



THE SUPREME COURT AS A COURT OF APPEAL

A-G KK Venugopal has suggested that the apex court only hear cases of constitutional and national importance. Instead, there should be a Court of Appeal above High Courts, with four benches of 15 judges each

ROUND Table Conferences from November 1930 to December 1932 saw the official opening of the new capital of India at Delhi in February 1932. The conferences led to the passage of the Government of India Act, 1935, and with it, the setting up of the Federal Court, with its seat in Delhi.

One must admire the dramatic landscape of New Delhi, constructed by the British with our money, for which we shall ever be grateful. The majesty of the new city was described by Robert Byron, who visited Delhi in January 1932. Byron drove from the Delhi railway station, past Red Fort, Jama Masjid, Daryaganj, under Hardinge Bridge, along Hardinge Avenue through India Gate up the gentle

climb to Raisina Hill, and set eyes on the spanking new Vice-Regal Lodge.

He wrote: "It was expected and assumed that representatives of British Sovereignty beyond the seas shall move in a setting of proper magnificence; and that in India, particularly the temporal power shall be hedged with the divinity of earthly splendour.... and shine with a Periclean importance."

Byron compared the architecture of New Delhi with the Italian baroque style of the 17th century, which laughed out loud, and concluded by saying how the "echoes of that laughter peals over the land, mitigating for some who hear it, the steel fury of the sun and the tragedy of conflicting efforts. While majority are deaf to all but the rights of man -

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whether to give or withhold them. They forget that one of those rights is beauty."

One must extend "divinity of earthly splendour" and "right of beauty" to our splendid Supreme Court building, "a setting of proper magnificence" blending with Rashtrapati Bhawan. On Tilak Marg (old Hardinge Avenue) stands our sentinel on the *qui vive*, and on its northern boundary is Lokmanya Bal Gangadhar Tilak's statue, which was installed to commemorate his birth centenary in 1956. The Court moved to its present home in 1958, to a building shaped like a balance.

As the Court debates the utility, usefulness and necessity of the Central Vista Development Project, Attorney General (AG) KK Venugopal has suggested a new element in its judicial architecture—that of a Court of Appeal between the High Courts and the Supreme Court.

The constitutional provisions regarding appeals to the Supreme Court are in Articles 132, 133, 134, 134A and 136.

Here one finds provisions for appeals in certain cases, appeals in civil cases, appeals in criminal cases, appeals by certificate to appeal and appeals by special leave to appeal. We have, therefore, clear constitutional provisions for appeals to the Supreme Court.

It wouldn't be wrong to suggest most of the fresh filing in the Supreme Court is under Article 136, out of which a majority are dismissed. Appeals come in all forms, shapes and sizes, always against judgments or orders of High Courts, but very seldom with certificates to appeal. The rest of the jurisdictional space consists of original jurisdiction over disputes between the states, writ jurisdiction and advisory opinions.

If a management expert was to inspect the Supreme Court Registry (without inviting contempt) to see how it manages its work, he will be shocked beyond belief. But he need not necessarily physically visit the Registry for all that he is seeking, he shall find on

the Court's website.

The Supreme Court had 64,426 cases as on December 4, 2020. There are 19,146 cases fixed for regular hearing, out of which 48 are for Constitution Benches of five, seven or nine judges. There are also 45,280 cases still at the admission stage. Can anyone imagine such a wild state of affairs in the highest court of the land with the widest constitutional powers and authority?

Our management consultant would next want to know what exactly does the Court do, how does it divide its time and plan its judicial manpower. And what is the timeframe in which these cases have to be decided. He shall not get any straight answers. But he will get many tutorials on the rule of law, independence of the judiciary, basic features of the Constitution and so on. These doctrines are important, but cannot be of any assistance in tackling pending work. What

KK Venugopal (below) said there were at least 25 common law countries having courts of appeal below their highest court. He also mentioned a study which found that a majority of SC cases were from north India.



use is the rule of law if the case does not get a patient hearing?

It would help if the management adviser is told how priorities are fixed for listing of cases. But he will get no indication about this from the website as it does not disclose the different types of appeals awaiting hearing.

So while making his recommendations, the obvious thing would be to make a few broad categories of cases. Constitutional cases involving complex questions of law of general public importance on the one hand and appeals between two private citizens or between a citizen and the State, on the other. And *voila!* You get the Constitutional Court and the Court of Appeal.

The attorney-general, speaking recently on Law Day, pointed out that through video-conferencing everyone has learnt new ways of addressing arguments. This is something that can continue even after the pandemic is over and courts resume hearings.

The A-G emphasised that the Supreme Court was the apex court, which was a constitutional court, and heard cases of national and constitutional importance, but strangely also hears matrimonial, rent, landlord and tenant cases, land acquisition cases and bail matters. The Supreme Court has about 400 categories of cases which can be filed before it. There are actually 47 categories divided into 332 sub-categories.

The A-G felt that the Supreme Court should regain its status and only hear cases of constitutional and national importance. He suggested that there should be a Court of Appeal above High Courts, consisting of four benches with 15 judges each, who should be of the same status and calibre as judges of the Supreme Court.

According to the A-G, there were at least 25 common law countries which →



Venugopal emphasised that as a constitutional court, the Supreme Court did hear cases of national and constitutional importance, but strangely it also entertained matrimonial, rent, landlord and tenancy cases and land acquisition cases as well as bail matters.

had courts of appeal below their highest court. The judges of the Supreme Court are very busy and work very hard on their cases, which gives them very little time for leisure, to patiently read cases and write judgments.

Venugopal also referred to a study by a Yale academician who found that a majority of cases before the Supreme Court were from the north; southern states like Tamil Nadu and Karnataka had only 1.5 percent to 2 percent of cases. With a Court of Appeal, the workload of the Supreme Court would reduce to about 2,000 manageable cases. He also said that setting up a Court of Appeal shall require an amendment of the Constitution.

A constitutional amendment to set up the Court of Appeal is not really necessary. The chief justice of India can obtain the approval of the president of India for circuit benches of the Supreme Court outside Delhi. These can be at Mumbai, Chennai, Kolkata and Allahabad. A provision to enable this arrangement already exists, taken verbatim from the Government of

India Act, 1935, in Article 130. It states: "The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint."

A Court of Appeal as a division of the Supreme Court could sit at five cities of India to cover five different zones. This can be seamlessly done by creating a Registry for each zone. The four locations can be in cities where the first four High Courts of British India were set up. The fifth would naturally be at Delhi as the Principal Bench.

Lokmanya Bal Gangadhar Tilak's principled life rules over justice-seekers during the day, but as night falls, Tilak rests and the colonial Hardinges take over to block all streams of justice. Tilak was the First Freedom Fighter of India. He coined the slogan, "Swaraj is my birthright, and I shall have it" and faced three sedition cases, ably defended by MA Jinnah. Tilak was to become an inspiration for the independence movement.

The two Hardinges, Henry and grandson Charles, were Governor-

General and Viceroy, respectively. Henry commanded the company troops in the 1st Anglo-Sikh War (1845-46) and very nearly lost the Battle of Mudki, but struck a deal with Gulab Singh who betrayed his forces, and as a reward, got Kashmir.

Charles organised the 1911 durbar where George V declared the shift of the capital from Calcutta to Delhi. Charles very nearly lost his life the next year to an assassin's bomb. Rash Behari Bose had planned the attempt. The bomb was thrown at the Viceroy's elephant near Red Fort, when he was in a ceremonial procession transferring the capital from Calcutta to New Delhi. The spirit of the two Hardinges still roams the corridors of the Supreme Court at night, while the path shown by the Lokmanya is all but forgotten. The old Hardinge Avenue is not quite Tilak Marg. ■

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