

## Judicial Comity & Strength of SC Bench

### What is the issue?

*The Supreme Court of India has held that a judgment delivered by a larger Bench will prevail over the decision of a smaller Bench, irrespective of the number of judges constituting the majority in the larger Bench.*

### What is the general principle?

- It is well-known in law that the decision of a superior court will always be binding on a lower court and that the decision of a larger Bench will always hold force over a smaller Bench of the same court.
- This canon of law seeks to ensure that there is stability and consistency in the decisions of the court.
- This principle stems from the assumption that a Bench with more strength is more likely to arrive at a correct decision.

### What influence does the Bench strength have?

- A vast majority of cases before the Supreme Court is heard and decided by a Bench of two judges (Division Bench) or three (full Bench).
- It is a settled position that a Bench of equal strength cannot overrule or reconsider a decision of a coordinate Bench; it can, at best, doubt the correctness of it.
- Whenever there is doubt or conflict between decisions of co-equal Benches, it is referred to the Chief Justice of India and this is where larger Benches are constituted.
- The larger Benches examine the question or correctness of the decision and the majority opinion expressed by them becomes the verdict, which is binding on the lower Benches.
- An anomaly here is that **a majority decision is treated as the ruling of the entire Bench**, including the dissenting judges, that examined the question. This is where the problem originates.
- If the correctness of a law laid down unanimously by a 5-judge Bench is doubted, could it be overruled by 4 judges of a 7-judge Bench?
- Could it be said that the four judges of the larger Bench arrived at the correct decision and not the five judges of the smaller Bench?

### What did the Supreme Court say?

- The Supreme Court held that if the number of judges is to have salience and not Bench strength, then every decision of a larger bench could be doubted and overruled on the ground of plurality of opinions.
- The observation holds some rationale, and this is the underlying *raison d'être* for the Rule of Precedents.

- However, a blanket adherence to this Doctrine of Precedents as enunciated by the Supreme Court can have serious consequences.
- This is because the correctness of a decision would become a game of numbers instead of reasons.
- The Supreme Court justified the binding nature of the larger Bench's view saying that this view was arrived at after deliberation by more judges.
- But just because a decision was considered by more judges does not mean that it is correct and it certainly would not be perceived to be correct.
- If a larger Bench arrived at a decision by a slim majority, its correctness would be all the more doubted on the presumption that had the Bench comprised different judges, the outcome might have been different.
- This is an anomaly as it is natural a decision by a larger majority is perceived to be correct over a decision considered by a larger number.

### **How is this anomaly considered by other nations?**

- Such an anomaly is avoided in the U.S. and in South Africa owing to the fact that any reconsideration of a precedent is a matter deliberated by the entire sitting strength of the court as opposed to division(s).
- While both the U.K. and Australia follow a system similar to that of India, the entire act of 'reconsidering a precedent' is viewed as a delicate and grave judicial responsibility in these countries.
- Rarely do precedents get re-decided more than once, unlike in India, in order to give quietus to litigation and in the limited occasion where a decision is reopened, the only requirement is that it would be examined by a Bench of all 'available judges'.

### **What are the recommendations made?**

- If such conflicts are to be avoided by the Supreme Court, certain changes are required in terms of how larger Benches are constituted.
- It is recommended that the term 'larger Bench' be understood not in the strict sense of being merely greater in strength than the lower Bench.
- Instead, there should be an endeavour to have a quorum with a break-even or a greater majority than the lower Bench.
- Thus, if a five-judge unanimous decision is referred to a larger Bench, it should be considered by a nine-judge Bench rather than seven, so that it would in any case be decided by a majority of at least five judges.
- After all, correctness of a judicial decision has more to it than just the number of judges deliberating the vexed question of law.
- Otherwise, a lower number of judges holding a majority opinion could overrule a higher number of judges holding a majority opinion based on the sheer fact that the lower number of majority opinion judges was part of a larger bench.
- By permitting this possibility, the Supreme Court has opened up the likelihood of its decisions being criticised on the grounds of having a 'narrow majority' in comparison to its previous unanimous decisions.

### **Reference**

1. [The Hindu | Judicial comity over arithmetic](#)

