Judicial Federalism

Why in news?

Recent actions of Supreme Court in transferring cases from High Court to itself is a cause of concern.

What is the ruling all about?

- Due to COVID-19 posed health crises, High Courts of Delhi, Gujarat, Madras etc. has issued a series of directions which are related to, issue of oxygen supply and procurement of oxygen.
- Supreme Court has took suo motu cognisance of the issue in 'Re: Distribution of Essential Supplies and Services during Pandemic'.
- It said that distribution of essential services and supplies must be done in an even-handed manner according to the advice of the health authorities.
- It asked the centre to present a national plan and issued an order asking the State governments and the Union Territories why the court cannot issue uniform orders.
- It also indicated the possibility of transfer of cases to the Supreme Court from High Courts.

What is the issue with transfer of cases?

- Under **Article 139A** of the Constitution, Supreme Court has the power to transfer cases from the High Courts to itself if cases involve the same questions of law.
- However, what makes the court's usurpation disturbing are two observations regarding its contemporary conduct.
- One, the court has been indifferent to the actions and inactions of the executive even in cases where its interference was warranted, such as the Internet ban in Kashmir.
- Two, where effective remedies were sought, when activists and journalists were arrested and detained, the court categorically stayed aloof and acted as if its hands were tied.
- Moreover High Courts are extremely important and play a vital role in the constitutional scheme.
- Ignoring them, reflects the arrogance of power of apex court and

disregard it has on the High Courts in the country.

Is Supreme Court stance is acceptable?

- In the Supreme Court, the judges sit in Benches of two or more for encouraging deliberation and to have a higher level of deliberative justice.
- In recent years, dissenting judges on the Bench are rare and the hearing on the COVID-19 case was no exception.
- According to the Seventh Schedule of the Constitution, public health and hospitals come under the State List.
- There could be related subjects coming under the Union List or Concurrent List and there may be areas of inter-State conflicts.
- But as of now, the respective High Courts are dealing with specific challenges at the regional level and the resolution of which does not require Supreme Court interference.
- In **L. Chandra Kumar v. Union of India** (1997), the Supreme Court itself said that the High Courts are institutions endowed with glorious judicial traditions which are existing since the 19th century.
- Moreover the power of the High Court under Article 226 is wider than the Supreme Court's under Article 32.
- High court can issue a writ not only in cases of violation of fundamental rights but also for any other purpose.
- This position was reiterated by the court soon after its inception in **State of Orissa v. Madan Gopal Rungta** (1951).

What can we infer from this?

- Judicial federalism has intrinsic and instrumental benefits.
- In U.S., despite the existence of some endemic issues, its system of judicial federalism has largely succeeded in promoting national uniformity and subnational diversity.
- The U.S. Supreme Court reviews only a relative handful of cases from state courts which ensures a large measure of autonomy in the application of federal law for the State courts.
- This basic tenet of judicial democracy is well accepted across the courts in the modern federal systems.
- The need for a uniform judicial order across India is warranted only when it is unavoidable —in cases of an apparent conflict of laws or judgments on legal interpretation.
- Else the autonomy, not uniformity, is the rule and Decentralisation, not centrism, is the principle.

Source: The Hindu

