

Bill No. XXIV of 2020

THE CONSTITUTION (AMENDMENT) BILL, 2020

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further to amend the Constitution of India.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act shall be called the Constitution (Amendment) Act, 2020.

Short title,
extent and
commencement.

(2) It shall extend to the whole of India.

(3) It shall come into force with immediate effect.

5 2. For article 130 of the constitution, the following article shall be substituted, namely:—

Substitution of
new article for
article 130.

“130. (1) The Supreme Court established under Clause (1) of Article 124 shall comprise of a Constitution Bench sitting at New Delhi and four Permanent Regional Benches for the northern, southern, eastern and western regions, which shall sit at New Delhi, Chennai, Kolkata and Mumbai respectively.

Constitution
Bench and
Permanent
Regional
Benches of the
Supreme Court.

10 (2) The Constitution Bench at New Delhi shall hear only cases which are of Constitutional importance.

Explanation.—The Chief Justice of India shall have exclusive power to determine which case is to be classified as a case of Constitutional importance.

(3) The four Permanent Regional Benches of the Supreme Court shall exercise the full jurisdiction of the Supreme Court of India, except over cases to be heard by the Constitution Bench. 5

(4) The territorial jurisdiction of the Permanent Regional Benches of the Supreme Court shall be as follows:—

(i) the northern Regional Bench of the Supreme Court at New Delhi shall deal with all cases, except cases to be heard by the Constitution Bench, arising out of the States of Uttar Pradesh, Uttarakhand, Rajasthan, Punjab, Haryana, Himachal Pradesh and the Union Territories of Jammu and Kashmir, Ladakh, Delhi and Chandigarh; 10

(ii) the southern Regional Bench of the Supreme Court at Chennai shall deal with all cases, except cases to be heard by the Constitution Bench, arising out of the States of Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, Telangana and the Union Territories of Puducherry and Lakshadweep; 15

(iii) the eastern Regional Bench of the Supreme Court at Kolkata shall deal with all cases, except cases to be heard by the Constitution Bench, arising out of the States of West Bengal, Bihar, Odisha, Jharkhand, Assam, Sikkim, Arunachal Pradesh, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Union Territory of Andaman and Nicobar Islands; and 20

(iv) the western Regional Bench of the Supreme Court at Mumbai shall deal with all cases, except cases to be heard by the Constitution Bench, arising out of the States of Maharashtra, Madhya Pradesh, Chhattisgarh, Gujarat, Goa and Union Territory of Dadra and Nagar Haveli and Daman and Diu: 25

Provided that the Chief Justice of India may, if in the interest of administration of justice, transfer any case pending before any Permanent Regional Bench to any other Permanent Regional Bench or the Constitution Bench:

Provided further that when cases involving the same substantial question of law or the same subject matter are pending before two or more Regional Benches, the Chief Justice of India may direct that all such cases be heard by any one of the Regional Benches. 30

(5) The Chief Justice of India shall nominate Judges of the Supreme Court to sit at the Constitution Bench and the Permanent Regional Benches: 35

Provided that Chief Justice of India shall nominate not less than six Judges of Supreme Court in each of the Permanent Regional Benches:

Provided that while nominating Judges to the Permanent Regional Benches, the Chief Justice shall give preference to Judges whose parent High Court or erstwhile place of practice or residence prior to appointment as Judge, is within the territorial jurisdiction of that Permanent Regional Bench: 40

Provided further that nothing contained herein shall prevent the Chief Justice from nominating any Judge of the Supreme Court to the Constitution Bench or any of the Permanent Regional Benches on the basis of seniority, or if it is otherwise necessary to do so in the interest of administration of justice. 45

(6) Upon coming into force of this article, all cases currently pending before the Supreme Court shall be forthwith distributed to the Permanent Regional Benches or the Constitution Bench as the case may be, in accordance with the provisions of this article, and in a manner to be determined by the Central Government in consultation with the Chief Justice of India.

STATEMENT OF OBJECTS AND REASONS

The Supreme Court of India currently hears all appeals from the High Courts and Tribunals across India, apart from exercising original jurisdiction and writ jurisdiction under Article 32 of the Constitution of India. When the framers of our Constitution drafted Article 108A of the Draft Constitution, which was enacted and renumbered as Article 130, their intention was that in case the capital is shifted to any place other than Delhi, or if it became necessary to have “circuit Courts or regional Benches” of the Supreme Court, there should be a provision in the Constitution to enable such a need. Article 130 therefore empowers the Chief Justice of India to establish regional benches of Supreme Court in consultation with the President for the purpose of effective delivery of justice.

The framers of the Constitution, particularly Dr. B.R. Ambedkar, while debating Article 108-A of the Draft Constitution, which ultimately was enacted as Article 130, considered it appropriate to entrust the powers of establishment of Regional Benches to the Chief Justice of India. Since the enactment of our Constitution, the population of the country has grown over four times, and the docket of the Supreme Court has grown about 10,000 times. This is also because of the rapid economic and social growth of our nation.

For decades now, there has been a widespread demand from various quarters for the establishment of Permanent Regional Benches of the Supreme Court. Many representations have been made from various Bar Associations and litigants from across the country. The people’s representatives in Parliament have also often raised this issue of Permanent Regional Benches of Supreme Court. The Standing Committees of Parliament recommended the setting up of Regional benches of the Supreme Court in 2004, 2005, and 2006. The Law Commission in its Report No. 229 dated 05.08.2009 to the Ministry of Law and Justice, Government of India has also emphasised the need for the establishment of “Cassation Benches” of the Supreme Court at New Delhi, Mumbai, Chennai and Kolkata.

Access to justice is a fundamental right of each citizen. Dispensation of justice to all citizens is a sovereign function. The advantages of setting up Regional Benches are many fold: Presently, access to the Supreme Court is restricted to only those with the economic means to travel to Delhi and afford a lawyer in Delhi. This effectively rules out a large percentage of the population who do not have the economic means, and therefore can litigate only up to the High Court. In some cases, such as some categories of Writ Petitions, the case is heard at the first instance itself by a Division Bench of the High Court, and appeal against the same is only to the Supreme Court. Therefore, a person, who cannot afford to go to Delhi, or afford the fees of the lawyers at Delhi, which is invariably higher due to demand, is left without an appellate remedy. Therefore, litigation at the Supreme Court is increasingly becoming available only to the affluent class, and the economically weaker sections of society are deprived of access to the Apex Court.

Further, setting up of regional Benches of the Supreme Court would also increase the strength of the Bench of the Supreme Court. Presently, the ratio of number of Supreme Court Judges to the population of the country and the docket of the Court is miniscule. There are only 34 Judges for a country with a population of 133 crores. Having Regional Benches would necessarily increase the Bench strength of the Supreme Court as well. This would need a separate amendment to the Supreme Court (Number of Judges) Act, 1956.

One of the regular reasons for adjournment at the Supreme Court is that the counsels travel from various parts of the country for hearing and cannot make it to the hearing for various reasons. Having regional Benches and splitting cases among them with more Judges to hear them will certainly aid in the effective delivery of Justice to all sections of citizens. Further, the litigant spends a lot of money on the travel and accommodation of the lawyers.

Each time a case is adjourned for want of a lawyer, it is the litigant who bears the expense. Therefore if permanent regional benches are established, it would ease the burden on the litigant.

The proposed amendment divides the Supreme Court into one Constitution Bench at the capital, and four regional Benches. The Constitution Bench would hear important constitutional cases only. The discretion to classify a case as a constitutional case has been conferred on the Chief Justice of India. Generally, constitutional cases are heard and decided by a Bench of five Judges or more. Regional Benches have been empowered under this amendment to exercise the full jurisdiction of the Supreme Court in all matters other than Constitution cases.

For the past seventy years, since the enactment of the Constitution, no Chief Justice has been able to exercise the power under Article 130, due to the disinclination of the full Court of the Supreme Court on occasions, due to various reasons. It is time for Parliament to hear the voice of the people, and answer their fervent cries to open the doors of justice to all sections of society. Access to Justice is not the preserve of the rich, but the right of every person in this great nation.

The Bill seeks to achieve these objectives.

P. WILSON

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for establishment of four Permanent Regional Benches of the Supreme Court at New Delhi, Chennai, Kolkata and Mumbai. The Bill, therefore, if enacted will involve expenditure from the Consolidated Fund of India for creation of Regional Benches of Supreme Court at Chennai, Kolkata and Mumbai which includes land cost, construction, infrastructure, staff and other expenditure. It is likely to involve an initial expenditure of rupees six hundred crores for establishment of Benches including infrastructure and annual recurring expenditure of about rupees one hundred crores from the Consolidated Fund of India.

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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130. 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. Seat of Supreme Court.

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RAJYA SABHA

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further to amend the Constitution of India.

(Shri P. Wilson, M.P.)