

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

**RAJYA SABHA  
UNSTARRED QUESTION NO. 1877**

**ANSWERED ON 16.03.2023**

**Uniform process for implementation of Collegium recommendation**

**1877. SHRI RAGHAV CHADHA:**

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

- (a) whether there is any uniform process for implementing Collegium recommendations on the appointment and transfer of judges throughout the country;
- (b) if so, the details thereof;
- (c) whether Government proposes to modify the Collegium System and formulate a new Memorandum of Procedure for appointment of Judges; and
- (d) if so, the details thereof, if not, the reasons therefor?

**ANSWER**

**MINISTER OF LAW AND JUSTICE**

**(SHRI KIREN RIJJU)**

(a) to (d): 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.

Judges of the Supreme Court of India and High Courts are appointed under Article 124, 217 and 224 of the Constitution of India and according to the procedure laid down in the Memorandum of Procedure (MoP) prepared in 1998 pursuant to the Supreme Court Judgment of October 6, 1993 (Second Judges case) read with their Advisory Opinion of October 28, 1998 (Third Judges case). As per MoP, initiation of proposal for appointment of Judges in the Supreme Court vests with the Chief Justice of India, while initiation of proposal for appointment of Judges in the High Courts vests with the Chief Justice of the concerned High Court. All the names recommended by High Court Collegium are sent with the views of the Government to the Supreme Court Collegium (SCC) for advice. Government, however, appoints only those persons as Judges of High Courts who are recommended by SCC.

Judges of High Courts are transferred as per Article 222 of the Constitution of India and according to the procedure laid down in the Memorandum of Procedure prepared in 1998 pursuant to the Supreme Court Judgment of October 6, 1993 (Second Judges case) read with the advisory opinion of October 28, 1998 (Third Judges case). As per the existing MoP, the proposal for transfer of High Court Judges is initiated by the Chief Justice of India in consultation with four senior-most puisne Judges of the Supreme Court. The MoP further provides that the Chief Justice of India is also expected to take into account the views of the Chief Justice of High Court from which the judge is to be transferred, as also the Chief Justice of the High Court to which the transfer is to be effected, besides taking into account the views of one or more Supreme Court judges who are in a position to offer views. All transfers are to be made in public interest i.e. for promoting better administration of justice throughout the country. No timeline has been prescribed in the MoP for transfer of judges from one High Court to another.

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 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 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 was conveyed to the CJI on 03.08.2016. Further comments of SCC on the views of Government on the draft MoP were received on 13.03.2017.

However, in a subsequent development, the Supreme Court in a Suo-Motu Contempt proceedings against a Judge of Calcutta High Court pronounced a judgement 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 all these relevant points were conveyed to the 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 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.

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