



SC Judges Appointment - Concerns

What is the issue?

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- The government recently sent back the SC collegium's recommendation on judges appointment.

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- It has raised concerns on the propriety of the Centre to hold back names from the collegium's list.

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What is the ongoing tussle?

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- The SC collegium recommended a list of names to be elevated as Judges of SC.

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- Justice K.M. Joseph and senior advocate Indu Malhotra were recommended together.

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- Justice K M Joseph is currently the Chief Justice of Uttarakhand High Court.

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- The government however approved only Indu Malhotra's name.

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- It however returned Justice K.M. Joseph's name for reconsideration.

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- This too was done more than 3 months after the Collegium had approved them.

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- The collegium recently decided to reiterate its recommendation to elevate Justice K M Joseph as SC judge.

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- **When reiterated** unanimously, **the Centre is bound to act** on the collegium resolution.
- This is as per the law laid down by the SC in the Third Judges Case of 1998.

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What are the concerns?

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- **Power** - The government's decision to send back the collegium's recommendation was unprecedented.
- It is suspected to have been influenced by some political considerations. Click [here](#) to know more.
- The executive power of the Centre holding back names from the collegium's list needs a reassessment.
- **Seniority** - The Centre has selectively approved some names from a batch of recommendations.
- It could make a difference to the seniority of the judges concerned.
- Notably, seniority is the sole consideration for appointment of the Chief Justice as well as membership of the collegium.
- **Delay** - Justice K M Joseph's name would only be part of the collegium's next set of recommendations.
- This would include proposals to elevate the Chief Justices of some more high courts.
- The collegium seems to address the Centre's concern on fair representation to all high courts.
- However, it remains a concern why collegium did not send its reiteration to the Centre immediately.

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What lies ahead?

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- The unanimous reiteration of the collegium may end the current controversy.
- However, the larger issue of differences between the judiciary and the executive needs attention.
- In a judge-recommended system of appointments differences over particular candidates cannot be avoided.
- But it should be possible for the two sides to minimise these differences and act expeditiously.
- The onus is more on the government of the day.
- It should resist from blocking the appointment of anyone whom the judges themselves have found fit and deserving.
- The present consultative process in appointments should not be hampered by executive stubbornness.

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Source: The Hindu, Indian Express

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