Transfer Procedure of High Court Judges

Why in news- The Madras Bar Association passed a resolution urging the Supreme Court collegiums to reconsider its recommendation to transfer Madras High Court Chief Justice Sanjib Banerjee, which it said was “perceived to be punitive”.

Key facts about high court
- The institution of high court originated in India in 1862, with three high courts was set up at Calcutta, Bombay and Madras (Indian high Courts act).
- Fourth HC was est. at Allahabad in 1866.
- The Constitution of India provides for a HC for each state, but the Seventh Amendment Act of 1956 authorized the Parliament to establish a common HC for two or more states or for two or more states and a UT.
- 214 to 231 in Part VI (State) of the Constitution deal with the organization, independence, jurisdiction, powers, procedures and so on of the HC.
- Constitution empowers the PARLIAMENT and the state legislature to change the jurisdiction and powers of a HC.
- Currently, India has total 25 High Courts established in different states of the country.
- Delhi is the only UT in India having high court of its own (since 1966).

Appointment of High court judges
- The judges of a high court are appointed by the President.
- Chief justice of High court is appointed by the President after consultation with the chief justice of India and the Governor of the state concerned.
- For Other judges of High court- chief Justice of the concerned HC is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the president.

Qualification of judges of High court
- He should be a citizen of India.
- He should have held a judicial office in the territory of India for ten years or
- He should have been an advocate of a high court for ten years.
- Constitution has not prescribed a minimum age for appointment as a judge of a HC.
- Constitution makes no provision for appointment of a “distinguished jurist” as a judge of a HC in the opinion of president. (Unlike in the case of the SC).

Removal of judges of High court
- Judge of a high court can be removed in the same manner and on the same grounds as a judge of the Supreme Court.
- A judge of a HC can be removed from his office by an order of the President on recommendations of parliament.
Grounds of removal– Proved misbehavior or incapacity.

**Procedure of transfer of HC judge:**

- Article 222 of the Constitution makes provision for the transfer of a Judge (including Chief Justice) from one High Court to any other High Court.
- The initiation of the proposal for the transfer of a Judge should be made by the Chief Justice of India (CJI).
- The opinion of the CJI “is determinative”.
- CJI is expected to take into account the views of the Chief Justice of the High Court from which the Judge is to be transferred and Chief Justice of the High Court to which the transfer is to be affected.
- The views of one or more Supreme Court Judges who are in a position to offer his/her views are also taken into account.
- In the case of transfer of a Chief Justice, only the views of one or more knowledgeable Supreme Court Judges need to be taken into account.
- The views on the proposed transfer of a Judge or a Chief Justice of the High Court should be expressed in writing and should be considered by the CJI and the four senior most Judges of the Supreme Court.
- The proposal once referred to the Government, the Union Minister of Law, Justice and Company Affairs would submit a recommendation to the Prime Minister who will then advise the President as to the transfer of the Judge concerned.
- After the President approves the transfer, the notification will be gazetted and the judge remains transferred.
SC judgments on it-

After some judges were superseded in the appointment of the CJI in the 1970s, there was a perception that the independence of the judiciary was under threat. This resulted in a series of following cases:

- The ‘First Judges Case’ (1981) ruled that the “consultation” with the CJI in the matter of appointments must be full and effective. However, it rejected the idea that the CJI’s opinion should have primacy.

- The ‘Second Judges Case’ (1993) introduced the Collegiums system, holding that “consultation” really meant “concurrence”. It added that it was not the CJI’s individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the Supreme Court.

- On a Presidential Reference for its opinion, the Supreme Court, in the Third Judges Case (1998) expanded the Collegiums to a five-member body, comprising the CJI and four of his senior-most colleagues.

Source- Indian express, Journals of India