

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

**RAJYA SABHA
STARRED QUESTION No. *166**

ANSWERED ON 16.03.2023

Alternative Panel for SC Collegium

***166 SHRI M. SHANMUGAM:**

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

- (a) whether Government has suggested an alternative panel in place of Supreme Court Collegium and to include a nominee of Central Government in the Collegium;
- (b) if so, the details thereof;
- (c) whether Government proposed formation of search-and-evaluation panel, with Government representatives, to shortlist and suggest names to Collegium for appointing Judges;
- (d) whether it is not contrary to the Supreme Court direction which asked the Government to work, in consultation with the Collegium, and to have a transparent Memorandum of Procedure; and
- (e) if so, the response of Government thereto?

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 Rajya Sabha Starred Question No. *166 due for answer on 16.03.2023 regarding “Alternative Panel for SC Collegium”

(a) to (b): No Sir.

(c) to (e): Hon'ble Supreme Court while hearing WP(C) 13 of 2015 in NJAC matter issued a detailed order on 16-12-2015 on supplementing the Memorandum of Procedure (MoP) which laid down that Government of India may finalize the Memorandum of Procedure by supplementing it in consultation with the Chief Justice of India. The Chief Justice of India will take a decision based on the unanimous view of the Collegium comprising of four senior most puisne Judges of the Supreme Court. The order stated that the following factors may be taken into consideration such as **eligibility criterion, transparency in the appointment process, secretariat, complaint mechanism and miscellaneous matter** considered appropriate for ensuring **transparency and accountability** including interaction with the recommendees by the Collegium of the Supreme Court without sacrificing the confidentiality of appointment.

In pursuance of the above orders, the Government of India, after due diligence prepared and sent the revised draft MoP to the Hon'ble Chief Justice of India on 22.3.2016 on which the response of the Supreme Court Collegium was received on 25.05.2016 and 01.07.2016. The views of the Government in response to the views of the SCC were conveyed to the CJI on 03.08.2016. Further comments of SCC on the views of the Government on the draft MoP were received on 13.03.2017.

However, in a subsequent development, the Supreme Court in a Suo-Moto Contempt proceedings against a Judge of Calcutta High Court pronounced a judgment on 04.07.2017 bringing out the system's failure of not providing an appropriate procedure for making assessment of the personality of the contemnor at the time of recommending his name for elevation inter-alia highlighting the need to revisit the process of selection and appointment of Judges to the Constitutional Courts. The views of the Government on the relevant points were conveyed to Supreme Court of India vide letter dated 11.07.2017. Following another Order of the Supreme Court dated 20.04.2021 in WP(C) No. 1236 of 2019, the Government again conveyed to the Supreme Court vide letter dated 18.8.2021 suggestions on the draft for supplementing para 24 of the MoP.

In its regular exchange of views and consultations with the Supreme Court Collegium, the Government has made suggestions in line with the Supreme Court Order in WP(C) 13 of 2015,

including the need for a Screening cum Evaluation Committee at the Supreme Court and High Court levels to assist the Collegiums of Supreme Court and High Courts respectively to enhance transparency and objectivity in the entire selection process. It was proposed that the Committees may screen and evaluate relevant material on the suitability of the prospective candidates and would act as a facilitator while the decision to make recommendations will continue to be exercised by the respective Collegiums of the Supreme Court and High Courts. However, the Supreme Court in their responses to the draft MoP did not convey its consent to set up such Committees.

Since the response of the SC Collegium on the views of the Government on the revised draft MoP sent vide its last letter dated 11.07.2017 and 18.08.2021 were not yet received, the Government in its recent communication dated 06.01.2023 to Supreme Court of India, has emphasized the need to finalize the MoP at the earliest in view of various judicial pronouncements and *inter-alia* suggested that the Search-cum-Evaluation Committee in respect of appointment of Judges in the Supreme Court and Chief Justices of High Courts should also consist of a representative nominated by Government of India. For appointment of Judges in the High Courts, the Committee should consist of a representative nominated by Government of India and a representative of State Government(s) under the jurisdiction of High Court as nominated by the Chief Minister(s). It has been proposed that for appointment and transfer of Chief Justices and Judges of High Courts the names recommended by the Chief Minister can be received by the Search-cum-Evaluation Committee along with the names taken from senior Judges outside the Collegium and eligible candidates taken from the database (Judicial Officers and Advocates) as maintained by the proposed Secretariat. The High Court Collegium may deliberate upon panel of names drawn up by the Search-cum-Evaluation Committee and recommend the names of most suitable candidates for appointment of Judges in the Supreme Court, Chief Justices and Judges of the High Courts. The Collegium at appropriate level may address the above requirements of drawing up panel of eligible candidates from aforementioned sources and draw up their proceedings by rendering requisite reasons and thereafter send the proposal to the Government with relevant documents.

Thus, the above mentioned Search-cum-Evaluation Committees will be entrusted to prepare a panel of eligible candidates from which the respective Collegiums will make recommendation. This, alongwith other measures suggested shall pave the way for a more transparent, accountable and expeditious mechanism for appointment of Judges to the Constitutional Courts.
