Transfer as Punishment

Why in news?

Chief Justice of the Madras High Court Sanjib Banerjee has been abruptly transferred to head the Meghalaya High Court.

What is the issue?

- In September 2019, Justice Vijaya K. Tahilramani resigned after being shifted from Madras to the Meghalaya High Court at a time when she was the country's senior-most Chief Justice.
- The transfer of Chief Justice of the Madras High Court Sanjib Banerjee is the second such instance of the head of a court with a sanctioned complement of 75 judges being asked to take over a court with a strength of 4.

What is the legal provision regarding the transfer of judges?

- **Article 222** of the Constitution deals with the transfer of judges and states that the President may, after consultation with the Chief Justice of India transfer a judge from one high court to another.
- The Chief Justice of India is justly empowered to transfer the head of any High Court in the interest of the "**better administration of justice**".
- A five-judge bench of the Supreme Court interpreted Article 222 in the *Sankalchand H Sheth case* and held that the transfer of a judge from one court to another inflicts many injuries on the individual.
- The court held that the consent of the judge proposed to be transferred was part of the scheme and language of Article 222.
- Italso said that if the power of transfer is vested solely with the executive, it undermines judicial independence and eats into the basic features of the Constitution.
- *The First and Second Judges' cases* resulted in the formation of the Collegium System by interpreting "consultation" with the CJI to really mean "concurrence" which is arrived at by the CJI upon discussion with

the two senior-most judges.
- *The Third Judges' case* expanded the collegium to include the five senior-most judges, including the CJI.
- *The K Ashok Reddy case* relied on the decision of the Second Judges' case and held that the primacy of the judiciary in the matter of appointments.

What are the concerns around the transfers?

- In Justice Banerjee's case, the transfer has come within 10 months of his assuming office, raising the question whether he was being punished for some uncertain reason.
- There is bound to be speculation on whether his transfer has anything to do with his stern approach and observations while seeking accountability from the Government and other institutions.
- This could be seen as degrading the work a judge is doing.

What does this call for?

- High Court Chief Justices play an important role in identifying judicial talent for appointments and streamlining administrative functions.
- It would be reasonable if a serving Chief Justice is given tenure long enough in a High Court to discharge the functions effectively.
- The Memorandum of Procedure for judicial appointments and transfers says a proposal to transfer a High Court judge can only be initiated by the CJI, "whose opinion in this regard is determinative".
- In addition, the views of "one or more knowledgeable Supreme Court judges" are taken which are considered by the five-member Collegium.
- However, recent developments suggest that it may not be enough to dispel the impression that a transfer is not exactly based on administrative needs or related to performance.
- There is a need for transparency in judicial functioning to dispel all notions of favouritism, bias or governmental interference.

References

1. https://www.thehindu.com/todays-paper/tp-opinion/transfer-as-punishment/article37551941.ece
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