

Delayed justice is Justice denied: EVALUATION OF “DECREASE THE PENDENCY OF CASES IN SUPREME COURT OF INDIA”

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Introduction-

Indian civilisation is among the oldest civilisations and Indian legal system is set by its ancient religious prescriptions. Before 400 BC itself, Manusmriti followed by the Yajnavalkya Smriti built laws regarding a person's conduct that must be followed in civic society and procedures that should be stringently followed legally at times of misappropriations.

In The Era of Mughals there were twelve ordinances of a Muslim Law digest, i.e. Fatawa-i-Alamgiri and Fatawa-i-Jehangiri. By the 19th century, Indian courts dealt with both civil and criminal litigations and there was development in the equity, justice and secularism to some extent. The era of British in India brought in the system of common law and precedence in the judiciary, putting an end to the legal system of Mughals. The court system which is currently running was introduced in 1726 by the establishment of The Mayor's Courts. The First Independence War of 1857 and the Indian High Courts Act of 1862 replaced the Mayor's court system and established Supreme Courts and High Courts in India, and then the Privy Council had become the highest court of appeal.¹

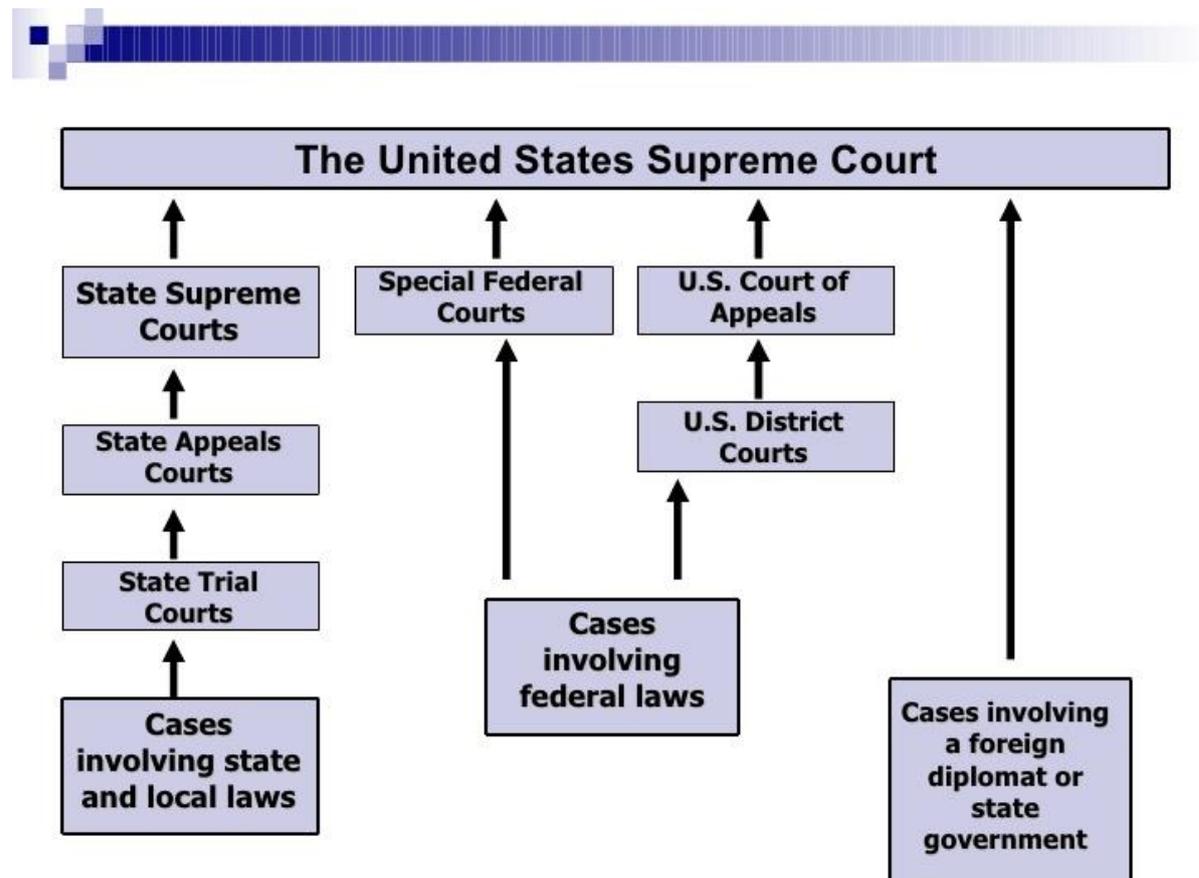
FROM INDEPENDENCE TILL DATE

Simplification and rationalisation of the nation's laws and policies with clarity which are to be uniform across nation in all agencies and departments leads to definite solutions filling the lacunas when drafted by intellectuals along with draftsmen who really understand the issues and can give remedies with the respective solutions.

Law is established by Central and State Acts, Rules, Regulations, Notifications, Circulars, Press Notes, Judgements etc., with bodies like RBI and SEBI. With the increasing population, litigants are increasing and they are filing as maximum number of

1. Evolution of The Indian Legal System, available at:
<http://www.legaleraonline.com/articles/evolution-of-the-indian-legal-system> (Visited on August 16, 2019).

Hierarchy of Judiciary in USA

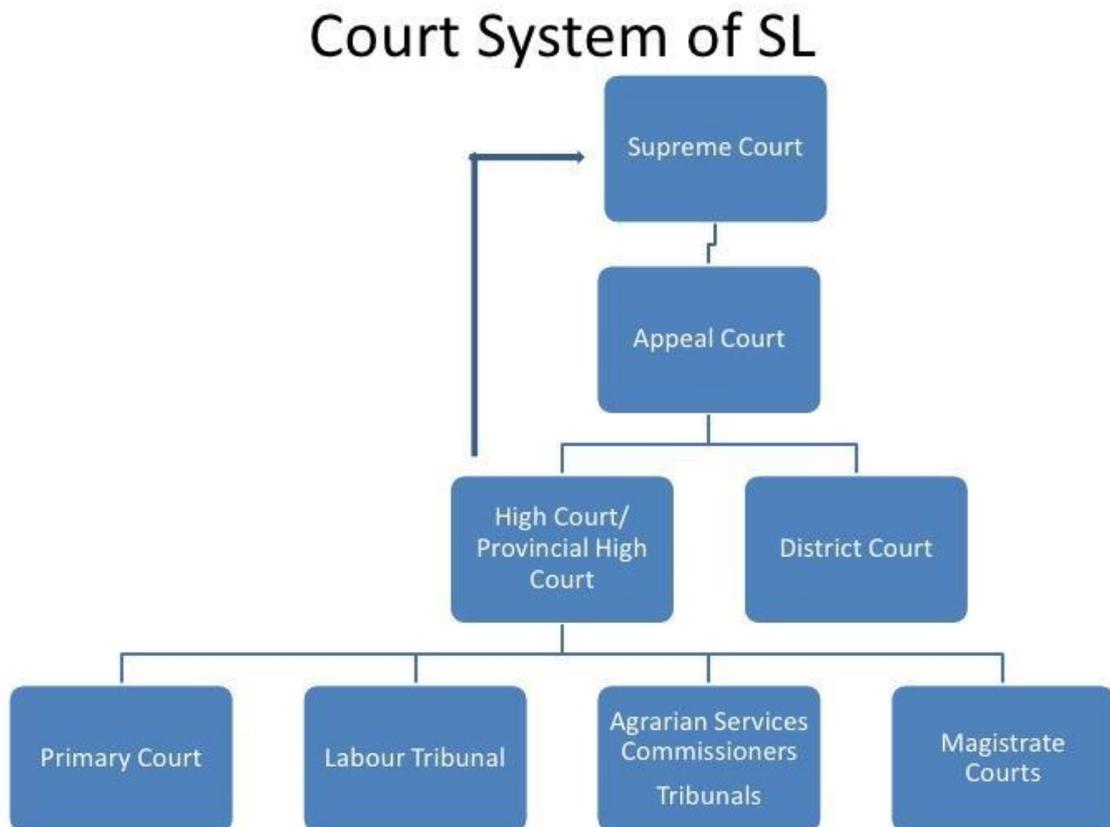


Courts of Appeals

The courts of appeals have appellate jurisdiction. They are not trial courts and do not hear cases first. Instead, the appellate courts review the decisions of the district courts, and determine whether they were correct. In an appeal, the losing party from the federal district court (both criminal and civil cases) asks the court of appeals to revisit their case, and to make a judgment on some issue of law.

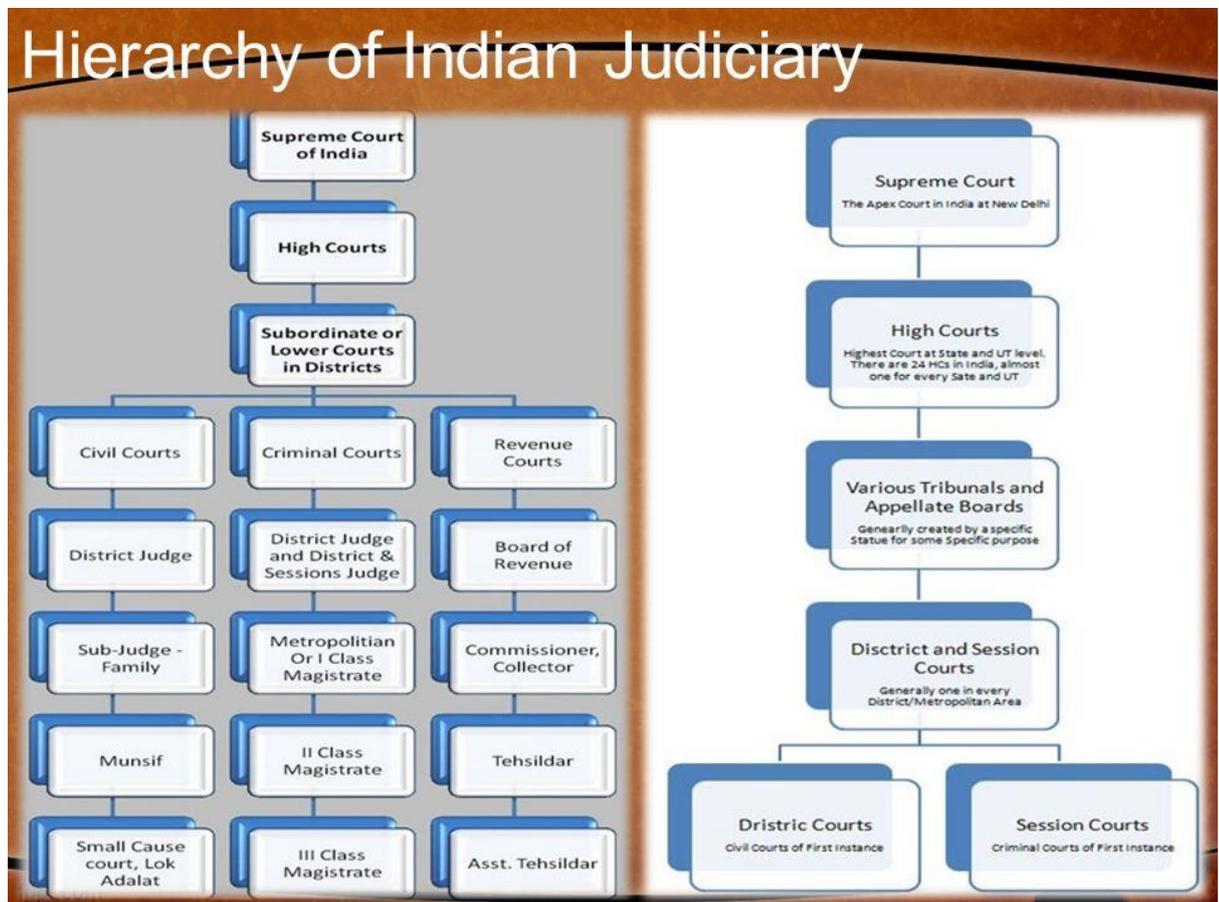
There are 12 regional circuit courts, and one for the “Federal Circuit,” that were established by Congress to relieve some of the caseload of the Supreme Court, and to hear cases that are appealed from the 94 district courts.

Court System of Sri Lanka



Court of Appeal of Sri Lanka, commonly known as the Appeal Court, is the second most senior court in the Sri Lankan legal system, with only the Supreme Court of Sri Lanka above it. The Court has jurisdiction to hear appeals from the High Court or any lower court, while its own decisions may be additionally appealed to the Supreme Court. The Appeal Court is headed by the President of the Court of Appeal.

Hierarchy of Courts in India



Significance of the Study

The need of the hour is that the Supreme Court of India should deal with only Constitutional issues and a Court of Appeal should be established between the High Courts and the Supreme Court. It will have many advantages other than speedy disposal of cases and decreased burden on the Supreme Court, which are mentioned below:-

- Better accessibility and communication of clients and counsels to the nearer Courts that reduce the expenses and increase the speed of work. – Proximity advantage
- Client's Advocates who is already in record can directly deal with their own cases without involving AOR (Advocate on Record) and their Senior Advocates which reduces the expenses. – Economic advantage

- Promotions and new recruitments in judicial fraternity. – Employment advantage

Review in the Subject:

The 229th Law Commission of India's Report, published in August 2009, proposed establishing separate benches to hear appeals and constitutional matters. The report also suggested the establishment of regional Supreme Court benches to hear appeals from high courts. However, these reforms, like the many cases in the Supreme Court, remain pending.²

On the 6th page of the Report, it is mentioned that: *“As constitutional adjudication occupies a place of its own, it always merits consideration as to whether there should be a separate Constitutional Court, as is the position in about 55 countries of the world (Austria established the world's first separate Constitutional Court in 1920), or at least the Supreme Court should have a Constitutional Division. Many continental countries have Constitutional Courts as well as final Courts of Appeal called Courts of Cassation (Cour de Cassation in French) for adjudication of non-constitutional matters. A court of cassation is the judicial court of last resort and has the power to quash (casser in French) or reverse decisions of the inferior courts.”*

On the 7th page, it is mentioned that: *“Whether the Supreme Court should be split into Constitutional Division and Legal Division for appeals, the latter with Benches in four regions – North, South, East and West, is a subject of fundamental importance for the judicial system of the country. This Report considers the question as to whether there is need for creating a Constitutional Court or Division in our Supreme Court that shall exclusively deal with matters of constitutional law and four Cassation Benches one each in the four regions.”*

On the 17th page, it is mentioned that: *“The liberal attitude of the courts in entertaining appeals from the lower courts has also contributed to the steady increase in the backlog. Those who have the financial resources go on appeal on the decisions of the lower courts to the next higher court, and finally to the Supreme Court, even when no*

2. Law Commission of India, 229th Report on Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai (5th day of August, 2009).

interpretation of the law may be involved. When the accused are influential politicians or rich businessmen, the cases can go on endlessly, bringing down in this process the reputation of the judicial system itself. If appeals can be limited to a small number, say one or two, depending on the nature of the crime, it can help a great deal in reducing pendency.”

On the 18th page, it is mentioned that: *“We have tried some of the above-mentioned measures for the last 59 years of the functioning of the judicial system in our country. The result appears to be far from satisfactory. Time has come when the entire judicial set-up will have to be overhauled and refurbished in order to make the goal of speedy justice a pulsating reality. It is quite often argued that the present pattern of working of the Supreme Court needs to be revised if any success in this direction is to be achieved. The indiscriminate acceptance of appeals on trivial issues of facts by the Supreme Court quite often overloads itself. In fact, only important issues need be litigated in the Supreme Court. Also, the present situation makes the Supreme Court inaccessible to a majority of people in the country.”*

In 20th page, it is mentioned that: *“The said Benches shall act as Cassation Benches to deal with appeals from a High Court in the particular region. The apex court could then deal with constitutional issues and other cases of national importance on a day to day basis since the accumulated backlog of cases would go to the respective zones to which they pertain.”*

Inequity in the Court’s Caseload: The Supreme Court’s 31 judges hear a huge number of cases. Whoever feels that they were wrongly decided in a lower court or tribunal can appeal in the Supreme Court. Even after the Court rejects some, it allows many for hearing. In 2011, the court’s judges decided some 47,000 admission matters out of which 9,070 (or about 19 per cent) went on for regular hearing. Listening to those many numbers it requires a huge time that leads to the backlog of cases. These pending matters take an average time of four years or more for the court to reach a final verdict per case. In case of a litigant, it takes over a decade for the total process from a district court, then in the High Court, and then heard again in the Supreme Court. Even after the Supreme Court allows appeals, it is not equally accessible to all. Appeals are not proportion from all the States. Most number of appeals is filed from Delhi High Court (12 per cent) because of proximity and relative wealth. Only 1.2 per cent appeals are filed

from Jammu and Kashmir or Odisha. And from the Madras High Court, it is only 1.1 per cent. This appeal pattern is difficult to characterise as fair. After introducing the electronic filing, system allowed litigants to easily file their cases from anywhere which does not solve the underlying problem. That is, the requirement of an Advocate-On-Record, to actually file a case in the Supreme Court and a lawyer to argue the case before the Court, who must be based in the capital. The Court decisions over the past five years included are 16 per cent of service matters, 13 per cent of direct or indirect tax matters, 9 per cent of land acquisition matters, whereas 21 per cent are criminal matter which dominate the workload of lower courts. Litigants can afford higher-priced and effective lawyers for their cases which are of less important to the nation. Most of the tax and service matters are decided by tribunals, not High Courts, where there is a clear sign that the court is wary of the decisions of the forums. The end result is The Court spends thousands of hours of precious time in hearing the cases of wealthier litigants live in and around Delhi.³

A Distracted Court: Sometimes important Constitution Bench cases are not being heard. For any substantial question of constitutional law to be heard five or more judges must hear. In the 1960s, the court decided over 100 such cases a year. Now, many important pending Constitution Bench matters are in the queue waiting to be heard. An increase in the number of appeals disturbed the court from deciding Constitution Benches and also from hearing writ petitions which is the only remedy to directly approach the Supreme Court when the fundamental rights are violated. Less than 2 per cent of admission cases involve writ petitions, because judges discouraged such litigants from approaching the Supreme Court, and directing them to the High Courts.

A court that centralises and creates uncertainty: There was an increase of 33 per cent disposals between 2005 and 2011 by the High Courts. Still number of matters appealed to the Supreme Court increased by 45 per cent and the number of admissions increased by 74 per cent in the Supreme Court for regular hearing. As more appeals are heard in Supreme Court, litigants started filing more appeals before the Court. In 2009, the India Law Commission recommended creating regional Benches of the Supreme Court in Mumbai, Chennai, Kolkata and New Delhi. The Commission also suggested creating a separate Constitution Bench in New Delhi to hear the important pending Constitution matters. There is pendency of cases because of the lack of enough judges.

“Do the law officers certify the need to file an appeal and specify the reasons why it is not considered fit or proper to file an appeal? Whenever any Ministry approaches the Law Ministry on any matter, the Law Ministry expresses its views and sends the file for the opinion of the law officer concerned. The law officer at the level of Additional Solicitor General or the Solicitor General sometimes has to examine even petty matters, or service matters, and consider whether it involves a matter fit enough to be taken to the Supreme Court. Ultimately, it depends on the opinion of the law officer of the Union. There have been suggestions for structural reforms of the Supreme Court, including formation of regional Benches. There is a view that the Supreme Court is tilted towards a particular class. Of course, the court was expected to hear matters involving important questions of law and the Constitution or the public interest.”⁴

Increase in the load of work, a “high rate of admission, and constitution of multiple two-judge Division Benches resulted in a tremendous increase in the number of judgments handed down by the Supreme Court, which in-turn increases the chances of inconsistencies in judgments.”⁵

Latest statistics shows that there are 59,695 pending cases in the Supreme Court of India. In an analysis, the judgements between 2005 and 2017, it is found that the Supreme Court’s workload, in terms of judgements, focuses on appeals from high courts (93% of judgements) and in particular civil appeals (64%). In contrast, writ petitions, which are filed for a violation of fundamental rights, are less prominent, accounting for 4% of all judgements. In a 2013 paper, Nick Robinson, a legal scholar, argues that the Supreme Court hears more appeals as a way to actively police the High Courts and the lower judiciary who they fear may be incompetent, corrupt or biased.⁶

HC origins of SC judgements

Number of Supreme Court judgments from high court appeals verses number of judgments at that high court; size of circle indicates size of high court in terms of sanctioned judges; Data indicates disproportionate number SC judgements (compared to HC judgements). Many of these trends are well-acknowledged. The 229th Law Commission report proposed establishing separate benches to hear appeals and constitutional matters. The report also suggested the establishment of regional Supreme Court benches to hear appeals from high courts. However, these reforms, like the many cases in the Supreme Court, remain pending.⁷

It is high time to have Supreme Court Benches in at least four major cities. One Bench each could be established in Mumbai, Chennai and Kolkata to start with, he said, on the occasion of the launch of his book on completing two years in office as Vice President.⁸

Referring to the Standing Committee's recommendations, Naidu said there is a need for the Supreme Court Benches in the southern, western and eastern regions. This would rule out the need for people to travel long distances, he pointed out. While maintaining that more judges are required for clearing the mounting pendency of cases, Naidu also expressed support for the idea of having two divisions of the apex court, one entrusted with Constitutional matters and the other for appeals.

7. Appeals available at <http://www.helpline.law.com/civil-litigation-and-others/SHCI/appeals.html> (Visited on August 16, 2019).
8. Venkaiah Naidu for Supreme Court benches in 4 major cities, available at: <https://www.hindustantimes.com/india-news/venkaiah-naidu-for-supreme-court-benches-in-4-major-cities-says-can-begin-here/story-P8eaLdCBXn4ULgyjk4EVaJ.html>(Updated on August 11, 2019).

Objectives

In order to reach to conclusion and to suggest the establishment of a Court of Appeal between the High Courts and Supreme Court of India in order to decrease the burden and reduce the pendency of cases on The Supreme Court of India, following objectives are framed:

- Identify the year wise number of Appeals from each High Court to the Supreme Court of India.
- To frame a Constitution Amendment Bill for the purpose of establishing Court of Appeal in India with five regional benches across the country:
 - Eastern India,
 - Western India,
 - Northern India,
 - Southern India and
 - Central India

Hypotheses

- As a result of the misuse of Article 136 of the Constitution of India by the Advocates, there is an increase in the pendency of cases in The Supreme Court of India due to the Appeals from High Courts.
- After the establishment of a Court of Appeal, the pendency of cases in the Supreme Court of India will decrease drastically because it will deal only with Constitutional matters, as was envisaged by the framers of the Constitution.
- Access to justice is denied to the residents of far off States as they do not find it feasible to approach the Supreme Court against the decision of the High Court because of geographical distance.

Conclusion:

As Appeals from High Courts of different states to the Supreme Court are increasing year by year, pendency of cases is increasing in the Supreme Court of India. If a system of middle-level courts is introduced between a set of High Courts of few neighbouring States (Zones) and Supreme Court, which is the subject of Central Government as established in Sri Lanka, burden on the Supreme Court of India will be decreased. Zones are to be made of neighbouring states according to the feasible number of total appeals and proximity. (Eg: Kerala, Karnataka and Tamil Nadu as one Zone, Andhra Pradesh, Telangana and Chhattisgarh as another Zone etc.) This way, the pendency of cases and burden of Supreme Court of India can be decreased.