

**GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF JUSTICE
RAJYA SABHA
STARRED QUESTION NO. 78
TO BE ANSWERED ON THURSDAY, THE 09.02.2023**

Differences with the top Judiciary

78*. SHRI JAWHAR SIRCAR:

Will the Minister of LAW AND JUSTICE be pleased to state:

- (a) the details regarding sharp points of difference between the Supreme Court and Government on important issues like the power and procedure of appointing Judges to the High Courts and the Supreme Court;
- (b) the status regarding the Supreme Court's recommendations made for filling up the posts of Judges in High Courts and the Supreme Court; and
- (c) whether Government proposes to introduce any Bill in this regard?

ANSWER

MINISTER OF LAW AND JUSTICE

(SHRI KIREN RIJU)

(a) to(c): A statement is laid on the Table of the House.

Statement referred to in reply to parts (a) to (c) of Rajya Sabha Starred Question No. *78 due for answer on 09.02.2023 regarding “Differences with the top Judiciary”

(a) to (b): Appointment of Judges in Higher Judiciary is a collaborative and integrated process involving both the Executive and the Judiciary. It requires consultation and approval from various Constitutional Authorities. Differences of opinion if any are mutually reconciled by the Executive and the Judiciary to ensure that only the appropriate person is appointed to the high constitutional post of a Judge.

As on 06.02.2023 against the sanctioned strength of 34 Judges, 32 Judges are working in the Supreme Court and recommendation to fill up remaining 02 vacancies received from the Supreme Court Collegium is at various stages of processing.

In the High Courts, against the sanctioned strength of 1108 Judges, 771 Judges are working and 337 posts of Judges are vacant. Appointment in respect of 13 Judges in various High Courts has been notified on 06.02.2023. Against these vacancies 127 proposals recommended by High Court Collegium are at various stages of processing and recommendations against 210 vacancies in the High Courts are yet to be received from the High Court Collegiums.

(c) No Sir.

भारत सरकार
विधि और न्याय मंत्रालय
न्याय विभाग
राज्य सभा
तारांकित प्रश्न सं. *78
जिसका उत्तर गुरुवार, 09 फरवरी, 2023 को दिया जाना है

शीर्ष न्यायपालिका के साथ मतभेद

***78 श्री जवाहर सरकार:**

क्या विधि और न्यायमंत्री यह बताने की कृपा करेंगे कि :

(क) उच्च न्यायालयों और उच्चतम न्यायालय में न्यायाधीशों की नियुक्ति संबंधी शक्ति और प्रक्रिया जैसे महत्वपूर्ण मुद्दों पर उच्चतम न्यायालय और सरकार के बीच मतभेद के प्रमुख बिंदुओं का ब्यौरा क्या है ;

(ख) उच्च न्यायालयों और उच्चतम न्यायालय में न्यायाधीशों के पदों को भरने के लिए उच्चतम न्यायालय द्वारा की गई सिफारिशों की क्या स्थिति है; और

(ग) क्या सरकार इस संबंध में कोई विधेयक प्रस्तुत करने का विचार रखती है ?

उत्तर

**विधि और न्याय मंत्री
(श्री किरन रिजिजू)**

(क) से (ग):विवरण सदन के पटल पर रख दिया गया है।

“शीर्ष न्यायपालिका के साथ मतभेद” से संबंधित राज्य सभा तारांकित प्रश्न सं. 78, जिसका उत्तर तारीख 09.02.2023 को दिया जाना है, के भाग (क) से (ग) के उत्तर में निर्दिष्ट विवरण

(क) से (ख) : उच्चतर न्यायपालिका में न्यायाधीशों की नियुक्ति एक सहयोगकारी और एकीकृत प्रक्रिया है जिसमें कार्यपालिका और न्यायपालिका दोनों शामिल हैं। इसके लिए विभिन्न संवैधानिक प्राधिकरणों से परामर्श और अनुमोदन की आवश्यकता है। यदि कोई मतभेद हो तो कार्यपालिका और न्यायपालिका द्वारा परस्पर सामंजस्य स्थापित किया जाता है ताकि यह सुनिश्चित किया जा सके कि न्यायाधीश के उच्च संवैधानिक पद पर केवल उपयुक्त व्यक्ति की नियुक्ति हो।

06.02.2023 तक उच्चतम न्यायालय में न्यायाधीशों की स्वीकृत पदसंख्या 34 के विरुद्ध, 32 न्यायाधीश कार्यरत थे और उच्चतम न्यायालय कॉलेजियम से प्राप्त शेष 02 रिक्तियों को भरने की सिफारिश प्रक्रिया के विभिन्न चरणों में है।

उच्च न्यायालयों में 1108 न्यायाधीशों के स्वीकृत पदों के विरुद्ध 771 न्यायाधीश कार्यरत हैं तथा न्यायाधीशों के 337 पद रिक्त हैं। तारीख 06.02.2023 को विभिन्न उच्च न्यायालयों में 13 न्यायाधीशों के संबंध में नियुक्ति अधिसूचित की गई है। इन रिक्तियों के लिए उच्च न्यायालय कॉलेजियम द्वारा अनुशंसित 127 प्रस्ताव प्रसंस्करण के विभिन्न चरणों में हैं और उच्च न्यायालयों में 210 रिक्त पदों के लिए सिफारिशें अभी तक उच्च न्यायालय कॉलेजियम से प्राप्त नहीं हुई हैं।

(ग) : जी नहीं।

SHRI JAWHAR SIRCAR: Sir, I asked for a specific reply to the ongoing differences between the Supreme Court and the Executive. We, as the Legislature, have the right to ask these questions but what I get by way of reply is that it requires consultation -- of course, we know it -- and differences of opinion, if any, are mutually reconciled. So, am I to understand that all differences are mutually reconciled? In the same sentence, you have used the words that only the appropriate person is appointed.

MR. CHAIRMAN: Hon. Member, please ask your supplementary.

श्री जवाहर सरकार : सर, मैं सप्लीमेंटरी ही पूछ रहा हूँ। Do you consider Victoria Gowri's appointment to be of really an appropriate person, one who has been accused in public of casteist remarks, of remarks against minority?

THE LEADER OF THE HOUSE (SHRI PIYUSH GOYAL): Sir, I think, we should have some decorum. It is about an hon. Judge who has been duly appointed through a process. I don't think that we, as Members, here should be casting aspersions of this nature. I seek your indulgence.

SHRI JAWHAR SIRCAR: This is in public domain. Everybody on earth knows that Victoria Gowri's opinion has been challenged ...*(Interruptions)*...

MR. CHAIRMAN: Hon. Member, please. ...*(Interruptions)*...Hon. Member, the three wings of the State -- Legislature, Executive and Judiciary -- have to act in tandem and togetherness. We must have mutual respect for them. All three ultimately have to get together to fructify our goals. When it comes to Judiciary, with respect to which a judgment of the highest court has already come, I am sure now that issue should be kept away. ...*(Interruptions)*...I would urge the hon. Member to ask his supplementary in a pointed manner keeping in mind the provisions that judicial situations have to be addressed in a delicate manner.

SHRI JAWHAR SIRCAR: Sir, I am saying this with delicateness.

MR. CHAIRMAN: No, no. Hon. Member, you are making reference to an individual who is not a Member of the House. You are making reference on which hon. President has

issued the warrant of appointment. The Supreme Court has already taken a view on that.

SHRI JAWHAR SIRCAR: Whatever be it, mistakes happen.

MR. CHAIRMAN: Now, hon. Minister.

SHRI KIREN RIJJU: Hon. Chairman, Sir, you have very rightly made the observation that there are certain sensitive matters which we have to bear in mind when we speak in this august House. ...*(Interruptions)*...You have not been called by the Chairman to speak. ...*(Interruptions)*...Sir, a question is raised by the hon. Member. He was a senior bureaucrat. So, I expect that he need not be told about rules, regulations and decorum. However, his question was very specific. He was asking about the conflict between Judiciary and Executive. Now, this is a vague kind of question in a way whether there are differences of opinion. That is very much part of democracy. Within a family and within a political party also, there are differences of opinion. So, when there are differences of opinion, there are ways to get solutions to them also. His question was not anything which he wanted to know from the Government in terms of any figures, facts, etc.

MR. CHAIRMAN: Hon. Member, second supplementary please.

SHRI JAWHAR SIRCAR: Sir, the Minister has not replied correctly. I asked for sharp points of difference, not conflict. So, don't put words in my mouth. I asked for sharp points of difference that have not been responded to.

MR. CHAIRMAN: Hon. Minister.

SHRI JAWHAR SIRCAR: And, Sir, one more to this is, he has mentioned about 127 proposals of High Court Judges that are lying vacant. When would these be taken up? Eighteen proposals have been rejected.

SHRI KIREN RIJJU: Sir, while I am speaking in this House today, there are 210 vacancies in various High Courts. In terms of the numbers of the vacancies, I can say that once the names are recommended by the Collegium, three-member Collegium in

the High Court, then it proceeds as per the laid down guidelines in the Memorandum of Procedure. So, Sir, in respect of these 210 names -- he is asking about the vacancies -
- we have not received the proposal. So, there is no question of any sharp differences.

MR. CHAIRMAN: Shri Sushil Kumar Modi.

श्री सुशील कुमार मोदी : सभापति महोदय, मैं माननीय मंत्री महोदय से यह जानना चाहता हूँ कि क्या यह बात सही है कि 6 जनवरी, 2023 को भारत सरकार ने चीफ जस्टिस ऑफ इंडिया को एक पत्र लिखा है, जिसमें यह आग्रह किया गया है कि सर्च-कम-इवैल्युएशन कमेटी में भारत सरकार एवं राज्य सरकारों का प्रतिनिधि रखा जाए, जिससे कॉलेजियम द्वारा जजों की नियुक्ति की जा सके? यदि हाँ, तो उसकी क्या स्थिति है?

श्री किरन रिजिजू : सर, आपको इस चीज़ के बारे में विदित होगा कि जब 2015 में सुप्रीम कोर्ट के कॉन्स्टिट्यूशन बेंच ने इस हाउस के द्वारा यूनैनिमस्ली पारित किए गए एनजेएसी और 99th कॉन्स्टिट्यूशन अमेंडमेंट एक्ट, दोनों को स्ट्राइक डाउन किया था, तो उसमें कुछ ऑब्जर्वेंशंस किए गए थे और कुछ डायरेक्शंस दिए गए थे। उस डायरेक्शन में यह क्लियरली लिखा गया है कि एग्जिस्टिंग एमओपी को सप्लिमेंट किया जाए, इम्प्रोवाइज़ किया जाए। उसी में यह भी कहा गया कि सरकार को कॉलेजियम के साथ पहल करनी चाहिए। उसको फॉलो अप करते हुए मैंने एक पत्र लिखा, लेकिन उस पत्र को कुछ समाचार पत्रों में या किसी एक फोरम में गलत तरीके से पेश किया गया। सर, अगर हम लोग यहाँ न्यूज़पेपर के आधार पर बात करेंगे तो यह ठीक नहीं रहेगा।

MR. CHAIRMAN: Shri Tiruchi Siva.

SHRI TIRUCHI SIVA: Sir, my question is very simple but very important. Would the Government consider the possibilities of introducing the reservation policy in the appointment of judges?

SHRI KIREN RIJITU: Sir, as per the existing policy and provision, there is no reservation in the Indian Judiciary. However, I have already reminded all the hon. Judges, especially, the Collegium members, to keep in mind while recommending the names, to include the members from backward communities, women and other categories which are not represented adequately in the Indian Judiciary.

MR. CHAIRMAN: Shri K.T.S. Tulsi.

SHRI K.T.S. TULSI: Hon. Chairman, Sir, thank you very much for giving me this opportunity. This is an important issue and I want to place before this House and before the Minister the statement made by Dr. B.R. Ambedkar with regard to the appointment of Judges. It is very important. In this statement, Dr. Ambedkar says: "With regard to the question of concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgment. I personally feel no doubt that the Chief Justice is an eminent person. But after all the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to veto."

MR. CHAIRMAN: Your question, Sir.

SHRI K.T.S. TULSI: Then there is Justice Krishna Iyer, who has expressed himself and this is in public domain.

MR. CHAIRMAN: What is your question to the hon. Minister?

SHRI K.T.S. TULSI: My second question with regard to the same issue is the quotation from Justice Krishna Iyer on the appointment of Judges. Justice Krishna Iyer says: "There is no structure to hear the public in the process of selection. No principle is laid down, no investigation is made, and a sort of anarchy prevails." Is that right?

SHRI KIREN RIJUJU: Sir, I share and endorse the sentiments made by the hon. Member Tulsi ji and also what he has quoted from the debates of the Constituent Assembly, especially, Dr. B.R. Ambedkar ji. However, we all know how the provisions of the Constitution would change, especially, in the Second Judges Case which is known as the Advocates-on-Record Association vs. Union of India Case and that where the word consultation was translated and changed as concurrence and further the Presidential Reference was made to seek clarification on the exact meaning of the consultation. It was elaborated and further expanded in 1998 by introducing the Collegium system. So, what was transpired in the Constituent Assembly and what is being introduced which we

still practice, there is a big shift. But, however, since we are not discussing about the judicial appointments and matters related to, it will be difficult to respond to the quotes which the hon. Member has made, especially, about Justice Krishna Iyer and Dr. B.R. Ambedkar.

MR. CHAIRMAN: Now, Question No. 79.