

## **SUPREME COURT OF INDIA OR SUPREME COURT FOR INDIANS**

These two versions are radically different in principle and content. The Preamble of our current Constitution has inscribed its conscience that it pledges the people of India to Justice—Social, Economic, cultural and political India with a geo-political concept. Indians are a humanist—socio-economic idea, a collective value, emphatically, a crore or more of Indian humanity with a cultural legacy. A finer noble thought than a mere span of space, a terrain or land politically united by a notion of nationalism. One is dynamic and dialectical, the other is bare ground, air, earth space which is the habitat of ten million of humanity. We are proud of being a united people. But earth and ocean have no life unless man has enlivened it. Institutions are to serve life and its development while earth is a planet on which people are born, live grow and die. If birth exists, death certainly is a painful end.

If democracy is for the people the Supreme Court should function where litigants need it, not where the British for their imperial reasons chose the location. The Red Fort and Delhi were for historical and geographic strategic grounds decided as capital. Delhi has no other claims to be the capital of the judiciary. For military purposes and administrative purposes United India found Delhi the most suitable. But with the Partition Delhi itself is vulnerable even from Pakistani military angle. As for the headquarters of the judiciary Delhi has no special advantage cultural, geographic, political or social to be the Centre of the judicial administration. 'For the People' is a democratic and logical desideratum. Then courts should be where litigants

are live in numbers, where their access to courts is best facilitated. In the large country of Bharat, Delhi is in a corner and the people live down South, East and West. Judging by relevant considerations bearing on the availability of forensic factors in a poor country, rife land disputes, cultural and religious conflicts and lawyers in numbers to make the adversary system feasible. These factors may be studied by a Commission like the Law Commission which has come to the reasoned conclusion that there must be four benches. The South feels dominated by the North by the Supreme Court. If no Supreme Court is situated the South, especially Tamil or Dravidian States once had a move for separation from the Aryan North. If Justice is also alienated by distance, culture, language from the North, the Supreme Court with authority over the rule of the nation this insular judicial imperialism will be a divisive force which should be avoided at all costs. One court, one country. But decentralisation is imperative dependent on the geography, history and other social perspectives which too are relevant. The glory of India in its undivided status and stature is not dependent on a single court but on its pragmatic diversity. So these are profound considerations behind the demand for Benches outside Delhi. Why did Pakistan as a nation became powerful only on religious criteria? Why did Bengal separate from Pakistan and became a separate sovereign State? Language and culture These are good lessons for us to keep Bharat as advaita. Let us have Benches on federal considerations promoting Unity in diversity.

Democracy, in a vast country, of diversity, demographic immensity, logistic difficulty and large-scale indigency, makes decentralisation an

imperative of Administration. Access to Justice also implies early finality within reach of the rich and the poor. These considerations persuaded the U.P. State, one of the direst in poverty, largest in population, and most agrastic in life-style, to attempt a moderate reform in the field of revision to the High Court in litigations of lesser financial stakes. Judicial reform is upto now a tinkering exercise, not an engineering project but even that little tinkering is fiercely challenged as litigative anathema by the profession, which is unfortunate. Decentralisation has a paramount desideratum if access to the people of judicial institutions has to be a reality and this fact compelled various states within India even native princedoms adopt the strategy of benches. Rajasthan, Bombay, U.P, Travancore-Cochin, even small Tamil Nadu has separate court or benches. To enable the poor aggrieved to reach the courts and seek their remedies it has worked well and the same reasoning justifies more importantly the need for benches of the Supreme Court if that magnificent institution is to fulfill its fundamental mission of being a court for the people and of the people. This principle persuaded the Law Commission to recommend four benches for the large country of India with a population over ten million. A few excerpts from the Law Commission Report and a speech made by me inaugurating a seminar in Kochi on the subject may be relevant.

“After all, justice is for the people, the needy people and not to be manipulated by a rich Bar and a creamy layer of high status but narrow population.

If democracy is to live, democracy must be made efficient; for the survival of the fit is as much a law of political economy as it is of the life of the jungle. If we would preserve free government in America, we must make free government, good government. Nowhere does

government touch the life of the people more intimately than in the administration of justice.

(John J Parker)

The Law Commission has pointed out how huge sums are wasted by a single court in one corner of the country being made final and infallible and driving every litigant selling all he has to reach Delhi higher on fabulous fees and to hire the lucrative lawyers only to find that by afternoon the case would be postponed and a large sum already incurred going down the drain. Air fare is expensive, hotel costs are horrendous, lawyers charge high fees, and arguments with leisurely judges take too many days. On the whole going to law is like going to Banaras or Mecca, by writing a will because the litigation lasts beyond your life time and astrologers alone can anticipate the uncertainty of its future fate. The Law Commission has made the following among other recommendations:

1. Four Cassation Benches be set up in the Northern region/zone at Delhi, the Southern region/zone at Chennai/Hyderabad, the Eastern region/zone at Kolkata and the Western region/zone at Mumbai to deal with all appellate work arising out of the orders/judgments of the High Courts of the particular region.
2. If it is found that article 130 of the Constitution cannot be stretched to make it possible to implement the above recommendations, Parliament should enact a suitable legislation/Constitutional amendment for this purpose.

The rule of law must govern the rule of life and if life is to be humanist, compassionate and accessible to the lowliest, law must be equally open to the humblest, simplest and the littlest member of the community."

Justice, judicial justice is the most precious value to a people. The adversary system of justice to be successful has to have the Bar as an integral part of the system of judicial administration. The Bench and the Bar together operate to dispense competent and sound justice. Justice is the salt of the earth and if the salt loses its savour, wherewith shall they be salted? The excellence of justice, the refined process of justice and justicing makes humanity happy, harmonious and a haven for peaceful and progressive habitation. Access is negated where the system is expensive; the social philosophy of the judges and the lawyers are with the proprietariate and the

poor are priced out of an archaic system whose doors open only to the opulent and close for the indigent. Dialectical materialism is the reality in the temporal world and where purchase of able argument from the Bar is beyond the purse of the litigant, he is de-facto denied justice. Economic democracy in the administration of justice commands a system where courts and tribunals are easy to reach, inexpensive to tap and facilitate finality of verdict. These fundamental features compel a democratic system of justice to be successful by decentralisation. Sans decentralisation, the people cease to be the beneficiaries of democracy and do not possess a voice in the State process. This applies all the more in the case of justice because justice is based on law and law in a complex society like modern democracy is too complicated for the laity. Our legal system is altogether beyond the common people and is so esoteric that a society which is largely illiterate remains alien and unintelligible without economic availability of the Bar which has professionally a monopoly of jurisprudence. If the court has too many tiers and the highest court is too distant from the regions where the proletariat live and struggle for existence, the right to justice which is the quintessence of democracy loses its spiritual value and cipherises the other fundamental rights. The inevitable conclusion is that a decentralized system of judicature is a paramount property for democracy to have élan. A vibrant democracy must therefore have a circuit system of administration of justice. Alternatively, Benches in different parts of the country to make the courts reachable to the lowly and the lost, justice must be available so that social justice may become a reality. The Bench and the Bar must be easy of access

if economic democracy is not to be a travesty. If political justice is too costly to be available only to the rich, laws grind the poor and the rich men rule the law.

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