



LAW COMMISSION OF INDIA

FORTY-FOURTH REPORT

ON

सत्यमेव जयते

THE APPELLATE JURISDICTION OF THE SUPREME COURT IN CIVIL MATTERS

October, 1971

GOVERNMENT OF INDIA, MINISTRY OF LAW

K.V.K. Sundaram
Chairman

New Delhi-1,
August 31, 1971.

Shri H.R. Gokhale,
Minister of Law & Justice,
Government of India,
Shastri Bhavan,
New Delhi-1.

Dear Law Minister,

I have pleasure in sending herewith the Forty-fourth Report of the Law Commission on the appellate jurisdiction of the Supreme Court in civil matters.

Yours sincerely,

K.V.K. Sundaram



REPORT ON THE APPELLATE JURISDICTION OF THE SUPREME COURT IN CIVIL MATTERS

1. Article 133 of the Constitution provides for an appeal to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court if—

Article 133 of the Constitution and the valuation limit.

(a) the value of the subject-matter of the dispute is not less than twenty thousand rupees, or

(b) some claim or question respecting property of the like amount is involved in the judgment, decree or final order, or

(c) the case is in the opinion of the High Court fit for appeal to the Supreme Court.

In case of (a) or (b), if the judgment, decree or final order affirms the decision of the Court immediately below, there must be involved in the appeal a substantial question of law.

2. This minimum limit of Rs. 20,000 was fixed in 1950 at the time of the Constitution. By 1969, it began to be felt that, in view of the fall in the value of the rupee, this limit was too low, and that the Supreme Court ought not to be troubled unless a much larger amount was involved. A proposal was, therefore, made to raise this amount to one hundred thousand rupees, and a Bill for that purpose was introduced in 1969 in the Rajya Sabha.¹ We were at one stage consulted about this matter, and we felt at that time that it was somewhat inappropriate and certain cases whether fit or unfit for the consideration of the Supreme Court should be allowed to go there merely because of the value of the subject-matter in dispute; and, while not objecting to the Bill as it stood, we remarked that "one might with good justification go to the extent of saying, that, in civil cases, appeals should lie to the Supreme Court only on a certificate of fitness granted "by the High Court or, in other words, only under clause (c) of Article 133(1) and that clauses (a) and (b) of this Article should be repealed."

Bill introduced in 1969 to enhance the valuation.

3. The Bill introduced in the Rajya Sabha was passed by it in August 1970; but, because the Lok Sabha was dissolved before it could consider it, the Bill lapsed. We were subsequently asked by the Law Ministry whether we would make a firm recommendation for the deletion of clauses (a) and (b) of Article 133, and took up this question for a closer and detailed study.

Reference to the Commission after lapse of the Bill.

1. The Supreme Court (Enhancement of Valuation for Civil Appellate Jurisdiction) Bill, 1969 (No. XXXI-C of 1969).

Note circulated by the Commission.

4. Before forming our opinion, we invited the views of all High Courts, Bar Associations and State Governments, in the country, apart from a number of jurists. For this purpose, we prepared a working paper¹ stating the nature of the proposal, its advantages and disadvantages and indicating our own tentative thinking on the subject. This was circulated and comments invited; and, although the time at our disposal was somewhat short, there has been a fair response from those whom we consulted.

History of the appellate jurisdiction—Privy Council.

5. The appellate jurisdiction of the Supreme Court in civil matters is in substance a legacy from the Privy Council, which first devolved on the Federal Court and, a little later, on the Supreme Court. The only change of any consequence made was the substitution of "Twenty thousand rupees" for "Ten thousand rupees" in connection with clauses (a) and (b) of Article 133. The Privy Council, or more appropriately, the King's Council, had jurisdiction over the Courts in the King's Dominions, and as soon as the British established a system of Courts in India, a provision for appeals to the Privy Council was naturally made.

Position up to 1838.

6. As early as 1726, when Mayors' Courts were functioning in the three presidency towns of Calcutta, Madras and Bombay, an appeal was provided to the King-in-Council in cases where the subject matter of the litigation was worth more than 1000 pagodas. After the establishment of the Supreme Court of Calcutta by the Regulating Act of 1773, the Charter of that Court provided for an appeal to the King-in-Council where the subject-matter of the dispute exceeded the sum of 1000 pagodas. In Bombay, however, the pecuniary limit for appeal to the King-in-Council was fixed at 3000 Bombay rupees. In the mofussil also, where the corresponding High Courts for civil litigation were the Sadar Diwani Adalats, a pecuniary limit was fixed for the purpose of appeal to the King-in-Council, but it varied from place to place.

Position after 1838.

7. By an Order in Council in 1838 uniformity was introduced, and an appeal to the King-in-Council was permitted only where the value of the matter in dispute in appeal was at least 10,000 company rupees. This minimum value continued the same after the constitution in 1861 of the High Courts (which replaced the old Supreme Courts and Sadar Diwani Adalats), and it was incorporated in the Civil Procedure Code of 1908 notwithstanding the considerable fall in the purchasing power of the rupee since 1838.

Position from 1937 to 1950.

8. The establishment of the Federal Court (1937) under the Government of India Act, 1935, and the advent of independence (1947) did not make any change on this point. Civil appellate

1. Appendix 1 to this Report.

jurisdiction of the Federal Court was enlarged in 1948 by a Central Act¹ passed in pursuance of section 206 of the Government of India Act, 1935. This Act vested the Federal Court with civil appellate jurisdiction heretofore exercised by the Privy Council, but preserved the jurisdiction of the Privy Council to hear appeals from the Federal Court. In 1949, the appellate jurisdiction of the Privy Council was totally abolished.² But these legislative measures, while changing the forum of appeal, did not disturb either the principle of valuation or the pecuniary limit which remained at Rs. 10,000. The makers of the Constitution, while maintaining the principle of valuation, raised the amount to Rs. 20,000 and indicated that Parliament might raise it further to any extent by an ordinary law.

9. The provision in Article 133 of the Constitution is supplemented by Article 136, which enables the Supreme Court to grant special leave to appeal to it from any decision of any court or tribunal in India. Civil appeals to the Supreme Court thus fall into two broad categories:

Position under the Constitution.

(i) those found fit by the High Court or the Supreme Court, and

(ii) those involving property or subject-matter worth Rs. 20,000 or more.

The first category is readily understandable; but the second, we think, is not, except on the ground that such has been the arrangement for a long time. We feel it is now time to take a second look at this arrangement. Forgetting the Supreme Court for a moment, it is clear that otherwise the Code of Civil Procedure contemplates only one appeal on facts, and section 100 of the Code expressly bars a second appeal except on a question of law. The result is that, if a District Judge hearing an appeal arrives at a finding of fact whether affirming or reversing the finding of the Court below, that finding of the District Judge is final, and cannot be disturbed by the High Court: should a High Court interfere with such a finding, the Supreme Court does not hesitate to quash the High Court's decision. In the circumstances, it is not easy to appreciate the rule that, if a High Court reverses a finding reached by the lower Court, that finding of the High Court is not final if the subject-matter of the litigation is worth a good deal of money.

10. The question of civil appellate jurisdiction of the Supreme Court was briefly discussed by the Law Commission when it considered the reform of judicial administration. In the 14th Report of the Law Commission,³ it was stated

Question previously considered by the Law Commission.

“The two rights of appeal, viz., the right of first appeal to the High Court and a further right of appeal to the Supreme

1. The Federal Court (Enlargement of Jurisdiction) Act, 1948 (1 of 1948), section read with section 2(a).

2. The Abolition of Privy Council Jurisdiction Act, 1949 (Constituent Assembly Act 5 of 1949).

3. Vol. 1, page 371, paragraph 16.

Court in certain cases are, to quote the Civil Justice Committee, 'both proper and necessary. . . , and that guarded and conditioned as at present, they are justifiable in principle in practice 'necessary as a control over the different (and differing) High Courts and a source of strength for our judicial system with the instructed and uninstructed public' With the abolition of the jurisdiction of the Privy Council and the creation of a Supreme Court in India, the great hardship of heavy costs which had to be incurred in England in appeals of this type has disappeared. On the whole, therefore we see no further scope for the curtailment of first appeal to the High Court or of appeals to the Supreme Court under article 133'

But the matter was, it seems, not approached from the particular angle which we have mentioned above.

Uniformity
of law.

11. Although we have adopted a federal constitution and administration of justice is a State subject, we have chosen a unified system of courts with the Supreme Court as the final interpreter of not only the Constitution but of all laws, State or Central, and Article 141 of the Constitution expressly requires all courts to be bound by the law as declared by the Supreme Court. This makes for uniformity in the interpretation and administration of laws. In the name of uniformity, it is contended that access to the Supreme Court should not be unduly restricted, and if different High Courts have read the same law differently, the Supreme Court should be enabled quickly to end the uncertainty created by such conflict. At the same time, it is recognised by everybody that too many cases cannot be allowed to go to the Supreme Court as that would choke the working of that Court. Admittedly, therefore, a line has to be drawn somewhere. We would like to avoid a line that merely divides the rich from the poor; and as we said in our working paper, the 'valuation test' seems to discriminate unfairly between the rich litigant and the poor.

Position in
other countries.

12. We have looked at the laws of some other countries to ascertain if there are comparable provisions for appeals to the highest court of the land.¹ In England, an appeal to the House of Lords needs leave from the court of appeal or from the House itself. Conditions in India are, of course, not the same as in England; but the English experience is valid to show that such an arrangement can work without difficulty. Some countries like Australia, Canada and Switzerland still retain the valuation test for appeals to the highest Tribunal, while in other countries like France, West Germany, U.S.A. and U.S.S.R. the value of the subject-matter is not relevant.

Appeals by
certificate.

13. It is sometimes said that High Courts are extremely reluctant to certify that an appeal is fit to be taken to the Supreme

¹See Appendix 1, paragraph 14 and Annexure B to that Appendix.

Court, and if clauses (a) and (b) of Article 133 were deleted and only clause (c) remained, there would be few appeals to the Supreme Court and conflicting views of different High Courts would keep the law uncertain for long periods of time. We do not think any such fear to be well founded. We have not been able to obtain very detailed information about the appeals filed in the Supreme Court under Article 133(1); but we have obtained the figures for 1966 and 1967,¹ and they do not show that appeals on certificate of fitness are rare or even smaller in number than those under clauses (a) and (b) of Article 133. Thus, in 1967, 367 appeals were filed in the Supreme Court under clauses (a) and (b) of Article 133, and as many as 648 under Article 133(1)(c) and Article 132(1). Of these 648 appeals it is unlikely that even half could be under Article 132(1) which concerns questions of law touching the interpretation of the Constitution. The corresponding figures for 1966 are 245 under Article 133(1)(a) and (b), and 636 under Article 133(1)(c) and 132(1). There seems, therefore, no ground for thinking that appeals on a certificate of fitness under Article 133(1)(c) would be rare.

14. It is true that a certificate of fitness for appeal to the Supreme Court is not to be granted lightly, as the Supreme Court has repeatedly pointed out. That is precisely how we think it should be. The Supreme Court, in our opinion, should be troubled only if the High Court finds itself in great difficulty in deciding a case and the question of law is of great importance. As we have said, such occasions would and should be few. It has to be remembered that Article 136 of the Constitution is always available for correcting any error of the strictness that a High Court may have committed, and, unlike the Privy Council, the Supreme Court is near at hand.

Certificate
not grant-
ed lightly.

15. We have already mentioned that administration of justice is a State subject, and for every State there is a High Court. The Judges there are carefully chosen on the basis of their experience. They are more familiar with conditions in their State, and it is reasonable to think that they are, generally speaking, more competent than any outsider to judge matters concerning that State. It is, therefore, proper that all ordinary litigation should end in the High Court, and only exceptional circumstances should justify recourse to the Supreme Court. We are not persuaded that the money value of the subject-matter of litigation can, in modern times, be called an exceptional circumstance.

High
Courts
more fami-
liar with
local con-
ditions.

16. In the working paper,² we had placed three main alternatives before those we consulted, namely,—

Three al-
ternatives
considered.

(1) no change in article 133;

1. See Appendix 1, paragraph 16.

2. See Appendix 1, para. 15.

- (2) raise the value in clauses (a) and (b) to one hundred thousand rupees; and
- (3) delete clauses (a) and (b) and retain only clause (c).

Another suggestion was to delete clauses (a) and (b), and while retaining clause (c), to add another clause to provide for an appeal from every division bench decision of a High Court exercising original jurisdiction. This last suggestion has not attracted much attention. We are also of the view that a provision for appeal to the Supreme Court from every division bench decision of a High Court exercising original jurisdiction is not required. Although it is a good rule in general that there should be at least one appeal so that litigation is not concluded by one judgment, we think that in this case, a provision for appeal to the Supreme Court is not needed. So far as writ petitions heard and decided by a division bench of a High Court are concerned, they invariably involve questions of law, and more often than not, clause (c) of Article 133(1) will come into play and appeal to the Supreme Court will be available in most cases.

Opinion of
the Bar

17. About the other three alternatives, opinion has—as we expected—differed. The Bar is generally against any change, and, in particular, against the proposal to delete clauses (a) and (b). We think that this is understandable. Members of the legal profession practising in the Courts, have a natural bias in favour of their clients; and clients, who approach them for taking appeals to the Supreme Court are those who usually feel that justice has not been done to them in the High Court. The general feeling among the Bar¹ therefore is that the doors to the Supreme Court must be kept wide open. The difficulty of obtaining a certificate and the uncertainty likely to be caused, have been emphasised. It has also been urged that the more the value of the claim the greater the stake the litigant has in the litigation, and it would not, therefore, be proper to deprive a litigant of his valuable right of appeal.

An eminent member² of the Bar is, however, in favour of deleting clauses (a) and (b) of article 133(1), “particularly because there should be no discrimination in the administration of justice between the rich and the poor.”

Views of
Judges.

18. The Registrar of the Supreme Court has furnished us with a statement showing institutions and disposals of appeals and writ petitions in the Supreme Court year by year from 1961 to 1970. It appears from this statement that the number of civil appeals disposed of by the Court in each of these ten years except 1961 has been very considerably less than the number of such appeals instituted during that year. During the last six years, 1965 to 1970, the total number of institutions was 13,229 and the

1. Views of the Supreme Court Bar Association were not received.
2. Shri Niren De, Attorney General of India.

total number of disposals was only 9,249, indicating an accumulation of arrears of nearly 4,000 civil appeals during this period. To quote from the Registrar's letter:—

“The Hon'ble the Chief Justice of India feels that with the present jurisdiction of and rate of institutions in the Supreme Court, it will rather be difficult to avoid further increase in the arrears of cases in the Supreme Court. It is expected that, if sub-clauses (a) and (b) of Article 133(1) of the Constitution of India are repealed, there will be appreciable reduction in the volume of work in the Supreme Court. The Hon'ble the Chief Justice of India would, therefore, welcome the suggestion or move to repeal sub-clauses (a) and (b) of Article 133(1) of the Constitution”

The High Court Judges generally are also in favour of the proposal to delete clauses (a) and (b) of Article 133. Some who do not go so far, favour some restrictions like raising the valuation limit to Rs. 100,000, while only a few think that there should be no change.

Many of the replies favouring deletion make the point that valuation cannot be the yardstick for a right to appeal. An important question of law can arise even in suits of small value. The test of valuation results in cases without merit going up to the Supreme Court.

Some of the replies have emphasised that where there is a substantial question of law involved, there ought to be a right of appeal to the Supreme Court, if the valuation test is satisfied.

19. Having considered the various aspects of this problem, we are of the opinion that in civil proceedings in the High Court an appeal should be permitted to the Supreme Court only if the High Court considers the case fit for appeal, keeping intact, of course, the discretion of the Supreme Court to grant leave to appeal. We recommend that clauses (a) and (b) of Article 133(1) should be omitted and clause (1) of the Article amended¹ to read as follows :—

Recommendation to delete clauses (a) and (b) of article 133 (1).

“(1) An appeal shall lie to the Supreme Court from any judgment, decree or order in a civil proceeding of a High Court in the territory of India if the High Court certifies that the case is a fit one for appeal to the Supreme Court.”

20. We now come to the provision to be made regarding matters pending at the date of commencement of the amendment or judgments pronounced before that date. This is important, because it is well-established that in the absence of an express provision on the subject, a provision relating to the right of appeal would not be retrospective. In a case² decided in 1957,

Transitional provisions.

1. Consequential amendments will be necessary in the Code of Civil Procedure, 1908, particularly sections 109-110 and Order 45.

2. *Veeraya v. Subbiah Choudhry and others*, (1957) S. C. R. 488 ; A. I. R. 1957 S. C. 540 (S. R. Das, C. J.)

where the question arose whether the increased limit of Rs. 20,000 applied to a judgment passed after the commencement of the Constitution, but arising out of a suit instituted before such commencement, the Supreme Court held as follows :—

“The right of appeal is a vested right, and such a right to enter the superior court accrues to the litigant and exists as on and from the date the *lis* commences and, although it may be actually exercised when the adverse judgment is pronounced, such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding, and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.”

Need for
express pro-
vision

21. In *Colonial Sugar Refining Co. v. Irving*¹, the Privy Council held that the (Australian) Commonwealth Judiciary Act, section 39, which abrogated the power of the court to grant leave to appeal to the Privy Council, did not affect the right of the appellant to file an appeal under the old law since the suit was pending when the section came into force. The section was “not retrospective by express enactment or by necessary intendment”; and the right of appeal was not a mere matter of procedure. “To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure.”

Provision
proposed in
earlier Bill.

22. We may note that the Bill passed by the Rajya Sabha called “The Supreme Court (Enhancement of Valuation for Civil Appellate Jurisdiction) Bill, 1970” contained a provision², leaving appeals pending in the Supreme Court to be dealt with according to the old law and other cases to be dealt with under the new law.

Query
made to
elicit opi-
nion.

23. We had, in our working paper³, put a specific query as to what should be the transitional provision as regards—

(a) matters pending in the High Court by way of appeal or revision or in its original jurisdiction, and

(b) matters pending in the High Court for the issue of a certificate on the basis of pecuniary valuation.

There we had also referred to clause 4 of the lapsed Bill and inquired if a provision on those lines would be satisfactory.

Views re-
ceived.

24. Many of the comments received on our working paper have not dealt with this point. Out of such of them as have answered it, a large number regard as satisfactory a transitional provision on the lines of clause 4 of the lapsed Bill. But a few

1. *Colonial Sugar Refining Co. v. Irving*, (1905) A. C. 369, 372.

2. Clause 4 of the Bill. See Annexure A, to Appendix I.

3. See Appendix I, para 15(v).

comments stress the desirability of a saving provision for pending applications also, *i.e.* applications pending in the High Court for a certificate on the basis of valuation under the present provision.

25. We considered the matter at some length. The possible situations at the commencement of the amending Act would be as follows :—

Possible
situations
analysed.

(i) cases pending in the High Court or a subordinate court on that date;

(ii) cases disposed of by the High Court before that date by a judgment, decree or final order, where a certificate under clause (a) or (b) of article 133(1) has not yet been applied for;

(iii) cases disposed of by the High Court by a judgment, decree or final order, where a certificate under clause (a) or (b) has been applied for, but the application for the certificate is pending on that date;

(iv) cases disposed of by the High Court before that date, where a certificate under clause (a) or (b) has been obtained, but the appeal to the Supreme Court has not been actually filed;

(v) cases in which, not only a certificate has been granted under clause (a) or (b), but also an appeal has been filed and is pending in the Supreme Court on that date.

26. We consider that in the situation at (i), (ii) and (iii) above, the amendment can be made applicable without much difficulty. The proceedings would not have reached such an advanced stage as to create an expectation that the defeated party will be able to invoke his right under clause (a) or clause (b) of article 133(1). Moreover, the provisions of article 133(1)(c) and article 136 could be resorted to.

Need for
saving pro-
vision con-
sidered.

27. The cases at (iv) and (v) above, however, stand on a different footing. In case (iv), for example, the prospective appellant has done all that requires to be done on his part to file an appeal, and, it is only the accident of the date of commencement falling between the obtaining of the certificate and the actual filing of the appeal that takes away his right. This is likely to cause hardship, and the number of such cases is bound to be appreciable. If the right under clause (a) or (b) is not preserved, the appellant will have to take fresh steps to obtain leave under article 133(1)(c). It is possible that the time limit for applying¹ for such leave may be about to expire very shortly, or may have already expired.

Cases where
certificate
already
obtained.

1. Under article 132, Limitation Act, 1963, the period of limitation for applying "to the High Court for a certificate of fitness to appeal to the Supreme Court under clause (1) of articles 132, article 133 or sub-clause (c) of clause (1) of article 134 of the Constitution or under any other law for the time being in force" is sixty days from the date of the decree, order, or sentence.

Saving necessary where certificate obtained or appeal pending.

28. It is, therefore, desirable that a party who has obtained a certificate under clause (a) or (b) should, subject of course to the law of limitation¹ and other procedural conditions, be allowed to file an appeal on the strength of that certificate, and the constitutional amendment should not apply in such cases.

As regards the situation at (v) above, not much argument is needed to show that the amendment should not affect appeals pending in the Supreme Court when it comes into force.

Recommendations as to transitional provision.

29. In short, we recommend—

(1) That the amendment should *not* apply—

(a) to any appeal pending in the Supreme Court on the date of its commencement; and

(b) to any judgment, decree or final order of a High Court in respect of which a certificate under the un-amended article has been already obtained, though an appeal has not been filed in the Supreme Court on such certificate; and

(2) That, subject to (1), the amendment should apply to judgments, decrees or final orders which were pronounced or passed before the above date, or which arise out of any civil proceeding pending in the High Court or any lower court on above date.

K. V. K. SUNDARAM—*Chairman*

S. S. Dulat

Mrs. Anna Chandi

R. L. Narasimham

D. B. Kulkarni

P. M. BAKSHI

Secretary

New Delhi,

Members

The 30th August, 1971.

1. Order 15, Rule 2, of the Supreme Court Rules, 1966, provides that "subject to the provisions of sections 4, 5, and 12 of the Limitation Act, 1963, the petition of appeal shall be presented within sixty days from the date of the grant of the certificate of fitness" etc.

APPENDIX I

WORKING PAPER CIRCULATED BY THE LAW COMMISSION IN MAY, 1971

SUBJECT :—Appellate Jurisdiction of the Supreme Court in regard to civil matters under Article 133 of the Constitution.

This note deals with a proposal regarding the appellate jurisdiction of the Supreme Court in regard to civil matters under Article 133 of the Constitution. The proposal is to repeal sub-clauses (a) and (b) of clause (1) of the Article, and thereby limit this jurisdiction to cases in which the High Court certifies that the case is a fit one for appeal to the Supreme Court under sub-clause (c), without reference to the amount or value of the subject matter of the dispute.

2. The Government of India had in 1969 introduced a Bill in the Rajya Sabha, the object of which was to enhance the amount mentioned in sub-clause (a) from Rs. 20,000 to Rs. 1,00,000. This Bill¹ was passed by the Rajya Sabha on the 3rd August, 1970, but owing to the dissolution of the Lok Sabha before it could consider the Bill, the Bill lapsed. A copy of the Bill, as passed by the Rajya Sabha, is attached for reference. (Annexure A).

3. Article 133, as is well known, was based on the provisions of sections 109 and 110 of the Civil Procedure Code which formerly regulated appeals to the Privy Council. The important differences between the Article and the sections were—

(i) the enhancement of the pecuniary limit from ten thousand rupees to “twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law”;

(ii) the right of appeal, formerly restricted to decrees and final orders passed *on appeal* by the High Court, now made available against “any judgment, decree or final order *in a civil proceeding* of a High Court”, thus including final orders passed by a High Court in the exercise of its revisional jurisdiction;

(iii) the right of appeal on a certificate of fitness, which was formerly available against *any order* of the High Court, now restricted to *final orders* of the High Court.

4. The raising of the pecuniary limit to Rs. 20,000 in the Constitution was obviously made in view of the depreciation of the rupee, but it was by no means proportionate to the fall in the purchasing power of the rupee. No appreciable fall in the number of appeals to the Supreme Court could have been expected from the small increase in the pecuniary limit, because the Constitution, for the first time, conferred extensive writ jurisdiction on

1. The Supreme Court (Enhancement of Valuation for Civil Appellate Jurisdiction) Bill, 1970.

High Courts under article 226 if this proceeding an appeal would be to the Supreme Court against a judgment decree or final order in such proceeding if it can be classified as "a civil proceeding"; and it is now well-settled¹ that it can be so classified if it deals with civil rights conferred either by civil law or by statute.

5. The present position, therefore, as regards the appellate jurisdiction of the Supreme Court in civil matters is as follows :—

(1) There is an unrestricted right of appeal to the Supreme Court where the value of the subject matter of the dispute is not less than Rs. 20,000 or where the order of the High Court involves directly or indirectly some claim or question respecting property of that amount or value—

(a) if the judgment or the final order of the High Court is passed in exercise of its original jurisdiction (ordinary or extraordinary),

(b) if in exercise of its appellate jurisdiction, the High Court reverses the judgment or order of the Court below.

(2) Where the appellate judgment of the High Court is one of affirmance, there must also be "some substantial question of law" involved.

(3) Where the High Court certifies that the case is fit for appeal to the Supreme Court, the pecuniary limit does not apply.

Judicial decisions have made it clear that the test for grant of a certificate of fitness under sub-clause (c) of clause (1) of article 133 [corresponding to clause (c) of old section 109, Civil Procedure Code] is much more rigorous than the test of a "substantial question of law" required for a certificate to appeal against a judgment of affirmance under clause (2) of Article 133²

6. In India, the conferment of a right of appeal to the highest tribunal based mainly on the value of the subject matter in dispute has an historical origin. As early as 1726, when Mayors' Courts were functioning in the three presidency towns of Calcutta, Madras and Bombay, an appeal was provided to the King-in-Council in cases where the subject matter of the litigation was worth more than 1000 pagodas. After the establishment of the Supreme Court of Calcutta by the Regulating Act of 1773, the Charter of the Supreme Court provided for an appeal to the King-in-Council where the subject matter of the dispute exceeded the sum of one thousand pagodas. In Bombay, however, the pecuniary limit for appeal to the King-in-Council was fixed at 3000 Bombay rupees. In the mofussil, where the corresponding High Courts for civil litigation were the Sadar Diwani Adalats, a pecuniary limit was fixed for the purpose of appeal to the King-in-Council, but it varied from place to place.

7. By an Order in Council dated 1838, uniformity was introduced, and an appeal to the King-in-Council was permitted only where the subject matter in dispute was at least Rs. 10,000 company rupees in value. This minimum value continued the same after the constitution in 1861 of the High

1. (a) *Naryan Row v. Ishwar Lal*, (1966) 1 S. C. R. 190 ; A. I. R. 1965 S. C. 1818.

(b) *Ramesh v. Gondalal*, (1966) 3 S. C. R. 198 ; A. I. R. 1966 S. C. 1445, 1448.

(c) *Arbind Kumar v. Nand Kishore*, (1968) 3 S. C. R. 322 ; A. I. R. 1968 S. C. 1227.

2. See Mulla, Civil Procedure Code (1965), Vol. I, page 467.

Courts (which replaced the old Supreme Courts and Sadar Diwani Adalats), and it was incorporated in the Civil Procedure Code of 1908 notwithstanding the considerable fall in the purchasing power of the rupee since 1838. The makers of the Constitution maintained the principle of valuation, though they raised the amount to Rs. 20,000 and indicated that Parliament might raise it further to any extent by an ordinary law.

8. The main advantages of an unrestricted right of appeal to the highest court in the country may be said to be—

(1) It ensures uniformity in interpretation of the laws, thereby avoiding the confusion which would result where the High Courts in the States give conflicting decisions.

(2) Correct determination is more likely to be obtained in the highest court than in the lower courts.

(3) There is always a possibility of error, and there should be superior court to correct the error.

9. On the other hand, the existence of a right of appeal based on valuation is open to the following criticism—

(1) It discriminates unfairly between the rich litigant and the poor.

(2) It is well known that important questions of law do not depend on the value of the subject matter in dispute.

(3) It promotes the leading of perjured evidence as regards valuation, and causes considerable delay in the High Court in determining valuation for the purpose of appeal. It is notorious that litigants under-value the subject-matter for the purpose of court fee, and then try to over-value the same for the purpose of appeal to the Supreme Court.

(4) It causes avoidable congestion in the Supreme Court, and thereby impairs the prompt discharge of its primary functions, namely, the grant of speedy relief in those cases which involve (a) interpretation of the Constitution (Article 132), and (b) enforcement of fundamental rights (Article 32) in regard to which this Court has (in the words of Chief Justice Patanjali Sastri) “been assigned the role of a sentinel on the *qui vive*”.¹

10. Uniformity in the interpretation of civil law, as indeed of all laws, throughout the country is essential. But this uniformity can always be brought about either by the High Court granting a certificate of fitness under sub-clause (c) of Article 133(1), or by the Supreme Court granting special leave under Article 136. As regards the other two advantages also², the power of the Supreme Court to grant special leave under Article 136 may suffice.

11. An English Chief Justice observed³ long ago that “it is the glory and happiness of our excellent Constitution that, to prevent any injustice,

1. *State of Madras v. V. G. Rau*, (1952) S. C. R. 597, 695 ; A. I. R. 1952 S. C. 196, 199.

2. Para. 8 above.

3. *King v. Chancellor, Masters and Scholars of the University of Cambridge*, (1723) 93 E. R. 698, 702-703. (Sir John Pratt, C. J.).

no man is to be concluded by the first judgment; but that, if he apprehends himself to be aggrieved, he has another court to which he can resort for relief." This principle will not be substantially jeopardised by the repeal of sub-clauses (a) and (b). Ordinary civil litigation reaches a High Court either in the first appellate stage or in the second appellate stage, according to the valuation of the subject matter of litigation. Hence, by the time the High Court disposes of the matter, the parties have had the benefit of at least one appeal on law and facts, and sometimes also a second appeal on questions of law. Even in those High Courts which have ordinary original civil jurisdiction, such as the High Courts of Calcutta, Bombay and Madras, if the original judgment is delivered by a single judge, there is always an unrestricted right of appeal to a Division Bench under the Letters Patent. It is true that if, in those High Courts, the original trial is held before a Division Bench, there will be no unrestricted right of appeal if sub-clauses (a) & (b) are repealed. But such original trials of civil suits before Division Benches are very rare indeed. However, if this aspect is considered important, a suitable provision on the subject could be made in Article 133.

12. The proposed amendment is not intended to interfere with the appeal to the Supreme Court against orders passed by the High Court, where such a right is conferred by provisions in special laws.¹ That right will not be affected in any way by the present proposals.

13. It may be said that by giving a right of appeal based solely on the test of value of the subject matter—and that too—after an appeal to the High Court—the law gives an opportunity "to put the dice into the box for another throw"². It only leads to heavy expense and delay in litigation, and to some extent, affects the prompt discharge by the Supreme Court of its primary functions.

14. A review of the existing position in England, France, U.S.A. and a few other countries with a federal constitution has been made, and the result briefly indicated in Annexure B. The value of the subject matter in dispute at the final appellate stage is relevant in three countries, viz., Australia, Canada and Switzerland; in England, France, West Germany, Russia and the U.S.A., it is not.

15. The points for consideration are—

(i) does the existing position under Article 133 require to be changed; and

(ii) if so, is it sufficient to enhance the valuation limit from the present 20,000 rupees to one lakh rupees, as proposed in the lapsed Bill (Annexure A); or

1. E. g.—(a) section 56, Indian Divorce Act, 1869 ;

(b) section 116-A, Representation of the Peoples Act, 1951 ;

(c) section 29, Wealth Tax Act, 1957 ;

(d) section 28, Gift Tax Act, 1958 ;

(e) section 38, Advocates Act, 1961 ;

(f) section 83, Income Tax Act, 1961 ; etc.

2. Ambrose Bierce, quoted by Carpentier, Counsel on Appeal, page 145.

(iii) is it preferable to repeal sub-clauses (a) and (b) of Article 133(1) allowing appeals under that Article only on a certificate of fitness under sub-clause (c) [without prejudicing in any way the power of the Supreme Court to grant special leave under Article 136]; or

(iv) alternatively, in place of sub-clauses (a) and (b), should there be a provision for appeal from a judgment, decree or final order of a Division Bench of the High Court¹ exercising original jurisdiction (ordinary or extraordinary, e.g., on a writ petition) irrespective of value, or when above a certain value;

(v) whichever alternative is adopted, what should be the transitional provision as regards—

(a) matters pending in the High Court by way of appeal or revision or in its original jurisdiction, and

(b) matters pending in the High Court for the issue of a certificate on the basis of pecuniary valuation; would a provision on the lines of clause 4 of the lapsed Bill² be satisfactory?

16. It would be useful to know the extent to which each of the above alternatives is likely to reduce the number of civil appeals before the Supreme Court. Detailed and up-to-date figures are not easily available. The following figures pertaining to the years 1966 and 1967 may afford some guidance:—

	1966	1967
1. Civil Appeals filed under Articles 133(1) (a) & (b)	245	367
2. Civil Appeals filed under Articles 132(1) and 133(1)(c)	636	648
3. Civil Appeals filed under Articles 132(1) and 133(1)(a), (b) and (c)	75	86
TOTAL	956	1101

About one third of the total number of civil appeals filed on certificates given under Articles 132(1) or 133(1) were on the basis of valuation only; and it may also be mentioned that the time taken in hearing and deciding such appeals is ordinarily more than the time taken in deciding an appeal under Article 132(1) or Article 133(1)(c).

1. Or of a Judicial Commissioner's Court with a single judge.

2. Annexure A.

ANNEXURE A

Bill No. XXXI-C of 1969

THE SUPREME COURT (ENHANCEMENT OF VALUATION FOR CIVIL APPELLATE JURISDICTION) BILL, 1970

(AS PASSED BY THE RAJYA SABHA ON THE 3RD AUGUST, 1970)

A

BILL

to enhance the amount or value of the subject matter of dispute for purposes of civil appellate jurisdiction of the Supreme Court, and further to amend the Code of Civil Procedure, 1908.

BE it enacted by Parliament in the Twenty-first year of the Republic of India as follows :

Short title
and com-
mencement.

1. (1) This Act may be called the Supreme Court (Enhancement of Valuation for Civil Appellate Jurisdiction) Act, 1970.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Enhance-
ment
of valua-
tion for
civil appel-
late juris-
diction of
the
Supreme
Court.

2. (1) On and from the commencement of this Act, for the purpose of an appeal to the Supreme Court under sub-clause (a) or sub-clause (b) of clause (1) of Article 133 of the Constitution,—

(a) the amount or value of the subject-matter of the dispute referred to in the said sub-clause (a) shall be not less than one lakh rupees instead of twenty thousand rupees;

(b) the judgment, decree or final order referred to in the said sub-clause (b) shall involve directly or indirectly some claim or question respecting property of the like amount or value.

(2) Save as aforesaid, the provisions of Article 133 of the Constitution shall apply in relation to any such appeal as they apply in relation to an appeal under that Article to the Supreme Court before the commencement of this Act.

Amendment
of Act 5
of 1908.

3. In section 110 of the Code of Civil Procedure, 1908, for the words "twenty thousand rupees" the words "one lakh rupees" shall be substituted.

4. (1) Nothing in this Act shall affect any appeal under sub-clause (a) or sub-clause (b) of clause (1) of Article 133 of the Constitution, which, on the commencement of this Act is pending before the Supreme Court, and every such appeal may be heard and disposed of by the Supreme Court as if this Act had not been passed.

Continuance
of certain
proceedings.

(2) Without prejudice to the provisions of sub-section (1), no appeal from any judgment, decree or final order referred to in sub-clause (a) or sub-clause (b) of clause (1) of Article 133 of the Constitution arising out of a civil proceeding pending in any court at the commencement of this Act, shall be entertained and disposed of by the Supreme Court, unless such appeal satisfies the provisions of section 2.

ANNEXURE B

Relevancy of valuation in appeals to the Supreme Court or other highest Court of the Country.

1. Australia :

Position as regards appeals to the High Court of Australia :—

(i) Valuation relevant (£ 1500).

(ii) Appeals also lie irrespective of valuation, where question of status (marriage, divorce, bankruptcy, aliens etc.) are involved.

(iii) Leave not required. But, besides the matters mentioned above, leave can be granted by the High Court, in other cases.

2. Canada :

Position as regards appeals to the Supreme Court of Canada :—

(i) Valuation relevant—10,000 dollars.

(ii) No limitation as to nature of the question involved.

(iii) Leave not required. But, in cases not covered by (i) above leave can be granted by the Supreme Court of Canada or the Provincial Court of Appeal.

3. England :

Position as regards appeals to the House of Lords :—

(i) Valuation not relevant.

(ii) No limitation as to nature of the question involved in general, except for 'leap-frog' appeals etc.

(iii) Appeal is only by leave of the Court of Appeal or the House of Lords.

4. France :

Position regarding appeals to the Court of Cession :—

(i) Valuation not directly provided for. But it may be noted that appeals to the first appellate court from the trial court (court of grand instance) are ordinarily allowed only if valued at a certain amount, roughly, 200 U. S. Dollars.

(ii) Appeal limited to question of law.

(iii) Leave not required.

5. West Germany :

Position regarding appeals to the Supreme Federal Court :—

(i) Valuation not relevant.

(ii) But the scope of appeal is limited indirectly, because the function of the Supreme Federal Court is "to preserve the uniformity of application of federal law", and, apparently, the appellate jurisdiction will be confined to cases involved such questions.

(iii) Leave not required.

6. Russia :

Position regarding appeals to the U.S.S.R. Supreme Court :—

(i) Valuation not relevant. But it should be noted that a private party has no right of appeal to the U.S.S.R. Supreme Court.

(ii) The jurisdiction of the Supreme Court is indefinite. Motion for review can be filed on the ground of a "particularly essential violation of the laws in force or a plain violation of the interests of the workers' and peasants' State and the toiling masses".

7. Switzerland :

Position regarding appeals to the Federal Tribunal :—

(i) Valuation relevant (8000 Swiss francs).

(ii) No express limitation as to the nature of the question involved could be discovered. But this seems to be implicit in the Tribunals' function of ensuring uniform application of

federal law. Apparently, its appellate jurisdiction will be confined to cases involving such application.

(iii) Leave not required.

8. U.S.A. :

Position regarding appeals or certiorari to the Supreme Court of the U.S.A. :—

(i) Valuation not relevant.

(ii) The question involved must be what can be roughly described as a “federal” one.

(iii) Leave not required. But review is discretionary in many cases :

Appellate cases may be taken to the Court by two routes, appeal and certiorari, depending on the nature of the case. The avenue of appeal, (which replaced the older writ of error), is reserved principally for cases from state courts in which the highest court of the state has held a state statute valid under the federal Constitution. Other cases from the highest courts of the states—decisions holding state statutes unconstitutional, construing federal statutes, or involving federal privileges and immunities like full faith and credit to judgments of sister states—must take the avenue of certiorari. Jurisdiction under appeal is obligatory, while jurisdiction under certiorari is discretionary with the Supreme Court.

(b) Position regarding appeal to the highest Court of the State in the U.S.A. :—

There is wide variation in detail in the provisions governing the right to further review, by the higher appellate court, of the determination made by the lower appellate court. Seldom is such further review a matter of right in all cases. Illustrative is a provision in one State giving such right of further review where the lower appellate court has reversed the judgment of the trial court, or where the affirmance of the judgment has been by a divided court; in all other cases review may be had only by permission, granted either by the lower or the higher appellate court.

APPENDIX 2

LIST OF COURTS¹ BODIES AND PERSONS WHO EXPRESSED VIEWS ON THE WORKING PAPER CIRCULATED BY THE LAW COMMISSION

High Courts²

1. Allahabad
2. Bombay (Appellate Side)
3. Delhi
4. Gujarat
5. Madhya Pradesh
6. Madras
7. Mysore
8. Orissa
9. Patna
10. Rajasthan
11. Judicial Commissioner, Tripura

State Governments

12. Assam
13. Gujarat
- 13A. Haryana
14. Maharashtra
15. Mysore
16. Orissa
17. Punjab

Bar Councils and Bar Associations

18. State Bar Council of Andhra Pradesh
19. State Bar Council of Bihar
20. State Bar Council of Gujarat
21. State Bar Council of Kerala
22. State Bar Council of Madhya Pradesh

1. As to the view forwarded by the Registrar, Supreme Court of India, see the Report.

2. (a) Judicial Commissioners are also included.

(b) Some of the High Courts have sent views of individual judges, while others have sent views of the High Court.

23. State Bar Council of Maharashtra
24. State Bar Council of Orissa
25. State Bar Council of West Bengal
26. District Bar Association, Patna
27. District Bar Association, Balurghat, West Bengal
28. Howrah Bar Association, West Bengal
29. Goa, Daman & Diu Advocates' Association

Others

30. Shri Niren De, Attorney General of India
31. Shri G. A. Kamat, Speaker, Legislative Assembly, Goa, Daman and Diu.
32. Shri J. H. Dalal, Advocate and Member, State Bar Council of Maharashtra.
33. Shri P. Tirupal Chetty, Advocate and Member, Bar Council of Andhra Pradesh, Cuddiapah.
34. Shri Haridas Govindas Gujarathi, Advocate, 419, Raviwar Peth, Motichowk, Poona-2.
35. Shri B. V. S. Sivaram Prasad, Advocate, Guntur, A.P.
36. Shri V. N. Shukla, Head of the Department of Law, Lucknow University.
37. Principal, University Law College, Dharwar.
38. Principal, M. N. Law College, Khandwa, M.P. सत्यमेव जयते
39. Principal, Lakhamgonda Law College, Poona.
40. Shri D. Gopalkrishnan Sastri, Reader Law College, Andhra University, Visakhapatnam.
41. Shri D. R. Sinha, Lecturer, Shri Shivaji College, Amravati.
42. Shri S. V. Kagi, Lecturer, University College of Law, Dharwar-1.
43. District and Sessions Judge, Manipur.
44. Shri J. G. Notaney, 1204/8, Ghole Road, Poona.