



**LAW COMMISSION
OF INDIA**

FOURTH REPORT

**(ON THE PROPOSAL THAT HIGH COURTS
SHOULD SIT IN BENCHES AT DIFFERENT
PLACES IN A STATE)**

CHAIRMAN,
LAW COMMISSION,
New Delhi, August 1, 1956

Shri C. C. Biswas,
Minister of Law
& Minority Affairs,
New Delhi.

My Dear Minister,

I have great pleasure in forwarding herewith the Fourth Report of the Law Commission dealing with the proposal that the High Court of a State should sit in Benches at different places in view of the proposed re-organisation of the States.

2. As the proposal is embodied in the States Re-organisation Bill which is pending before Parliament, the matter was considered at a meeting of both the sections of the Commission held on the 21st July, 1956. The unanimous opinion of the Members present was that it was not in the interest of the administration of justice that the High Courts be split up and made to sit in Benches and it was decided that a Report should immediately be made to the Government giving expression to the Commission's view.

3. In view of the proposal being under the active consideration of Parliament and the urgency of the matter the Report is being forwarded though it has not yet been formally signed. The Report has, however, the concurrence of all the Members except that of Dr. N. C. Sen Gupta who was not present at the meeting and Shri S. M. Sikri who is abroad. The Report will be signed at the next meeting of the Commission.

4. As decisions on the subject-matter of the Report are likely to be taken very soon, I shall thank you to forward it to the appropriate authorities so that due consideration may be given to it.

Yours sincerely,
M. C. SETALVAD.

REPORT

1. The question of the High Courts sitting in Benches at different places in a State has come to the forefront owing to the proposed re-organisation of the States. At present there are five High Courts in India that sit in Benches—the High Court of Punjab which has a Bench at Delhi, the High Court of Rajasthan which sits at Jodhpur and Jaipur, the High Court of Uttar Pradesh which has a Bench at Lucknow, the High Court of Travancore-Cochin which sits at Trivandrum and Ernakulam, and the High Court of Madhya Bharat which sits at Gwalior and Indore. It will be found that in all these instances the reason for the departure from the accepted principle that the High Court should be situated at the Capital of the State was owing to historical and political considerations. There is now a suggestion that this principle should be extended and that in some of the new States the High Court should sit in different Benches situated at different places. There is a provision in the States Re-organisation Bill (Clause 53) that the High Court for a new State and the judges and Division Courts shall sit at such place or places as the Chief Justice may, with the approval of the Governor, appoint. As the provision stood, the initiative for the formation of a Bench at a particular place would have come from the Chief Justice. This provision has been altered by the Joint Select Committee and the initiative for the formation of a Bench at a particular place has been transferred to the President. In other words, more emphasis has been put upon the political considerations that may necessitate the setting up of a Bench at a particular place.

2. In our opinion the question whether the High Court should sit as a whole at one place or in Benches at different places has to be considered solely from the point of view of the administration of justice—and political and sentimental considerations have as far as possible to be excluded. We are firmly of opinion that in order to maintain the highest standards of administration of Justice and to preserve the character and quality of the work at present being done by the High Courts, it is essential that the High Court should function as a whole and only at one place in the State.

3. The High Court is the highest Court of Appeal in the State and it is necessary that it should have the assistance of the best legal talent and the best equipped law library. It is also necessary that

it should work in a proper atmosphere and should be constantly conscious of the traditions built up by the Chief Justices and Judges in the past. With regard to the new High Courts the Chief Justice and Judges should be equally anxious to build up traditions similar to those of the older High Courts. This, in our considered view, is only possible if the Chief Justice and Judges sit at the same place and administer justice as a team.

4. If the High Court works in Benches it will be difficult if not impossible for the Chief Justice to have proper administrative control over the working of the Benches or the doings of his colleagues who will constitute the Benches. The cohesion and the unity of purpose that should exist among all the Judges of a High Court will necessarily be absent when some Judges sit at places far away from the principal seat of the High Court. Every court has an atmosphere and traditions. A new Judge coming to the Court becomes conscious of these and tries to act in conformity with them. These operate as a salutary corrective to the personal idiosyncracies of the Judge. This corrective will be completely absent in a Bench.

5. The High Court Bar acquires a justifiable reputation by appearing before the Judges of the High Court, by arguing important cases, and by helping the Court finally to settle the law at the highest level. A Bench of the High Court can never expect to get assistance from such a Bar. A District or Taluka Bar, however competent it may be, cannot be compared to the High Court Bar. The litigant, therefore, appearing before a Bench will have to be satisfied with less competent advocacy or will have to spend much more by getting the services of some one from the High Court Bar.

6. A well stocked and well equipped library is essential to the proper working of the Court. Such libraries only exist in the High Courts. At other places where the Bench sits both the lawyer and the Judge will be considerably handicapped by the absence of this important and essential convenience.

7. In the High Court Judges are familiar with the judgments delivered by their colleagues from day to day. Being constantly in touch with each other they are in a position to consult with each other on points of practice so that there should be uniformity in the decisions given and certainty in the minds of the litigants as to how the Court will decide. If there are different Benches it is quite possible that one Bench may come to a decision contrary to the one given by another Bench a few days before. The High

Court will have to be frequently constituting Full Benches to resolve these conflicts.

8. As against these serious disadvantages are there any counter-vailing conveniences which the litigant will receive by the constitution of these Benches? It is said that in the India of today justice should be taken to the door of the litigant and therefore the litigant should not be compelled to go long distances to the High Court. This argument is based upon a complete misapprehension of the working of the High Court and the system of administration of justice in our country. In the trial of cases, both civil and criminal, undoubtedly the Court, functioning as a court of first instance, must be easily accessible to the litigant and his witnesses. The civil and criminal courts in the Talukas or Tehsils and at District-headquarters, Subordinate Judge's and the District and Sessions Courts in the District satisfy these needs. When the argument is put forward that in England the High Court Judge goes on circuit, it is forgotten that he goes as a court of first instance and never as an appellate court and under our system the Subordinate Judge and the District and Sessions Judge fulfil this role. As pointed out by the Civil Justice Committee of 1924-25: "The appellate side of the High Court does work which in England is done by the Court of Appeal". The presence of the litigant is not really necessary at the hearing of the appeal. He is not called upon either to give evidence or to help the court in any way by his presence. The appeal is decided on the record before the Court which has already been prepared by the court of first instance. Undoubtedly there are litigants who like to be present when their appeals are heard, but the expense involved is trifling. Therefore, the litigant will in no way be benefited by the setting up of different Benches of the High Court.

9. If the liberty of the citizen is to be safeguarded and the rule of law to be ensured, it is of paramount importance that the High Courts all over India should be strengthened. It was, it seems to us, unwise to have created so many High Courts after Independence. But that perhaps was also due to historical reasons. There are welcome signs now of a reversal of that policy. There are proposals for a common High Court for more than one State and in some of the new States one High Court will take the place of the High Courts which existed in the merging States. If the object of this new policy is to strengthen the High Courts, then that object will be totally defeated by the idea of setting up Benches. In effect the

High Court will be divided into several High Courts sitting at different places. The Benches will be nothing more than glorified District Courts.

10. It may be pointed out that a very large majority of those who have answered the Questionnaire issued by the Commission including the Judges of the Supreme Court who have answered it have expressed a view against the formation of Benches. Informed opinion is thus decisively against the proposed course.

11. As the re-organisation of the States is imminent and as the policy of constituting Benches may be given effect to in the very near future we have thought it our duty to make this Report in order to apprise the Government of India in time of the serious dangers underlying this policy. The efficiency of the administration of justice should, in our view, be the paramount consideration governing this matter. The structure and constitution of the Courts should not be permitted to be influenced by political considerations. That this has happened in the past in certain cases can be no valid ground for the extension of that policy. The Commission is of the view that we should firmly set our face against steps which would lead to the impairment of the High Courts with the inevitable consequence of the lowering of the standards of administration of justice.

M. C. SETALVAD,
(Chairman)

M. C. CHAGLA,
K. N. WANCHOO,
G. N. DAS,
P. SATYANARAYANA RAO,
V. K. T. CHARI,
D. NARSA RAJU,
G. S. PATHAK,
G. N. JOSHI.

(Members)

K. SRINIVASAN,
DURGA DAS DASU.
Joint Secretaries.

NEW DELHI,
The 22nd September 1956.