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Creation of Southern Bench of Supreme Court

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The Supreme Court of India is the highest in India, having final authority to uphold the Indian Constitution. The judicial system of India faces numerous challenges. The idea to establish a southern bench of the Supreme Court will bring the apex court closer to the litigants and make it cheaper. Many people are giving up their legal battles as they are unable to reach the Supreme court. Various Law commissions reports recommended setting up regional benches and urging that Supreme Court benches be established in every country region. Several Parliamentary standing committees, legal commissions, bar councils, and others have made many submissions in this respect throughout the years. Over time, the judicial branch's core responsibility has been enlarged to include additional vital areas and providing equal access to the legal system for all who desire it.

Keywords: *supreme court, bench, creation.*

INTRODUCTION

As said by Benjamin Franklin, "Justice will not be served until the unaffected areas are incensed as the injured." Justice is a moral rightness concept based on law, ethics, rationality, natural law, religion, equity and fairness, and legal administration that takes into account all human beings' and citizens' inalienable and inborn rights, as well as the right of all people and individuals to equal protection before the law of their civil rights. It is also thought to be

inclusive of social justice because there is no discrimination based on race, gender, sexual orientation, gender identity, national origin, colour, ethnicity, religion, handicap, age, wealth, or other characteristics, and courts exist to do justice, guarantee liberty, promote social order, resolve disputes, uphold the rule of law, and provide equal protection to all people.

The Supreme Court of India is the highest in India, with the ultimate authority to uphold the Constitution of India and the values of the rule of law. It was founded on January 26, 1950, and is located in New Delhi. The Supreme Court of India was housed at the Parliament House until it was relocated to its current location. The Supreme Court of India is India's highest judicial court and the highest court of appeal under the Indian Constitution, and the highest constitutional court with judicial review authority. The Supreme Court, High Courts, and Subordinate Courts comprise India's three-tiered legal system, which also includes the High Courts and Subordinate Courts. The Supreme Court of Judicature in Calcutta was established as a Court of Record with complete jurisdiction and power by the Regulating Act of 1773. It was created to hear and determine all criminal accusations in Bengal, Bihar, and Orissa and to entertain, hear, and consider all claims and procedures.

The Indian judicial system has always sought justice for the innocent and punishment for the wicked, from monarchical rule to the British era to the present system of independent India. Despite the judiciary's independence from the executive and legislative branches, the Indian judicial system faces numerous challenges, including case backlogs, corruption, lack of transparency (particularly in the appointment of judges), under-trials of the accused, and a lack of information and interaction between people and courts. However, the most severe problem facing the Indian judicial system is the pendency of cases. The goal of the legal system has been thwarted by a high number of cases pending in the Supreme Court and other lower courts. Several Law Commission reports (the 95th, 120th, 125th, and 229th) and standing committee reports have proposed that regional benches be established in light of the Supreme Court's challenges. The proposal to set up a Southern bar of the supreme court has been a long-standing demand of the people in the southern states of India. They made the demand,

keeping in mind difficulties they faced, both in terms of accessibility and the costs involved, in conducting cases in the country's capital (New Delhi).

DEMAND TO SET UP SUPREME COURT BENCH IN SOUTH

The concept of regional Supreme Court benches is not new. This has been discussed in the Supreme Court, and Law Commission reports. It has long been a goal of the people of the South to establish a southern bench of the Supreme Court. The idea to establish a south bench of the Supreme Court will bring the apex court closer to the litigants and make it more cheap and cost-effective. Many individuals are abandoning their legal challenges because they cannot reach the Supreme Court.

Regional benches were suggested in the 95th, 120th, 229th, and 125th Law Commission report. The Law Commission noted in its 125th Report titled "The Supreme Court - A Fresh Look"¹ stated that "The Supreme Court sits at Delhi alone. On a couple of occasions, the Government of India sought the opinion of the Supreme Court of India for setting up a Bench in the South." The article claims that the purpose for constructing regional benches is: "... those coming from distant places like Tamil Nadu in the South, Gujarat in the West and Assam and other States in the East have to spend a huge amount on travel to reach the Supreme Court" and "There is a practice of bringing one's lawyer who has handled the matter in the High Court to the Supreme Court. That adds to the cost. And an adjournment becomes prohibitive." According to the research, the benefits of establishing regional benches include: "... considerably reduce costs but also the litigant will have the advantage of his case being argued by the same advocate who has helped him in the High Court and who may not be required to travel long distances."

The Law Commission recommended in 2009 that a Constitution Bench of seven judges be formed in Delhi and four Cession Benches of four to six judges each in Chennai/Hyderabad,

¹ Law Commission, *The Supreme Court - A Fresh Look* (Law Com No 125, 1988)

Mumbai, and Kolkata. These were to act as appeal courts for Supreme Court orders.² They claimed that, notwithstanding the Supreme Court's rejection in 2010, the time has come to reconsider. They further argued that Article 130³ of the Constitution empowers the CJI to create these regional benches with the President's approval. It would enable ordinary people who cannot afford to go to Delhi to file appeals in the highest courts. Still, it will also give opportunities for the legal community and help reduce the number of cases pending in the courts. Furthermore, the Parliamentary Standing Committee on Law and Justice has frequently advocated for establishing Supreme Court benches in the country's southern, western, and north-eastern areas to enhance the speed with which ordinary people may access justice.

In paragraph 8.36 of the 15th Report, the Standing Committee stated, "The Committee, therefore, endorses its earlier view that establishment of benches of the Supreme Court in other parts of the country would be of immense help to the poor who cannot afford to travel from their native places to Delhi." The formation of regional benches was confirmed in paragraph 6.8 of the Standing Committee's 28th Report on the grounds that "it is not possible for the people living in far-flung and remote areas to come to the National Capital to seek justice for various reasons." It is evident from the preceding that the primary objectives for establishing regional Supreme Court benches are to lower litigation transaction costs and enhance access to justice. Among the transaction costs are the fees of introducing one's lawyer who handled the issue in the High Court, the cost of delay becoming excessive, and other expenses.

In the case of *V. Vasanth Kumar v H. C. Bhatia*, ⁴(2016) 7 SCC 686, several issues were raised regarding whether they are still valid, particularly in the age of virtual courts. The case has been sent to the Constitutional Court, which is now reviewing it. The Supreme Court of India addressed a number of concerns in this case, including the prospect of structural reforms at the

² Special Correspondent, 'Plea to Set up SC Bench in South' (*The Hindu*, 2021)

<<https://www.thehindu.com/news/cities/Hyderabad/plea-to-set-up-sc-bench-in-south/article35550291.ece>>

accessed 24 August 2021

³ Constitution of India, art 130

⁴ *V Vasanth Kumar v H C Bhatia* (2016) 7 SCC 686

highest levels of the Indian legal system. In this case, the Supreme Court of India raised the following questions:

(a) Is it true that the location of India's Supreme Court in the far north, in Delhi, renders travel from the southern states and certain other Indian states too long and expensive, impeding appropriate access to justice?

(a) Is the Supreme Court, which has courts all throughout India, a suitable answer to the problem as mentioned above?

A delegation from the Bar Councils of five southern states – Telangana, Tamil Nadu, Karnataka, Andhra Pradesh, and Kerala – recently met with Chief Justice of India NV Ramana and Vice President M Venkaiah Naidu to push for the formation of a Supreme Court of India bench in the southern area. In January 2021, the Bar Councils of Telangana, Andhra Pradesh, Tamil Nadu, Kerala, and Karnataka banded together and requested a Supreme Court bench in south India. Telangana State Bar Council Chairman A. Narasimha Reddy, Andhra Pradesh Bar Council Chief G. Rama Rao, Tamil Nadu Bar Council Chief P.S. Amal Raj, Karnataka Bar Council Chief L. Srinivasa Babu, Kerala Bar Council Chief K.N Anil Kumar, and ex-member of legislative council N. Ramchandra Rao led the delegation that met both dignitaries in Delhi. They made a statement emphasizing the significance of such a move as well as the advantages. They claim that constructing Supreme Court seats in the north, south, east, and west will relieve the Supreme Court's workload and make it more approachable and accessible to the public. They further said that high court judges would have a higher chance of being elevated to the Supreme Court.⁵

In November 2019, MDMK General Secretary and Rajya Sabha MP Vaiko expressed the long-standing demand for the Supreme Court to establish a bench in south India for the convenience of litigants in the Upper House of Parliament. Vaiko stated that a Supreme Court bench in Chennai would help the supreme court's litigation backlog. He said that the cost of

⁵ Express News Service, 'Proposal for SC bench at Hyderabad unlikely to see the light of day anytime soon' (*The New Indian Express*, 2021) <<https://www.newindianexpress.com/cities/hyderabad/2021/aug/06/proposal-for-sc-bench-at-hyderabad-unlikely-to-see-light-of-day-anytime-soon-2340789.html>> accessed 24 August 2021

travel to New Delhi was prohibiting marginalized and underprivileged people in South India from accessing the Supreme Court. While the establishment of a Southern Bench of the Supreme Court of India is pending before the top court, Law Minister Ravi Shankar Prasad highlighted that it has so far not garnered favour.⁶ The letter, dated February 12, responded to a question raised in Parliament by Mr. Vaiko, who inquired if a Supreme Court of India bench could be established in southern India. P Wilson, a Rajya Sabha member, and a prominent lawyer has introduced the Constitution (Amendment) Bill, 2020, a Private Member Bill that proposes decentralizing the Supreme Court by establishing four permanent regional benches.⁷

DECENTRALIZATION OF SUPREME COURT POWERS

"The Supreme Court shall sit in Delhi or such other place or places, as the chief justice of India may, with the agreement of the president, appoint from time to time," states Article 130⁸ of the Indian Constitution. As a result, the Supreme Court can meet anywhere, not just in Delhi. Justice P. N. Bhagwati concurred with this approach in a 1986 ruling. The Law Commission noted in its 229th Report, "If Article 130⁹ is liberally interpreted, no constitutional amendment may be required for the purpose of setting up of cassation benches in four regions and a Constitution Bench at Delhi". The action of the Chief Justice of India, with the approval of the President, may suffice. According to Justice Krishna Iyer, there was no need for the Supreme Court to be headquartered entirely in Delhi. This concentrated organization paralleled the north's domination of the South. It proposed dividing the Supreme Court into multiple benches, as several High Courts have done. Several other proponents of decentralization point to two key issues that they believe regional bars can overcome. Southern courts refer a modest percentage of cases to the South Carolina Supreme Court. The number of Supreme Court cases pending has grown from 690 in 1950 to 67000 in 2021. (March). The geographical concentration

⁶ Special Correspondent, 'Southern Bench of Supreme Court not favoured, says Law Minister' (*The Hindu*, 17 February 2021) <<https://www.thehindu.com/news/national/southern-bench-of-supreme-court-not-favoured-says-law-minister/article30844603.ece>.> accessed 25 August 2021

⁷ Aaratrika Bhaumik, 'Establishment of Permanent Regional Benches of Supreme Court: Rajya Sabha Member P Wilson Moves Private Member Bill' (*Live Law*, July 28 2021) <<https://www.livelaw.in/news-updates/supreme-court-permanent-regional-benche-rajya-sabha-mp-bill-p-wilson-178290>> accessed 25 August 2021

⁸ Constitution of India, art 130

⁹ *Ibid*

of the Supreme Court in Delhi has resulted in frequent adjournments, which have further added to the backlog of litigation. Aside from the case backlog, the Law Commission's 229th Report¹⁰ highlighted the practical challenges that impoverished litigants face when commuting to Delhi.

Various law commissions recommended that four regional benches must be established to hear matters from each region. Second, the bifurcation would allow a Supreme Constitutional Court to adjudicate national-security issues effectively. Litigants commonly request that their High Court attorneys appear at the Supreme Court, which results in a cost multiplier in hotel and travel expenses. "Adjournments become prohibitive, costs multiply," according to the Law Commission's findings. The Supreme Court was created as a constitutional court, not just another court of appeals (Justice Bhagwati).

On the other hand, the court is currently inundated with appeals, which consume more time than constitutional issues. Compared to a hundred every year in the 1960s, only ten 5-judge constitutional benches have been formed on average per year. Contrary to this viewpoint, many legal experts believe that establishing regional Supreme Court benches will diminish the court's constitutional authority. However, such fears may be unjustified because decentralization is functional and structural, and only the Delhi bench deals with constitutional matters. As a result, the Supreme Court's finality and superiority are unaffected by the creation of regional bars. As a result, the establishment of regional benches does not affect the Supreme Court's finality or supremacy. The Supreme Court of India has always been a vital institution that has provided exceptional service to the country. Another proposal was to establish a National Court of Appeals, which would necessitate a revision to Article 130 of the Indian Constitution, which would be equivalent to interfering with the Supreme Court's fundamental constitutional structure. Still, such an amendment would deprive the Supreme Court of its incredible appeals-hearing authorities.

¹⁰ Law Commission, *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* (Law Com No 229, 2009)

The union minister of law and justice stated the same thing in 2014 while denying the aforementioned request. There were earlier attempts to decentralize the powers of the supreme court. A report recommended that the Supreme Court establish four appellate benches in Chennai, Hyderabad, Delhi, Kolkata, and Mumbai. The Report's recommendations were rejected in 2015 when V Vasanth Kumar filed Public Interest litigation in the Supreme Court to establish regional benches. The Supreme Court designated the incumbent Attorney General, KK Venugopal, as an amicus curia in the case. He concluded that the court should be decentralized. Mukul Rohatgi, the then-Attorney General, was outspoken in his opposition to the proposal.

Even though decentralization of the powers of the supreme court would ensure the smooth running of the cases but at the same time, it has some drawbacks too. It is thought that a splintered court would result in splintered verdicts. The Supreme Court must unify the law across India, and numerous benches may obstruct this purpose. This is analogous to the current situation, in which multiple High Courts issue conflicting judgments on the same facts. The suggestion could also violate the doctrine of basic structure. Any court split would necessitate a constitutional amendment, notably Article 136, which could influence the Basic Structure Doctrine. Ex- KG Balakrishnan, the Chief Justice of India, made a point of not reducing cases because doing so would be tantamount to denying someone a hearing. As a result, urgent modifications are required to resolve the case's pending status.

CONCLUSION

Several Parliamentary standing committees, law commissions, bar councils, and others have made many submissions in this respect throughout the years. Over time, the judicial branch's core responsibility has been enlarged to include additional vital areas, including but not limited to the following: Providing equal access to the legal system for all who desire it—managing the court's operations in a way that fosters efficiency, transparency, and the ability to resolve cases in a fair and timely manner—taking the lead among other justice-related agencies to devise strategies that bring together the interests of all three parts of government, understanding that the court cannot operate in isolation while maintaining its independence. If

the concept of delayed justice is to be changed, the SC's current functioning system must be adjusted.