

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

**RAJYA SABHA
UNSTARRED QUESTION NO. 117
ANSWERED ON 02/02/2023**

Representation of Government in the appointment of Judges

117# SHRI RAM NATH THAKUR:

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

- (a) whether Government is heading towards appointing its representative in the process of appointment of judges; and
- (b) whether Government is considering to set up an independent regulator like Union Public Service Commission (UPSC) for appointment of judges?

ANSWER

MINISTER OF LAW AND JUSTICE

(SHRI KIREN RIJJU)

(a) to (b): Hon'ble Supreme Court while hearing WP(C) 13 of 2015 in NJAC matter issued detailed Order on 16-12-2015 on supplementing the Memorandum of Procedure (MoP) 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 they shall take the following factors 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 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 sent the MoP to Hon'ble Chief Justice of India on 22.3.2016, the response of the Supreme Court Collegium on the revised draft MoP was received on 25.05.2016 and 01.07.2016. The view of the Government in response to the views of the SCC was conveyed to the CJI on 03.08.2016. The view of the Government in response to the views of the SCC was conveyed to the CJI on

03.08.2016. Comments of SCC on the views of Government on the draft MoP received on 13.03.2017.

Subsequently, the Supreme Court in judgment dated 4.7.2017 in Suo-Motu Contempt proceedings against a Judge of Calcutta High Court brought 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* highlighted the need to revisit the process of selection and appointment of Judges to the Constitutional Courts. The view of the Government on the relevant points was 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 approached Supreme Court vide letter dated 18.8.2021 suggesting draft for supplementing para 24 of the MoP.

In its consultations with the Supreme Court Collegium, the Government has made suggestions in line with the Supreme Court Order dated 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. 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. 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 did not agree to set up such Committees.

In its recent communication dated 06.01.2023 to Supreme Court of India, the Government has emphasized the need to finalize the MoP 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 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 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.

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 will pave the way for a more transparent, accountable and expeditious mechanism for appointment of Judges to the Constitutional Courts.
