

Session 6: Strengthening the Role of Constitutional Courts



Sunday, 28 Feb 2021
9:00 AM - 11:00 AM



Justice Madan B. Lokur

Former Judge, Supreme Court of India

(Chair)



Shri V. Sudhish Pai

Lawyer and Jurist



Ms. Catty Catherson

Former Clerk and Circuit Executive of the Court of Appeals, Ninth Circuit, USA



Shri Alok Prasanna Kumar

Co-Founder and Lead, Vidhi Centre for Legal Policy, Karnataka

- The session will begin with a 5 minute presentation from FDR.
- The Chair for the session will first present his views for 10-12 minutes.
- The Chair will then call upon each speaker, who will also have 10-12 minutes to share their insights.
- Post that, the Chair may open the session for a panel discussion.
- The last 30-45 minutes will be dedicated to taking questions from the audience.
- We request the participants to keep the questions brief and lucid and also mention the panelist that they would like the question to be directed to.

Mounting Arrears in High Courts - A Cause for Concern



- Constitutional Courts - **interpret, enforce** and act as **guardians** of the Constitution
- High Court case pendency - arguably the **greatest challenge** facing Indian Judiciary
- Over **5.6 million cases** pending in High Courts, **85%** of which have been pending for over a year.
- More than **80,000 cases** have been pending over 3 decades!
- Over **8,000 cases pending per judge**. The disposal rate per judge in 2019 was an astonishing **3,500 cases!**

Figure 1: Age-Wise Pendency in High Courts



0 to 1 years:-	849848 (14.93 %)
1 to 3 years:-	1502397 (26.39 %)
3 to 5 years:-	907031 (15.93 %)
5 to 10 years:-	1177792 (20.69 %)
10 to 20 years:-	1011851 (17.77 %)
20 to 30 years:-	151690 (2.66 %)
above 30 years:-	92000 (1.62 %)

Source: National Judicial Data Grid

Mounting Arrears in High Courts - A Cause for Concern



- At the **apex** of the judicial pyramid in a state.
- **Jurisdiction** - ordinary, extraordinary, original, appellate, revisional, and writ.
- Exercise power of **supervision** and **administrative control** over subordinate courts
- Unduly burdened with appellate and revisional matters - **40%** of the caseload.

Table 1: Nature of the pending cases

Type	Civil	Criminal	Total (% of the total pending cases)
First Appeal	3,77,358	529	3,77,887 (8.61 %)
Second Appeal	2,64,234	-	2,64,234 (6.02 %)
Appeal	3,23,157	5,27,548	8,50,705 (19.39 %)
Revision	63,699	1,78,190	2,41,889 (5.51 %)
Writ Petitions	12,67,044	51,904	13,18,948 (30.06 %)
Others	8,11,790	5,21,629	13,33,419 (30.39 %)

Source: National Judicial Data Grid, 10 February 2021

1. **Filling up vacancies** in sanctioned strength of judges on priority

Table 2: High Courts Judicial Strength

Sanctioned Strength	Working Strength	Vacancies
1079	673	406

Source: Department of Justice, 01 November 2020

2. Invoke **Article 224A** of the Constitution

- Provides for appointment of **ad hoc judges** from amongst retired High Court judges to clear the backlog
- Recommended by the Committee on Arrears (1989-90)

3. Limiting the jurisdiction of the High Courts -

a. Abolition of ordinary original civil jurisdiction

- Favoured by **several Committees** in the past - Justice Satish Chandra Committee, 1986 and the Committee on Arrears (1989-90)
- **No justification** for continued exercise of such jurisdiction with the establishment of City Civil Courts

Table 3: Caseload under Original Civil Jurisdiction of High Courts

High Court	Cases	Proportion of the civil caseload	Proportion of the total caseload
Bombay HC	8,705	1.9%	1.6%
Madras HC	151	0.03%	0.03%
Calcutta HC	NA	NA	NA
Delhi HC	10,486	15.9%	11.5%
Himachal Pradesh	860	1.3%	1.1%
Jammu and Kashmir	16	0.03%	0.03%

Source: National Judicial Data Grid, 10 February 2021

- Moreover, High Courts take longer than the trial courts to dispose of original civil cases

Table 4: Average Pendency of Civil Suits in Bombay and Delhi

Court Name	Pending Cases	Average Pendency (in years)
Delhi High Court	19,740	5.8
Delhi Lower Judiciary	15,223	3.7
Bombay High Court	16,099	6.1
Maharashtra Lower Judiciary	1,02,931	5.6

Source: Economic Survey 2017-18, Volume I

- b. Restriction of appeals - 79th Law Commission Report (1979) and Committee on Arrears (1989-90)**
 - Increase the pecuniary limits of appellate jurisdiction of District Courts and mandatory periodic review of these limits every 3 years
 - Restrict second appeal in civil matters to suits above a certain limit, say Rs 2 million.

- c. Limit Revisional jurisdiction -**
 - Civil Revisional Jurisdiction (S 115, CPC)
 - must be **abolished** as recommended by the **54th Law Commission Report**
 - **Article 227** of the Constitution provides sufficient remedy

 - Criminal Revisional Jurisdiction (S 397, CrPC)
 - must be **restricted** as recommended by the **Committee on Arrears (1989-90)**

- Sessions Courts to have exclusive power of revision against orders of the subordinate courts
- High Courts to have power of revision only against orders of Sessions Courts/ Special Courts which are themselves not orders made under revisional jurisdiction

4. Expand and improve the **judicial clerk system**

- Each HC judge must be allotted **four clerks** selected purely on merit
- Judicial clerks may **grow in stature** over time and become leading lawyers and judges themselves

- **Constitutional adjudication on the backseat** as dispute-resolution functions take priority
- Constitutional matters comprised only **7%** of the judgments delivered by the Supreme Court in 2014
- Number of matters heard by constitutional benches (i.e. of five or more judges) has reduced from 15.5% in the 1950s to **0.12%** in the 2000s
- There is an urgent need to set up separate **permanent constitutional bench**
- Recommendations made previously by the **95th, 125th and 229th Law Commission Reports**
- **Article 130** allows for such restructuring of the Apex Court, without the need for any amendment of the Constitution.
- Restore the **constitutional role** of the court and enhance the **quality** of constitutional adjudication