# The Emergence of A "High Court of India": Separating the Myth From the Substance

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*The question of extra-territorial applicability of a High Court judgment has been uncertain for quite some time. Such uncertainty poses a threat to the legal framework within which society functions – development of law becomes incoherent, thereby making law itself indeterminate. Recently a new twist was added to this tale when the Supreme Court's obiter in Kusum Ingots v. Union of India was referred by the Madras High Court in Textile Technical Tradesmen Association v. Union of India to hold that a High Court's judgment on the constitutional validity of a central legislation will be applicable throughout the territory of India. This view introduces the much needed element of consistency in the laws governing society, albeit to a certain extent. However, the desired objective is achieved at the cost of going against the mandate prescribed by the Constitution of India. The authors argue that the obiter in Kusum Ingots is bad in law and is not legally sustainable. Consequently, the Madras High Court by relying on Kusum Ingots in Textile Technical Tradesmen Association has created a "High Court of India", which is not envisioned by the Constitution of India. The authors have put forth a more pragmatic solution in consonance with the Constitution of India which allows constitutional jurisprudence to evolve in a uniform manner. Such evolution is essential for ensuring that the rights and obligations of the people, which are crystallized by law, remain definite and certain.*

## I. Introducing "High Court of India"

We are living in an age where the capacity to make new laws has been invoked as a mechanical response to changing patterns of

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social order. However, in a democracy, the legislature is not always right; recourse to judicial review is available to the people for vindicating their rights. However, jurisdiction is the first hurdle to be crossed before a remedy can be sought in a court of law. It defines the scope of the court to entertain cases and to give directions in response to such cases. The same has been envisioned in Article 32 and Article 226 of the Constitution of India for the Supreme Court and the various High Courts respectively. The Supreme Court and the High Court of each State can exercise this power of judicial review to invalidate laws enacted by the Union Parliament and the State Legislatures for being violative of the constitutional mandate. According to Dr. B.R. Ambedkar, the provisions for judicial review constituted the heart of the Constitution; the very soul of it.[1]

The Constitution of India has empowered the higher judiciary to declare a particular law as unconstitutional. The ramification of such a declaration by the Supreme Court, pursuant to Article 141, would be that the law declared by the Apex Court is binding on all courts throughout India. However, as regards the consequences of this power when exercised by a High Court, the answer is not so straightforward. The repercussions of a High Court adjudicating over the constitutionality of a Central law may be four-fold – limited application of the judgment within the territorial limits of the said High Court, nationwide applicability of such a judgment, nationwide applicability until another High Court comes up with a conflicting judgment or nationwide applicability until the Supreme Court reverses such a decision.

Recently the Madras High Court was faced with this intricate conundrum in *Textile Technical Tradesmen Association & Ors.* v. *Union of India & Ors.*[2] The Court was posed the question of whether the striking

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1 VII CONSTITUENT ASSEMBLY DEBATES 953 (Dec. 9, 1948).

2 Textile Technical Tradesmen Association & Ors. v. Union of India & Ors., (2011) I L.L.J. 297 (Mad).

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down of the provisions of any Central Act by a High Court had force even beyond the territorial limits of that High Court.

The cause of action from which the petition arose in *Textile Technical Tradesmen Association* was a notification on 11th August 2001 by the Government of Pondicherry under Section 17A of the Industrial Disputes Act, 1947 (*hereinafter* I.D. Act) by which the Government had declined to enforce an award passed by the Special Industrial Tribunal for revision of wages. This notification was challenged by the Petitioner Association in the Madras High Court (which has territorial jurisdiction over the Union Territory of Pondicherry) on the ground that Section 17A of the I.D. Act was *ultra vires* the Constitution.

Furthermore, an alternative ingenious argument was put forth by the Petitioner before the Madras High Court for quashing the Government of Pondicherry's notification under the said provision. It was pointed out by the Petitioner that on 23rd April 1997 the Andhra Pradesh High Court in *Telugunadu Workcharged Employees State Federation, Nalgonda District Unit* v. *Government of India*[3] had struck down Section 17A of the I.D. Act as unconstitutional. It was argued by the Petitioner that the striking down of Section 17A by the Andhra Pradesh High Court had resulted in the provision no longer remaining in the statute book throughout the country, and hence the Notification published by the Government of Pondicherry under this provision was without statutory backing and should be quashed.

On 29th September 2010, the Madras High Court came out with its decision in *Textile Technical Tradesmen Association*. While independently going into the merits of Section 17A to hold that this provision violated the independence of judiciary and hence was against the basic tenets of the Constitution, the Court also addressed the contentious argument of whether a High Court's decision to strike down the provisions of a Central enactment had extra-territorial jurisdiction. The High Court quoted the following observations of the Supreme Court in *Kusum Ingots* v. *Union of India*[4]:

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[3] Telugunadu Workcharged Employees State Federation, Nalgonda District Unit v. Government of India, 1997 (3) A.L.T. 492.

[4] Kusum Ingots v. Union of India, A.I.R. 2004 S.C. 2321.

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"*An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final, keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act*".[5]

Relying on this *obiter* in *Kusum Ingots*, the Madras High Court concluded that the judgment of the Andhra Pradesh High Court in *Telugunadu Workcharged Employees* declaring Section 17A to be unconstitutional had taken effect throughout the territory of India.

This essay aims at analyzing whether *Textile Technical Tradesmen Association* is justified in concluding that a High Court's decision on the constitutionality of a provision has extra-territorial application, and more specifically whether the *obiter* in *Kusum Ingots* on which the High Court has relied for its rationale has any legal basis. Considering that law does not exist in a vacuum, the socio-economic perils of adopting either the territorial or the extra-territorial applicability of the High Court decisions have also been delved into.

## II. The Need For Answers

The question of extra-territorial applicability of a High Court judgment has been explored for quite some time now.[6] The need for having a certain and discernible set of legal provisions which can be enforced by, as well as against the people is at the heart of ensuring consistency in the manner in which society is governed. In a geographically vast country like India with its teeming millions, legal

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5 *Id.* ¶ 22.

6 *See generally* Jasmine Joseph, *Divided Laws In A Unified Nation: Territorial Application of High Court Decisions*, 2 NUJS L. Rev. 471 (2009); Shivprasad Swaminathan, *All India Permit*, The Indian Express, July 10, 2009, http://www.indianexpress.com/news/allindia-permit/487413/.

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indeterminacy is an undesirable outcome. It may be argued that the issue of extra-territorial applicability of High Court decisions striking down any provision of a Central Act is only of academic significance since the said decision would invariably be challenged in the Supreme Court. However the significance of ascertaining the correct position of law on this point comes to the fore through myriad circumstances.

What is really undesirable about uncertain rules of law is that they leave persons unsure of their entitlements making it impossible for them to plan their activities in light of such ambiguous rules. Although one might look at the increasing growth in reported judicial decisions, statutes, and regulations as an increasingly successful attempt to impose precision upon human activities and in the verbosity of the multi-volumed set of the legislations one might see rules of sophistication, detail, and clarity. But on a closer scrutiny, those same volumes can be regarded as a futile and sometimes mad attempt to encapsulate real-world transactions in elusive and ambiguous legal prose. Scholars contend that the increasing volume of litigation and rulemaking results in internal contradictions, a multiplication of ambiguities, and normative specifications that invite persons to avoid rules of law by planning their activities around them.[7] The perils of uncertainty and non-uniformity in the decisions made by different High Courts on the same substantial questions of law are not merely social and need to be looked at from an economic lens also. Economic scholars like Posner, for instance, have taken the position that a second meaning of 'justice', and the most common they argue, is simply 'efficiency'.[8] It would, thus, be a safe assumption to make that efficiency of a legal system is instrumental to achieve the ultimate ends of justice. Undue costs rendered by litigants while pursuing a question of law greeted with a split verdict in different High Courts is seen as yet another evil of non-uniformity of judicial decisions across the nation.

*Textile Technical Tradesmen* itself throws up such a situation. Had the decision of the Andhra Pradesh High Court in *Telugunadu*

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7 *See generally* Anthony D'Amato, *Legal Uncertainty*, 71 Cal. L. Rev. 1 (1983).

8 Satish K. Jain, Law and Economics, New Delhi, (2010).

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*Work Charged Employees* been challenged in the Supreme Court and the Apex Court had rendered a verdict on the Constitutional validity of Section 17A of the I.D. Act, this decision would undoubtedly have been applicable throughout India, including the Union Territory of Pondicherry. Hence the issue of whether Section 17A still existed in the statute book of Pondicherry and whether any consequential order passed by the Government of Pondicherry in exercise of this power under Section 17A was illegal would not have arisen.

The true import of this quandary comes to the fore even in instances where the matter is in fact pursued further in the Apex Court. In the aftermath of the Delhi High Court's decision in *Naz Foundation & Ors.* v. *Government of NCT & Ors.*[9] a wide range of views were canvassed as to whether the reading down of Section 377 of the Indian Penal Code, 1860 was only within the territory of Delhi or whether this new interpretation extended throughout the country.[10] While the matter has gone in appeal to the Supreme Court, the apex court's refusal to grant an interim stay on the High Court's judgment leaves open the question of whether the new interpretation of Section 377 has taken effect throughout the country. Thus, the relevance of this academic discussion is not lost even in the context of *Naz*. Hence it is of immense importance to determine the true extent of a High Court's decision rendering a provision unconstitutional.

## III. Constitutional Flip-Flop Over High Court's Jurisdiction: Article 226

The Supreme Court's observations in *Kusum Ingots*, on which the Madras High Court relied in *Textile Technical Tradesmen Association*, referred to Article 226(2) of the Constitution to conclude that a High Court's decision on the constitutionality of a Parliamentary Act would take effect throughout the territory of India. In order to ascertain

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9 Naz Foundation & Ors. v. Government of NCT & Ors., (2010) Cri.L.J. (Del) 94.

10 Swaminathan, *supra* note 6.

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whether any such import flows from Article 226(2), it would be useful to refer to the history of Article 226.

Article 226, as it originally existed in the Constitution, provided in Clause 1 that a High Court would have the power to issue directions, orders, writs, etc throughout the territories to which it exercises jurisdiction to any person or authority within those territories. Clause 2 as it exists today was not enacted at that time.[11][11]

The provisions contained in erstwhile Article 226 were interpreted by a 7-Judge Bench in *Lt. Col. Khajoor Singh* v. *Union of India & Anr.*[12], where the Supreme Court held that there was a constitutional limitation on the High Court which required the person or authority to whom the writ is to be issued to be resident in or located within the territories over which the High Court had jurisdiction. Recognizing the difficulties which may be posed by such an interpretation, Subba Rao, J., in his dissenting opinion had highlighted the impracticalities of such an interpretation thus:

> "… *whenever the Union Government infringes the right of a person in any remote part of the country, he must come all the way to New Delhi to enforce his right by filing a writ petition in the Circuit Bench of the Punjab High Court. If a common man*

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[11] *See* INDIA CONST. art. 226 (The article states that: *Power of High Courts to issue certain writs – (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*

*(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories*).

[12] Lt. Col. Khajoor Singh v. Union of India & Anr., A.I.R. 1961 S.C. 532.

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> *residing in Kanyakumari, the southern-most part of India, is illegally detained in prison, or deprived of his property otherwise than by law, by an order of Union Government, it would be a travesty of fundamental rights to expect him to come to New Delhi to seek the protection of the High Court of Punjab*".[13]

This problem was taken note of in the majority opinion as well, when Sinha, C.J. poignantly observed that:

> "*It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Article 226*".[14]

In light of the Supreme Court's observations in *Lt. Col. Khajoor Singh* and the Law Commission of India's 14th Report[15], Parliament through the Constitution (15th Amendment) Act, 1963 included Clause 1A in Article 226, which by the 42nd Amendment has now been contained in Clause 2. The shortcomings of Article 226 as highlighted in *Ltd. Col. Khajoor Singh* were overcome by providing in Clause 2 that the High Court could issue directions, orders, etc to any person, authority or Government even if the seat of such Government or authority or the residence of such person was not within the territorial jurisdiction of the High Court.

Interestingly, this was not the only claim to fame of the 42nd Amendment or the "Mini Constitution of India"[16]. There was also the

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[13] *Id.* ¶ 24.

[14] *Id.* ¶ 16.

[15] Law Commission Of India, I Fourteenth Report on Reforms of the Judicial Administration (1958).

[16] Neera Chandhoke & Praveen Priyadarshi, Contemporary India: Economy, Society, Politics 236 (2009).

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insertion of Article 226A by way of this amendment which removed from the ambit of Article 226 the power to adjudicate upon the constitutional validity of Central laws.[17] As a corollary, Article 131A was inserted to give the Supreme Court exclusive jurisdiction in such matters.[18] Although Article 226A and Article 131A were not to stay for long and were removed by way of the 43rd Amendment in the following year itself, they go a long way to show that there has for long been a Constitutional tussle over the High Court's power to declare a central law unconstitutional.

### A. The 'Cause Of Action' Riddle

In spite of the series of amendments to which Article 226 has been subjected, Clause 2 of Article 226 contains the limitation that the High Court must have jurisdiction over the territories within which the cause of action is wholly or partly arising. The only expansion in the High Court's power under Article 226(2) is that it can now issue directions, orders or writs to authorities or persons who are situated outside its territorial jurisdiction. This being the context in which Clause 2 was enacted, there is no reason to believe that this power under Article 226(2) confers upon the High Court the power to make any declaration of law binding throughout the territory of India. Hence it is difficult to appreciate how on the basis of Article 226(2), the Supreme Court concludes in *Kusum Ingots* that a High Court's declaration on the constitutionality of a Parliamentary Act will have effect throughout the country.

In fact *Kusum Ingots* tacitly recognizes the territorial limitations which are present on a High Court when it is entertaining a writ petition, by stating that:

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17 *See* Const, *supra* note 11,. art. 226A (repealed w.e.f. 13.04.1978) (The article states that: *Constitutional validity of Central laws not to be considered in proceedings under Article 226 – Notwithstanding anything in article 226, the High Court shall not consider the constitutional validity of any Central law in any proceedings under that article*).

18 *See* Const, *supra* note 11,art. 131A (repealed 1978).

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> "*If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the Petitioner. A writ Court, it is well settled, would not determine a constitutional question in vacuum*".[19]

Considering the fact that *Kusum Ingots* itself highlights the importance of a cause of action to arise within the territorial jurisdiction of the High Court for Writ Jurisdiction to be exercised, it is difficult to reconcile this legal reasoning with the conclusion of extending a High Court's decision throughout the country.

Moreover, Article 227(1) establishes the judicial hierarchy within a particular territory where the High Court exercises its jurisdiction, by placing the High Court above all other courts and tribunals.[20] The reference to "every" High Court implies that each High Court in the country has superintendence over all subordinate Courts within its territorial jurisdiction. Nowhere does this provision even remotely suggest that a High Court in one jurisdiction will have superintendence over a High Court in another jurisdiction. In fact, the inference arrived at in *Kusum Ingots* and which has been relied upon by *Textile Technical Tradesmen Association* would run contrary to the letter and spirit of Clause 1 of Article 227.

This confusion has never arisen with respect to the Supreme Court since Article 141 of the Constitution unambiguously states that the law declared by the Supreme Court shall be binding on all courts

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19 Kusum Ingots, *supra* note 4, ¶21.

20 *See* CONST, *supra* note 11,art. 227(1) (The article states that: *Power of superintendence over all courts by the High Court – Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.*"

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within the territory of India.[21] Hence the only express mention in the Constitution to a judicial declaration which is binding throughout the country is a declaration by the Supreme Court. The Apex Court had the opportunity of interpreting Article 141 in *Bengal Immunity Co.* v. *State of Bihar,*[22] where it was clarified that "all courts within the territory of India" refers to all courts other than the Supreme Court.[23] Hence it was concluded that while the law declared by the Supreme Court would be binding on all courts throughout the country, the Supreme Court would not be bound by its own decisions.[24] However, there was nothing in *Bengal Immunity Co.* which even remotely suggested that this binding declaratory power throughout the territory of India was also enjoyed by the High Court, and there is nothing in Article 141 to even raise such a proposition.

Under Article 141, a High Court will be bound by the judgments of the Supreme Court. Further, it will be bound by decisions of its own Court, by virtue of the doctrine of *stare decisis*. But this is not akin to concluding what the Madras High Court has observed in *Textile Technical Tradesmen Association* that a High Court's decision applies throughout the territory of India and hence is binding upon any other High Court.

The above Constitutional provisions lead to the conclusion that the *obiter* in *Kusum Ingots* is bad in law. Consequently, the Madras High Court has erred in stating that the Andhra Pradesh High Court's decision had taken effect throughout the country.

### B. Diverse Opinions of the Supreme Court

It may be argued that the Madras High Court was bound by this *obiter* of the Supreme Court, as the High Court also observed in *Textile Technical Tradesmen Association* by referring to the observations

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[21] *See* Const, *supra* note 11,art. 141 (The article states that: *Law declared by Supreme Court to be binding on all courts – The law declared by the Supreme Court shall be binding on all courts within the territory of India*).

[22] Bengal Immunity Co. v. State of Bihar, A.I.R. 1955 S.C. 661.

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in *Oriental Insurance Co. Ltd.* v. *Meena Variyal*[25] that, "*An Obiter Dictum of [Supreme] Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court*".[26]

In light of the above statement, the High Court may have been justified in relying on the *obiter* in *Kusum Ingots* when there was no other Apex Court judgment on this "grey area of law"[27]. However, there are two other judgments of the Supreme Court subsequent to *Kusum Ingots* which emphasize on the territorial limitations placed on a High Court's jurisdiction.

In *Ambica Industries v. Commissioner of Central Excise*[28] the Supreme Court was faced with a question of whether a High Court could exercise appellate jurisdiction over a Tribunal's decision when the assessee had been assessed outside its territory. While answering this question in the negative, Sinha, J., made the following observation:

> "*There cannot be any doubt whatsoever that in terms of Article 227 of the Constitution of India as also Clause (2) of Article 226 thereof, the High Court would exercise its discretionary jurisdiction as also power to issue writ of certiorari in respect of the orders passed by the Subordinate Courts within its territorial jurisdiction or if any cause of action has arisen there within*".[29]

In *Durgesh Sharma* v. *Jayshree*[30] the apex court was concerned with whether a High Court could pass an order transferring a case

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23 *Id.* ¶ 22.

24 *Id.* ¶ 143.

25 Oriental Insurance Co. Ltd. v. Meena Variyal, A.I.R. 2008 S.C. 1609.

26 *Id.* ¶ 26.

27 Swaminathan, *supra* note 6.

28 Ambica Industries v. Commissioner of Central Excise, (2007) 6 S.C.C. 769.

29 *Id.* ¶ 17.

30 Durgesh Sharma v. Jayshree, (2008) 9 S.C.C. 648.

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pending in a Court subordinate to it to a Court subordinate to another High Court. The Supreme Court, while emphasizing on the jurisdiction of every Court being circumscribed by territorial limitations, made a tacit reference to Article 226(2) by stating:

> *"… The jurisdiction of a High Court has territorial limitations. It can exercise the power 'throughout the territories in relation to which it exercises the jurisdiction', that is to say, the writs issued by a High Court cannot run beyond the territory subject to its jurisdiction and the person or authority to whom the High Court is empowered to issue such writs must be within those territories which clearly implies that they must be amenable to its jurisdiction in accordance with law*".[31]

Interestingly, *Textile Technical Tradesmen Association* does not refer to either *Ambica Industries* or *Durgesh Sharma* at all, in spite of them being more recent judgments than *Kusum Ingots*. While the observations in these two judgments may be dismissed as merely *obiter*, it is to be borne in mind that while the *obiter* in *Kusum Ingots* is bad in law in light of the incorrect interpretation to Article 226(2), the relevant passages in *Ambica Industries* and *Durgesh Sharma* are *obiters* in consonance with the letter and spirit of Article 226(2). Hence, it cannot be said that the Madras High Court's hands were tied by the obiter in *Kusum Ingots* while deciding the question of extra-territorial application of High Court decisions.

## IV. Conclusion: Roadmap For the Future

The practical ramifications of *Textile Technical Tradesmen Association* are far reaching. It entails that all Governments and Courts across the country will have to constantly keep abreast of any constitutional challenge which has been mounted against a Central

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[31] *Id.* ¶ 75.

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Act in any High Court. Not only this, it also implies that as far as constitutional interpretations are concerned, the authority exercised by the High Court would be at par with that of the Supreme Court.

However, the Constitution bestows no such power, either expressly or impliedly, upon the High Court. At the same time, not giving extra-territorial applicability to a High Court judgment deciding on the constitutionality of a central law would be like opening Pandora's Box for conflicting judgments by other High Courts on the same points of law.

The legal chaos created by conflicting decisions of High Courts on central laws and the need to bring in some element of uniformity in such situations, was recognized tacitly by the 136th Report of the Law Commission.[32] The recommendations suggested therein focussed on legislative intervention and the proposed mechanism for 'nipping in the bud' such conflicts which give rise to multiplicity of proceedings. The authors are of the opinion that the suggestion pertaining to legislative clarification as a solution to avoid conflicting decisions may be reasonable to bring into conformity the varying interpretations of a Central law but not when it comes to the constitutionality aspect of such laws. It would defeat the basic concept of Separation of Powers if a Central law were to be sent back to Parliament for a clarification on its constitutionality.

The authors also believe that reintroduction of a provision like erstwhile Article 131A[33] as a solution to this problem of conflicting decisions has to be seen in the light of such a provision being against the very spirit of the Constitution. Whenever the question of power and jurisdiction of the Supreme Court arose in the formative years of

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[32] Law Commission Of India, One Hundred And Thirty Sixth Report On Conflicts In High Court Decisions On Central Laws –How To Foreclose And How To Resolve (1990).

[33] Const., *supra* note 18, art. 131A.

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the Constitution[34], the Report of the *ad hoc* Committee on Supreme Court was always referred to.[35] According to this Report, the Supreme Court exercising jurisdiction over matters of constitutional validity of Central Acts is a necessary implication of any federal scheme. However, the Report stated that this jurisdiction need not belong exclusively to the Supreme Court.[36] The kind of paramount authority that Article 131A intended to vest with the Supreme Court will not only revive the concerns expressed by Subba Rao, J., in *Lt. Khajoor Singh*, it will result in stultifying progress and development of Constitutional law in the country by keeping High Courts at arm's length from such matters.

Further, problems exist in the relationship between the legal and pattern maintenance systems. The tension between 'doing justice' and 'maintaining predictability and stability' in law seems endemic in the role of the judiciary and is usually resolved in favour of stability and predictability when the choice has to be made.[37] Consequently, the problem of uncertainty posed by multiplicity of interpretations by various High Courts is duly noted. However, what the authors fail to digest is that whether something like extra-territorial applicability of High Court decisions which falls beyond the constitutional mandate is a legitimate solution to this problem of increasing uncertainty. Moreover, as per Rosco Pound's analysis the modern lawyer's and legislator's concern is 'social engineering'. According to him, law secures social cohesion and orderly social change by balancing conflicting interests – individual (private interests of the individual), social (arising from the common conditions of the social life) and public (specifically the interests of the state). These interests are made visible to law-makers in the claims brought before the courts. Thus, orderly social engineering through law requires that such interests be balanced in a rational and consistent manner.

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34 *See generally* IV CONSTITUENT ASSEMBLY DEBATES (July 29, 1947).

35 THE FRAMING OF INDIA'S CONSTITUTION: SELECT DOCUMENTS 587.

36 *Id.*

37 ROGER COTTERRELL, THE SOCIOLOGY OF LAW: AN INTRODUCTION (2nd ed., 1992).

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Accordingly, in an attempt to minimize interference with the High Court's Writ Jurisdiction under Article 226, and yet for solving this problem and to promote uniformity, given below are certain recommendations tendered by the authors, which they believe will help furthering rationality and consistency:

1. All the High Courts shall deposit with the Supreme Court Registry bi-annually, a list of central laws declared unconstitutional within their jurisdiction.

2. A compiled version of all these lists shall then be dispatched by the Supreme Court Registry to the respective Registries of all other High Courts, again bi-annually.

3. The High Courts shall take note of these lists when dealing with matters of constitutional challenges against central laws, and in case there has been a law which has been declared unconstitutional on a previous occasion by another High Court, that High Court shall promptly refer the case at hand to the Supreme Court, which in turn shall lay down the law to be followed on the matter thereon.

The authors concede that these recommendations, if implemented, may add to the prevailing backlog of cases in the Supreme Court, which exercises varied jurisdictions of original, appellate and advisory nature. It is in this context that one may turn to the recommendations of the 229th Law Commission Report.[38] This Report suggested that the Supreme Court may be divided into benches with a Constitution bench at Delhi and four cassation benches spread throughout the country, the authority to do so being derived from Article 130[39] of the Constitution of India. The authors propose that

[38] Law Commission Of India, Two Hundred and Twenty Ninth Report on Need for division of the Supreme Court Into a Constitution Bench at Delhi and Cassation Benches in Four Regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai (2009).

[39] *See* Const., *supra* note 11,art. 130 (The article states that: *Seat of Supreme Court – The*

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once such a division takes place, then a Constitution Bench so created shall deal with cases arising from the model suggested by the authors. Although this might seem to be far-fetched, a similar question had been posed to Dr. B.R. Ambedkar during the debates in the Constituent Assembly.[40] When asked whether it will be open to the Supreme Court to have a circuit court anywhere else in the country, Dr. Ambedkar had replied, "*Yes, certainly. A circuit court is only a bench of the Supreme Court*".[41] Thus, setting up of cassation benches and a constitution bench of the Supreme Court is not completely alien to Indian Constitutional jurisprudence.

A mechanism which is a symbiotic outcome of the recommendations of the 229th Law Commission Report and the model as suggested by the authors should be able to arrive at a conclusive solution to the confusion surrounding High Court decisions on constitutionality of Central laws. Law promotes justice, but justice has many meanings and it often remains undefined. The proposed solution will provide some much needed consistency to the manner in which laws governing our society are interpreted and evolved by the higher judiciary to propagate the idea of justice within the constitutional mandate.

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*Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint*).

40 VIII CONSTITUENT ASSEMBLY DEBATES 383 (May 27, 1949).

41 *Id.*

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