

# IT'S TIME TO REVAMP THE STRUCTURE OF THE SUPREME COURT

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Supreme Court of India. File | Photo Credit: Shiv Kumar Pushpakar

The Supreme Court of India has three jurisdictions under the Constitution: original, appellate, and advisory. The Supreme Court serves as a Constitutional Court as well as a Court of Appeal. The Court sits in benches of varying sizes, as determined by the Registry on the directions of the Chief Justice of India (CJI), who is the Master of the Roster.

Constitution Benches of the Supreme Court typically comprise five, seven, or nine judges who deliberate on a specific issue related to constitutional law. Article 145(3) of the Constitution provides for the setting up of a Constitution Bench. It says a minimum of five judges need to sit for deciding a case involving a "substantial question of law as to the interpretation of the Constitution", or for hearing any reference under Article 143, which deals with the power of the President to consult the Court.

Typically, cases before the Supreme Court are heard by Division Benches (of two judges) or full Benches (three judges) to examine a wide range of topics, such as film prohibitions/restrictions or charges that a police commissioner abused his position. Under its very broad jurisdiction, the Supreme Court has entertained frivolous public interest litigations, such as demands that passages be deleted from the Quran or secularism be removed from the Preamble to the Constitution.

This is why, at present, there are 79,813 cases pending before the 34 judges of the Supreme Court. It is therefore understandable that there has been demand time and again for a structural change in the top court. Recently, CJI D.Y. Chandrachud announced his intent to create Constitution Benches of varied strengths as a permanent feature of the Court.

In March 1984, the Tenth Law Commission of India proposed that the Supreme Court be split into two divisions: the Constitutional Division and the Legal Division. The proposal stated that only issues pertaining to constitutional law would be brought to the proposed Constitutional Division.

Reiterating this, the Eleventh Law Commission stated in 1988 that dividing the Supreme Court into parts would make justice more widely available and would significantly decrease the fees

that litigants have to pay. It was reported that appeals in the top court mostly comprised matters from High Courts that are closer to the Supreme Court. That is, appeals from the Punjab and Haryana High Court, Allahabad High Court, and Delhi High Court formed the major chunk of matters, whereas courts far away from the apex court had fewer appeals filed, due to both difficulties in accessibility and costs.

Earlier, in *Bihar Legal Support Society v. Chief Justice of India* (1986), the Supreme Court stated that it was “desirable” to establish a National Court of Appeal that would be able to entertain special leave petitions. This would allow the Supreme Court to only entertain constitutional and public law-related questions.

As a step towards making the Court more accessible, the 229th Law Commission Report (2009) recommended four regional benches to be located in Delhi, Chennai or Hyderabad, Kolkata, and Mumbai to hear non-constitutional issues. It recommended six judges from each region at four regional benches take up appellate responsibility, with a Constitution Bench in New Delhi working on a regular basis. By dividing the heavy backlog of non-constitutional cases among regional benches, the Supreme Court, it said, could “deal with constitutional issues and other cases of national importance on a day-to-day basis.”

During colonial times, there were three Supreme Courts: in Bombay, Calcutta, and Madras. The Indian High Courts Act of 1861 replaced the Supreme Courts with High Courts for separate regions. The Government of India Act, 1935, created the Federal Court of India as an appellate body for the Privy Council and High Courts. India approved the Constitution in 1949. The Supreme Court, as we know it now, was founded on January 28, 1950, under Article 124 of the Constitution, two days after India became an independent, democratic republic. It came into being in Delhi as a result of Article 130.

The first Supreme Court included eight judges, including the CJI. As the workload rose year after year and arrears of cases began to accumulate, Parliament increased the number of judges from eight in 1950 to 11 in 1956, 14 in 1960, 18 in 1978, 26 in 1986, 31 in 2009 and 34 in 2019.

Today’s Supreme Court issues around 8-10 decisions each year through Constitution Benches of five or more judges. It serves primarily as an appeals court. Only four of the 1,263 decisions issued in 2022 were issued by a Constitution Bench. The Supreme Court hears matters between the Centre and the States, as well as between two or more States; rules on civil and criminal appeals; and provides legal and factual advice to the President. Any person can immediately petition the Supreme Court if they consider their basic rights have been infringed.

The work of the Supreme Court could be split so that there is a Final Court of Appeal and a permanent Constitution Bench. This would ensure greater judicial stability and consistency by explicitly distinguishing cases filed under constitutional authority from those filed under appellate and review jurisdiction.

A Constitution Bench (*V. Vasanthkumar v. H.C. Bhatia*) is analysing these issues and contemplating measures to protect a citizen’s basic right to access the Supreme Court. Under the guidance of the CJI, there is an opportunity to address this structural gap in the Supreme Court by designating several of the court’s appeal benches as regional benches.

***Kumar Kartikeya is a legal researcher based in Delhi***

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