Collegium Issue | L.Victoria Gowri Case

Why in news?

A petition was filed in the Supreme Court challenging the appointment of L. Victoria Gowri to the Madras High Court for judgeship for her alleged engagement in hate speech against Muslims and Christians.

What is the issue?

- The collegium of Supreme Court (SC) recommended L.Victoria Gowri for the judgeship of Madras High Court.
- She was alleged to be engaged in hate speech against Muslims and Christians.
- The Chief Justice of India (CJI), who heads the collegium, stated that the collegium finished the appointment process even before they had taken knowledge of this issue.
- A last attempt to stop it by way of a legal challenge was rejected by two other judges of the Supreme Court.

What is the Collegium system?

- The **Collegium system** is one where the Chief Justice of India and a forum of the four senior-most judges of the SC recommend appointments to the higher judiciary and transfers of judges.
- **Three Judges Cases**-The collegium system does not figure in the Constitution.
- Its legal basis is found in three SC judgments usually referred to as the Three Judges Cases concerning the higher judiciary.

What are the Three Judges Cases?

- **The S.P. Gupta case (1981) or the First Judges Case –** It observed that the word "consultation" could not be interpreted as "concurrence".
- The CJI's opinion was **not binding** on the executive.
- Accordingly the CJI's opinion was **not binding** on the executive
- **The Second Judges case (1993)** - The court overruled its earlier decision and held that the advice rendered by the CJI on appointments is **binding** on the President.
- It led to the introduction of the initial version of the collegium, where the CJI would consult two of his senior-most judges on appointments.
- **The Third Judges case (1998)** – It laid down that the CJIs should consult with four senior-most Supreme Court judges for judicial appointments and transfers resulting in the present collegium.

Why is the Collegium system being criticised?

- **Empire within an Empire** - The Central government has criticised it saying it has

created an imperium in imperio within the Supreme Court.

- **Judiciary vs Executive** - The collegium system being born out of years of friction between the judiciary and the executive itself is a concern.
- **Haves and have-nots** - The Supreme Court Bar Association has blamed it for creating a "give-and-take" culture, creating a rift between the haves and have-nots.
- **Transparency** - The functioning of the collegium can be contrasted with judicial appointments in other democratic countries while the specific processes are different, they are all open.
- **Questioning an appointment** - Once a collegium recommendation has been made, the only way of contesting it is through a legal challenge.
- However, that challenge must be before the Supreme Court itself, leading to a set of juniors as judges.
- **All in one roof** – The appointments body (the collegium), the body for the constitution of Benches (the CJI's office), the judicial review body (the Supreme Court) are all effectively one and the same so the correction becomes very difficult.
- **Eligibility and not suitability** – In considering with the case the question of whether alleged hate speech is a question of suitability or eligibility, the eligibility is considered and suitability is left aside.

To know more about the issues of collegium, click here

What can be done?

- **In need of new MOP** - The appointment of the CJI and judges of the apex court is governed by a Memorandum of Procedure (MoP).
- The court told the Centre in 2015 to come up with a new MoP in order to make the collegium's proceedings transparent.
- In 2017, the MoP was finalised but was not adopted as the government said it was reconsidering the issue.
- **Transparent Collegium** - To avoid the harnessing tussle between judiciary and executive a transparent and viable collegium is needed.
- **Checks and Balances -** There should be a degree of separation between the judicial appointments commission and the court for a check and a corrective mechanism.

Quick Facts

- **Appointment of judges** - **Articles 124 and 217** of the Constitution deal with the appointment of judges to the Supreme Court and High courts of the country.
- Article 124(2) states that "Every Judge of the Supreme Court shall be appointed by the President" after consultation with the judges of the Supreme Court and the high courts"
- **National Judicial Appointments Commission –** It was established by 99th Constitutional Amendment Act, 2015.
- It is an independent commission to appoint judges to the Supreme Court and high courts to replace the collegium system.
- The NJAC was to be composed of 6 people

1. The Chief Justice of India as the ex officio Chairperson
2. Two senior-most Supreme Court Judges as ex officio members
3. The Union Minister of Law and Justice as ex officio member
4. Two eminent persons from civil society.

- However, the judiciary struck down the amendment to be unconstitutional.

References

1. The Hindu | The lesson from a court appointment drama
2. The Hindu | NJAC vs collegium
3. The Hindu | The workings of the Supreme Court collegium

