

GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF JUSTICE
RAJYA SABHA
UNSTARRED QUESTION NO. 436
ANSWERED ON 28/11/2024

VACANCIES IN JUDICIARY

436. SHRI SANJAY KUMAR JHA:

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

- (a) the current vacancies in the judiciary including district courts and different forums;
- (b) whether Government is planning to fill such vacancy as soon as possible, if so, the details thereof;
- (c) whether Government is thinking to bring all India Judicial Service examination for the selection of judges, if so, the details thereof ;
- (d) whether Government is thinking to allow foreign law firms practising in India, if so, details of the regulatory structure to allow multinational law firms; and
- (e) whether Government has recently convened a meeting with various stakeholders in this regard?

ANSWER

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

(SHRI ARJUN RAM MEGHWAL)

(a): The status of vacancies in the judiciary including district courts as on 21.11.2024 is as under:

Name of the Courts	Vacancy as on 21.11.2024
Supreme Court	02
High Courts	364
District and Subordinate Courts	5245

(b): Appointment of Judges of the High Courts is made under Articles 217 and 224 of the Constitution of India, which is a continuous, integrated and collaborative process between the Executive and the Judiciary. It requires consultation and approval from various constitutional authorities both at the State and Centre level. While every effort is made to fill up the existing vacancies expeditiously, vacancies of Judges in High Courts do keep on arising on account of retirement, resignation or elevation of Judges and also due to increase in the strength of Judges.

Filling up of vacant positions in the case of District and Subordinate courts is the responsibility of the High Courts and State Governments concerned. As per the Constitutional framework, in exercise of powers conferred under proviso to Article 309 read with Articles 233 and 234 of the Constitution, the respective State Government in consultation with the High Court frames the rules and regulations regarding the appointment and recruitment of Judicial Officers in the respective State Judicial Service. The Hon'ble Supreme Court vide order passed in January 2007 in the Malik Mazhar Sultan case, has inter-alia, stipulated certain timelines, which are to be followed by the States and the respective High Courts for the recruitment process of judges in the District and Subordinate courts.

(c): Article 312 of the Constitution provides for the establishment of All India Judicial Service (AIJS), which shall not include any post inferior to that of a District Judge. The constitutional provision enables creation of the AIJS at District Judge level. A comprehensive proposal was formulated for the constitution of an All India Judicial Service (AIJS) and the same was approved by the Committee of Secretaries in November, 2012. The above proposal was included as an agenda item in the Conference of Chief Ministers and Chief Justices of the High Courts held in April, 2013 and it was decided that the issue needs further deliberation and consideration. The views of the State Governments and High Courts were sought on the proposal. There was divergence of opinion among the State Governments and the High Courts on the constitution of All India Judicial Service.

The matter regarding creation of a Judicial Service Commission to help the recruitment to the post of district judges and review of selection process of judges/ judicial officers at all level was also included in the agenda for the Chief Justices Conference, which was held on 03rd and 04th April, 2015, wherein it was resolved to leave it open to the respective High Courts to evolve appropriate methods within the existing system to fill up the vacancies for appointment of District judges

expeditiously. The proposal for constitution of All India Judicial Service with views from the High Courts and State Governments received thereon was also included in the agenda for the Joint Conference of Chief Ministers and Chief Justices of High Courts held on 05th April, 2015. However, no progress was made in the matter.

The proposal of setting up of an All India Judicial Service was again discussed on points of eligibility, age, selection criteria, qualification, reservations etc. in a meeting chaired by then Minister of Law and Justice on 16th January 2017 in the presence of Minister of State for Law and Justice, Attorney General for India, Solicitor General of India, Secretaries of Department of Justice, Department of Legal Affairs and Legislative Department. Setting up AIJS was also deliberated in a meeting of the Parliamentary Consultative Committee in March, 2017 and the Parliamentary Committee on the Welfare of SCs/STs on 22.02.2021.

It was proposed to include the issue of All India Judicial Service in the agenda for Joint Conference of Chief Ministers and Chief Justices of High Courts held on 30th April, 2022. However, the same could not be included in the agenda of the conference.

In view of the existing divergence of opinion amongst the major stakeholders, at present, there is no consensus on the proposal for setting up an All India Judicial Service.

(d): The Bar Council of India (BCI) vide notification dated 10th March, 2023 has published in Gazette of India the Bar Council of India Rules for registration and regulation of foreign lawyers or foreign law firms in India. The Rules provide for foreign lawyers and Foreign Law Firms to practice foreign law and diverse international law and international arbitration matters in India on the principle of reciprocity in a well-defined, regulated and controlled manner. Chapter IV of the Rules lays down nature and extent of law practice by a foreign lawyer/law firm. Rule 8 provides the nature and extent to which a foreign lawyer is authorised to practice law in India.

The BCI has informed that foreign law firms in India have to subject themselves to the regulatory mechanism of BCI as per the rules that may be summarised as under:

- i. Foreign Lawyers and Law firms shall be allowed to advise their clients about foreign laws and international laws only.

- ii. They would render advisory work about such Laws for their foreign clients only.
- iii. Foreign Lawyers and foreign law firms shall be allowed to function in non-litigious areas only.
- iv. Foreign lawyers and foreign law firms shall not be allowed to appear in any Court, Tribunal, Board, before any statutory or regulatory authority or any forum legally entitled to take evidence on Oath and/or having trappings of a Court.
- v. Entry of Foreign Lawyers would be on reciprocal basis only i.e. Lawyers of only those countries would be permitted in India where Indian Lawyers are also permitted to practice.
- vi. Foreign Lawyers would be allowed to appear for their clients in International Commercial Arbitration.

The BCI shall have the right of issuing such directions and regulations from time to time, as are necessary for the proper implementation and execution of these Rules.

As per the objects and reasons of the Rules, growth in international legal work, globalization of legal practices and crisscrossing of legal professionals from one country to other has called for presence of an open, responsive and receptive legal dispensation mechanism in India. Bar Council of India is of the view that opening up of law practice in India to foreign lawyers in the field of practice of foreign law; diverse international legal issues in non litigious matters and in international arbitration cases would go a long way in helping legal profession/domain grow in India to the benefit of lawyers in India too. The rules will also help to address the concerns expressed about flow of Foreign Direct Investment in the country and making India a hub of International Commercial Arbitration.

Further, the BCI has informed that, it is of the firm view, firstly, that entry of foreign lawyers and foreign law firm is not going to adversely impact advocates of the country. On the contrary, the Bar Council of India firmly believes that entry of foreign lawyers and law firms will benefit scores of young advocates and budding Indian Law Firms. And in the long run, it will be proved beneficial to the Indian Lawyers, Law Firms and for the entire country.

(e): Recently the Government has not convened any meeting in this regard.
