

UNANIMOUS RESOLUTION PASSED AT THE EOGM OF BOMBAY BAR ASSOCIATION ON THURSDAY, 26TH SEPTEMBER 2019 AT 2.30 PM

In view of decisions of the Supreme Court of India starting from First Judge's case (S.P.Gupta V. Union of India 1981-Supp-1-SCC-87), Second Judge's case : Supreme Court Advocates On Record Association V. Union of India – 1993-4-SCC-441; Third Judge's Case : Re Special Reference No. 1 of 1998- 1998-7-SCC-739 and the latest judgment in case of National Judicial Appointment Commission (NJAC) case (Supreme Court Advocates on Record Association V. Union of India 2016-5-SCC-1), the Supreme Court Collegium controls the appointment of judges of higher judiciary in the country i.e. the Judges of the Supreme Court and the High Courts.

WHEREAS the Collegium by its Resolution dated 10th May 2019 recommended the appointment of Justice A. A. Kureshi as the Chief Justice of the Madhya Pradesh High Court;

WHEREAS the Government failed to act upon the Collegium's recommendation for a period of four months;

WHEREAS the Government only acted on the said recommendation when compelled to do so in light of the proceedings instituted by the Gujarat High Court Advocates Association before the Supreme Court of India;

WHEREAS the Collegium's recommendation was referred back to the Chief Justice of India *vide* two communications dated 23rd August 2019 and 27th August 2019, along with accompanying material;

WHEREAS the contents of these communications dated 23rd August 2019 and 27th August 2019 and the accompanying material whilst being placed before the three senior-most members of the Collegium have not been made available to the public;

AND WHEREAS, the Collegium thereafter published on 20th September 2019, its decision dated 5th September 2019 reconsidering the said recommendation. The Collegium modified the original recommendation of 10th May 2019, and recommended the appointment of Justice A. A. Kureshi as the Chief Justice of the Tripura High Court.

The Bombay Bar Association therefore resolves as follows:

RESOLVED THAT:

This Association expresses serious concerns and strongly disapproves the Collegium's manner of decision-making pertaining to the elevation of Justice A. A. Kureshi as Chief Justice of the Tripura High Court and the modification of earlier recommendation at the behest of the Government of India.

This Association believes that the modification of the Collegium's recommendation in the case of Justice A. A. Kureshi, at the behest of the Government undermines the independence of the judiciary and would have an adverse effect on the functioning of the judiciary as a whole and the ability of judges to discharge their constitutional functions without fear or favour. This Association views with grave apprehension the opaque procedure adopted by the Collegium relating to the elevation of Justice A. A. Kureshi as Chief Justice. This Association believes that the disclosure of reasons behind the Collegium's recommendations (and any modifications thereof) is necessary, and would subserve the interests of the judiciary and the administration of justice.

This Association further strongly disapproves the manner in which the Government has interfered with the Collegium's decision-making in respect of the appointment of Justice A.A.Kureshi in particular and appointments, elevation or transfer of Judges in general thereby threatening the independence of the judiciary.