



## Constitution Bench of Supreme Court

**For Prelims:** Chief Justice of India, Supreme Court, Article 145(3), Article 143.

**For Mains:** Constitution Bench of Supreme Court.

### Why in News?

Justice Uday Umesh Lalit, **49<sup>th</sup> Chief Justice of India (CJI)**, assured there will be at least one Constitution Bench functioning throughout the year in the **Supreme Court**.

### What is the Constitutional Bench of the Supreme Court?

#### ▪ About:

- A Constitution Bench is a bench of the Supreme Court **having five or more judges on it**.
- These benches are not a routine phenomenon.
- A vast majority of cases before the Supreme Court are heard and decided by a bench of two judges (called a Division Bench), and sometimes of three.

#### ▪ Circumstances for Constitutional Bench to Exist:

- **Article 145(3):**
  - Article 145(3) provides, “The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five.”
- **Article 143:**
  - When the **President seeks the Supreme Court’s opinion** under law under **Article 143** of the Constitution.
  - As per the provision, the President of India **has the power to address questions to the Supreme Court**, which he deems important for public welfare.
  - The Supreme Court upon reference advises the President by answering the query. However, such referral advice by the apex court is **not binding on the President**, nor is it ‘law declared by the Supreme Court’.
- **Conflicting Judgments:**
  - When two or more three-judge benches of the Supreme Court have **delivered conflicting judgments** on the same point of law, necessitating a definite understanding and interpretation of the law by a larger bench.
    - The Constitution benches are **set up on ad hoc basis** as and when the above-mentioned conditions exist.

### Why does CJI seek a Permanent Constitutional Bench?

- Presently, Constitution Benches are set up on an **ad hoc basis (particular purpose)** as and when the need arises.
- It aims to help the judges **identify, hear and provide relief** in cases which need their urgent attention and also help **litigants and lawyers to avoid delay in getting their cases listed for**

**hearing before judges** due to the long-winded processes of the Supreme Court Registry.

- It is also imperative because the Supreme Court's pendency has crossed **over 71,000 from a little over 55,000 in 2017**.
  - This is despite the fact that the sanctioned judicial strength of the court was increased to 34 judges in August 2019.

## Way Forward

- Unless Constitutional Bench decisions establish clear precedent, and large numbers of cases are dismissed through written orders without a hearing by the SC, the long-term benefits of a Constitutional Bench jurisdiction may be lost.

## UPSC Civil Services Examination Previous Year Question (PYQ)

### Prelims

**Q. We adopted parliamentary democracy based on the British model, but how does our model differ from that model? (2021)**

1. As regards legislation, the British Parliament is supreme or sovereign but in India, the power of the Parliament to legislate is limited.
2. In India, matters related to the constitutionality of Amendment of an Act of the Parliament are referred to the Constitution Bench by the Supreme Court.

**Select the correct answer using the code given below.**

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

**Ans: (c)**

**Exp:**

- Parliamentary sovereignty means supremacy of the legislative body i.e., Parliament over all other government institutions including executive and judicial bodies. In Britain there is Parliamentary sovereignty i.e., the legislature may change or repeal any previous legislation and is not bound by any written law like the Constitution.
- In India there is no Parliament sovereignty rather there is constitutional sovereignty and the authority and jurisdiction of Parliament are limited by:
  - Written Constitution which puts limitations on all organs of the state.
  - Distribution of legislative powers between the Union and the States (Articles 245-246 and the Seventh Schedule),
  - Incorporation of a code of justiciable fundamental rights (Articles 12-35 and 226), and
  - General provision for judicial review and an independent judiciary. The Judiciary can declare any law or ordinance passed by the legislature void, if any of its provisions violate one or more of the constitutional provisions. Hence, 1 is correct.
- **A Constitution Bench is a bench of the Supreme Court having five or more judges on it.**
- **Therefore, option (c) is the correct answer.**

**Q. With reference to the Indian judiciary, consider the following statements: (2021)**

1. Any retired judge of the Supreme Court of India can be called back to sit and act as a Supreme Court judge by the Chief Justice of India with the prior permission of the President of India.
2. A High Court in India has the power to review its own judgement as the Supreme Court does.

**Which of the statements given above is/are correct?**

- (a) 1 only  
(b) 2 only  
(c) Both 1 and 2  
(d) Neither 1 nor 2

**Ans: (c)**

**Exp:**

- As per Article 128 of Indian Constitution, the Chief Justice of India may at any time, with the previous consent of the President, request any person to sit and act as a Judge of the Supreme Court with the following qualifications:
  - Who has held the office of a Judge of the Supreme Court. Hence, statement 1 is correct.
  - Who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court.
- Being a Court of Record, the High Court can review its own judgments under Article 226 of the Constitution of India. Similarly, under Article 137, the Supreme Court shall have the power to review any judgment pronounced or order made by it. **Hence, statement 2 is correct.**
- **Therefore, option (c) is the correct answer.**

### **Mains**

**Q.** Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India. **(2017)**

**Source: TH**

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