

# revamp the structure of the Supreme Court

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## **Context:**

Supreme Court (SC) 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:**

1. 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.
2. A constitution bench typically comprises 5, 7 or 9 judges who deliberate on a specific issue related to constitutional law. Usually, cases before the SC are heard by Division Benches (2 judges) or full Benches (3 judges) to examine a wide range of topics.
3. Under its very broad jurisdiction, the Supreme Court has entertained frivolous public interest litigations (PILs), such as demands that passages be deleted from the Quran or secularism be removed from the Preamble to the Constitution.
4. 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.
5. Recently, CJI D.Y. Chandrachud announced his intent to create Constitution Benches of varied strengths as a permanent feature of the Court.

## **Discourse on a separate Constitution Bench:**

1. In 1984, the Tenth Law Commission of India proposed that the SC 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.
2. 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.
3. Earlier, in Bihar Legal Support Society case (1986), the SC 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 SC to only entertain constitutional and public law related questions.
4. 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 6 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 nonconstitutional cases among regional benches, the SC, it said, could “deal with constitutional issues and other cases of national importance on a day-to-day basis.”

### **Evolution of SC:**

1. During colonial times, there were three Supreme Courts: in Bombay, Calcutta, and Madras. SC, 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.
2. The first Supreme Court included 8 judges, including the CJI. As the workload rose year after year and arrears of cases began to accumulate, Parliament periodically kept increasing the number of judges; the latest being 34 in 2019.
3. An overburdened court Today’s Supreme Court issues around 810 decisions each year through Constitution Benches of five or more judges. It serves primarily as an appeals court. Only 4 of the 1,263 decisions issued in 2022 were issued by a Constitution Bench.

### **Way forward:**

1. SC 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.
2. The work of the SC 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 (Vasanth Kumar v. H.C. Bhatia case) is analysing these issues and contemplating measures to protect a citizen’s basic right to access the Supreme Court.

### **Conclusion:**

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.

