

High court judge transfer

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Manifest pedagogy: Judges transfer has come into the limelight because of the transfer of Murlidaran who was known for his excellent track record in handling sensitive cases. The reasons for the transfer and the political motivations if any are outside the purview of UPSC but the procedural aspects of transfer, cases associated with it and possible reforms for a more fairer system can be asked as questions.

In news: The Supreme Court Collegium has recommended the transfer of Delhi High Court judge Justice S. Muralidhar to the Punjab and Haryana High Court.

Placing it in syllabus: High Court

Static dimensions:

- Procedure of transfer of HC judge
- SC judgements on it

Current dimensions: Recent issue

Content:

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**".
- **Consent of the Judge** for his first or subsequent transfer **would not be required**.
- 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 effected.

- The **views of one or more Supreme Court Judges** who are in a position to offer his/their 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 judgements 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After some judges were superseded in the appointment of the CJI in the 1970s, there was a perception that the independence of the judiciary was under threat.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 Collegium 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 Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.

Thus the **Collegium of judges is the Supreme Court's invention and is not mentioned in the Constitution.**

In case of selection and transfer of HC judges, the collegium consists of CJI, 2 senior most judges of the SC and CJ of the concerned High Courts. All such **transfers must be made in the public interest**, that is, "for the betterment of the administration of justice".

Recent issue:

- A Supreme Court Collegium's (led by CJI S.A. Bobde) decision to transfer Delhi High Court judge Justice S. Muralidhar to the Punjab and Haryana High Court has gained criticism.
- Justice Muralidhar, who was **elevated as a judge of the Delhi High Court in May 2006**, is known to be a good judge with an excellent track record.
- He is well-known for a slew of important **verdicts in sensitive cases** like Section 377 case, 1984 anti-Sikh riots case (had convicted Congress leader Sajjan Kumar), Hashimpura massacre etc...
- He is also among the few judges who has done away with the convention of judges being addressed as 'My Lord' or 'Your Lordship'.
- However, the **Delhi HC Bar Association has condemned the sudden transfer** and has demanded reasons for the same.
- The Association has called the **transfer "more punitive" rather than routine.**
- It has maintained that **such transfers will impede free and fair delivery of justice** by the SC Bench.

- Many senior advocates in Delhi have claimed that the “pro-litigant” and “pro-citizen” orders passed by Justice Muralidhar may have led to his transfer.

However, **sources in the Supreme Court Collegium have claimed that** the transfer was “routine” and that **eventually the judge will take over as Chief Justice in Chandigarh**, once current Chief Justice is elevated to the Supreme Court (A judge normally cannot be the Chief Justice in his parent court).

Similar cases:

Along with this, the collegium’s decision to **transfer Bombay HC judge Justice Ranjit More to the Meghalaya HC** has also been criticised. It is opined that his transfer is due to his recent ‘controversial’ judgments, in the Punjab and Maharashtra Co-operative (PMC) Bank crisis case.

In August, 2019, Chief Justice of the Madras HC, **Justice V.K. Tahilramani** was transferred to the Meghalaya HC without specifying any reasons and the judge had requested the SC collegium to reconsider its decision. As the request was denied, she had resigned from the services.