

# LEGALFOXES LAW TIMES

## Thirtieth Amendment of the Indian Constitution (1972)

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*Abstract:*

The Indian Constitution was drafted under Dr Bhimrao Ambedkar's direction. The Federal Court received the authority to hear appeals from the Privy Council in civil disputes in 1949. Giving the parties an opportunity to appeal to the Supreme Court in civil matters under Article 133 By allowing matters to be decided by a single judge, the High Court essentially denies the litigant's right to appeal. It defeats the clear goal stated in Article 133 of the Indian Constitution. India's High Court effectively denies the litigant's ability to appeal. Only when a legal issue of substance emerges may an appeal be brought before the Supreme Court. The power of the Privy Council has been removed, and India now has a Supreme Court instead. With the doctrinal research on different constitutional papers, the value test was changed since it is not an accurate indicator of an appeals right. Misuse might result in an excess of legislative or executive power, which could destroy our democracy. The Supreme Court's workload was lightened by amending Article 133 of the Constitution, but it also granted them the power to hear cases involving important legal issues.

*Keywords:*

Article 133, Indian Constitution, Civil Appeal, Supreme Court, High Court.

*Introduction:*

Under the guidance of Dr. Bhimrao Ambedkar, the Indian Constitution took 2 years, 11 months and 18 days for its compilation<sup>1</sup>. The framers of our Constitution have considered other countries' Constitutions for the selection of valuable features with the necessary modifications that will fit our country. The Indian Constitution has been working satisfactorily as a testimony to its quality and utility. The Constitution is the longest non-fictional document outlining the principles that will govern India. This constitution will provide certain guidelines for the functioning of the country and also provide certain precedents according to which the States and other existing organisations have to be governed.

The Indian Constitution, which is thought to be the longest written Constitution, has 444 Articles divided into 22 Parts and 12 Schedules. It is considered the supreme law of the land. The Constitution has experienced 105 revisions as of the date of its enforcement for retrospective effects on the operation of the State.

*Thirtieth Amendment, 1972 (History and Law commission report):*

The Federal Court received the bulk of the Privy Council's legacy on the Supreme Court's appeal power in civil cases first. The establishment of the British system of courts in India gave a natural provision for appeal to this Privy Council. The enlargement of the civil appellate jurisdiction to the Federal Court was in 1948 by a Central Act<sup>2</sup>. According to the statement, the Act transferred to the Federal Court the civil appellate power formerly held by the Privy Council as well as the Privy Council's retained authority to hear appeal from the Federal Court. This was later abolished<sup>3</sup> in 1949. With a similar intention, The party has the option to use Article 133's right to appeal a civil case to the Supreme Court. No indication has been made of how the litigant's eligibility to go to the Supreme Court will be gained for him, much alone how those prerequisites would be met. The right will not be accessible if the High Court's sole judge

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<sup>1</sup> MP Jain, "Indian Constitution." *Lexis Nexis*, Fifth Edition

<sup>2</sup> The Federal Court (Enlargement of Jurisdiction) Act, 1948.

<sup>3</sup> The Abolition of Privy Council Jurisdiction Act, 1949.

decides the issue; else, the rights are accessible. According to the Indian Constitution, any regulations that the High Court may issue must be written in a way that they really carry out their intended purpose rather than defeating it.<sup>4</sup> While the High Court's decision to allow cases to be resolved by a single judicial officer would effectively deprive the litigant's right to appeal, undermining the obvious objective expressed by the article's provisions.<sup>5</sup>

When considering the reformation of judicial administration, the Law Commission briefly reviewed the issue of the Supreme Court's civil appellate authority. According to the Judicial Advisory Board, "both proper and essential and guarded and influenced as at present, they are legitimate in principle and in practice."<sup>6</sup> The two appeal rights—the privilege of first persuading the High Court and the additional right of decision with While the High Court's decision to allow cases to be resolved by a single judicial officer would effectively deprive the litigant's right to appeal, undermining the obvious objective expressed by the article's provisions. The Privy Council's authority has been abolished, and India now has a Supreme Court, eliminating the enormous suffering and high costs associated with appeals of this nature in England. Therefore, Article 133 cannot be used to limit the initial appeal to the High Court or the attempts to appeal to the Supreme Court.

In *Amarjeet Kaur v. Pritam Singh*<sup>7</sup>, the Supreme Court decided that when an appeal against a judgement was pending, the Court of Appeal had custody of the entire case and it once again came before the court, even if the judgement was still treated as final for purposes of execution. The court of appeal will therefore have all the authority and carry out, as closely as possible, all the obligations placed on and granted to the original jurisdiction court. It is well established law that the court may take cognizance of a cognizable change in law and tailor the remedy on the grounds of the right transformed under the amended legislation where the appeal was therefore ongoing in the Supreme Court and the original procedures were still ongoing.

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<sup>4</sup> *Salubai Ramchandra vs. Chandu Sadhu* on 17 September, 1964, (1965) 67 BOMLR 69

<sup>5</sup> Patra, Atul Chandra. "LANDMARKS IN THE CONSTITUTIONAL HISTORY OF INDIA." *Journal of the Indian Law Institute*, vol. 5, no. 1, 1963, pp. 81–131. *JSTOR*

<sup>6</sup> Patra, Atul Chandra. "LANDMARKS IN THE CONSTITUTIONAL HISTORY OF INDIA." *Journal of the Indian Law Institute*, vol. 5, no. 1, 1963, pp. 81–131. *JSTOR*

<sup>7</sup> *Pritam Singh v. Amarjeet Kaur* (AIR 1974 SC 206)

The Thirtieth Constitutional Amendment in 1972, made changes to Article 133 of the Constitution. This amendment saw changes in the foundation of an appeal from the value criteria to a significant legal issue in civil cases before the Supreme Court of India. Revisions to the article include:

*133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.*

*(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A-*

*(a) that the case involves a substantial question of law of general importance; and*

*(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.*

*(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.*

*(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.<sup>8</sup>*

If the subject matter of the dispute had a value of Rs. 20,000 or more, the initial form had the right to appeal the High Court's ruling to the Supreme Court. Through this amendment, an appeal may be laid to the Supreme Court, *inter alia*, with regard to the certificate given by the High Court only when a substantive question of law arises.<sup>9</sup> This change was introduced because the valuation test is not a true yardstick for the right to appeal to the Supreme Court. The Supreme Court used to value the cases for civil appeal on the basis of the valuation of the civil dispute, which was very difficult to analyse because each dispute had a different valuation and the burden was on them (the Supreme Court) to evaluate such cases. To ease this issue, the Law Commission of India addressed it through this solution: the Supreme Court would address the

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<sup>8</sup> The Constitution Of India 1949

<sup>9</sup> MP Jain, "Indian Constitution." *Lexis Nexis*, Fifth Edition

appeal of civil disputes on the issue of significant law question that needed to be addressed for a larger cause.<sup>10</sup> The Law Commission of India for this issue advised that the Constitution clauses (a) and (b) in Article 133(1) be removed and to allow the Supreme Court to address the same only if the High Court acknowledged that the lawsuit in question had a significant legal issue in the public interest and in the view only when the High Court needed the Supreme Court to address same. With this change, the Supreme Court would receive fewer appeals that lack any substance and are only submitted because the value criteria are met. This is what the Amendment aimed to accomplish.<sup>11</sup>

Constitutional design is predicated on the notion that organizations have predictable outcomes, but empirical confirmation of these anticipated outcomes has not received much attention in contemporary political science.<sup>12</sup> Texts of Indian legal history often appear not to have availed themselves of the original sources of law,<sup>13</sup> this was made because the Constitution of India has principles that are collected and modified from different existing written laws in foreign countries. After this amendment, an appeal to the Supreme Court under Article 133 was made in *P.K. Dave vs. People's Union of Civil Liberties*<sup>14</sup>. As part of judicial discipline, it was ruled that the High Court should refrain from using profanity when critiquing another person's actions, especially if that individual is not in front of the court. This appeal was considered by the Supreme Court only because of the substantial question with regard to the procedure of law made with regard to the High Court judgment.<sup>15</sup> The court is debating whether a learned single judge's order declining to excuse the appellant's tardiness in submitting an application under Section 34 of the Arbitration And conciliation act, 1996, was deemed an appealable order under

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<sup>10</sup> J. ML Singhal, Suhaas R Joshi. "Manual on the Constitution of India." Lexis Nexis, vol. 3, Article 29 to 213.

<sup>11</sup> MP Jain, "Indian Constitution." *Lexis Nexis*, Fifth Edition

<sup>12</sup> Lutz, Donald S. "Toward a Theory of Constitutional Amendment." *The American Political Science Review*, vol. 88, no. 2, 1994, pp. 355–70. JSTOR

<sup>13</sup> Patra, Atul Chandra. "LANDMARKS IN THE CONSTITUTIONAL HISTORY OF INDIA." *Journal of the Indian Law Institute*, vol. 5, no. 1, 1963, pp. 81–131. JSTOR

<sup>14</sup> *P.K. Dave v. People's Union of Civil Liberties*, AIR 1996 SC 2166: (1966) Supp 2 SCR 770: 1996 (4) SCALE 652

<sup>15</sup> J. ML Singhal, Suhaas R Joshi. "Manual on the Constitution of India." Lexis Nexis, vol. 3, Article 29 to 213.

Section 37(1)(c) of the same Act after it resulted from a registration certificate under Article 133 r/w Article 134-A of the Constitution by Delhi High Court.<sup>16</sup>

*Conclusion:*

We must understand that this democracy's foundation is the constitution. Although it was innovative of our founding fathers to include clauses allowing for amendments, it is crucial that these clauses not be abused. Excessive legislative or democratic authority might come from misuse. Although it was innovative of our founding fathers to include clauses allowing for amendments, it is crucial that these clauses not be abused. Misuse might lead to an overabundance of legislative or executive authority, which could rip our democracy apart. Amendments are made to the Constitution itself to enable the functioning of its principles for society. The amendment of Article 133 of the Constitution was introduced to reduce the burden on the Supreme Court but also give them the authority to address the cases with substantive questions of law, which will help in the better functioning of the courts in the country. Both the High Court and the Supreme Court are given the power to decide questions of law, with the High Court able to address issues to the Supreme Court also. This change will be able to address the big picture in the future.<sup>17</sup>

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<sup>16</sup> *Chintels India Ltd. V. Bhayana Builders Pvt. Ltd.*, 2021 SCC OnLine SC 80

<sup>17</sup> ALBERT, RICHARD. "Constitutional Amendment by Constitutional Desuetude." *The American Journal of Comparative Law*, vol. 62, no. 3, 2014, pp. 641–86. *JSTOR*

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