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 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 likeliness 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

