a bigger unit, which is the High Court. The division of the High Court into these three branches as well as the jurisdictional division are primarily based on historical reasons. Other than that, the choice for the Family Division has been made on deliberate considerations: against the background of the suffering which is accompanied with most family cases and the need for a sensitive approach this specialised court was created.

Like India (see in Chapter 7), England is familiar with administrative tribunals. Here, they are however integrated in the normal court structure. Their functioning is controlled by the Council of Tribunals, an organ consisting of lay men reporting the tribunals' work to the government. By involving lay men into the procedure, the ordinary man's sense of justice and fairness is represented in the procedure.

In relation to the English specialised court system – with regard to family cases –, it has been concluded that specialised courts can generally be a powerful justice instrument.⁸

⁸ E. Cazalet

5. USA – four specialised courts

Most federal courts are traditional courts with broad jurisdiction. Though, there are four specialised courts which should be noted.

1. US Court of Federal Claims
2. US Court of International Trade
3. US Tax Court⁹
4. Territorial Courts.¹⁰

All the courts apply standard procedures, including oral hearings. Their jurisdiction will be explained in the following.

Monetary suits against the United States exceeding \$10,000 or claims arising from (contractual) relationships with federal authorities are brought before the US Court of Federal Claims. This type of court has existed since 1855, formerly known as US Claims Court. Its judges are appointed for a limited period of time, i.e. for 15 years. While the Court has headquarters in Washington DC, it will also hear cases elsewhere if this is more convenient to the parties.¹¹

A case that is related to international trade and customs *and* involves the United States, federal agencies or their employees will be handled by the Court of International Trade. Its institutional origin lies in the Board of Appraisers, a quasi-judicial administrative unit within the Treasury Department set up in 1860. The Board of Appraisers was replaced by the Customs Court in 1926, and its name was changed into Court of International Trade in 1980.¹²

The third court's jurisdiction is apparent: the Tax Court covers all kinds of tax-related disputes.

Territorial courts are so-called legislative courts. Their jurisdiction covers local cases and also disputes arising under federal law. An interesting detail about them is that

⁹ <http://www.uta.fi/FAST/US2/PAPS/hh-court.html>, last visited November 18th, 2005.

¹⁰ <http://www.yale.edu/ynhti/curriculum/units/1984/2/84.02.08.x.html>, last visited November 21st, 2005

¹¹ <http://www.thecre.com/fedlaw/intro3/89921.htm>, last visited November 18th, 2005.

¹² <http://www.cit.uscourts.gov/informational/about.htm>, last visited November 18th, 2005

they were created under the Constitution (Article 1). Its judges are appointed for only 10 years.¹³

As can be seen from the foregoing, the specialised courts in the US have a historical background, like the English courts. The ratio behind institutions with a historical origin is mostly not so clear. Often, tradition is the better argument for their existence than any logical explanation.

¹³ http://www.uscourts.gov/understanding_courts/89913.htm, last visited on November 21st, 2005

6. Germany – five types of jurisdiction

According to Article 95 *Grundgesetz* (the German constitution), cases and courts are divided into five different types: ordinary, administrative, fiscal, labour and social. Ordinary cases are subdivided into civil and criminal cases. For every type of case, a separate court structure exists, i.e. from first instance to last instance court.

Aside from that, the German legal system incorporates a constitutional court (*Bundesverfassungsgericht*).

In 2004, there has been a big academic discussion about justice reforms.¹⁴ Draft legislation (*Zusammenfuehrungsgesetz*) suggested merging the five court tiers into two. The arguments which lead the legislator to draft the proposal were the following: merging the courts would lead to more flexibility and synergy. A second reason is ‘balance’: the case loads of the different courts would be more similar. Furthermore, it would simplify the procedures, and be cost saving for the state as well as the litigants.

The most significant contra-arguments presented by the German Federation of Judges (*Deutscher Richterbund*) were of a constitutional nature: basic principles going back to the Third Reich made such an amendment impossible. Another important restraint was that changing the court system would bring along changes in other areas of the law, too. Furthermore, it was questioned why an established system should be abandoned. When it comes to the cost saving argument, the Federation concluded that costs could also be saved through reasonable human resources planning.

¹⁴ A. Graw, ‘Gerichtsverfahren sollen verkuerzt werden’, *Welt*, 11 September 2004, to be found at: <http://www.welt.de/data/2004/09/11/331006.html>, H. Prantl, ‘Aus fuenf mach zwei’, *Sueddeutsche Zeitung*, 2 September 2004, to be found at: <http://www.sueddeutsche.de/deutschland/artikel/526/38488/>, Stellungnahme des Deutschen Richterbundes zu den Entwürfen eines Gesetzes zur Änderung des Grundgesetzes (Art. 92 und 108) - BR-Drs. 543/04 - und eines Gesetzes zur Öffnung des Bundesrechts für die Zusammenführung der Verwaltungs-, Sozial- und Finanzgerichtsbarkeit in den Ländern (Zusammenführungsgesetz - ZfG -) - BR-Drs. 544/04

7. Tanzania – Commercial Division¹⁵

Like India in 1991, Tanzania changed its economic policy into market-oriented liberalisation in the late 1980's. Accordingly, a commercial court was needed and created as a Division of the High Court in 1999. Following this example, Ghana has established a Commercial Division in its High Court earlier this year (March 2005).¹⁶

The access to the court is limited to cases which have a certain (high) value. Also, the cost of litigation at this court is higher than ordinary litigation. Even though the commercial court is a division of the High Court, it has a separate budget. Interlocutory appeals are inadmissible so as to prevent deliberate delays. The Commercial Division does not have exclusive jurisdiction, i.e. the earlier courts are also allowed to handle commercial cases.

Following a study on its performance which has been carried out one year after its installation, the Commercial Division appears to be very efficient. On average, cases before the commercial court are resolved within 89 days, compared to four to five years in ordinary courts. The Commercial Division might have been so efficient because it started with a clean slate and was not well known (yet). Apart from that, it was strongly supported by funds. During the year of the research, it adhered to a strict time schedule by means of a computerised case tracking system. On the long run, it will probably benefit most from the ban on interlocutory appeals.

When considering the possibility of such a system in India, the following critical arguments brought up against the Tanzanian court should be born in mind: a court's objectives will fail if it is inaccessible to most litigants. In Tanzania, the Commercial Division was not highly appreciated by the firms. The ordinary jurisdiction and case load were not much affected by the creation of the Division. Obsolete legislation is however seen as the biggest obstacle for a proper functioning of the judiciary.

¹⁵ D. L. Finnegan, *Observations on Tanzania's Commercial Court – A Case Study*, World Bank Conference, July 8-12 2001, St Petersburg, Russia

¹⁶ http://www.judicial.gov.gh/commercial_court/home.htm

8. India – possibilities and proposals

During the conference “Reinventing Indian Legal System for Achieving Double Digit Economic Growth” held in New Delhi in April 2004, Justice Rajendra Babu gave a favourable opinion on the creation of specialised courts, particularly for commercial and economic cases.

India’s constitution and secondary legislation offers the legal possibilities to create alternative courts and tribunals. These legal bases will be discussed shortly, followed by a summary of the Law Commission Reports relevant in this respect. Equally relevant in this respect is the fact that the Indian court system created administrative tribunals in 1985. Their functioning has however been minimised by a Supreme Court judgment of 1997. Further information will be provided below (paragraph 8.3f).

8.1 Legislation

Article 323-A Constitution provides parliament with the power to create administrative tribunals. On the basis of the subsequent Article (Art. 323-B), also other tribunals can be constituted. For both types of tribunals, the Constitution lies down some frameworks to be filled in by the legislator once it makes use of that power.

The Industrial Tribunals Act 1947 is one example of secondary legislation providing a legal basis for the establishment of specialised courts: state governments as well as the central government are attributed the power to create different kinds of industrial tribunals. Their jurisdiction can entail areas like wages, working hours, rest intervals, leave, shift-working and retrenchment. These tribunals would be subject to the appellate authority of the general court system.

For the purpose of providing speedy trial in human rights cases, state governments specify for each district a Court of Session to be a Human Rights Court. This power is attributed by the Protection of Human Rights Act 1993.

8.2 Law Commission Reports

In this paragraph, five different Law Commission Reports related to the current subject will be shortly discussed. They have been presented over the past 21 years, i.e. since 1984. The most recent Report under discussion is from 2003.

8.2.1 95th Report:

A Proposal for Constitutional Division within the Supreme Court

In this report, the Law Commission proposed the creation of a constitutional court. Constitutional adjudication has such special features that it deserves a separate judicial structure and approach.¹⁷ The report advocated the division of the Supreme Court into a constitutional and a legal branch. This proposal has never been embraced by any other institution.

8.2.2 125th Report:

The Supreme Court – A fresh look

The most important point to be drawn from this Report is that the Supreme Court itself supported the creation of two separate courts of last instance. Its proposal was to install a new court, presumably named the National Court of Appeal, which would leave the Supreme Court to deal with constitutional matters only.¹⁸

8.2.3 162nd Report:

Review of functioning of Central Administrative Tribunal, Customs, Excise and Gold (Control) Appellate Tribunal and Income-Tax Appellate Tribunal

In this Report, the administrative tribunals' functioning was evaluated. Generally, the administrative tribunals are considered to have too little independence. There is little confidence in (the quality of) their performance and it is questioned whether its procedures and ad hoc approach are appropriate.

8.2.4 186th Report:

Proposal to Constitute Environmental Courts

Without getting into the details of the ratio behind it, it is worth mentioning that the Law Commission proposed the establishment of environmental courts, to be manned by judicial persons as well as by experts on environmental issues. The Commission suggests

¹⁷ Law Commission of India, *95th Report*, Chapter III, para. 3.4, page 7.

¹⁸ Law Commission of India, *125th Report*, Chapter I, para. 1.11, page 6.

to grant the environmental courts original jurisdiction with all powers of a civil court, but not to subject it to any rules of procedure.¹⁹ In the light of ADR introduction, the courts can lay down their own rules of procedure, it was proposed. An act possibly introducing this type of court could be attributed with extra remedies. Environmental courts should not get any exclusive jurisdiction, meaning that the jurisdiction of the civil courts will not be ousted. Naturally, if one court has already made a final decision in a case, and the parties then refer to the other court, that other court would have to deny the parties standing.

8.2.5 188th Report:

The Proposals for Constitution of Hi-Tech Fast-Track Commercial Divisions in High Courts

Following the 1991 economic policy changes, commercial courts are needed. The Law Commission recommends the creation of commercial divisions in every High Court with limited jurisdiction. According to the Report, jurisdiction should be restricted to cases with a higher value than Rs 1 crore.

A secondary recommendation made in the Report concerns the reduction of the backlog in family and criminal cases. To this aim, the Commission is supporting the creation of separate courts for these fields of law.²⁰

8.3 Case Law

In the case *Chandra Kumar vs. Union of India*²¹ the Supreme Court declared the creation of administrative tribunals unconstitutional. The reasoning of the judgment was the following:

Article 26 of the Constitution confers the exclusive and reserved power of judicial review to the High Courts and the Supreme Court. This jurisdiction is “part of the inviolable basic structure of the Constitution”. Section 28 Administrative Tribunals Act – the foundation for creating administrative tribunals – is also based on constitutional provisions, i.e. Articles 323A and 323B. Regardless of their constitutional basis, administrative tribunals are unconstitutional since they make other courts (except for the

¹⁹ Law Commission of India, *186th Report*, Chapter IX, pp. 142-148.

²⁰ Law Commission of India, *188th Report*, Chapter X, pp. 165-169.

²¹ *Chandra Kumar vs. Union of India*, 1997 (2) SLR SC 1

Supreme Court) play a supplementary role by excluding them from administrative jurisdiction. Due to the earlier mentioned inviolable position of the High Courts and the Supreme Court, restricting their jurisdictions will be unconstitutional.

Looking at this judgment critically, it must be said that the legislator had taken account of exactly the same grounds on which the Court struck the Administrative Tribunals down. Without hollowing out the High Courts entire competences, the legislator created an exception and slightly reduced the jurisdiction of the High Courts. Since this exception is well underpinned in Article 28 Administrative Tribunals Act and, more importantly, since it has a constitutional basis, it should not have been declared unconstitutional.

8.4 Analysis of the failure of administrative tribunals

Two causes for the failure and ineffectiveness of administrative tribunals can be identified: the strong position of the judiciary on the one hand, contradictions in legislation on the other.

A strong judiciary is good for a legal system, as long as the other two branches (legislative and executive) are equally strong, i.e. as long as there is balance of power. Originally, the judiciary was intended to be the weakest of the three branches²², designed as an institution in-between the people on the hand and the executive and legislature on the other, ensuring that the latter two do not extend their limited competence. Bearing this original intent in mind, the Indian judiciary has developed into a very strong branch as compared to the other two. The first reason for this is the public's trust in the judiciary: it is generally believed to be more trustworthy than the legislature or the executive. Secondly and strongly related to the first argument, the judiciary pulls powers towards it.

This is what the Supreme Court did in *Chandra Kumar vs. Union of India*. A parliamentary act which found its legal basis in the Constitution was struck down.

²² Montesquieu, cited in: Alexander Hamilton, 'Federalist No. 78: The Judiciary Department, McLeans's Edition New York', *Independent Journal*, June 14, 1788 to be found at: <http://www.constitution.org/fed/federa78.htm>, last visited on Oktober 27th, 2005

The judiciary is not elected by the people and is neither directly accountable to the people. Its members are appointed for life, and it is difficult to expel them from their office. Therefore, the aforementioned developments are potential dangers to (a) society.

The Constitution was the legal ground for the enactment of the Administrative Tribunals Act. Equally, the Constitution was the reason for striking down that same Act. The legislator as well as the judge should ensure that any act – and especially the Constitution – is consistent in itself and that different pieces of legislation are not contradicting each other. Obviously, the legislator is the first responsible organ to ensure this consistency.

If it fails in doing so, the judiciary has to correct this. In the case of *Chandra Kumar vs. Union of India*, the Supreme Court had to weigh the validity of two *constitutional* provisions: Article 26 and Article 323 A/B. The former Article was found to be more fundamental to the Indian legal system than the Article providing the basis for the administrative tribunals. This led to the Administrative Tribunals Act being void.

9. Establishing the need of specialised courts

This paper does not intent to give a clear-cut answer on how India should approach further. In this chapter, a guideline on how to proceed further so as to detect the need for introducing a specialised court system. Further research will be necessary to specify the details.

9.1 Specialised Court System

Based on the English legal system, Edward Cazalet²³ has identified different criteria in order to determine whether a legal system (or a part thereof) is in need of a specialised court system. These criteria will be outlined and put in light of the Indian situation.

Comprised into six main issues, Cazalet's criteria are the following:

1. The period of the need for specialised courts should be long running.
2. A legal system has to see if past experiences indicate a potential success of the creation of specialist courts.
3. The future legislation should be taken in regard and it should be established from that how big the influence thereof on the case load is.
4. It should be analysed if certain inconsistencies within a field of law have lead to a high case load within the respective field of law.
5. The harmfulness of delay in that particular field of law should be deliberated
6. Complaints from the side of interest organisations or other types of organisations should be taken into account.

Along the lines of the above list, a small 'to-do' list will now be compiled which can lead to the next level of the research. The list is written on the assumption that a specialised court system is found to be feasible and will be advocated by Lok Satta.

If possible, specific information on numbers of cases per field of law should be gathered so as to establish which field of law has the highest case load and the biggest backlog and therefore the highest statistical need for a specialised court system. In this context, the term 'field of law' comprises more than just civil law or criminal law. The reader should think of fields like 'family law', 'commercial law' or 'tort law'.

²³ see footnote 1

Recent information on the commercial court in Tanzania (and other African countries) might be useful to see in what way its creation changed the legal system of the country/countries.

Unlike in Germany, not every field of law should have its own court system.²⁴ First, the introduction thereof would take a lot of time and India does not have time. Its judicial system is in need of quick, effective reforms. Secondly, aside from time consuming, the creation of a court system along the lines of the German would be costly. Lastly, such a court system might be confusing to the population and create a big judicial monster instead of transparency.

Clearly, only some areas of law should be dealt with by specialised courts. Considering which fields of law should be covered by specialised courts will be a difficult assessment. The importance that society attaches to certain aspects or cases should be one of the guidelines. Further, one can only weigh up the different, factually incomparable, arguments against each other: should family cases have priority because of the personal troubles that they usually lead to? Should commercial cases be the main concern because that might strengthen the country's economy? Or, otherwise, since quicker solving of administrative cases leads to a more efficient state and bureaucracy, should these cases be solved by administrative courts?

9.2 Constitutional Court

In answer to the question of (advocating) the creation of a constitutional court, the following must be considered. Apart from establishing a specialised court system, the Law Commission has recommended establishing a constitutional division within the Supreme Court.²⁵ Also, the Supreme Court as well as the Law Commission has suggested the creation of a new court of last instance, leaving the Supreme Court to deal with constitutional matters and that new court as an "ordinary last instance court".²⁶ Since these proposals did not meet broad acceptance yet, advocating a constitutional court would at this point be unsuccessful.

²⁴ In Germany, the system has also been under fire.

²⁵ See under 8.2.1

²⁶ See under 8.2.2

The creation of a specialised court system leads to a need for a constitutional court. Conflicting judgments of the different courts will be inevitable since every field of law is in some way interrelated to another one. These conflicts will have to be solved by an independent court. Once a specialised court system has been established, the need for such an independent court will be more evident which would make the advocacy thereof easier.

10. Conclusion

Countries have various reasons for the existence of specialised courts. In some countries, like in England, the different jurisdictional branches exist for historical reasons and while other countries like Germany created them for constitutional grounds, Tanzania introduced a commercial court so as to reduce the case load.

The Indian Constitution offers the possibility for the legislator to introduce specialised courts in certain fields. From different sides, the creation thereof has been advocated. Problems arise due to contradictions within the Constitution: while providing the legislator with the option to introduce specialised courts and give them extensive jurisdiction, the Constitution confers exclusive jurisdiction in appellate matters to the High Courts and the Supreme Court. Generally, this constitutional contradiction would have to be solved before a specialised court is installed due to the risk of the specialisation being declared unconstitutional by the Supreme Court. Other guidelines for a possible creation of and further research about a specialised court system have been given in chapter 9.

The recommendation regarding the creation of a constitutional court is that in case a specialised court system should indeed be introduced, a constitutional court would also become necessary.

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