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The Role of Constitutional Bench in the Judicial Framework

“In a constitutional democracy like ours, the will of the people is represented through established institutions and that there is no question of a referendum.”

-Chief Justice of India (CJI) D Y Chandrachud

Constitutional bench is the bench of the hon’ble Supreme Court that standardly consists of five judges and sometimes more than five judges. These are temporary benches that are set up to resolve legal issues. According to Article 145(3) of the Indian Constitution, 1950, to decide any substantial question of law regarding interpretation of this constitution or for the purpose of any reference under Article 143 (which talks about the consultation of the Supreme Court expeditiously seeks by the President of India on a question of law or fact which is of public importance) the minimum number of judges required shall be five. The hon’ble Chief Justice of India holds the power to constitute the constitutional bench and refer the cases and legal issues to it.

Constitutional Bench: Purpose & Aim

- The following are the reasons and the aim behind the constitution of the constitutional bench:
- To decide substantial question of law as to interpretation of the constitution.
- When the President seeks the Supreme Court’s opinion on a law or fact.
- To decide a conflicting judgment delivered by a two – judge bench and later by a three – judge bench on a same legal issue.
- To decide a conflicting judgment delivered by a three – judge bench and later by a three – judge bench on a same issue.
- For speedy disposal of legal issues.
- For effective and immediate identification and hearing of cases with the upmost importance.

How the constitutional bench has impacted the society at large?

The following are the some historical and impactful constitutional bench judgments:

Thirteen – Judge Bench:

The historical, landmark, and highest bench judgment i.e. *Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr.*, 1973, also known as the Kesavananda Bharati judgement, where the Supreme Court preserved the Indian Constitution by limiting the power of the government to amend the constitution and established the concept of basic structure. This judicial activism came out as a savior of Indian democracy and spirit of the constitution.

Eleven – Judge Bench:

The judgments that challenged basic features of the constitution and led to Kesavananda Bharati judgement are *I.C. Golaknath and Ors. vs State of Punjab and Anrs.*, 1967, and *Rustom Cavasjee Cooper v. Union of India* , 1970.

Another significant milestone with 11-judge bench was marked in *T.M.A. Pai Foundation & ORS. vs State of Karnataka & ORS.*, 2002 which shaped the educational landscape by securing autonomy, rights and freedom of functioning of educational institutions without undue government intervention.

Nine – Judge Bench:

The following 9–judge bench judgments embraced the different aspects of the society that are *Indra Sawhney & Ors. v. Union of India*, 1992, where the court strikes a fine balance between the society and rights of the backward classes. *S. R. Bommai v. Union of India*, 1994, this case had huge impact on Centre-State Relations by questioning law relating to Proclamation of President's Rule and dissolution of Legislative assemblies as per Article 356 of the Constitution of India. *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors.*, 2017, the Right to Privacy verdict , the court held that the right to privacy is protected as a fundamental right under Articles 14, 19 and 21 of the Indian Constitution.

Eight – Judge Bench:

The 8-judge bench held in *M.P. Sharma vs Satish Chandra*, 1954, that the process of search and seizure is a reasonable restriction of the freedoms under the Constitution which could not be held unconstitutional.

Seven – Judge Bench:

One of the landmark judgment delivered by a 7-judge bench is *L. Chandrakumar v. Union of India*, 1997, by allowing tribunals to function supplementary and parties to challenge decisions of tribunals before a division

bench of the high court. It is a positive resolution as judicial review is basic structure of our constitution as it provides speedy trial to common people.

Six – Judge Bench:

The first ever constitutional bench judgment is *A. K. Gopalan vs State of Madrs, 1950*, where the court sets a precedent for the protection of rights of citizens under preventive detention laws. In the case of *Kharak Singh vs State of Uttar Pradesh, 1950*, a 6-judge bench invoked the right to privacy to challenge the surveillance of an accused person by the police.

Five – Judge Bench:

The 5-judge bench in the past years brought revolutionary changes in the society by exploring and enhancing different aspects of law such as: by upholding the Constitutional validity of the 17th Constitutional Amendment through the case of *Sajjan Singh vs State of Rajasthan, 1965*, by not including Right to Die under Right to Life as per Article 21 of the Indian Constitution through the case of *Gian Kaur vs State of Punjab, 1996*, by issuing important guidelines regarding first information report of an accused in the case of *Lalita Kumari vs Government of Uttar Pradesh, 2014*, by upholding Section 377 of the Indian Penal Code, 1860 is constitutionally valid and that homosexuality is a criminal offense in India in the case of *Naz foundation trust vs Suresh kumar koushal, 2016*, by challenging constitutional validity of the Muslim practice of Triple Talaq through the case of *Shayara bano vs UOI, 2017*, by not limiting the time while granting Anticipatory Bail in the case of *Sushila Aggarwal vs NCT of Delhi, 2020* and many more.

Is Constitutional Bench effective or not in delivering Justice?

On comments of Advocate Mathews J. Nedumpara for calling constitution bench useless and irrelevant, the Chief Justice of India Dr. Justice D. Y. Chandrachud expressed his intentions to make the Constitution Bench a “permanent feature” of the Supreme Court to constitute nine-judge benches to look into matters of public importance.¹ CJI himself being a part of 21 constitution benches which is the highest in the country while citing the example of the Light Motor Vehicle Driving License case which concerned the livelihood of hundreds and

¹ SCO, <https://www.scobserver.in/journal/constitution-benches-to-become-a-permanent-feature-of-sc-chief-justice-d-y-chandrachud/> (last visited April 6, 2024)

thousands of drivers across the country advised Nedumpara to “disabuse” his mind from the notion that the apex court only deals with “fancy constitutional matters.”

Working of Supreme Court’s Constitution Bench:

During 1950-59 there were disposal of 440 cases by the constitution benches and during 1960-69 it is 956. In latest years, this rate of disposal went down drastically with these benches adjudicating only 71 cases during 2010-2019 and 19 during 2020-2023. Due to the advent of Covid-19 pandemic², there were 11 Constitution Bench judgments/orders of the Supreme Court in 2020. According to the National Judicial Data Grid³, there are 21 seven-judge bench and 135 nine-judge bench matters currently pending. In which the Supreme Court had 69,766 cases pending before it for adjudication. But what alarming is the pendency before its constitution benches. The oldest case before a five-judge constitution bench has been pending for 31 years now.⁴ But, the year 2023 has shown that the apex court is still awake and focusing on deciding matters of public importance. As CJI stated that in year 2023, the Court has been hearing Constitution Bench cases with a newfound alacrity. In the first half of 2023 alone, Constitution Benches assembled 55 times and delivered 13 judgements—easily among the most active they have been in a decade. As of July 2023, the pendency of five-judge cases, which was 43 at the beginning of the year, was down to 33. The landmark constitution bench judgment since past year includes State (NCT of Delhi) v. Union of India, 2023, consists of coram Justices Dr D.Y. Chandrachud, M.R. Shah, Krishna Murari, Hima Kohli and P.S. Narasimha, which decided control over “services” in the National Capital Territory of Delhi (NCTD), the Government of NCTD or the Lieutenant Governor (LG) acting on behalf of the Union Government, Subhash Desai v. Governor of Maharashtra, 2023 and Association for Democratic Reforms v Union of India, 2024. In the end of 2023 and beginning of 2024, the hearing of judgments in the marriage equality case, Article 370 challenge, Electoral Bond challenge leading to a further drop in the number of pending cases.

Conclusion:

²LiveLaw, <https://www.livelaw.in/top-stories/supreme-court-constitution-bench-judgments-2020-167654>(last visited April 6, 2024)

³ National Judicial Data Grid, <https://njdg.ecourts.gov.in/senjdg/>(last visited April 7, 2024)

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TimesofIndia, http://timesofindia.indiatimes.com/articleshow/102255570.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst(last visited April 7, 2024)

The jurisprudence behind the constitutional bench is to work expeditiously in disposing of cases and to provide reasonableness, equity, non arbitrariness and fair nature of justice to every individual of the country. High rate of pendency of cases is mocking this constitutional and jurisprudential essence. But considering the active role of constitution bench from the last year and as Chief Justice of India intended for a permanent Constitution Bench, it can be concluded that this is the bench which had and will shape the India with focused and intensive work of hearings over a fixed time period.