

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF JUSTICE

RAJYA SABHA
STARRED QUESTION NO. *50

ANSWERED ON 07.12.2023

Vacancies in High Courts and the Supreme Court

*50. SHRI SHAKTISINH GOHIL:

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

- (a) the number of vacancies in High Courts and the Supreme Court, and the number of proposals recommended against the said vacancies;
- (b) the duration of time since the Collegium of the Supreme Court recommended the said proposals;
- (c) whether Government is aware of the delay in judicial appointments as well as transfers, if so, the reasons for delay; and
- (d) the detailed reasons for non-clearance of names of judges of various High courts recommended by the Collegium of the Supreme Court?

ANSWER

MINISTER OF STATE (INDEPENDENT CHARGE) FOR MINISTRY OF LAW AND JUSTICE; MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS;
MINISTER OF STATE FOR THE MINISTRY OF CULTURE

(SHRI ARJUN RAM MEGHWAL)

(a) to (d): A statement is laid on the Table of the House.

Statement referred to in reply to parts (a) to (d) of Rajya Sabha Starred Question No. 50 due for answer on 07.12.2023 regarding “Vacancies in High Courts and the Supreme Court”

(a) to (d): As on 04.12.2023, against the sanctioned strength of 34 Judges, the Supreme Court is functioning at full strength and there is no vacancy. As regards the High Courts, against the sanctioned strength of 1114 Judges, 790 Judges are working and 324 post of Judges are vacant in the various High Courts.

As on 01.01.2023, 171 proposals received from High Court Collegiums were at different stages of processing. During the calendar year 2023, 121 fresh proposals were received. Out of the total 292 proposals for consideration during the current calendar year, 110 Judges have been appointed and 60 recommendations were remitted to the High Courts on the advice of the SCC. As on 04.12.2023, 122 proposals are at various stages of processing. Out of these 122 proposals, 87 proposals were sent to the Supreme Court Collegium (SCC) for seeking advice against which the SCC has provided advice on 45 proposals which are at various stages of processing in the Government. 42 proposals are under consideration with the SCC. 35 fresh proposals received recently are being processed for seeking the advice of the SCC. Recommendations are yet to be received from High Court Collegiums in respect of the remaining 198 vacancies.

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 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 High Courts vests with the Chief Justice of the concerned High Court. Chief Justice of the High Court is required to initiate the proposal to fill up of vacancy of a High Court Judge six months prior to the occurrence of vacancy. However, this timeline is often not adhered to by the High Courts. 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.

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.

The transfer of Chief Justices/Judges of High Courts 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.

As a result of the collaborative process between the Executive and Judiciary, during the year 2022, 165 Judges were appointed in various High Courts and 08 transfer among High Courts were made (02 Chief Justices and 06 Judges) and during the year 2023, a total of 110 Judges have been appointed in various High Courts and 34 judges have been transferred among various High Courts till 04.12.2023.
