



Need For Federal Judiciary

This editorial is based on [“A case for a more federal judiciary”](#) which was published in The Hindu 17/02/2022. It talks about the issues of federalism and centralisation in the Judiciary.

For Prelims: Articles related to Supreme court and High Courts, tribunals, Collegium system

For Mains: Issues with centralisation of Judiciary, Challenges of Federalism, Need of

Nearly 150 years ago, A.V. Dicey wrote, “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”. Much has been written about the federal structure in relation to the legislature and the executive.

India is a union of States. The Supreme Court of India has held that the federalist nature of our country is part and parcel of the basic structure of the Constitution. But is this the case for Judiciary, one of the important organs of the state?

What is Federalism in Judiciary?

- 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 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 characteristics within the larger union.
- 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.
- 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 the rights.
- 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.”

Whether the Supreme Court and High Courts are Equal in Status?

- 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.
 - Famously, the Chief Justice of the Bombay High Court, Justice M.C. Chagla and the Chief Justice of the Madras High Court, Justice P.V. Rajamannar, when offered seats in the newly

formed Supreme Court, rejected the offer, preferring to be Chief Justices of prestigious High Courts than being ordinary judges in a newly formed court.

- 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 between two courts existed from Independence onwards, until the **1990s. Since then, however, it has been tilting in favour of the central court.**
 - The need for this balance was underscored during the Emergency, when the High Courts (a significant number, at least) stood out as beacons of freedom, even as the Supreme Court failed in this duty.
- In recent years, **three specific trends have greatly eroded the standing of the High Court,** leading to an imbalance in the federal structure of the judiciary.
 - First, the Supreme Court (or rather, a section of its judges, called “the Collegium”) has the power to appoint judges and chief justices to the High Courts and the Supreme Court. This Collegium also has the power to transfer judges and chief justices from one High Court to another.
 - Second, 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.
 - Third, the Supreme Court has been liberal in entertaining cases pertaining to trifling matters.

What are the Issues of Centralisation of Judiciary?

- **Centralised Ruling:** This has inevitably led to the balance tipping in favour of a centralisation of the judiciary. The greater the degree of centralisation of the judiciary, the weaker the federal structure.
- **Centralised Judiciary More in Interests of Centre:** In the United States, empirical research by the legal researcher shows that the U.S. Supreme Court is far more likely to strike down a state statute as unconstitutional than a federal statute.
 - This research leads to the conclusion that judicial review by a centralised judiciary tends toward unitarism (the opposite of federalism).
 - In Nigeria, a similar federal country, research has shown that the Supreme Court favours the jurisdiction of the central government over the State units, and this has manifested itself in recent litigations over mineral rights and subsoil rights, where the Supreme Court has favoured interpretations which support the rights of the centre over the States.
- **Interference of SC in High Courts:** 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.
- **Interference of SC in Matters of Local Importance:** An aggressively interventionist Supreme Court leads many to approach it directly as a panacea for all ills befalling the nation. In 2018, some individuals from Delhi directly filed a petition in the Supreme Court to curtail Deepavali celebrations.
 - The Supreme Court interferes in matters which are clearly of local importance, having no constitutional ramifications. 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.”
- **High Court Becomes Redundant:** Every time the Supreme Court entertains an appeal against a High Court decision, it second guesses the High Court. This makes the high court look like a redundant body.
- **High Court can Effectively Dispose PILs:** Every time the Supreme Court entertains a Public Interest Litigation(PIL) on some matter which could just as effectively have been dealt with by the High Court, raises doubts on the effectiveness of the High Court.
- **The creation of parallel hierarchies of courts and tribunals,** whether it be the Competition Commission, or the company law tribunals, or the consumer courts. In all these cases, the High

Courts are bypassed.

- Laws have been drafted such that the High Court has no role to play and the Supreme Court directly acts as an appellate court.

What Can Be The Way Forward?

- The Supreme Court should itself recognise the importance of self-abnegation and restore the federal balance by re-empowering the High Courts. This will be in the best interest of the nation.
- The Supreme Court was created under the Constitution, and is a relatively new court. On the other hand, some of the High Courts in our country have been in existence since the 1860s (and some existed even before that, in their earlier avatars as supreme courts of the Presidencies).
 - It is advisable that their role should not be minimised even unintentionally.
- 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.

Drishti Mains Question

A delicate balance is required to be maintained between the Supreme Court and the High Courts in order for the constitutional structure. Discuss the issues with reference to integrated judiciary in India.