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Addressing the pendency of cases: Examining the proposal for a national court of appeal in India and global practices

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Abstract

The framers of the Constitution of India envisioned the Supreme Court to focus on complex constitutional matters. Over time, however, it has become more of a general appellate court due to a broad interpretation of Article 136. Attempts to mitigate case backlogs, such as increasing the number of judges and technological reforms have been insufficient. This paper proposes the establishment of a National Court of Appeal (NCA) with regional branches as a pragmatic and urgently needed solution. The NCA would enable the Supreme Court to refocus on its foundational purpose of addressing constitutional matters. The effectiveness of this approach is supported by comparative studies of similar legal systems around the globe. While acknowledging the merits of alternative solutions, the paper asserts that they fall short of addressing the systemic issue. It concludes by advocating strongly for the NCA, offering a balanced assessment of its merits, limitations, and feasibility within the Indian legal framework.

Keywords: pendency, national, global, practices, NCA

Introduction

In the Indian constitutional framework, the doctrine of the separation of powers delineates distinct roles and responsibilities among the three principal branches, the legislative body is vested with the authority to enact statutes, the executive branch is tasked with the execution and administration of these legal provisions, and the judiciary bears the responsibility for interpreting and adjudicating upon the constitutionality and applicability of the laws [1]. The Supreme Court of India, as the apex judicial institution, was originally envisioned to focus on adjudicating complex constitutional matters. However, due to its broad interpretation of Article 136, which grants it the discretionary powers to grant leave to appeal against any judgment or order of any Court or Tribunal in the territory of India [2]. This evolving role has significantly impacted its efficiency. As of 2023, the Supreme Court had a backlog of nearly 69,000 cases [3].

The judiciary's capability is further strained by an insufficient number of judges. Despite periodic increases in judicial appointments expanding the number of Supreme Court judges from an initial 7 to 34 currently the backlog persists [4]. The burgeoning caseload diverts the Court's attention from its primary function of constitutional adjudication to a vast array of civil and criminal appeals.

The Supreme Court of India has implemented various technological initiatives to improve the efficiency and accessibility of the Judicial system such as platforms like SUPACE (Supreme Court Portal for Aid in Courts Efficiency), SUVAS (Supreme Court Vidhik Anuvaad Software), and E-Courts. SUPACE utilizes artificial intelligence to provide judges with relevant case information to assist decision-making [5]. SUVAS translates legal documents between English and regional languages to enhance comprehension [6]. E-courts enable online case filing, virtual courtrooms, and electronic case management. While these advances have increased efficiency and accessibility, the impact on the backlog has been limited. The pace of technological innovation has not adequately matched the influx of new cases. The sheer volume keeps

the pendency high. While the Supreme Court's technology drive has facilitated timely justice delivery and operational improvements, substantially decreasing case backlogs will require more comprehensive and wide-ranging reforms.

To analyse the backlog of cases in the Supreme Court the researcher, relied on the analysis of Nick Robinson in his research work titled "A Quantitative Analysis of the Indian Supreme Court's Workload" In his work Mr Robinson analysed the data between 1993 and 2010 of the Supreme Court workloads, found that the more than 95% cases are pending in the supreme court are under Article 136 of the constitutional of India i.e. SLPs and the majority of Appellant cases in Supreme Courts are from the High Court which are in geographical Proximity of the Supreme Court. A detailed analysis of the Robinson manuscript is done in the next section.

To address the Overwhelming caseload in the Supreme Court of India without compromising its core Institutional role, this paper advocates the Idea of the establishment of a National Court of Appeal (NCA) with regional branches, this would relieve the burden on the Supreme Court, enabling it to concentrate on matters of national and constitutional importance.

Quantitative Insights into the Supreme Court's Growing Caseload

To gain a comprehensive understanding of the escalating cases backlog in the Supreme Court of India, this study relied on the study by Nick Robinson in his research paper "A Quantitative Analysis of the Indian Supreme Court's Workload" [7] which conducts a quantitative analysis of the Indian Supreme Court's caseload from 1993 to 2011. His analysis reveals that the number of admission matters submitted to the Court nearly doubled during this period, paralleled by a similar increase in regular hearing matters. This escalation in caseload has led to an accumulating backlog; specifically, the percentage of regular hearing cases pending for over five years increased from 7% in 2004 to 17% in 2011 [8].

Special Leave Petitions (SLPs) constitute the majority of the Court's caseload, while the proportion of writ petitions and certified appeals has decreased. Additionally, appeals are more likely to be filed from High Courts located near Delhi. The Court predominantly deals with cases of civil, criminal, tax, service, labour, and land acquisition matters. Despite extensive media focus on public interest litigation, it comprises only about 1% of the total cases [9]. Moreover, cases involving tax, arbitration, land acquisition, and company law exhibit higher acceptance rates. In contrast, family law and criminal cases are generally adjudicated more swiftly. While the rate of appeals has increased over time, the acceptance rates have remained relatively stable. Intriguingly, the growth rate of regular hearing matters at the Supreme Court has exceeded that of High Courts and lower courts, suggesting a potential dilution of precedent. A considerable number of decisions remain unpublished, thereby limiting their potential impact as precedent.

Concerning Special Leave Petitions, the data indicates that they make up approximately 85% of admission matters. This ratio has been gradually increasing. In the 1970s, civil SLPs accounted for around 74% of the total, which increased to 82-86% in the 1980s and 1990s before slightly decreasing to 75% in recent years. Despite a modest acceptance rate of 11-13% from 2005-2011, both the total number of filed and accepted SLPs have nearly doubled since 1993 [10]. This disproportionate growth in accepted SLPs implies that High Courts may not be consistently adhering to Supreme Court precedent. Consequently, SLPs serve as a critical component in both admission and regular hearing matters, granting the Court discretionary control over its caseload. However, the significant increase in SLPs has also exacerbated the existing workload and backlog, emphasizing the need for reform in SLP acceptance criteria to manage the Court's burgeoning docket effectively.

The above study shows that the Indian Supreme Court is dealing with a lot more cases than it used to, which is causing delays, especially in cases that take over five years to resolve. Most of these cases are Special Leave Petitions (SLPs), and their increase suggests that lower courts might not be following the Supreme Court's past decisions closely. The study also finds that certain types of cases and appeals from geographically proximate regions from the Supreme Court are more common, which raises questions about fair access to the Court. This growing workload highlights the need for some changes in how the Court operates and calls for more data to be shared for a better understanding of the issues.

The Origins of the Idea of the National Court of Appeal

The genesis of the National Court of Appeal (NCA) can be traced back to the era of the Constituent Assembly Debates. Notable figures like Shri Jaspat Roy Kapoor introduced the idea of establishing circuit courts of the Supreme Court, strategically located in various parts of the country. Not only was this idea supported, but it was also endorsed by Dr. B.R. Ambedkar [11]. Despite this early recognition of its potential advantages, the concept never materialized into a concrete legislative or judicial initiative.

It remained dormant until the early 21st century when it was revitalized by a series of Law Commission reports and landmark court cases. The Law Commission of India gave renewed focus to this concept in 1984, suggesting that the Supreme Court should divide its responsibilities between original and appellate jurisdictions. This proposal aimed to address the growing number of pending cases and the consequent strain on the Supreme Court, issues that have raised questions about the court's effectiveness and its accessibility to the public. The 95th Law Commission Report was particularly instrumental in bringing this idea back into contemporary discussions. It proposed the establishment of a specialized constitutional division within the Supreme Court, staffed by a minimum of seven judges dedicated solely to constitutional matters [12]. Subsequent reports, like the 125th and 229th, expanded upon this by suggesting not only a separate division for constitutional issues but also the involvement of retired judges to expedite the disposal of civil and criminal appeals [13, 14].

The role envisioned for the NCA is to focus solely on appellate cases, thereby freeing the Supreme Court to dedicate its efforts to more constitutionally significant tasks. These tasks include interpreting the Constitution, addressing matters of national concern, and resolving inter-state disputes. The landmark case of Bihar Legal Support Society v. Chief Justice [15] played a pivotal role in shaping this idea.

In this case, a Constitutional Bench of the Supreme Court itself suggested the establishment of an NCA. The Court clarified that its primary role was never to act as a regular appellate court but rather to serve as a special body for addressing significant legal issues and preventing severe injustices. Adding weight to the discussion was the viewpoint of former Attorney General K.K. Venugopal. He has been vocal in his support for an NCA, arguing that regional benches could decentralize the Supreme Court's functions. This decentralization would make the legal system more accessible to citizens across the country. Venugopal contends that an NCA would act as a more immediate authority for appeals, thus reducing the Supreme Court's caseload and allowing it to focus on matters of national and constitutional importance.

Interpretation of Article 136

Around 95 per cent of the cases which are pending in the Supreme Court of India is SLP which filed Under Article 136 [16]. Article 136 of the Constitution of India confers special leave jurisdiction on the Supreme Court, granting it discretionary powers to grant leave to appeal against any judgment or order of any Court or Tribunal in the territory of India. The scope and exercise of this power have led to divergent views, with the Supreme Court itself oscillating between broader and narrower interpretations of this provision over the years through its jurisprudence.

Broader Interpretation of Article 136

The expansive approach regards Article 136 as conferring the widest possible discretionary powers on the Supreme Court to grant leave to appeal in any cause or matter before any Court or Tribunal in the country. This interpretation relies heavily on the literal wording of Article 136 which does not explicitly impose any limitations on the exercise of special leave jurisdiction.

Eminent jurists like Durga Das Basu have opined that Article 136 confers the "widest possible amplitude" on the Supreme Court and the language makes the scope of discretion "as wide as could be made [17]." This viewpoint has found favour in several Supreme Court judgments like Mathai v. George [18] and Union Carbide Corporation v. Union of India [19] which rejected attempts to restrict the scope of Article 136 through judicial interpretation.

In Mathai, the Constitution Bench authoritatively ruled that Article 136 should not be subject to limitations through judicial pronouncements. The Court held that accepting fetters on the discretion under Article 136 would go against the intention of the framers who envisioned the Supreme Court as the highest Court capable of interfering to correct errors in all cases. This broader interpretation draws support from the Supreme Court's exalted status as the highest judicial organ and the final interpreter of the Constitution [20].

Narrower Interpretation of Article 136

On the other hand, the narrower view regards the special leave power under Article 136 as an extraordinary remedy to be exercised sparingly and in exceptional circumstances only. This interpretation cautions against the Supreme Court entertaining routine appeals which do not involve substantial questions of constitutional interpretation or grave miscarriage of justice [21].

The restrictive approach was articulated right in 1950 in the case of Pritam Singh v. State [22] where the Court held Article 136 is not meant to be used in ordinary cases. The intention was to constitute the Supreme Court as the apex Court only for laying down authoritative interpretations of the law, not for correction of individual injustices.

Subsequently, in State of Uttaranchal v. Sunil Kumar Singh Negi [23], the Court has ruled that recourse to Article 136 must be limited to extraordinary cases alone, in keeping with the role envisaged for the Supreme Court. The Court has also expressed concern that excessive use of special leave converting the Supreme Court into a regular appellate Court contrary to the framers' intent and the Supreme Court's exalted role as the highest Constitutional Court.

The expansive interpretation of Article 136, which grants the Supreme Court of India considerable latitude in admitting special leave petitions, has significantly contributed to the growing backlog of cases before the Court. Through a border reading of this Article, the Supreme Court has effectively widened the scope for appeals, encompassing a range of cases from civil, criminal and other matters. As a result, the Court's docket has become saturated with appeals that often lack substantial legal questions or evidence of significant judicial errors. The architects of the Constitution envisioned Article 136 as a specialized legal provision, aimed at addressing only exceptional cases that warranted urgent attention. However, its application as a general appellate mechanism has overwhelmed the Supreme Court's resources.

Given the urgent need to alleviate this growing case backlog, one viable option could be the establishment of a National Court of Appeal. This could serve as a more specialized appellate body, allowing the Supreme Court to redirect its focus toward cases of constitutional and national importance.

National Court of Appeals around the globe

The idea of having a National Court of Appeal is not new. Many countries like Ireland, South Africa, England and Wales, have similar courts. These courts help us understand how appellate systems work and what problems they might face. In Ireland, a new Court of Appeal has helped reduce the number of cases that the Supreme Court needs to handle. South Africa and England and Wales have special courts that deal with the most important legal issues.

Ireland National Court of Appeal

The creation of the Court of Appeal in Ireland in 2014 as a court between the High Court and Supreme Court has greatly reduced the number of cases that the Supreme Court has to hear. Before 2014, the Supreme Court was the only appeals court in Ireland. It heard appeals from the High Court in civil and criminal cases. This led to a huge backlog of cases in the Supreme Court. The Thirty-Third Amendment to the Constitution (Court of Appeal) Act 2013 [24] and the Court of Appeals Act 2014 set up the Court of Appeal to fix this problem [25].

The 2014 Court of Appeal Act gives the Court of Appeal a lot of the appeals jurisdiction that used to be only the Supreme Court's. Now the Court of Appeal hears almost all appeals of civil cases from the High Court. The only

exception is cases about whether a law is constitutional - the Court of Appeal shares that power with the Supreme Court. The Court of Appeal also took over the appeals jurisdiction of the old Court of Criminal Appeal. So, the Court of Appeal is now the final review court for most appeals. Only exceptional cases that meet certain criteria can go past the Court of Appeal to the Supreme Court. Two important parts of the law passed power from the Supreme Court to the new Court of Appeal. First, Section 7A of the 2014 Act lets the Court of Appeal take over any appeals that were waiting in the Supreme Court before the Court of Appeal was created [26]. This instantly moved hundreds of waiting Supreme Court cases to the new Court of Appeal. Second, any new appeals that might have started in the Supreme Court before now have to start in the Court of Appeal instead, unless they meet the law's strict criteria. Only cases of public importance or justice interests can skip the Court of Appeal. In its first year, the Court of Appeal got over 450 appeals that likely would have gone straight to the Supreme Court before 2014. That's over a 50% increase from the prior year, showing the Court of Appeal quickly took on a lot of the Supreme Court's work. Since then, the Court of Appeals has kept adjudicating several hundred civil and criminal appeals every year that the Supreme Court used to get [27].

While the Court of Appeal has no doubt helped reduce the Supreme Court's workload, it isn't working at full capacity yet. The Court of Appeal could take even more appeals from the Supreme Court. But long delays in appointing judges to open spots on the Court of Appeal have stopped it from reaching its full potential. With only half its judges, the Court of Appeal itself has a growing backlog. Filling those empty seats quickly could maximize the benefits of creating the Court of Appeal.

Supreme Court of Appeal, South Africa

The Supreme Court of Appeal (SCA) has played an important role in the South African judicial system since its establishment in 1996. As the final court of appeals on all matters other than constitutional issues, the SCA serves to lighten the caseload burden on the Constitutional Court. This division of labour has promoted greater court efficiency and enabled the Constitutional Court to focus on its critical mandate of constitutional adjudication. Several features contribute to the SCA's relatively efficient operations compared to apex courts in other countries [28]. First, the SCA sits in permanent sessions based in Bloemfontein. This allows for steady case throughput rather than interrupted or abbreviated hearings. Second, cases are heard by panels of three or five justices, which balances robust deliberation with efficiency. Third, the SCA's jurisdiction is limited to appeals rather than original matters. This streamlines the court's docket compared to jurisdictions where the apex court hears both original and appellate cases [29].

Beyond promoting court efficiency, the SCA has delivered several qualitative benefits to the justice system

- Its appellate jurisdiction has established consistency and coherence in the interpretation of laws other than the Constitution.
- SCA judgments have developed legal doctrines and precedents in areas like delict, contract, property, and criminal law.
- The SCA has enhanced access to justice by serving as an avenue of appeal from lower courts.
- Litigants have the benefit of appeals being heard swiftly compared to jurisdictions where appeals languish for years.

Court of Appeal in England and Wales

The Court of Appeal is a key component of the appellate court structure in England and Wales. It serves as an intermediate appellate court between the High Court and the Supreme Court of the United Kingdom. The Court of Appeal was established in 1875 under the Judicature Acts, which aimed to reform and rationalize the court system. A major goal of creating the Court of Appeal was to reduce the workload burden on the House of Lords (now the Supreme Court) and enable more appellate cases to be heard. The Court of Appeal consists of two divisions - the Civil Division and the Criminal Division. The Civil Division hears appeals on matters of law, and sometimes fact, from the High Court and county courts of England and Wales. The Criminal Division handles appeals from the Crown Court and other lower criminal courts. Currently, there are 26 Lord Justices of Appeal and 11 Lady Justices of Appeal who sit on the Court of Appeal [30]. The Court of Appeal has jurisdiction to hear appeals in both civil and criminal matters from the lower courts. In civil cases, appeals typically involve challenges to legal determinations, procedural issues, or awards of damages. For criminal cases, defendants may appeal convictions or sentences handed down by lower courts.

The Court of Appeal serves two main interrelated purposes. The first is a review function - providing litigants an opportunity to have lower court rulings reconsidered and corrected for potential errors or inconsistencies. This allows for mistakes to be rectified and justice to be achieved in individual cases. The second purpose is supervision - giving authoritative precedents and guidance to lower courts on important points of law and procedure. This role ensures greater predictability, uniformity, and clarity in the legal system [31]. The Court of Appeal helps maintain standards and consistency across lower courts through its appellate oversight. The Court of Appeal also acts as a "gatekeeper" to the Supreme Court. Most appeals require permission from either the Court of Appeal or the Supreme Court to proceed further in the system. This leave requirement filters out frivolous or unmeritorious claims and prevents the Supreme Court from being overburdened. The Court of Appeal's gatekeeping function is a cornerstone of an efficient appellate structure [32].

The creation of the Court of Appeal has proven largely successful in reducing the caseload burden on the Supreme Court. It has also brought greater efficiency, oversight, and consistency to the appellate process. By providing an intermediate level of appeal, the Court of Appeal plays an indispensable role in the English and Welsh judicial system.

The idea of having a National Court of Appeal in India is not unique other common law countries like Ireland, South Africa, and England and Wales have shown that creating an intermediate appeals court between the High Courts and Supreme Court works well and is effective. An Indian

National Court of Appeal could take on many appeals from High Courts, so the Supreme Court can focus on the most important national-level cases. Setting up a permanent appeals court that holds regular hearings and controls further appeals could also improve efficiency, as seen abroad. While India's courts have their challenges, the success of national appeals courts globally indicates that a similar model adapted for India could greatly reduce case backlogs.

Advantages and disadvantages of the National Court of Appeal in India

A. Advantages of Instituting the National Court of Appeal

a. **Mitigating the Chronic Backlog in the Supreme Court:** One of the most compelling arguments in favour of establishing the National Court of Appeal (NCA) revolves around the dire state of case backlog in the Supreme Court of India. Historically, this problem has been persistent, manifesting itself in an overwhelming caseload that has only exacerbated over the years. As of the most recent data, the Supreme Court grapples with over 69,000 pending cases. The indiscriminate filing of SLPs, attributed to the absence of stringent procedural guidelines, further compounds the issue. Instituting the NCA would serve as a dedicated forum for both civil and criminal matters, thereby alleviating the workload of the Supreme Court and facilitating more expeditious case resolutions [33].

b. **Removing Financial Barriers to Justice:** Supreme Court of India employs a specialized procedural framework that mandates the involvement of an "Advocate on Record" for the initiation of any legal case. To secure this designation, legal practitioners are obligated to pass a dedicated examination administered by the Supreme Court. While this system aims to sustain high-quality legal representation, it inadvertently creates several obstacles. Notably, the restricted number of Advocates on Record leads to inflated legal fees, imposing a significant financial burden on litigants. This cost barrier often discourages litigants from accessing the Supreme Court, thereby undermining the broader goal of equal access to justice [34].

   In contrast, the proposed National Court of Appeal (NCA) could offer a more inclusive model. Specifically, it might permit legal practitioners from regional High Courts to represent cases. This expansion of eligible legal representatives could reduce the financial strain on litigants, particularly those who are economically disadvantaged. By enlarging the cadre of qualified advocates, the NCA has the potential to make the legal system more accessible, encouraging a wider demographic to engage with the judiciary.

c. **Promoting Geographical Equity and Reducing Litigation Costs:** As majority of the appellant cases filed in the supreme courts are from the states which are geographically proximate to it because the location which is far from the Supreme Court imposes a substantial financial and logistical burden on litigants hailing from distant regions of the country. The proposed regional benches of the NCA in cities like New Delhi, Chennai, Mumbai, and Kolkata would enable litigants to approach the nearest judicial forum. This proximity would not only reduce travel, accommodation, and subsistence costs but also democratize access to justice [35].

d. **Revitalization of Constitutional Jurisprudence:** The NCA could catalyze the rejuvenation of constitutional jurisprudence. Given that landmark constitutional rulings have become increasingly rare, the specialized focus of the Supreme Court Judges on constitutional matters, facilitated by the NCA, would likely lead to judgments that are both coherent and consistent. This specialization would enable a more nuanced understanding of constitutional law, potentially leading to groundbreaking jurisprudence [36].

B. Potential Disadvantages and Counterarguments

a. **The Risk of Regionalism:** One of the primary concerns raised by detractors is the potential for regionalism to creep into the judiciary. Critics posit that the establishment of regional NCA branches may ignite demands for additional branches in other geographical regions. However, this argument seems to rest on speculative grounds and is not substantiated by empirical evidence or historical precedent.

b. **Efficacy in Alleviating Case Backlog Questioned:** Sceptics of the NCA assert that it may not serve as an effective solution to the backlog issue and may inherit a caseload problem of its own. However, this argument appears to be based on a flawed understanding of judicial administration, as the NCA's specialized focus is designed to streamline and expedite the judicial process.

c. **Financial Constraints:** The fiscal implications of establishing multiple branches of the NCA constitute another point of contention. Critics argue that such an undertaking would be financially onerous for the government. However, a nuanced cost-benefit analysis reveals that the expeditious resolution of cases, particularly those in which the government is a party, could eventually offset the initial establishment costs.

d. **Existence of Viable Alternatives:** Opponents of the NCA often point to technological and procedural reforms as alternative solutions to the backlog problem. However, past endeavours, such as the attempt to digitize court proceedings, have been largely unsuccessful. Additionally, other suggested alternatives, like augmenting the number of Supreme Court Judges or restricting oral argument durations, are fraught with their own sets of complications and limitations.

Conclusion

The persistent issue of case backlog in the Indian Supreme

Court is more than a mere inconvenience; it is a roadblock to justice and a hurdle to constitutional interpretation. Attempts to increase the number of judges and extend court hours have proven insufficient in tackling this long-standing issue. This paper, therefore, strongly advocates for the establishment of a National Court of Appeal (NCA) as a pragmatic and effective solution.

The NCA would specialize in handling civil and criminal appeals, thus allowing the Supreme Court to refocus its energy on complex constitutional matters. Not only would this relieve the overwhelming burden on the apex court, but it would also facilitate a more nuanced development of constitutional jurisprudence. The successful implementation of similar appellate courts in Ireland and Germany serves as a compelling international precedent, underscoring the feasibility and effectiveness of this approach.

Constitutional hurdles, while not trivial, are surmountable. With a judicious interpretation of Article 130 or through targeted policy decisions, the NCA could be integrated into the existing constitutional framework of India. In doing so, the NCA has the potential to 'cure' the ailing judiciary, enabling it to function as originally intended-upholding justice and interpreting the Constitution.

The establishment of a National Court of Appeal emerges as a balanced, realistic, and urgent solution to the enduring problem of case backlog. It offers a pathway to judicial efficiency without compromising the integrity of constitutional interpretation.

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