

A Court Of Equals

The present controversy over the powers of the chief justice, whether of the Supreme Court (SC) or the high court, to constitute the benches of the respective courts has more than one dimension. The constitution of benches is undoubtedly an administrative matter and should ordinarily be the privilege of the chief justice as the administrative head of the court. But neither is the court an administrative institution and nor is the power to constitute the benches ordinary. The function of the court is to deliver justice, and in our country, the function of the high court and the SC is also to lay down the law for the state and the country respectively. The chief justice is the administrative head of the respective court, but not its judicial head.

Unlike in the US Supreme Court, where all its nine judges sit together and decide all the matters, India's high courts and the SC discharge their function through the benches, and whether it is the chief justice's bench or other benches, the justice delivered, and the law laid down by them, is of equal weight and equally binding. The chief justice is one among equals. The power to constitute the benches, also indirectly implies the power to shape justice and law. This is not ordinarily perceived. That is why a wise and healthy convention has been developed both in the high courts and the SC that 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.

The present controversy brings into focus the importance and far-reaching consequences of the power to constitute benches. The power is liable to be abused. If a chief justice is so inclined, he may pack the benches by judges who will uphold a particular view. The rule of law will then mean the rule of one man's view. This is not mere theory. 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. Another CJI would instruct pliable colleagues to take particular views in the matter. The exercise of any power which has far reaching consequences cannot be left in the hands of one man.

The autocratic use of power to constitute benches has deleterious effects for democracy. It may result in one man's view as the law of the land. There will be no difference left between autocracy and democracy. All the paraphernalia of democracy will be reduced to a farce. The power must be shared with at least the next four senior-most judges, when political and sensitive cases are decided.

It is true that judges cannot be divided into senior and junior since all judges are equal. But to avoid the charge of pick and choose, and to instill and sustain the confidence of the people in the judiciary, such a convention is warranted. The judgment must appear to be the judgment of the court and not of one man or hand-picked men. It must be remembered that whether it is a high court or the SC, the "court" consists of several judges. It is on account of the force of circumstances that we are forced to constitute benches and we call the decisions the decisions of the "court" and the people have to respect it as such. If even such decisions are further reduced to a one-man show, people cannot be blamed if they lose confidence in the credibility of the judiciary, which is its only asset.

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