

## **Supreme Court's Power to Overrule itself**

### **What is the issue?**

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- A 5-judge Supreme Court Bench led by the Chief Justice is now slated to hear the conflicting judgments of two previous three member SC benches.

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- This new episode was triggered by cases regarding land acquisition, and has brought to highlight, a pressing constitutional issues.

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### **How did the current issue come up?**

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- Three separate cases involving compensations to be paid for land acquired for various activities came up to the Supreme Court at various times.

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- Firstly, in January 2014, a three-judge Bench unanimously held that “paid” would mean compensation offered or rendered, and deposited in court.

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- In February 2018, another 3 judge bench held that once compensation had been unconditionally offered and refused, it would be considered “paid”.

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- In another subsequent case recently heard by a 3 judge bench - the bench was surprised to know that one 3 judge bench had overruled another previously.

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- As this is against judicial convention, the case has now been referred to the Chief justice of India to constitute a larger bench to resolve this issue.

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- The matter is now slated to be heard by a 5 judge constitutional bench that would include the CJI.

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## Can the Supreme Court rule against its own decisions?

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- The Supreme Court has the power to overrule its own decisions, but it has affirmed that this power will be used sparingly and only in compelling cases.

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- But it has been fairly established that a Bench of the Supreme Court can't overrule a previous judgment delivered by a bench of equal or larger size.

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- In such a situation, in case of an inability to agree, the only option available is to refer the matter to the CJI, requesting that a larger Bench to hear the same.

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- Notably, this has to be a mere reference to the CJI and criticism or doubts about the correctness of the previous judgment (of a larger bench) can't be aired.

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- Notably, this is merely a convention followed for ensuring certainty in law and there is no explicit constitutional provision for the same.

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- It is to be noted that, since the Supreme Court has 11 to 13 Benches hearing cases concurrently in different contexts, conflicting opinions are only natural.

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## Why does the Supreme Court have benches of different sizes?

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- It was proposed in the constituent assembly that India's Supreme Court should exercise its jurisdiction as a full court, and not as separate Benches.

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- But this was not accepted as it might not help in the optimal use of judicial time, may lead to a slower judicial process and backlogs.

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- Initially, the Supreme Court was envisaged as having a Chief Justice and seven other judges, with Parliament having the power to increase this number.

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- **Evolution** - In the early years, all judges sat together, but as the work of the court increased, Parliament increased the number of judges.

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- From 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978, 26 in 1986 and 31 in 2008 (the current strength), the number of judges have gone up with time.  
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- To deal with more cases, judges started sitting in smaller Benches of two or three, and larger Benches of five or more were constituted only for some cases.  
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- Notably, a matter can be referred to a larger Bench only by a judicial order.  
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- **Special benches** - Any case involving a substantial question of law (like interpreting the Constitution) must be heard by a Bench of at least 5 judges.  
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- While it is a norm to constitute such a bench, there have however been constitutional cases that were decided by smaller benches.  
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- Chief Justice of India is the head of the judiciary, and is vested with the administrative responsibility to constitute the benches.  
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- While all judges including the CJI are equal in their judicial powers, it is a norm to use the experienced senior judges for Constitutional Benches.  
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- **Other Countries** - In the US, UK, Australia, Canada and South Africa, in most cases, all judges of the Supreme Court sit together in large Benches.  
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- Notably, Supreme Courts of the above mentioned countries usually have seven to nine judges only and their jurisdictions are also very selective.  
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- Considering the small number of judges, a judgment of a bench over 5 members would mostly imply the majority opinion of the entire court.  
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**Source: The Indian Express**

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