

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

**LOK SABHA
STARRED QUESTION NO.193**

TO BE ANSWERED ON WEDNESDAY, the 15TH MARCH, 2017

Oath of Judges

+*193.SHRI AJAY MISRA TENI:

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

(a) whether the judges in Jammu and Kashmir do not take oath to uphold the Constitution of India and the judges of the Hon'ble High Court of Jammu and Kashmir are not bound to uphold the Constitution of India and if so, the details thereof;

(b) whether the provision of Article 368 of the Constitution has been added under the Constitutional order, 1954 wherein it has been provided that no such amendment shall have effect unless applied by order of the President under clause (1) of Article 370 and if so, the details thereof;

(c) whether there is a need to amend the Constitutional Order, 1954 in the present scenario; and

(d) if so, the details thereof and if not, the reasons therefor?

**ANSWER
MINISTER OF LAW AND JUSTICE AND ELECTRONICS & INFORMATION
TECHNOLOGY**

(SHRI RAVI SHANKAR PRASAD)

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

Statement referred in reply to parts (a) to (d) of Lok Sabha Starred Question No.193 to be answered on 15.03.2017 regarding “Oath of Judges”

The Form of oath or affirmation which a judge of the High Court of Jammu and Kashmir has to make and subscribe is given in the Fifth Schedule of the Constitution of Jammu and Kashmir. The text of the said Form is reproduced below:

“I, A.B., having been appointed Chief Justice (or a Judge) of the High Court of Jammu and Kashmir do swear in the name of God / Solemnly affirm that I will bear true faith and allegiance to the Constitution of the state as by law established, (that will uphold the sovereignty and integrity of India,) that I will duly and faithfully and to the best of my ability, knowledge, and judgment perform the duty of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.”

The Constitution (Application to Jammu and Kashmir) Order, 1954 was issued on 14 May 1954. Through this Constitution Order, following proviso has been added to Article 368 of the Constitution (Power of Parliament to amend the Constitution and procedure therefor) in its application to the State of Jammu and Kashmir:

"Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clause (1) of article 370".

At present, there is no proposal for amendment in Constitution (Application to Jammu and Kashmir) Order, 1954.

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TO BE ANSWERED ON WEDNESDAY, THE 15.03.2017

Oath of Judges

Name of M.P.:

SHRI AJAY MISRA TENI:

INDEX

Sl. No.	Details of the content
1	Text of Question and Reply
2	Note for Supplementary
3	Annexure I. Bio-Data of the Hon'ble M.P. II. Vacancy Position in Supreme Court and High Courts .

**LOK SABHA
STARRED QUESTION NO.193
TO BE ANSWERED ON 15.03.2017**

Oath of Judges

Note for Supplementary

APPOINTMENT OF CHIEF JUSTICE OF J&K HIGH COURT

In case of initial appointment of a Chief Justice of a High Court, the provisions of Article 217 of Constitution of India will have to be followed. In the case of Jammu & Kashmir High Court, appointment of Chief Justice shall be made in accordance with section 95 of the Constitution of Jammu & Kashmir. Transfer of Chief Justice from one High Court to another will be governed by the provision of Article 222 of the Constitution of India. Transfer of a Chief Justice to and from Jammu & Kashmir High Court shall be made in accordance with clause (1) of Article 222 of the Constitution of India read with Article 222 (1A) of the Constitution (Application to Jammu & Kashmir) Order, 1954.

The Government has, in consultation with the Chief Justice of India, decided as a matter of policy to appoint the Chief Justice of all High Courts from outside.

The initiation of the proposal for the transfer of a Judge should be made by the Chief Justice of India whose opinion in this regard is determinative. Consent of a Judge for his first or subsequent transfer would not be required. All transfers are to be made in public interest i.e. for promoting better administration of justice throughout the country.

Transfer of Judge to or from Jammu & Kashmir High Court shall be made in accordance with clause (1) of Article 222 of the Constitution of India read with Article 222 (1A) of the Constitution (Application to Jammu & Kashmir) order, 1954. Therefore, when it is proposed to transfer a Judge from or to the Jammu & Kashmir High Court, the Minister of Law and Justice in the Central Government will consult the Governor (Chief Minister) of Jammu & Kashmir for his views before putting up the relevant papers to the Prime Minister for advising the President. In case there is a difference of opinion, the Union Minister of Law & Justice will consult the Chief Justice of India again before putting up the papers to the Prime Minister for advising the President on the matter of Transfer. On approval of the President, the transfer will be announced in the usual manner.

At present, Shri Justice N. Vasantha Kumar of Madras High Court is holding the post of Chief Justice of Jammu & Kashmir High Court. Likewise, Shri Justice Mansoor Ahmad Mir, presently functioning as Chief justice of Himachal Pradesh High Court belongs to Jammu & Kashmir High Court.

2. VACANCIES OF JUDGES IN JAMMU & KASHMIR HIGH COURT

As on 10.3.2017, there are 8 vacancies of Judges in Jammu & Kashmir High Court. The Approved Strength, Working Strength and Vacancies of Judges in Jammu & Kashmir High Court is given below.

Approved Strength	Working Strength	Vacancy
17	09	08

3. VACANCIES IN SUPREME COURT AND HIGH COURTS

A Statement indicating the Approved Strength, Working Strength and Vacancies in Supreme Court and High Courts in the Country is at **Annexure-II**

3.1 Supreme Court

The Judge strength of the Supreme Court (including the Chief Justice of India) is 31. As on 10.03.2017, 28 Judges are in position, leaving 3 vacancies of Judges to be filled.

3.2 High Courts

Against the sanctioned strength of the High Court Judges of 1079 as on 10.03.2017, 639 Judges are in position, leaving 440 vacancies of Judges to be filled. During 2016, 250 fresh recommendations for appointment of Judges in various High Courts have been received.

4. PROPOSAL UNDER CONSIDERATION FOR APPOINTMENT OF JUDGES IN JAMMU & KASHMIR HIGH COURT

The Chief Justice of Jammu & Kashmir High Court vide letter dated 19.2.2016 has recommended the names of 6 Advocates and 3 Judicial Officers for appointment as Judges of that High Court. The Chief Minister of Jammu & Kashmir vide letter dated 30.5.2016 has raised objections to the recommendations made by the Chief Justice. The Chief Minister of Jammu & Kashmir is of the view that the recommendations may be returned back to the Chief Justice of Jammu & Kashmir High court for reconsideration in consultation with the State Government. The Governor vide letter dated 02.06.2016 has agreed with the views of the State Government. The proposal

has been submitted to the Chief Justice of India on 19.8.2016 for consideration by the Supreme Court Collegium. The response of the Supreme Court Collegium is awaited.

5. Procedure for appointment of Judges in the Supreme Court and High Courts- Position on supplementing MoP

The Supreme Court of India vide its order dated 16.10.2015 inter-alia struck down the Constitution (Ninety Ninth Amendment Act) 2014 and the National Judicial Appointments Commission Act, 2014 as unconstitutional and void. Supreme Court simultaneously revived the “Collegium System” for appointment of Judges to Higher Judiciary.

The Supreme Court pronounced its Order on improvement in the ‘Collegium System” on 16.12.2015 vide this order they have inter alia decided that the

“Government of India may finalize the existing Memorandum of Procedure (MoP) 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 the four senior most puisne Judges of the Supreme Court.

In view of the importance of the matter, the Government of India constituted a Team of Ministers to deliberate upon on draft MoP for appointment of Chief Justice and Judges of the Supreme Court of India and for appointment and transfer of Chief Justices and Judges of High Courts.

The changes proposed in the draft MoP's were sent to the Hon'ble Chief Justice of India vide letter dated 22.3.2016. The response of the Chief Justice of India was

received on 25.5.2016 and 01.07.2016. The Supreme Court Collegium has agreed with some of the suggestions of Government of India made in the revised MoP while it has not agreed with some of the suggestions. The views of Government were conveyed to the Chief Justice of India on 03.08.2016. The effort of the Government is to ensure that only good and meritorious candidates are appointed. The response of the Hon'ble Chief Justice of India is awaited.

6. Process of appointment of Judges in Supreme Court and High Court resumed at the initiative of Government.

While the case was being heard and till the Judgment was pronounced by Supreme Court, only those Additional Judges whose terms were expiring were given extensions of three months as per the Supreme Court orders dated 12.05.2015 and

15.07.2015. No other appointments were made. During this period 112 Additional Judges were given extension of tenure.

7. APPOINTMENT OF JUDGES MADE IN 2016 AND 2017

As the process of finalizing the MoP is likely to take some time, at the initiative of the Government of India, the matter was taken up with the Supreme Court and the process of appointment of Judges has been resumed. During 2016, 131 Additional Judges were made Permanent, 4 Judges have been appointed in the Supreme Court and 126 fresh appointment of Judges have been made in various High Courts.

