

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

**RAJYA SABHA
UNSTARRED QUESTION NO. 122
ANSWERED ON 02/02/2023**

System of appointment of judges in higher judiciary

122 SHRI RAJEEV SHUKLA:

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

- (a) whether there is any proposal to bring an alternative mechanism or to tweak the present system of appointment of judges in higher judiciary;
- (b) if so, the details thereof;
- (c) whether there is any proposal to include Government's representative in National Judicial Appointment Commission (NJAC); and
- (d) if so, the details thereof?

ANSWER

MINISTER OF LAW AND JUSTICE

(SHRI KIREN RIJJU)

(a) to (d): In order to replace the Collegium system of appointments of Judges of the Supreme Court and High Courts with a more broad-based, transparent, accountable appointment mechanism and to bring greater objectivity in the system, the Government brought into operation the Constitution (Ninety-Ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 w.e.f. 13.04.2015. However, both the Acts were challenged in the Supreme Court. The Supreme Court vide Judgment dated 16.10.2015 declared both the Acts as unconstitutional and void. The Collegium system as existing prior to the enforcement of the Constitution (Ninety-Ninth Amendment) Act, 2014 was declared to be operative.

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) and 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 recent communication dated 06.01.2023 to Supreme Court of India, the Government has emphasized on the need to finalize the MoP in view of various judicial pronouncements.
