



## Decentralization of Judicial System is Indianization of Judiciary

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### **Abstract-**

*This article focus on the decentralization of the Indian judicial system. The first court had established in 1726 in Calcutta, followed by madras and Bombay. Which had been replaced after 1774 to (apex courts) Supreme Courts till 1937. Although the after 1950 the government of India established a democratic and federal structure in the country, which is quasi-federal in nature. The government of India act 1935 had established the Supreme Court in Delhi and presidency courts have been converted into the high courts of India. However, the hierarchical structure of the Indian judiciary has made it of a centralized nature. Due to the distance of SC and HC justice becomes unreachable to a majority of people in the country. Which has raised a question, "Judiciary of India or Judiciary for Indians?"*

### **Introduction-**

As in the preamble of the Indian constitution, India is socialist democracy promised to people socio, economic, political, and cultural justice. After 1947 India come up as unity in diversity, a country is suitable for federalism. It became a drastic change in the previous colonial nature of a country. However, the independence could not bring any major change in the structure of the Judiciary.<sup>1</sup>

The hierarchical structure of the judicial system remained the same by the supreme court of India in Delhi. However bypassing time the load on the court increased, so the number of judges has

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<sup>1</sup> MANURAJ SHUNMUGASUNDARAM, 'A More Meaningful Court: Why Decentralisation Ofjudicial Powers Is The Way Forward' <<https://www.theleaflet.in/specialissues/a-more-meaningful-court-why-decentralisation-of-judicial-powers-is-the-way-forward/>> accessed 19 September 2021.

been increased by parliament. Which was eight in 1950, eleven in 1956, 1976 it was eighteen, and twenty -six in 1986. It was a convenient solution to reduce the burden on the court, though it remain temporary. The number of pending cases kept increasing day by day.<sup>2</sup>

The Supreme Court governs by article 145 of the constitution. Which protects the independence of the judiciary and grants power over other courts too. Although, the pending cases in the Supreme Court and High court are increasing. And it will keep increase after the pandemic, due to the unreachable structure of the judiciary. Delhi's location for SC is in one corner of the country and far away from the majority of Indian's. Apart from historical cause there has not any special reason to make Delhi a judicial capital<sup>3</sup>

### **Decentralization of Judiciary: concept and meaning-**

The concept of decentralization can describe as the distribution of power or authority and responsibility. Indians believe in co-operative federalism, the structure that provides a little bit of autonomy to state and local self-government. However, the judicial structure of power is more hierarchical than the federal. Though high courts of India has provided some power over the state judicial system.<sup>4</sup>

The judicial system of India was created by establishing the first mayor's court in culcutta, 1726 by the East India Company. Moreover, the regulation act set up the apex courts in 1773, which has been considered as high courts from 1861 in three presidency towns. Indeed, after independence by the government of India act 1935, the Supreme Court has situated in Delhi. And high courts were established in every state. The Supreme Court has been provided by original, appellate, advisory powers and authority over high courts.<sup>5</sup>

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<sup>2</sup> Shubhangi Agrawal, 'An Analysis Of Decentralization Of The Judiciary In India' <<https://blog.ipleaders.in/analysis-decentralization-judiciary-india/>> accessed 9 August 2021.

<sup>3</sup> V. R. Krishna Iyer, 'Questions Of Judicial Access' <<https://www.thehindu.com/opinion/op-ed/Questions-of-judicial-access/article16812031.ece>> accessed 19 September 2021.

<sup>4</sup> Shubhangi Agrawal, 'An Analysis Of Decentralization Of The Judiciary In India' <<https://blog.ipleaders.in/analysis-decentralization-judiciary-india/>> accessed 9 August 2021.

<sup>5</sup> Shubhangi Agrawal, 'An Analysis Of Decentralization Of The Judiciary In India' <<https://blog.ipleaders.in/analysis-decentralization-judiciary-india/>> accessed 9 August 2021.

However, the burden of the judiciary kept increasing after 1950. To reduce the number of pending cases, the number of judges increases. Many law commission has been formed to provide a concrete solution. The 14th report of the law commission suggests the establishment of tribunals. And the 58th report demanded the establishment of tribunals for pending matters of the service sector. Swaran Singh committee talked about the establishment of the independence of tribunals, and as a result of it 42nd amendment took place which created tribunals of administration and other tribunals under articles 323-A and 323-B<sup>6</sup> Nonetheless, it did not change the structure of the judiciary. It may help to reduce some burden but still, the judiciary (high courts and supreme court) remain unapproachable for common people.

### **Federalization of Judicial Power –**

There was one bill roaming around the internet, mostly on what's app. The bill was known as the constitutional (amendment) bill 2020. The bill was introduced by MP Shri. P. Wilson, it was regarding the decentralization of judicial powers. Though, it has not been discussed in Rajya Sabha. The bill mostly focuses on article 130 of the constitution. It advocates the establishment of permanent regional benches of the Supreme Court at Mumbai, Kolkata, Chennai, and Delhi. He had promoted this bill even before it.<sup>7</sup>

However, according to him, the distance of SC is far away from other states. Due to it the majority of people nearly lost their right to approach the court. The distance and cost to approach the Supreme Court are higher for common people. And that's why article 32 is technically not available to these people.<sup>8</sup>

India is a vast country and a prime example of unity in diversity. The judiciary aims to keep the peace and harmony in the society by making them believe in the system. The country itself is democratic and federal, though the judiciary of its centralized and hierarchical. Although the constitution provided the access to everyone. It's negated due to an expansive and unreachable

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<sup>6</sup> Shubhangi Agrawal, 'An Analysis Of Decentralization Of The Judiciary In India' <<https://blog.ipleaders.in/analysis-decentralization-judiciary-india/>> accessed 9 August 2021.

<sup>7</sup> Nilufer Bhateja, 'Fact Check | Image Of Bill To Set Up Four Permanent Benches Of Supreme Court: Fake Or Real?' <<https://www.scconline.com/blog/post/2021/07/26/fact-check-image-of-bill-to-set-up-four-permanent-benches-of-supreme-court-fake-or-real/>> accessed 2 October 2021.

<sup>8</sup> Nilufer Bhateja, 'Fact Check | Image Of Bill To Set Up Four Permanent Benches Of Supreme Court: Fake Or Real?' <<https://www.scconline.com/blog/post/2021/07/26/fact-check-image-of-bill-to-set-up-four-permanent-benches-of-supreme-court-fake-or-real/>> accessed 2 October 2021.

system. Decentralization of the judiciary will bring economical democracy in the system of justice.<sup>9</sup>

### **Need of decentralization and demand of Kolhapur High court-**

The pandemic of COVID-19 has shown the mirror to constitutional institutions. And people are agreed that in these situations judicial bodies are incapable to provide justice. To get justice common people have to spend lots of money on travelling to the corner of the country to an area of judiciary. An excessive amount has been spent on the accommodation and prolongs stay which is not affordable for everyone. Due to all this, the price of lawyers also increase. Moreover, it's spent on the process which is lengthier than someone's lifetime.<sup>10</sup>

The judiciary of the country should be governed by the equity of equality. The rule of law in the constitution is based on the rule of life, the life which is compassionate, accessible and justifiable for every one of us. To strengthen democracy the administration of the judicial system should inexpensive, reachable and accessible to the poorest of poor people. Without all of it, justice will be just the heavenly dream in daylight for the common person.<sup>11</sup>

The pending cases in the honorable high courts are in the lakhs. Indeed, the National Judicial Data suggest the pending cases in the Karnataka high court is up to 2, 86,372 and the Andhra Pradesh high court has 2,10,404, the Telangana has up to 2,36,852 and Tamil Nadu and Kerala are 5,82,009 and 2,17,797.<sup>12</sup>

Moreover, the Bombay high court has pending cases of 5, 48,257. However the Delhi gets the benefit of having SC, the pending cases in there are relatively less compared to other states. It's 91,195 and in the apex court the 66,072. They centralize power in Delhi and the appointment of

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<sup>9</sup> V. R. Krishna Iyer, 'Questions Of Judicial Access' <<https://www.thehindu.com/opinion/op-ed/Questions-of-judicial-access/article16812031.ece>> accessed 19 September 2021.

<sup>10</sup> Shubhangi Agrawal, 'An Analysis Of Decentralization Of The Judiciary In India' <<https://blog.ipleaders.in/analysis-decentralization-judiciary-india/>> accessed 9 August 2021.

<sup>11</sup> Shubhangi Agrawal, 'An Analysis Of Decentralization Of The Judiciary In India' <<https://blog.ipleaders.in/analysis-decentralization-judiciary-india/>> accessed 9 August 2021.

<sup>12</sup> Prashanth Shivadass, 'Divide And Unite: Decentralizing The Judiciary' <<https://www.barandbench.com/columns/divide-and-unite-decentralizing-the-judiciary#:~:text=Given%20the%20above%2C%20it%20is,distribution%20of%20work%2C%20but%20als>> accessed 4 October 2021.

judges is higher, the existence of tribunals are moreover there which benefits to get faster justice<sup>13</sup>

The use of technology was higher in the period of a pandemic. The majority of high courts conduct the proceeding with the video conference. However it is not the ultimate option, many lawyers and district, session courts lack the technological infrastructure. Conducting a cross-examination and submission of evidence is more difficult. Set up of good quality technology is costly for lawyers, which may increase the cost of the lawyer. The third party, the press and most of the time clients could not witness the court proceeding. And people have the right to know what is going on in the court. Indeed the creating constitutional benches at Bombay, Delhi, Kolkata and Chennai will be the only option to make justice accessible for a common person.

#### Demand of Kolhapur High Court Bench-

It's been 35 years since the Kolhapur demanding the high court bench for six districts of Maharashtra. The Kolhapur, Sagali, Satara, Ratnagiri, Solapur and Sindhudurg will be the primary beneficiary districts of the high court bench. Before independence, the state of Kolhapur had its district court and high court. The first court was established in 1844 and the district court was created in 1867 in the princely state. It had its own laws like Hindu Kaydyache Nibandh. In the May 1931 Kolhapur state high court regulation, 1931 were published. And there had regular high court for the State of Deccan. It had included the princely state of south Maharashtra, Konkan and Karnataka. And it has played a major role from 1946 to 1949, and published Kolhapur law reports too.<sup>14</sup>

The demand for a high court bench at Kolhapur is justiciable. The Bombay high court resides in one corner of the state and it's unreachable for the majority of people. The geographical area of the demanding districts is up to 53% of the state, with the 1, 64, 75, 579 of constantly increasing population. Moreover, out of six districts the major five districts are more than 500 km from

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<sup>13</sup> Prashanth Shivadass, 'Divide And Unite: Decentralizing The Judiciary' <<https://www.barandbench.com/columns/divide-and-unite-decentralizing-the-judiciary#:~:text=Given%20the%20above%2C%20it%20is,distribution%20of%20work%2C%20but%20als>> accessed 4 October 2021.

<sup>14</sup> 'Kolhapur District Bar Association' (*Kdba.in*, 2021) <[https://kdba.in/Kdba\\_Website/khandpith](https://kdba.in/Kdba_Website/khandpith)> accessed 5 October 2021.

Bombay high court. It took more than five to nine hours to reach the high court. The poor people in these districts cannot even think of appealing for justice over there. The cost of justice is much higher for them, the long-distance of hectic travelling, cost of living and time that spent which is more than three days for a just date in this lifelong judicial procedure. The people of these six districts have the right to reach the high court but don't have access to reach there. The centric hierarchical structure of Bombay high court creates inequality of justice and show the undemocratic economic structure, which only riches can access.<sup>15</sup>

### **Possible Defects of Decentralization of Judiciary-**

The decentralization of the judiciary has some defects which it will come out in time. The decentralization damages the hierarchy of the judiciary. The SC rules over high courts and high courts over district courts, the verdict of SC is common and mandatory to all over the nation. Which will not remain the same and like high courts, each constitutional bench try to overrule each other.<sup>16</sup>

### **Conclusion –**

On 18th September 2021, Chief Justice of India states, 'the Colonial Structure currently following in the Indian judiciary. The country's legal system needs to be more Indianisation'.<sup>17</sup> Decentralization of the judiciary system makes it more suitable to India. The geographical area of the country and growing population will be governed by democratic and federal structures. The centric structure of the judiciary makes justice unreachable to common people. The crating constitutional and high court benches make it easy to reach for people. And it's more economical and federal. The current colonial structure is costly and only accessible to the rich section of society and the poor usually left out from justice. The decentralization of the judiciary is the Indianisaion of the judiciary.

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<sup>15</sup> 'Kolhapur District Bar Association' (*Kdba.in*, 2021) <[https://kdba.in/Kdba\\_Website/khandpith](https://kdba.in/Kdba_Website/khandpith)> accessed 5 October 2021.

<sup>16</sup> Abhijit Murthy and Abhijit Murthy, 'Decentralising The Supreme Court Of India' (*Nyaya Forum for Courtroom Lawyering*, 2021) <<https://nyaya.nalsar.ac.in/2019/07/15/decentralizing-the-supreme-court/>> accessed 5 October 2021.

<sup>17</sup> 'Colonial Origin Rules May Not Be Suited For Needs Of Indian Population, Says CJI Ramana' <<https://thewire.in/law/cji-ramana-calls-for-indianisation-of-legal-system>> accessed 4 October 2021.

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