



Judicial Majoritarianism

Prelims: Judicial Majoritarianism, Supreme Court, Demonetization, Article 145(5), Article 145(3).

Mains: Judicial Majoritarianism, related Concerns and Solution.

Why in News?

Many people have raised concerns over Judicial Majoritarianism on the judgement of the [Supreme Court](#) on [demonetization](#) and the minority judgment has been hailed **for its challenge to the RBI's (Reserve bank of India) institutional acquiescence** to the Central government.

What is Judicial Majoritarianism?

- Numerical majorities are of particular importance to cases **which involve a substantial interpretation of constitutional provisions.**
- The requirement for **a majority consensus flows from Article 145(5) of the Constitution** which states that no judgment in such cases can be delivered except with the concurrence of a majority. It also provides for judges to freely deliver dissenting judgments or opinions.
- In important cases, [Constitutional Benches](#), consisting of five or more judges, are set up in **consonance with Article 145(3) of the Constitution.** Such Benches usually consist of five, seven, nine, 11 or even 13 judges.

What are the Concerns?

- **Denial of Merit:**
 - A meritorious minority decision, irrespective of the impeccability of its reasoning, **receives little weightage in terms of its outcomes.**
 - An example is the dissenting opinion of Justice Subba Rao in the *Kharak Singh v. State of U.P.* (1962) case upholding the [Right To Privacy](#) which received the judicial stamp of approval in the *K.S. Puttaswamy v. UOI* (2017) case.
 - The dissenting opinion of **Justice H.R. Khanna in *A.D.M. Jabalpur v. Shivkant Shukla* (1976)** upholding the [right to life](#) and personal liberty even during situations of **constitutional exceptionalism is a prime example.**
 - It is argued that the **weightage given to numerical majorities** in judicial decisions by our Constitutional Courts is opposed to the merits in their reasoning.
- **Obscure Situations:**
 - All judges on a particular Bench give their rulings on the same set of facts, laws, arguments and written submissions. In light of the same, any differences in judicial decisions **can be attributed to a difference in either the methodology adopted and the logic applied by the judges in their interpretation.**
 - In such circumstances, it is entirely possible that the **majority may fall into either methodological fallacies and errors** or be limited by their 'judicial hunch' respectively.
- **Question on Head Counting Procedure:**
 - A study also found that the rate of **dissent where the Chief Justice was a part of the**

- Bench was lower** than in those cases where the Chief Justice was not on the Bench.
- Such situations call into **question the efficiency and desirability of head-counting procedures for a judicial determination** on questions of national and constitutional importance.

What can be the Solution?

- A system can be devised, which either gives **more weightage to the vote of senior judges** given that they have more experience or to the junior judges as they **may represent popular opinion better**. Such alternatives, however, can **only be explored once we identify and question the premises and rationales** which underlie head-counting in judicial decision-making.
- The absence of a critical discourse on judicial majoritarianism represents one of the **most fundamental gaps in our existing knowledge** regarding the functioning of our Supreme Court.
- As pending Constitutional Bench matters are listed for hearing and judgments are reserved, **we must reflect upon the arguments of judicial majoritarianism on the basis of which these cases are to be decided**.

UPSC Civil Services Examination, Previous Year Question (PYQ)

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)

Source: TH