

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF JUSTICE

LOK SABHA
UNSTARRED QUESTION NO. 1459

TO BE ANSWERED ON WEDNESDAY, THE 27.12.2017

Transparency in Appointment of Judges

1459 SHRI J.J.T. NATTERJEE:

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

- (a) whether the existing judicial system in the country lacks transparency particularly in the appointment of judges;
- (b) if so, the details thereof;
- (c) whether the Government recently proposed any major revision of rules in this regard and if so, the details thereof;
- (d) whether according to Government, the National Judicial Appointment Commission (NJAC) is more transparent in appointment of judges; and
- (e) if so, the details thereof along with the steps taken in this regard so far?

ANSWER
MINISTER OF STATE FOR LAW AND JUSTICE AND CORPORATE
AFFAIRS
(SHRI P.P. CHAUDHARY)

(a) to (e): The setting up of the National Judicial Appointment Commission by the Government was struck down by the Supreme Court vide Judgement dated 16.10.2015 declaring the Constitution (Ninety – Ninth Amendment) Act, 2014 and the National Judicial Appointment Commission, Act, 2014 as “unconstitutional and void” and the system of appointment of Judges to the Supreme Court and High Courts as existing prior to the Constitution (Ninety – Ninth Amendment) Act, 2014 called the “Collegium system” was declared to be operative.

As the Collegium system of appointments lacked transparency and suffered from other infirmities such as lack of accountability and objectivity, the Supreme Court Bench passed an order dated 16.12.2015 for improvement in the “Collegium system”, directing the Government of India to finalize the existing Memorandum of Procedure (MOP) by supplementing it in consultation with the Supreme Court Collegium.

The Government of India after due deliberations, proposed changes in the existing MoP taking into consideration factors such as eligibility criteria, transparency, establishment of Secretariat and mechanism to deal with complaints. The effort of the Government is to supplement the existing MoP by making the appointment process transparent, fair, and accountable and at the same time ensuring the independence of Judiciary.

The changes proposed in the draft MoP’s were sent to the Hon’ble Chief Justice of India vide letter dated 22.03.2016. The response of the Chief Justice of India was received on 25.05.2016 and 01.07.2016. The views of the Government were conveyed to the Chief Justice of India on 03.08.2016. The inputs on the MoP as finalised by the Supreme Court Collegium were received from Chief Justice of India vide letter dated 13.03.2017.

Meanwhile, Supreme Court in another judgment dated 4.7.2017 in a Suo Moto Contempt Proceeding against a Judge of the Calcutta High Court, two Judges of the Supreme Court Bench noted the need to revisit the process of selection and appointment of Judges to the Constitutional Courts. The Government of India has conveyed the need to make improvement on the draft MoP to the Supreme Court vide letter dated 11.07.2017.
