

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

RAJYA SABHA

UNSTARRED QUESTION NO. 906

TO BE ANSWERED ON THURSDAY, THE 09.02.2023

Draft MoP for appointment of Judges

906. SHRI SUSHIL KUMAR MODI:

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

- (a) the number of draft Memorandums of Procedure (MoPs) for appointment of Judges exchanged between the Supreme Court (SC) and the Government since 2018;
- (b) whether the MoP is pending finalisation since 2018, and if so, the reasons therefor;
- (c) the details of the recent communication made by Government with SC on restructuring the Collegium in the MoP; and
- (d) whether a response has been received from the SC, if so, 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. It was laid down that 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 revised MoP to Hon'ble Chief Justice of India on 22.3.2016 and the response of the Supreme Court Collegium on the said revised draft MoP 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. Subsequent comments of SCC on the views of Government on the draft MoP were received on 13.03.2017.

Thereafter, the Supreme Court in a judgment dated 04.07.2017 in a 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 as High Court Judge 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.

A two-judge Bench of Supreme Court vide its judgment dated 28.03.2018 in Criminal Appeal No. 470 of 2018, brought out deficiencies in the system and emphasized the need to improve the process of appointment of Judges to the Constitutional Courts.

In another case, while hearing a matter involving M/s PLR Projects Pvt Ltd. vs Mahanadi Coalfield Ltd. and Ors [Transfer Petition (civil) no: 2419 of 2019] regarding issue of appointment of High Court Judges, the three-judge Bench of the Supreme Court, vide order dated 20.04.2021, laid down additional timelines in respect of the time taken by the Government

in processing the proposal for appointment of Judges of High Courts. However, these timelines are not yet a part of MoP.

The Supreme Court, while hearing another case No. WP(C) 1236 of 2019 on the matter of appointment of retired judges at sittings of High Courts under Article 224A of the Constitution of India, vide its judgment dated 20.04.2021 has laid down fresh criterion for their appointment. After detailed deliberation, Government has submitted its views to the Chief Justice of India on 18.08.2021 to supplement para 24 of existing MoP which provides for the appointment of retired judges at the sitting of High Courts under Article 224A. The issue is still under consideration of the Supreme Court.

While sending the proposal for supplementation of MoP on the criteria fixed in Supreme Court order dated 16.12.2015 in W.P.(C) 13 of 2015 in NJAC matter, Government has made suggestions 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 the Chief Justice 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). The existing MoP stipulates that if the Chief Minister desires to recommend the name of any person, he/she should forward the same for consideration. However, since this has not been put in actual practice, the names recommended by the Chief Minister can also 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 said Committee and recommend the names of the most suitable candidates for appointment as Judges of 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. The said Committees will be entrusted to prepare a panel of eligible candidates from which the respective Collegiums will make recommendation. A response from the Supreme Court is awaited.
