A Case for a more Federal Judiciary

Why in news?

There is a need to examine the Indian judiciary and to strengthen the federal nature of our judiciary.

What is federalism?

- Federalism is a system of government in which the same territory is controlled by two levels of government.
- It 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 Supreme Court in the *Kesavananda Bharti case* mentioned that federal character is one of the basic features of the Indian Constitution.
- **Key features of Federalism**
    - Division of powers
    - Supremacy of the constitution
    - Rigid Constitution
    - Written constitution
    - Independent judiciary
    - Bi-cameral legislature

What is the nature of Indian Federation?

- K.C. Wheare analyses India's centralized state with some federal features as "**quasi-federal**".
- **Article 1-** it describes India as a 'Union of States', which implies that the federation is a union because it is indestructible and helps to maintain the unity of the country.
- **Governors**- The working of Indian federal system clearly reveals that the Governor has acted more as centre's representative than as the head of the State.
- **National Emergency-** The Union exerts control over states after the imposition of National Emergency.
- **Unequal representation**- Indian States have unequal representation in the Rajya Sabha. In a true federation such as that of USA, every State irrespective of their size or population sends two representatives in the upper House.
- **Appointments**- All important appointments such as the Chief Election Commissioner, the Comptroller and Auditor General are made by the Union Government
- **Citizenship and Constitution**- in India, there is only single citizenship and there is no provision for separate Constitutions for the states.
- **All India Services**- All India Services such as IAS and IPS have been created which are recruited and trained by the Union and deployed in States.
- **Finance**- In financial matters too, the States depend upon the Union to a great extent
- During Financial Emergency, the Center exercises full control over the State's finances.
- **Powers of the Union-** In case of disturbances in any State or part thereof, the Union Government is empowered to depute Central Force in the State or to the disturbed part of the

State.
- **Powers of parliament**- The Parliament, by law may increase or decrease the area of any State and may alter its name and boundaries.
- **Judiciary**- The federal principle envisages a dual system of Courts. But, in India we have unified Judiciary with the Supreme Court at the apex.
- It is clear that there is a tilt in favour of the Centre at the cost of the States and this is why constitutional experts have called it 'semi-federal' of 'quasi federal' system.

What about the status of judiciary in a federal India?

- **Integrated judiciary**- The federal judicial system comprises the Supreme Court and the High Court in the sense that it is only these two courts which can adjudicate upon the rights of the federal units and the central unit, and between the citizen and these units.
- Dr. B.R. Ambedkar stated in the Constituent Assembly that 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 provide remedies in all cases arising under the constitutional law.
- **Equality of power-** 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.
- The need for the balance between the courts was highlighted during the Emergency, when a significant number of High Courts stood out as guides of freedom, even as the Supreme Court failed in this duty.
- **Independent judiciary**- Independence of the judiciary means that the legal fraternity has all the powers to make their own decisions, without any external influence.
- Security of tenure has been provided to the judges who cannot be removed from the office except by an order of the President and that too on the ground of proven misbehavior and incapacity as per Articles 124 and 217.
- The salaries and allowances of the judges are determined by Parliament by law but it shall not be varied to his disadvantage after his appointment.
- The conduct of any judge of Supreme Court or of a High Court in the discharge of his duties cannot be discussed in the legislature.
- Parliament can only add to the powers and jurisdiction of the Supreme Court but cannot curtail them.
- The Supreme Court and the High Court have the power to punish any person for their contempt.

What trends are creating an imbalance in the federal structure of the judiciary?

- **Collegium-** The Supreme Court (the Collegium) has the power to appoint judges and chief justices to the High Courts and the Supreme Court.
- The Collegium also has the power to transfer judges and chief justices from one High Court to another.
- The practical impact of this is the power dynamic between a High Court judge and a Supreme Court judge.
- **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.

- In cases of the Competition Commission, the company law tribunals, or the consumer courts, the High Courts are bypassed.
- The effect of this will be weakening of the authority of the High Courts.
- **Petty cases**- The Supreme Court has been liberal in entertaining cases pertaining to trifling matters.
- In 2018, the Supreme Court entertained a 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.
- There is an urgent need for the Supreme Court of India to address the imbalance in the federal structure of the judiciary by empowering High Courts again.

References

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