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Reduce the Pendency of Cases in the Supreme Court of India by Introducing Court of Appeal

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ABSTRACT

"The Supreme Court of India sits at the pinnacle in hierarchy in the judicial system of India. Initially, it was established basically for the purpose of resolving intricate constitutional issues. However, over the past 25 years, the burden on the Supreme Court of India has increased tremendously as it has actually become a regular court of appeal due to the misuse of Article 136 of the Indian Constitution. The number of Judges in the Supreme Court has been increased from 7 in 1950 to 34 in 2021. But it does not seem to have helped a great deal in reducing the mounting pendency of cases. Therefore, we need to explore other options for reducing this pendency. Through this research paper, the authors have suggested that Courts of Appeal with five regional benches need to be established between the High Courts and the Supreme Court. Courts of Appeal are running successfully in several countries including the United Kingdom and USA. In the end, some suggestions are proffered for the establishment of Courts of Appeal in India and the distribution of work amongst them."

KEY WORDS: "Courts of Appeal", "Accessibility to Courts", "Faster disposal of cases"

Introduction

Indian civilisation is among the oldest civilisations and Indian legal system is set by its ancient religious prescriptions. Before 400 BC itself, Manusmriti followed by the

Yajnavalkya Smriti built laws regarding a person's conduct that must be followed in civic society and procedures that should be stringently followed at all times. Any deviation from the rules laid down in these books was considered an offence and was hence punishable.

In the era of Mughals there were twelve ordinances of a Muslim Law digest, i.e. Fatawa-i-Alamgiri and Fatawa-i-Jehangiri. These books were compiled on the orders of Mughal emperors Aurangzeb and Jahangir respectively. In the British era, Courts were established at various levels for dispensing justice. Initially, justice was dispensed with the help of Pandits and Maulvis. But gradually, the practice of appointing Judges learned in common law was developed. The court system which is currently running was introduced in 1726 by the establishment of The Mayor's Courts. The first Supreme Court was established in India in the year 1774 by The Regulating Act, 1773. It was established at Fort William in the Presidency Town of Calcutta with Justice Elijah Impey as the Chief Justice. With the passage of time, two more Supreme Courts were established in the other two Presidency Towns of Bombay and Madras. In 1861, the Supreme Courts were abolished and the High Courts were established in Bombay, Calcutta and Madras. Gradually, High Courts were also established in Allahabad, Lahore and Nagpur. The practice of taking appeals from the High Courts to the Privy Council in the United Kingdom also started in the 19th century.[1]

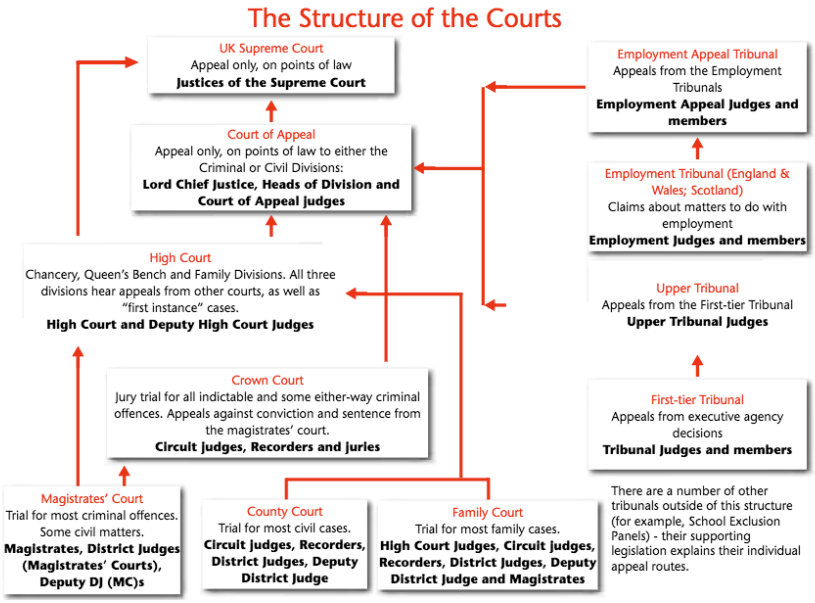
By the 19th century, Indian courts dealt with both civil and criminal litigations and there was development in the equity, justice and secularism to some extent. In 1935, because of increasing number of appeals to the Privy Council, the Federal Court of India was established above the High Courts and below the Privy Council. The practice of preferring appeals to the Privy Council was discontinued in 1949. With the establishment of the Supreme Court of India in 1950, the Federal Court was abolished.

From Independence Till Date

Simplification and rationalisation of the nation's laws and policies with clarity which are to be uniform across nation in all agencies and departments leads to definite solutions filling the lacunas when drafted by intellectuals along with draftsmen who really understand the issues and can give remedies with the respective solutions.

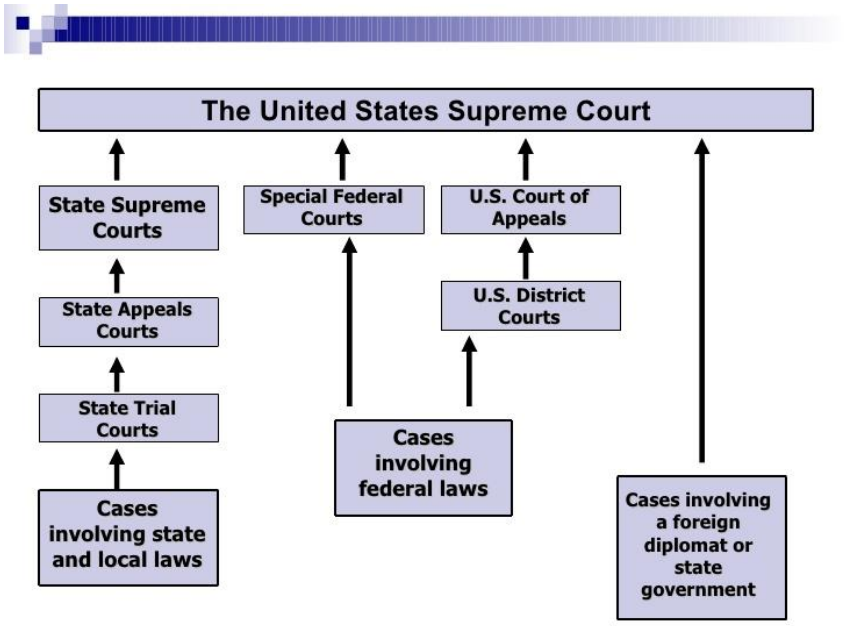
Law is established by "Central and State Acts, Rules, Regulations, Notifications, Circulars, Press Notes, Judgements etc". With the increasing population, litigants are increasing and they are filing as maximum number of possible appeals claiming their rights, ignoring the corresponding obligations. As a consequence, more number of judges are required even after the introduction of tribunals and fast-track courts for reducing the backlog of cases. Still pending cases is not getting reduced. Pending cases as on 1st July 2019 in the Honourable Supreme Court were 59,695.

Hierarchy of UK Judiciary



There are two divisions in the Court of Appeal, i.e. "the criminal division and the civil division. The Civil Division of the Court of Appeals hears the appeals from the High Court, the tribunals and under certain circumstances from the county courts. The decisions by the Court of Appeals are binding on itself, and all the other courts excluding the Supreme Court".

Hierarchy of Judiciary in USA

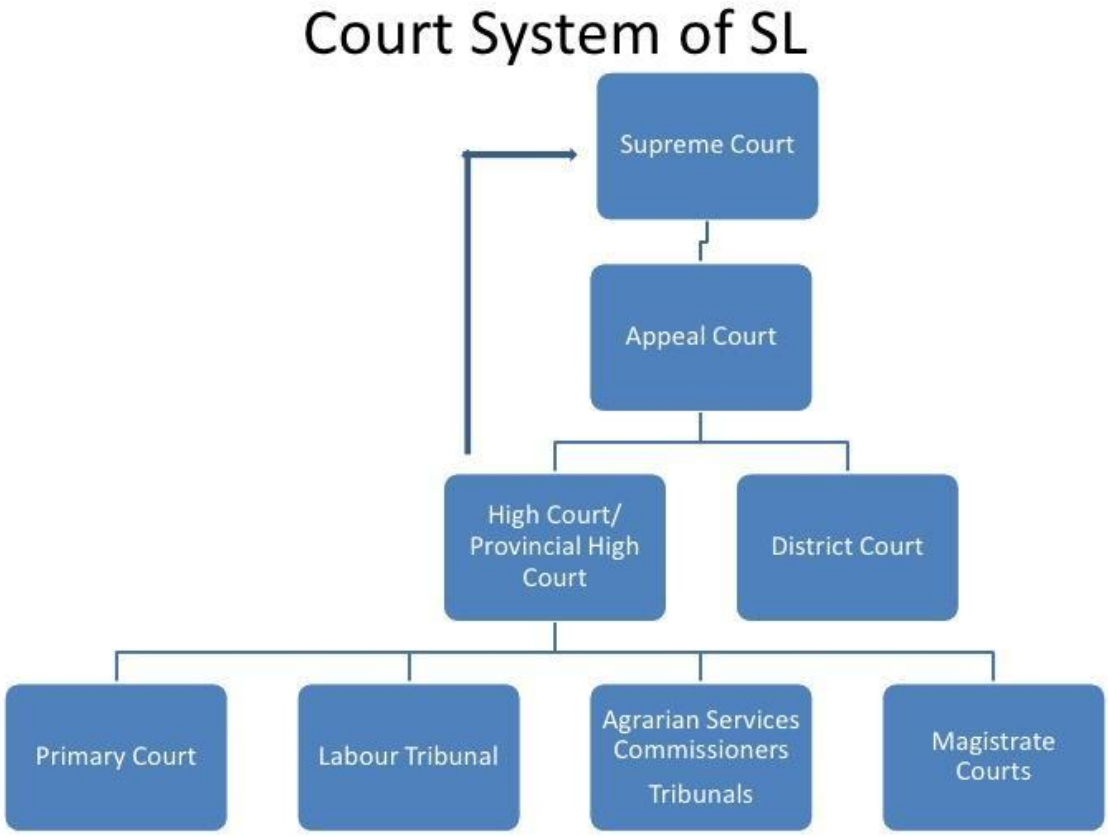


Courts of Appeals

The courts of appeals have appellate jurisdiction. They are not trial courts and do not hear cases first. Instead, the appellate courts review the decisions of the district courts, and determine whether they were correct. In an appeal, the losing party from the federal district court (both criminal and civil cases) asks the court of appeals to revisit their case, and to make a judgment on some issue of law.

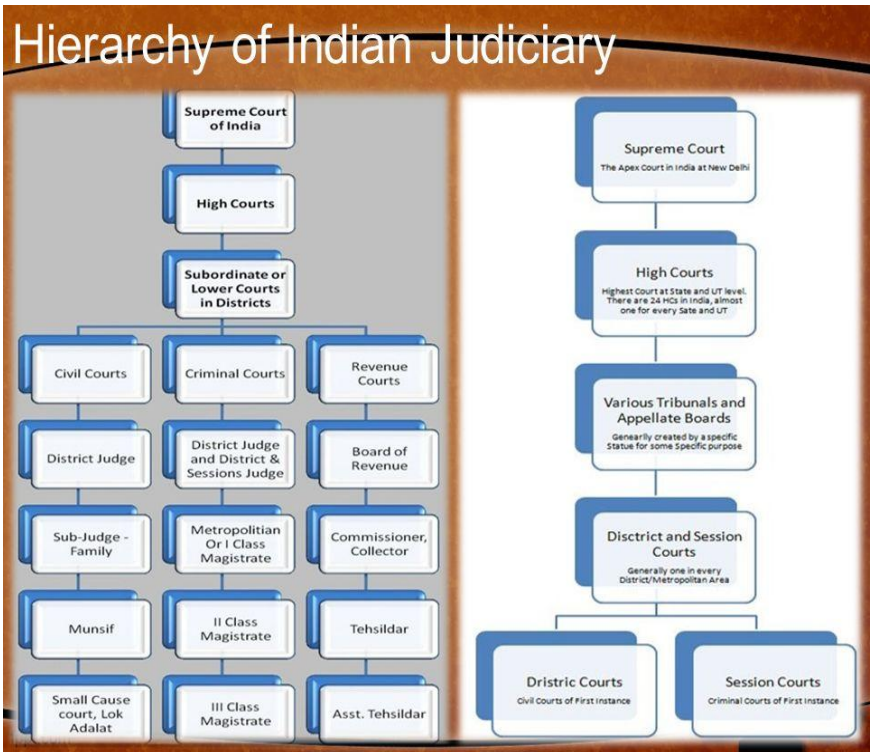
There are 12 regional circuit courts, and one for the "Federal Circuit," that were established by Congress to relieve some of the caseload of the Supreme Court, and to hear cases that are appealed from the 94 district courts

Court System of Sri Lanka



Court of Appeal of Sri Lanka is "the second most senior court in the Sri Lankan legal system, with only the Supreme Court of Sri Lanka above it. The Court has jurisdiction to hear appeals from the High Court or any lower court, while its own decisions may be additionally appealed to the Supreme Court. The Appeal Court his headed by the President of the Court of Appeal".

Hierarchy of Courts in India



Significance of the Study

The need of the hour is that the Supreme Court of India should deal with only Constitutional issues and a Court of Appeal should be established between the High Courts and the Supreme Court. It will have many advantages other than speedy disposal of cases and decreased burden on the Supreme Court, which are mentioned below:-

- Better accessibility and communication of clients and counsels to the nearer Courts that reduce the expenses and increase the speed of work. – Proximity advantage
- Client's Advocates who is already in record can directly deal with their own cases without involving AOR (Advocate on Record) and their Senior Advocates which reduces the expenses. – Economic advantage
- Promotions and new recruitments in judicial fraternity. – Employment advantage

Report of The Law Commission of India:

The 229th Law Commission of India's Report, published in August 2009, proposed "establishing separate benches to hear appeals and constitutional matters. The report also

suggested the establishment of regional Supreme Court benches to hear appeals from High Courts."Although four regional Benches of the Supreme Court have been established at New Delhi, Mumbai, Kolkata and Chennai by a Constitutional amendment in 2021, but the Court of Appeal is yet to see the light of the day.[2]In addition to the four regional Benches, there will also be a Constitution Bench in New Delhi which will only adjudicate intricate Constitutional issues.

On the 6th page of the Report, it is mentioned that: "*As constitutional adjudication occupies a place of its own, it always merits consideration as to whether there should be a separate Constitutional Court, as is the position in about 55 countries of the world (Austria established the world's first separate Constitutional Court in 1920), or at least the Supreme Court should have a Constitutional Division. Many continental countries have Constitutional Courts as well as final Courts of Appeal called Courts of Cassation (Cour de Cassation in French) for adjudication of non-constitutional matters. A court of cassation is the judicial court of last resort and has the power to quash (casser in French) or reverse decisions of the inferior courts*."

On the 7th page, it is mentioned that: "*Whether the Supreme Court should be split into Constitutional Division and Legal Division for appeals, the latter with Benches in four regions – North, South, East and West, is a subject of fundamental importance for the judicial system of the country. This Report considers the question as to whether there is need for creating a Constitutional Court or Division in our Supreme Court that shall exclusively deal with matters of constitutional law and four Cassation Benches one each in the four regions."*

On the 17th page, it is mentioned that: "*The liberal attitude of the courts in entertaining appeals from the lower courts has also contributed to the steady increase in the backlog. Those who have the financial resources go on appeal on the decisions of the lower courts to the next higher court, and finally to the Supreme Court, even when no interpretation of the law may be involved. When the accused are influential politicians or rich businessmen, the cases can go on endlessly, bringing down in this process the reputation*

of the judicial system itself. If appeals can be limited to a small number, say one or two, depending on the nature of the crime, it can help a great deal in reducing pendency."

On the 18th page, it is mentioned that: "*We have tried some of the above-mentioned measures for the last 59 years of the functioning of the judicial system in our country. The result appears to be far from satisfactory. Time has come when the entire judicial set-up will have to be overhauled and refurbished in order to make the goal of speedy justice a pulsating reality. It is quite often argued that the present pattern of working of the Supreme Court needs to be revised if any success in this direction is to be achieved. The indiscriminate acceptance of appeals on trivial issues of facts by the Supreme Court quite often overloads itself. In fact, only important issues need be litigated in the Supreme Court. Also, the present situation makes the Supreme Court inaccessible to a majority of people in the country*."

On the 20th page, it is mentioned that: *"The said Benches shall act as Cassation Benches to deal with appeals from a High Court in the particular region. The apex court could then deal with constitutional issues and other cases of national importance on a day to day basis since the accumulated backlog of cases would go to the respective zones to which they pertain*."

Inequity in the Court's Caseload

The Supreme Court's 34 judges hear a huge number of cases. Whoever feels that their case was wrongly decided in a lower court or tribunal can file an appeal in the Supreme Court. Even after the Court rejects some, it allows many appeals for hearing. In 2011, "the court's judges decided some 47,000 admission matters out of which 9,070 (or about 19 per cent) went on for regular hearing". Listening to those many numbers requires a huge time that leads to the backlog of cases. These pending matters take an average time of four years or more for the court to reach a final verdict per case. In case of a litigant, it takes around 15 years for the total process from a District Court, then in the High Court, and then heard again in the Supreme Court.

Even after the Supreme Court allows appeals, it is not equally accessible to all. Appeals are not proportionate from all the States. Most number of appeals are filed from Delhi High Court (12%) because of proximity and relative wealth. Delhi High Court is just 3 km away from the Supreme Court.On the other hand, only 1.2% appeals are filed

from Jammu and Kashmir or Odisha. And from the Madras High Court, it is only 1.1 per cent. This appeal pattern is difficult to characterise as fair. After introducing the electronic filing, system allowed litigants to easily file their cases from anywhere which does not solve the underlying problem. That is, the requirement of an Advocate-On-Record, to actually file a case in the Supreme Court and a lawyer to argue the case before the Court, who must be based in the capital. The Court decisions over the past five years included are 16 per cent of service matters, 13 per cent of direct or indirect tax matters, 9 per cent of land acquisition matters, whereas 21 per cent are criminal matter which dominate the workload of lower courts. Litigants can afford higher-priced and effective lawyers for their cases which are of less important to the nation. Most of the tax and service matters are decided by tribunals, not High Courts, where there is a clear sign that the court is wary of the decisions of the forums. The end result is The Court spends thousands of hours of precious time in hearing the cases of wealthier litigants live in and around Delhi.[3]

A Distracted Court

Sometimes important Constitution Bench cases are not being heard. For any substantial question of constitutional law to be heard five or more judges must hear. In the 1960s, the court decided over 100 such cases a year. Now, many important pending Constitution Bench matters are in the queue waiting to be heard. An increase in the number of appeals "distractedthe court from deciding Constitutional issues and also from hearing writ petitions which is the only remedy to directly approach the Supreme Court when the fundamental rights are violated. Less than 2% of admission cases involve writ petitions, because judges discouraged such litigants from approaching the Supreme Court, and are directing them to the High Courts".

A Court That Centralises and Creates Uncertainty

There was an increase of 33% disposals between 2005 and 2011 by the High Courts. Still number of matters appealed to the Supreme Court increased by 45 per cent and the number of admissions increased by 74 per cent in the Supreme Court for regular hearing. As more appeals are heard in Supreme Court, litigants started filing more appeals before the Court. In 2009, the India Law Commission "recommended creating regional Benches of the Supreme

Court in Mumbai, Chennai, Kolkata and New Delhi. The Commission also suggested creating a separate Constitution Bench in New Delhi to hear the important pending Constitution matters". There is pendency of cases because of the lack of enough judges.

"*Do the law officers certify the need to file an appeal and specify the reasons why it is not considered fit or proper to file an appeal? Whenever any Ministry approaches the Law Ministry on any matter, the Law Ministry expresses its views and sends the file for the opinion of the law officer concerned. The law officer at the level of Additional Solicitor General or the Solicitor General sometimes has to examine even petty matters, or service matters, and consider whether it involves a matter fit enough to be taken to the Supreme Court. Ultimately, it depends on the opinion of the law officer of the Union. There have been suggestions for structural reforms of the Supreme Court, including formation of regional Benches. There is a view that the Supreme Court is tilted towards a particular class. Of course, the court was expected to hear matters involving important questions of law and the Constitution or the public interest.*"[4]

Increase in the load of work, a "high rate of admission, and constitution of multiple two-judge Division Benches resulted in a tremendous increase in the number of judgments handed down by the Supreme Court, which in-turn increases the chances of inconsistencies in judgments."[5]

Latest statistics shows that there are 59,695 pending cases in the Supreme Court of India. In an analysis of the judgements between 2005 and 2017, it is found that "the Supreme Court's workload, in terms of judgements, focuses on appeals from high courts (93% of judgements) and in particular civil appeals (64%). In contrast, writ petitions, which are filed for a violation of fundamental rights, are less prominent, accounting for 4% of all judgements. In a 2013 paper, Nick Robinson, a legal scholar, argues that the Supreme Court hears more appeals as a way to actively police the High Courts and the lower judiciary who they fear may be incompetent, corrupt or biased".[6]

HC origins of SC judgements

Number of Supreme Court judgments from high court appeals verses number of judgments at that high court; size of circle indicates size of high court in terms of sanctioned judges; Data indicates disproportionate number SC judgements (compared to HC judgements). Many of these trends are well-acknowledged. The 229th Law Commission report "proposed establishing separate benches to hear appeals and constitutional matters. The report also suggested the establishment of regional Supreme Court benches to hear appeals from high courts."[7]This suggestion of the Law Commission was finally accepted in 2021.

Referring to the Standing Committee's recommendations, Venkaiah Naidu, the Vice President of India said that "there is a need for the Supreme Court Benches in the southern, western and eastern regions. This would rule out the need for people to travel long distances, he pointed out. While maintaining that more judges are required for clearing the mounting pendency of cases, Naidu also expressed support for the idea of having two divisions of the apex court, one entrusted with Constitutional matters and the other for appeals".

Arguments in Favour of Court of Appeal

- As a result of the misuse of Article 136 of the Constitution of India by the Advocates, there is an increase in the pendency of cases in The Supreme Court of India due to the Appeals from High Courts.
- After the establishment of a Court of Appeal, the pendency of cases in the Supreme Court of India will decrease drastically because it will deal only with Constitutional matters, as was envisaged by the framers of the Constitution.
- Access to justice is denied to the residents of far off States as they do not find it feasible to approach the Supreme Court against the decision of the High Court because of geographical distance.

Conclusion

The authors are of the opinion that the misuse of Article 136 of the Constitution of India by the Advocates is the primary reason for the mounting pendency of cases in the Supreme Court of India. It has relegated the Supreme Court as a regular court of appeal. The number of cases pending in the Supreme Court of India from various High Courts is directly proportional to the distance of the High Courts from the Apex Court. For ex: the Delhi High Court is just 3 km away from the Supreme Court and therefore, it contributes 10 per cent (which is the highest) of the total appeals pending in the Supreme Court. On the other hand, the Madras High Court is 2200 km away from the Supreme Court and thus, contributes the minimum number of appeals to the Apex Court, i.e. just 1.1 per cent.

Recommendations:

- A Court of Appeal should be established in India, which should be placed above the High Courts and below the Supreme Court.

- It should be established with 5 Benches so as to cater to all regions of the country. In my opinion, the Benches of the Court of Appeal should be established in Chandigarh (for North India), Kolkata (for East and North East India), Bhopal (Central India), Gandhinagar (West India), and Bangalore (South India).

- The Court of Appeal at Chandigarh shall hear appeals from 4 States and 4 Union Territories, i.e., Punjab, Haryana, Himachal Pradesh, Uttarakhand, Jammu and Kashmir, Ladakh, Chandigarh and NCT of Delhi.

- The Court of Appeal at Kolkata shall hear appeals from 9 States and 1 Union Territory, i.e., West Bengal, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland, Tripura, and Andaman and Nicobar Islands.

- The Court of Appeal at Bhopal shall hear appeals from 6 States, i.e., Uttar Pradesh, Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand and Odisha.

- The Court of Appeal at Gandhinagar shall hear appeals from 4 States and 1 Union

Territory, i.e., Gujarat, Rajasthan, Maharashtra, Goa, Dadra & Nagar Haveli and Daman & Diu.

- The Court of Appeal at Bangalore shall hear appeals from 5 States and 2 UnionTerritories, i.e., Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, Telangana, Puducherry and Lakshadweep Islands.

- There shall be no provision to file an appeal from the decision of the Court of Appeal to the Supreme Court, except in cases where the accused has been convicted and sentenced to death.

- The Supreme Court should only entertain cases involving the interpretation of the Constitution under Article 136 of the Constitution.

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