

**GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF JUSTICE**

LOK SABHA

STARRED QUESTION NO. 241

TO BE ANSWERED ON FRIDAY, THE 17.03.2023

R&AW Reports on Supreme Court Collegium

***241. SHRI MANISH TEWARI:**

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

- (a) whether it is a fact that the Supreme Court collegium cited reports by R&AW regarding the sexuality of an advocate, if so, the details thereof;
- (b) whether it is the practice of the Government to use R&AW reports for appointment of judges to the Supreme Court, if so, the details thereof;
- (c) whether the sexual orientation of an Indian citizen is legally/constitutionally germane to their nomination as a judge, if so, the details thereof;
- (d) whether the Government takes into consideration Political leanings and online posts for consideration of appointment of judges, if so, the details thereof; and
- (e) the details regarding the number of times collegium recommendations have been sent back between May 2019 to February 2023?

ANSWER

MINISTER OF LAW AND JUSTICE

(SHRI KIREN RIJJU)

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

Statement referred to in reply to parts (a) to (e) of Lok Sabha Starred Question No. *241 due for answer on 17.03.2023 regarding “R&AW Reports on Supreme Court Collegium”

(a) to (e):The Supreme Court Collegium (SCC) vide its Minutes dated 18th January, 2023 cited the reports of the Research & Analysis Wing (R&AW), which *inter-alia* mentioned the sexuality of an Advocate whose name has been recommended for appointment as Judge of the Delhi High Court. Generally, it is not a practice to seek R&AW reports on proposals for appointment of judges in the High Courts and the Supreme Court except in extraordinary circumstances, involving issues related to national security.

As per the Memorandum of Procedure for Appointment of Judges of High Courts, the proposals recommended by the High Court Collegium for appointment as High Court Judges, are to be considered in the light of such other reports/inputs as may be available to the Government for assessing the suitability in respect of the names under consideration. Accordingly, IB inputs are obtained and provided to the SCC for making assessment on the recommendees.

Supreme Court in its Judgment dated 6.10.1993 in Supreme Court Advocate on Record Vs. Union of India (Second Judges Case) *inter-alia* observed that merit selection is the dominant method for judicial selections and the candidates to be selected must possess high integrity, honesty, skill, high order of emotional stability, firmness, serenity, legal soundness, ability and endurance. Besides the above, the hallmarks of the most important personal

qualifications required are moral vigour, ethical firmness and imperviousness to corrupting or venal influences, humility and lack of affiliations, judicial temperament, zeal and capacity to work. In a recent judgment dated 10.02.2023 in WP (Civil) No. 148 of 2023, dismissing the Writ Petitions filed in the matter of appointment of a Judge in the Madras High Court, the Supreme Court observed that political background by itself has not been an absolute bar to appointment of otherwise a suitable person. Similarly, criticism of policies or actions by the persons recommended for elevation has not been held as a ground to treat them as unsuitable.

The Supreme Court Collegium has also opined that political leanings or expression of views by a candidate does not disentitle him to hold a constitutional office so long as the person proposed for judgeship is a person of competence, merit and integrity. The Government, as an important stakeholder in the process of appointment of Judges in the High Courts and as laid down in the Memorandum of Procedure on appointment of High Court Judges provides inputs which mainly contain information on the suitability, competence and integrity of the candidates under consideration for appointment to high constitutional post in the judiciary. The recommendations along with inputs are then submitted to the SCC for advice. It may be mentioned that the Government only appoints those persons who are recommended by the SCC.

Appointment of the Judges of the constitutional courts is a continuous, integrated and collaborative process between the executive and the judiciary. It requires consultation and approval from various constitutional authorities both at state and central level. The Government can seek reconsideration of the

recommendations made by the SCC under the collaborative process so as to ensure that only the most suitable candidates are appointed as Judges in the High Courts.
