News

Seeking judicial discourse: Absence of discussion in Constitution Bench rulings

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For the majority in Aligarh Muslim University v. Naresh Agarwal and Ors, a case heard by the seven-judge Constitution Bench, Justice **DY Chandrachud** wrote one of his final rulings as Chief Justice of India in November 2024. On the surface, the AMU case appears to be an example of Constitution Benches carrying out their mandate, with numerous judges deliberating and rendering decisions.

Justice **Dipankar Datta's** dissenting opinion, however, emphasized the lack of judge consultation in decision-making, which would have been crucial in forming judicial views. In order to ensure a genuine "give and take of ideas in true democratic spirit to build up a

consensus," he emphasized the absence of a forum.

Constitution Benches' Objective

According to Article 145(3) of the Constitution, a "substantial question of law" must be decided by a bench consisting of at least five judges. According to a study by Nick Robinson and Jyotika Randhawa, between 1960 and 1964, around 134 Constitution Benches were established annually. But in the past ten years, there are now less than ten of these benches annually.

Larger bench compositions have also become less common. Twelve out of the 19 Constitution Benches are composed of five judges as of January 2025. It should come as no surprise that the Constituent Assembly did not seriously consider a maximum number of judges for the bench; Dr. BR Ambedkar believed that a "minimum" of five judges was required to examine and interpret constitutional issues.

However, because the need for authoritative pronouncements had started to be felt, smaller benches were deemed "weaker" during the parliamentary debates on the 1956 Supreme Court (Number of Judges) Act, which set an upper limit for the Court's total strength.

Adequate intra-bench communication is essential to ensuring logically-reasoned conclusions, which is necessary for a larger bench to be completely effective in guaranteeing finality. In State of Gujarat v. Gordhandas Keshavji Gandhi (1961), Justice PN Bhagwati emphasized this, pointing out that the power of a larger bench over smaller benches stems from the fact that its decision is the outcome of a rigorous process of "joint deliberations and discussions" rather than just a compilation of the individual opinions of judges.

Absence of "free and frank" conversations

Public information about the frequency (or lack thereof) of these conversations among judges is frequently unavailable. Notably, though, Justice MM Punchhi noted in the Second Judges' case (1993) that there was no forum for the judges to address the matter. Justice Punchhi, one of the nine judges on the bench, expressed surprise at the dearth of "meaningful meetings[...] striving for a unanimous decision."

Given that most Constitution Bench rulings are written by individual judges—typically the more senior members of the Bench—on behalf of themselves and their fellow judges, this

tendency is especially startling. Even while this process isn't always extended to meetings of the entire Bench, it is assumed that in these cases, the co-signing judges have gone through a rigorous internal discussion and collaboration process.

But, as Justice Datta notes in the AMU case, justices have little time for these kinds of meetings and internal discussions due to the Supreme Court's heavy workload, which also includes time spent on research and preparing decisions. This raises concerns about the capacity to guarantee frank discussion of viewpoints, which could enhance the process of making decisions.

The necessity of judicial deliberation

Judges must consult with one another and discuss each other's conclusions in order to improve the final legal interpretations and stances. In their rulings, US Supreme Court justices frequently analyze one another's viewpoints. For instance, in order to support their divergent opinions, Justices Ginsburg and Sotomayor's dissent in Masterpiece Cakeshop v. Colorado Civil Rights Commission (2018) carefully considers the logic used in the majority and concurring rulings.

Indian judges are far less likely to engage in this behavior. Numerous concurring and dissenting opinions have been produced by judgments like Kesavananda Bharati (1973) and the Justice KS Puttaswamy ruling (2017), but these do not involve substantial direct interaction with other judges. In particular, concurring opinions frequently just reiterate the majority's stances and cited sources.

Confusion results from this. For instance, in the Sabarimala case (2018), Justice Rohinton Nariman was the only judge to mention a previous concurring opinion that addressed the potential impact of social assistance and reform on "essential religious practice." But he also pointed out that a single concurring opinion could not be definitive because it had not been discussed by other judges. There is still uncertainty in the law in this field.

In conclusion

The benefit of creating larger benches is that more discussion and thought will result in more definite and consistent law and enable a more varied and sophisticated process of legal reasoning. For these Benches to actually serve their role, judges must actively participate in productive judicial discourse.

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[This paper examines the importance and operation of the Supreme Court's Constitution Benches and is the fourth in a series of the Vidhi Centre for Legal Policy's JALDI (Justice, Access, and Lowering Delays in India) initiative.]