



For a more federal judiciary

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(Mains GS 2 : Separation of Powers between various organs Dispute Redressal Mechanisms and Institutions.)

Context:

The federalist nature of our country is part and parcel of the basic structure of the Constitution thus India needs to strengthen federal structure not only in relation to the legislature and the executive but also to the federal nature of our judiciary.

Essential characteristic :

- Federalism is a midpoint between unitarism which has a supreme centre, to which the States are subordinate, and confederalism wherein the States are supreme, and are merely coordinated by a weak centre.
- The essential characteristic of federalism is the distribution of limited executive, legislative and judicial authority among bodies which are coordinated with and independent of each other.
- The idea which lies at the bottom of federalism is that each of the separate States should have approximately equal political rights and thereby be able to maintain their non-dependent (for want of a better word) characteristics within the larger union.

Integral requirement:

- The Supreme Court was created under the Constitution, and is a relatively new court while some of the High Courts in our country have been in existence since the 1860s.
- Dr. B.R. Ambedkar stated in the Constituent Assembly: “The Indian Federation though a dual polity has no dual judiciary at all. The High Courts and the Supreme Court form one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law.”
- However, an integral requirement of a federal state is that there be a robust federal judicial system which interprets this constitution, and therefore adjudicates upon the rights of the federal units and the central unit, and between the citizen and these units.

Constitutional position:

- The Indian Constitution envisaged the equality of power of High Court judges and Supreme Court judges, with a High Court judge not being a subordinate of a Supreme Court judge.
- The Supreme Court has, on many occasions, reiterated the position that the Supreme Court is superior to the High Court only in the appellate sense.
- Therefore, the theoretical position has always been that High Court judges and Supreme Court judges are equals.
- A delicate balance is required to be maintained between the Supreme Court and the High Courts in order for the constitutional structure dreamt of by B.R. Ambedkar to work.

Appointment of judges:

- In recent years, few specific trends have greatly eroded the standing of the High Court, leading to an imbalance in the federal structure of the judiciary.
- The Supreme Court of India today, by playing the role of a collegium, effectively wields the power to appoint a person as a judge to a High Court or to transfer him or her to another High Court, or to appoint (or delay the appointment) of a sufficiently senior High Court judge as a chief justice or as a judge of the Supreme Court.
- The practical impact of this in the power dynamic between a High Court judge and a Supreme Court judge, leaves little to be said or imagined.

Direct appeals:

- The Supreme Court has been liberal in entertaining cases pertaining to trifling matters.
- An aggressively interventionist Supreme Court leads many to approach it directly as a panacea for all ills befalling the nation.

- For example, in 2018, some individuals from Delhi directly filed a petition in the Supreme Court to curtail Deepavali celebrations. The Court promptly entertained the writ petition and issued directions that Deepavali could be celebrated for only one or two hours in the evening. This led to an uproar because people in South India celebrate Deepavali in the morning.
- The Court itself observed recently, “Frivolous matters are making the institution dysfunctional... These matters waste important time of the court, which could have been spent on serious matters, pan-India matters.”

Parallel judicial systems:

- Successive governments have passed laws that create parallel judicial systems of courts and tribunals which provide for direct appeals to the Supreme Court, bypassing the High Courts.
- The creation of parallel hierarchies of courts and tribunals, whether it be the Competition Commission, or the company law tribunals, or the consumer courts, hampers the normal functioning of the High Courts.
- Laws have been drafted such that the High Court has no role to play and the Supreme Court directly acts as an appellate court.
- The effect of this can be easily imagined, whether it be the weakening of the authority of the High Courts or the possibility of a tendency towards subservience or apathy of the judges of the High Courts.

Conclusion:

- An integral requirement of a federal state is that there be a robust federal judicial system which interprets the constitution.
- Thus the Supreme Court needs to recognise the importance of self-abnegation and restore the federal balance by re-empowering the High Courts.