



## A case of judicial federalism

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**(MainsGS 2 : Separation of powers between various organs, dispute redressal mechanisms and institutions & Structure, organisation and functioning of the Executive and the Judiciary)**

### **Context:**

- Recently the Supreme Court took suo motu cognizance of some of the key issues related to Covid-19 management, including the supply of oxygen and essential drugs and declaration of lockdowns.
- Noting that the matter was being heard in several high courts, “creating some confusion” and “diversion of resources”.
- A bench of S.C. led by Chief Justice of India S A Bobde said there is “almost a national emergency” and asked the Centre to submit a “national plan” to deal with it.

### **The limited scope of the courts:**

- In comparison to the legislature and the executive, the judiciary has limited rights in the socio-economic realm.
- Courts cannot build better health infrastructure or directly supply oxygen; neither are they functionally bound to.
- Courts often lack the expertise and resources to decide social rights issues.
- Courts can only ask tough questions to the executive, implement existing laws and regulations, and hold the executive accountable in various aspects of healthcare allocation.

### **Proactive role of courts in alarming situation:**

- In *Parmanand Katara v. Union of India* (1989), the Supreme Court underlined the value of human lives and said that the right to emergency medical treatment is part of the citizen’s fundamental rights.
- In the face of a de facto COVID-19 health emergency, the High Courts of Delhi, Gujarat, Madras and Bombay, among others, owe a duty to protect this right.
- They considered the pleas of various hospitals for oxygen supply.

- The Gujarat High Court issued a series of directions, including for laboratory testing and procurement of oxygen.
- The Nagpur Bench of the Bombay High Court was constrained to hold night sittings to consider the issue of oxygen supply. It directed immediate restoration of oxygen supply that had been reduced from the Bhilai steel plant in Chhattisgarh.
- The Delhi High Court directed the Central government to ensure adequate measures for the supply of oxygen. It cautioned that the country might lose thousands of lives due to lack of oxygen.

### **Transfer of cases:**

- On April 22, the Supreme Court took suo motu cognisance of the issue in ‘Re: Distribution of Essential Supplies and Services During Pandemic’.
- It said, “Prima facie, we are inclined to take the view that the distribution of these essential services and supplies must be done in an even-handed manner according to the advice of the health authorities” and asked the Central government to present a national plan.
- In addition, it issued an order asking the State governments and the Union Territories to “show cause why uniform orders” should not be passed by the Supreme Court.
- The court thus indicated the possibility of transfer of cases to the Supreme Court, which it has done on various occasions before.

### **Judicial federalism:**

- Under Article 139A of the Constitution, the Supreme Court does have the power to transfer cases from the High Courts to itself if cases involve the same questions of law.
- However many lawyers will find it difficult to recall a significant recent case of civil liberty from the court where tangible relief was granted against the executive, except for rhetorical statements on personal liberty.
- Thus many from different High Court Bar Associations spoke up against the move to transfer the cases from the High Courts to the Supreme Court.
- Navroz Seervai, a noted lawyer from the Bombay High Court, critiqued the views of the top court saying that they reflected “arrogance of power” and “rank contempt for and disregard of the High Courts in the country, and the extremely important and vital role they play in the constitutional scheme”.

### **The importance of High Courts:**

- According to the Seventh Schedule of the Constitution, public health and hospitals come under the State List as Item No. 6.
- However, 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 have been dealing with specific challenges at the regional level, the resolution of which does not warrant the top court’s interference.

- In addition to the geographical reasons, the constitutional scheme of the Indian judiciary is pertinent.
- 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” since they “had been in existence since the 19th century and were possessed of a hoary past enabling them to win the confidence of the people”.
- Even otherwise, the power of the High Court under Article 226 is wider than the Supreme Court’s under Article 32, as in case of H.C. a writ can be issued 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).

### **Conclusion:**

- The 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 the COVID-19-related cases, High Courts across the country have acted with an immense sense of judicial responsibility. This is a legal landscape that deserves to be encouraged.