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A Shankar IAS Academy Initiative

Understanding Special Courts

What is the issue?

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- It is assumed that special courts are a panacea for judicial efficiency.

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- But the system needs a reassessment to understand its actual working efficacy, for it to be more rational in number and functioning.

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What are special courts?

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- Special courts have existed in the subordinate judiciary since before Independence.

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- A special court is one which is to deal with special types of cases under a shortened and simplified procedure.

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- They are established under a statute meant to address specific disputes falling within that statute.

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- Over 25 special courts were set up between 1950 and 2015 through various Central and State legislations.

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What are fast track courts?

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- Fast track courts on the other hand were the result of recommendations

made by the 11th Finance Commission.

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- 11th FC advised the creation of 1,734 such courts to deal with the judicial backlog.

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- They were actualised though an executive scheme as opposed to a statute of the legislature in case of special courts.

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- Moreover these are meant to be set up by the State governments in consultation with the respective high courts.

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What are the concerns with special courts?

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- **Understanding** - Special courts are a significant means of addressing the specificities of certain statutes and judicial backlog.

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- However, there is little if any evaluation of how this system works and a vacuum exists in research and analysis of special courts.

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- This has led to inconsistencies in legislation and operation, which is more pronounced by the Parliament.

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- Central legislations from Special Criminal Courts (Jurisdiction) Act, 1950 to the Prevention of Money Laundering (Amendment) Act, 2012 prove this point.

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- **Ambiguities** - The Special Courts case clearly uses the phrase “established under statute”, meaning the establishment of a new court.

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- However statutes use terms like “constitute”, “create”, “designate”, “notify”, “appoint”, etc leading to ambiguities of its stature.

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- The anomaly is that these terms have not been defined or procedurally explained.

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- Moreover, certain legislations state that the government “may” set up special courts, while other say the government “shall”.

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- However, going by the definition, the answer as to whether a law requires a special court or not should only be either yes or no.

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- Leaving options such as “may”, add to the ambiguities.

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- **Clarity** - For States and high courts, this leads to uncertainties in operation and setting up such courts.

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- There is lack of clarity in specifics like:

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- i. Do they require new buildings?

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- ii. Should more judicial officers be hired?

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- iii. If a judge is designated under a special statute, should those matters be added to or replace her roster?

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- This also creates confusion with respect to appointments, budgetary allocation, infrastructure, and listing practices.

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- **Purpose** - There are more special courts under the Prevention of Corruption Act, 1988 than SC/ST (Prevention of Atrocities) Act, 1989.

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- However the former is said to have a tenth of the number of registered cases as the latter (2015).

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- This points to the unclear legislative intent for creating special courts.

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What is the way forward?

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- The SC should address the constitutional status, and analyse policy questions pertaining to the need and efficiency of special courts.

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- There are over 2.8 crore cases in the subordinate judiciary, which is the

highest out of the three tiers of the judiciary.

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- The working of special courts has to be studied critically.
- Parameters such as the frequency and number of effective hearings and calculating the number of pending cases need to be developed.
- These are essential to check the growing number of special courts being established without definite purposes.
- In all, it is important to determine whether or not this special courts system is in fact helpful in addressing the judicial backlog.

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Source: The Hindu

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