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RISE IN THE NUMBER OF CONSTITUTION BENCH JUDGMENTS IN 2023: A CAUSE TO CELEBRATE?

AUTHORED BY - ALIND GUPTA
& DR TANVEER KAUR

Abstract

The year 2023 saw Supreme Court deliver 18 Constitution Bench judgments. This is the highest number of Constitution Bench disposals by the Supreme Court in the past few years. The increased Constitutional Bench disposal rate attains importance in light of the well documented studies on the Supreme Court flagging its difficulty in setting up Constitution Benches to discharge its functions. Viewed in this context, while it is crucial to recognize the Supreme Court's return to its role as the interpreter of the Constitution, it is equally important to understand the same may not be a lasting cure for systemic pathologies afflicting the apex court.

The Supreme Court of India delivered 18 Constitution Bench judgments in 2023 (including one judgment by a 7-judge bench).¹ These judgments dealt with variety of constitutional issues like same sex marriage, abrogation of Article 370, demonetisation, power of the Bar Council of India, appointment of the election commissioners, Delhi Government vs L.G. tussle, etc. This is a welcome development in light of the Supreme Court's struggles to stick to its role as the interpreter of the Constitution.

Studies on the Supreme Court have documented that the number of Constitution benches have fallen since independence.² Just after the independence, around 13% of the decisions of the Supreme Court emerged from 5 judge or larger benches.³ However, this number has reduced remarkably as the backlog of cases increased. In 2005-09, only 0.12% decisions of the Supreme

¹ Padmakshi Sharma, 'Supreme Court Constitution Bench Judgments & Hearings Of 2023' (LiveLaw, December 2023) <https://www.livelaw.in/top-stories/supreme-court-constitution-bench-judgments-hearings-of-2023-245254> accessed 1 January 2023.

² Nick Robinson and ors, 'Interpreting the Constitution: Supreme Court Constitution Benches since Independence' (2011) EPW 46(9) <http://ssrn.com/abstract=1883272> accessed 8 September 2022; Nick Robinson, 'A Quantitative Analysis of the Indian Supreme Court's Workload' (2013) 10(3) Journal of Empirical Legal Studies < <https://heinonline.org/HOL/P?h=hein.journals/emplest10&i=584>> accessed 25 May 2023.

³ *ibid*

Court came from Constitution Benches.⁴This has, scholars have argued, far reaching consequences.

Article 145 (3) stipulates that ‘any case involving a substantial question of law as to the interpretation of...[the] Constitution’ has to be necessarily decided by a minimum of 5 judges.⁵ The lack of such benches owing to the Supreme Court’s workload has meant that the many critical cases of perceived Constitutional importance have been decided by two or three judge benches.⁶ The over-reliance of smaller benches to discharge its functions has exposed the judicial system to various ‘systemic pathologies’ which include: poor reasoning, dilution of stare decisis, delay in deciding constitutionally salient matters.⁷

In order to unshackle the Supreme Court, many have suggested setting up an appellate division in the judicial hierarchy to ensure that the focus of the Supreme Court remains on constitutionally salient matters.⁸ Data from 2023 is remarkable within this context as it shows Supreme Court’s inclination to resolve substantial questions around interpretation of the Constitution using Constitution Bench. In recent years, that has been a rare sight. The year 2022 saw four judgments of the Constitution Bench. This number was three in 2021 and eleven in 2020.

In CJI Ramana’s 17-month tenure, ‘Constitution Bench hearings came to a complete standstill’.⁹ CJI Lalit in his short tenure bucked the trend and promised to ‘have at least one Constitution Bench functioning throughout the year’.¹⁰Besides echoing similar sentiments,¹¹ the current CJI

⁴ ibid

⁵ Constitution of India 1950, Art 145.

⁶ Robinson 2011 (n2).

⁷ Tarunabh Khaitan, ‘The Indian Supreme Court’s identity crisis: a constitutional court or a court of appeals?’ (2020) 4(1) Indian Law Review < <https://www.tandfonline.com/doi/full/10.1080/24730580.2020.1730543>> accessed 25 May 2023.

⁸ Alok Prasanna Kumar, Faiza Rahman, Ameen Jauhar, ‘The Supreme Court of India’s Burgeoning Backlog Problem and Regional Disparities in Access to the Supreme Court’ (Consultative Paper, Vidhi Centre for Legal Policy, October 2015) < <https://vidhilegalpolicy.in/wp-content/uploads/2019/05/sBurgeoningBacklogProblem.pdf>> accessed 7 August 2022.

⁹ R Sai Spandana, ‘In 5 Months, the SC Conducted a Remarkable 55 CB Hearings’ (Supreme Court Observer, May 2023) < <https://www.scobserver.in/journal/constitution-bench-cases-and-judgements-2023-jan-may/>> accessed 1 January 2024.

¹⁰ Krishnadas Rajgopal, ‘There will be at least one Constitution Bench in Supreme Court throughout the year: CJI-designate U.U. Lalit’ (The Hindu, August 2022) < <https://www.thehindu.com/news/national/there-will-be-at-least-one-constitution-bench-in-supreme-court-throughout-the-year-cji-designate-uu-lalit/article65814413.ece>> accessed 1 January 2024.

¹¹ Advay Vora and Krithiha V, ‘Constitution Benches to become a “permanent feature” of SC: Chief Justice D.Y. Chandrachud’ (Supreme Court Observer, September 2023) < <https://www.scobserver.in/journal/constitution-benches-to-become-a-permanent-feature-of-sc-chief-justice-d-y-chandrachud/>> accessed 2 January 2024.

D.Y. Chandrachud seems to have taken the task set by his predecessor seriously till now. In 2023, the Supreme Court gave as many Constitution Bench judgments as it did in the years 2020, 2021 and 2022 combined. While it is crucial to recognize the Supreme Court's return to its role as the interpreter of the Constitution, it is equally important to understand the same may not be a lasting cure for systemic pathologies afflicting the apex court.

As indicated earlier, the Supreme Court's increased use of Constitution Bench to decide cases is primarily a result of the choices by the incumbent CJI. This means that while the current trend may continue till November 2024 (till the retirement of J. Chandrachud), the same may not extend once another CJI takes over. In other words, the solution is not sustainable. That is why many scholars who have highlighted the Supreme Court's inability to fulfill its constitutional role advocated for a systemic solution (like the National Courts of Appeal) that bypasses a CJI-centric route.¹²

Another aspect which needs due attention is that while five judge benches have been liberally employed in 2023 to decide cases, the number of larger benches have almost remained stagnant. As noted earlier, the Supreme Court decided only one case by a seven-judge bench. Based on data from July 2023, there were 6 matters pending before seven judge bench and 7 before nine judge bench.¹³ These include issues like Sabarimala review petitions, constitutionality of Part XIV of the Finance Act, 2017, definition of 'industry' under the Industrial Disputes Act, 1947, etc. Higher judge benches ensure not just greater clarity of law for the lower Court but they also bind the smaller benches of the Supreme Court itself.¹⁴ Moreover, scholars have noted that 'a larger bench is more likely to be sensitive to existing precedents, and therefore more likely to give judgements that are at least legally more palatable'.¹⁵ Amidst concerns about the dilution of stare decisis, use of larger benches to decide appropriate cases is critical.

Lastly and most importantly, while procedural aspects of the Supreme Court's functioning deserve scrutiny, it is ultimately the decisions that alter the rights and liabilities of the parties. On that front, the judgments left much to be desired. In other words:

¹² Khaitan (n7).

¹³ R Sai Spandana, 'Where are the Seven and Nine Judge Constitution Benches?' (Supreme Court Observer, July 2023) < <https://www.scobserver.in/journal/where-are-the-seven-and-nine-judge-constitution-benches/>> accessed 1 January 2024.

¹⁴ *ibid.*

¹⁵ Khaitan (n7).

“...petitioners in some of these heavily-debated cases, who had accused the government of attacking the principles of federalism; of implementing policy causing widespread financial distress; and had sought protection of fundamental rights of equality and dignity of marriage, found no relief before the Constitution Benches of the court.”¹⁶

In multiple matters (appointment of election commissioners, Delhi Government vs. L.G.), the Central Government ‘sidestep[ed] Constitution Bench judgments’ effectively negating at least their immediate effect.¹⁷ In other matters (Article 370 abrogation), the amount of time that the Supreme Court took to dispose of the case via a Constitution Bench virtually resulted ‘in the creation of a *fait accompli* “on the ground” that eventually becomes irreversible in fact’.¹⁸



¹⁶ Krishnadas Rajagopal, ‘Supreme Court in 2023: Constitution Benches galore, but judgments belie petitioners’ hopes’ (The Hindu, December 2023) < <https://www.thehindu.com/news/national/constitution-benches-galore-in-sc-but-judgments-belie-petitioners-hopes/article67693019.ece>> accessed 2 January 2024.

¹⁷ *ibid.*

¹⁸ Gautam Bhatia, ‘The Sound of Silence: The Legacy of Chief Justice N.V. Ramana’ (The Wire, August 2022) < <https://thewire.in/law/cji-ramana-legacy>> accessed 2 January 2024.