The troubling ‘courtroom policy-making’ by the Supreme Court

What is the issue?

Over the last three decades, the Supreme Court (SC) has gradually designated itself the de facto administrative head of all courts in India.

What are the recent developments?

- A Supreme Court bench approved CJI’s vision of creating a National Judicial Infrastructure Corporation (NJIC) to administer judicial infrastructure across the country.
- A proposal has been sent on these lines to the Law Ministry.
- The court is trying to secure through the judicial route what it is unlikely to get through administrative negotiations.

What is problem with this decision?

- There are serious issues of constitutional propriety with how the Supreme Court is gradually taking over the administration of the district judiciary.
- The Constitution clearly vests the administration of district judiciary (appointments, budgeting, daily running) with the High Courts and state governments.

What are some cases where SC took over the administration?

- Over the last three decades, the Supreme Court has gradually designated itself the de facto administrative head of all courts in India.
- **All India Judges Association** (first case) 1991 - AIJA, representing the district judges, approached the Supreme Court to secure better service conditions for their members.
- Since then the Supreme Court has been in a tussle with the Union and state governments over the issue of pay for the district judiciary in 3 major judgments in 1993, 2002 and 202.
- In **Malik Mazhar Sultan vs UP Public Service Commission litigation**, the Supreme Court prescribed timelines and monitored the recruitment of judges for the district judiciary.
- In 2006, the Supreme Court decided on a legal question regarding the UP Judicial Service Rules, 2001.
- The Supreme Court took control the way appointments are made to the district judiciary.
- **In Imtiyaz Ahmad v. State of UP**, Allahabad High Court granted a prolonged stay of criminal proceeding. It was transformed by the Supreme Court into a vehicle for an assortment of judicial reforms.

In what ways Supreme Court usurped the administration of district courts?

- SC gave directions to the Law Commission to study specific issues.
- Supreme Court gave a specific formula to calculate the required number of judges for the district judiciary to all High Courts.
- This new method of calculation contradicted a formula proposed by the Supreme Court in 2002 in one of the AIJA cases.
- This same case became the launchpad for the Supreme Court's demand for the creation of a "national umbrella organisation" to look after the judiciary's need for infrastructure.
- In several cases the Supreme Court has also **summoned government officials and registrars of High Courts to stand before** them and provide explanations.
- Supreme Court has appointed amici curiae to advise on the nature of judicial reforms to be implemented.
- They are generally selected from amongst the senior lawyers of the Supreme Court.

What is the criticism behind SC moves?

- **Amici Curiae -** The amici not only have little experience of practising before the district judiciary, but they also usually lack the skill and time required for policy research.
- Most importantly, court-appointed amici rarely point fingers at the judiciary for their shortcomings.
- This courtroom policy-making by the Supreme Court, apart from being fragmented across various benches and amici, there is little hope for consistency
- This is also undemocratic since it lacks avenues for public participation.
- It also treats principles like federalism (which the court has held to be part of the "basic structure") very casually, often proposing "one size fits all" solutions for the entire district judiciary across India.
- In certain cases, judicial reform could be better served by the Supreme Court's withdrawal. It must begin by creating a culture of transparency within the judiciary.

Reference

1. https://indianexpress.com/article/opinion/columns/supreme-court-courtroom-policy-making-judicial-infrastructure-7686029/

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