

What is a Constitution Bench of the Supreme Court?

October 7, 2023 • vajiramandravi.com



About Constitution Bench of the Supreme Court

- Generally, **most of the cases before the SC are heard by a division bench** (2 or 3 judge members).
- If a **case is likely to have a larger national impact** or it is **likely to decide the law for good**, a **constitution bench is formed**.
- Constitution bench **gives an overarching view on a question of law** and defines a path the law will take in the future.
- **Article 145(3)** of the Constitution makes it clear. It says **“any case involving a substantial question of law as to the interpretation of the Constitution”** must be **decided by a Bench of at least five judges**.
- In India, these benches are **temporary and are dissolved once** a legal question or **issue is settled**.
- **Size:**
 - It will have **five or more judges of the SC**.
 - A **larger bench is constituted** either **depending on the importance of the issue** or if there is a **need to review the judgment** of a smaller bench.
 - For instance, a seven-judge bench is constituted if a need is felt to review the judgment of a five-judge bench.
- To date, **the largest-ever Constitution Bench was that of 13 judges in the case Kesavananda Bharati v. State of Kerala**. The Kesavananda Bharati judgment, delivered on 24 April 1973, in a historic

7:6 majority decision, propounded the basic structure doctrine of the Constitution, which holds that certain fundamental features of the Constitution cannot be amended by parliament.

Who forms the Constitution bench and when?

- The **Chief Justice of India** has the power to **set up a Constitution bench, and he is the one who refers cases to it.**
 - Currently, there are **four situations when such a bench can be formed.**
 - First, if a case involves a **“substantial question of law” related to the interpretation of the Constitution.**
 - Second, a bench can be formed **if the President seeks SC’s opinion on a law or fact.** In this case, however, the apex court’s **decision is not binding on the President**, and they can take a different point of view.
 - Third, a Constitution bench can be formed **when a two-judge bench and later a three-judge bench deliver conflicting judgements** on the same issue.
 - Lastly, it can be formed **if a three-judge bench delivers a judgement that is different from the judgement delivered by a previous three-judge bench on an issue.**
-

Q1: What is Judicial Review?

Judicial review is the power bestowed upon the judiciary by the constitution, by virtue of which the judiciary can examine legislative enactments and executive orders of the governments, be it state or central. It is the Constitution of India itself that grants such power to the judiciary in India. The right to judicial review is possessed by both the supreme courts and the high courts of the country. The courts have the power to declare any law passed by the legislature as null and void if the law goes against the constitution upon which the law cannot be imposed by the government.

Source: SC mulls having sign language interpreter during Constitution bench hearings

Source: <https://vajiramandravi.com/current-affairs/what-is-a-constitution-bench-of-the-supreme-court/>

© Vajiram & Ravi. For personal use only.