Concerns with Powers of Chief Justice

What is the issue?

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In India there are controversies over the power of chief justice in constitution of benches.

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What are the powers of a Chief justice?

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- **SC -**The judges of the Supreme Court and high courts are appointed by the president after consultation with the chief justice of India.
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- The chief justice of High court is appointed by the president after consultation with the chief justice of India and the governor of the state concerned.
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- The consultation with the chief justice is obligatory in the case of appointment of a judge other than chief justice.
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- Thus the advice tendered by the chief justice of India is binding on the president in the matters of appointment of the judges of the SC.
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- **HC -** For appointment of other judges the chief justice of the concerned high court is also consulted.
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What are benches?

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- In the US Supreme Court, there will be nine judges and all sit together and decide all the matters.
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- Likewise in India high courts and the SC discharge their function through

the benches.
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- In India the members of the bench is usually appointed by the chief justice of the respective court, a chief justice can also present in the bench.
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- The constitution of benches is an administrative matter and is a privilege of the chief justice as the administrative head of the court.
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- Therefore in India Chief justice is the administrative head of the respective court, but not its judicial head.
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- The justice delivered by CJ's benches and other benches have equal weight and are equally binding.
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- Both in the high courts and the SC for deciding matters involving constitutional disputes, a bench of no less than five judges should be constituted and the said bench should consist the senior-most judges.
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What are the concerns in constituting the benches?

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- **Power abuse -**The power to constitute the benches, also indirectly implies the power to shape justice and law.
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- Few incidents claims that the power of CJ to constitute benches is liable to be abused.
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- If a chief justice is so inclined, he may pack the benches by judges who will uphold a particular view.
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- **Autocracy -**A chief justice of India (CJI) used to constitute benches to uphold his views expressed as a high court judge but overruled by the SC.
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- Another CJI would instruct flexible colleagues to take particular views in the matter.
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- By this the exercise of any power which has far reaching consequences has been left in the hands of one man, which has deleterious effects for democracy.
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What measures needs to be taken?

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- The power to constitute a bench must be shared with at least the next four senior-most judges, when political and sensitive cases are decided.
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- Judges cannot be divided into senior and junior since all judges are equal, it must be understood that to sustain the confidence of the people in the judiciary, such a convention is warranted.
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- Any judgment must appear to be the judgment of the court and not of one man or hand-picked men, which needs involvement of several judges.
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Source: The Indian Express

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