

GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF JUSTICE

**LOK SABHA
STARRED QUESTION NO. 125**

TO BE ANSWERED ON WEDNESDAY, THE 19.12.2018

Collegium System

*125. DR. BHARATIBEN D. SHYAL
SHRI KIRTI AZAD:

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

- a) whether the Government is aware of the pre-ponderance of members of 400 odd families in higher judiciary and that the current collegium system has contributed to this malaise and if so, the details thereof and the reasons therefor;
- b) whether it is true that 2/3rd of higher judiciary is not required to compete in any examination and are merely picked up from the bar, which contributes to the perpetuation of these 400 families to be parachuted into the higher judiciary and if so, the details thereof; and
- c) whether the Government has any plans to introduce an All India Legal Service on the lines of Central Services, for which an All India Exam will be conducted by UPSC and not any High Court and if so, the time by which the proposal is likely to be implemented?

ANSWER

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

(SHRI RAVI SHANKAR PRASAD)

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

Statement referred to in reply to Parts (a) to (c) of Lok Sabha Starred Question No. 125 due for answer on 19.12.2018 regarding “Collegium system”

(a) and (b): The Judges of the Supreme Court are appointed by the President under Article 124 (2) of the Constitution while Judges of the High Courts are appointed by the President under Article 217 (1) and 224 (1) of the Constitution. Judges of the Supreme Court and High Courts are appointed as per the procedure laid down in the Memorandum of Procedure prepared in 1998 pursuant to the Supreme Court Judgment of October, 6th, 1993 (second judges case) read with the advisory opinion of October, 28th, 1998 (third judges case). The word “Collegium” is nowhere mentioned in the Constitution. It has come into force as per Judicial pronouncements.

As per the Memorandum of Procedure (MoP), initiation of proposal for appointment of Judges in the Supreme Court vests with the Chief Justice of India, while initiation of proposal for appointment of Judges of the High Courts vests with the Chief Justice of the concerned High Court. Sometimes some of the names recommended by the High Court Collegium for appointment as Judges of High Courts are relatives of the sitting or retired Judges of Supreme Court and High Courts. The Government on its own cannot recommend any name for appointment as a Judge of Supreme Court and High Courts. However, if the Chief Minister desires to recommend the name of any person for appointment as a Judge of High Court, he/she should forward the same to the Chief Justice for his consideration. The names of the recomendees are considered by the State Constitutional Authorities, Supreme Court Collegium and Constitutional

Authorities at the Centre before their appointment as Judges of High Courts.

In order to change the Collegium system of appointments of Judges of the Supreme Court and High Courts and to make it more broad-based and transparent, the Government brought into force 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. Subsequently, the Supreme Court vide order dated 16.12.2015 directed the Government to finalize the existing MoP by supplementing it in consultation with the Supreme Court Collegium taking into consideration eligibility criteria, transparency, establishment of secretariat and mechanism to deal with complaints.

As the process of finalizing the supplementation of the existing MoP was likely to take some time, at the initiative of the Government, the matter of continuing the appointment process was taken up with the Supreme Court and appointments of Judges of Supreme Courts and High Courts are being made as per the existing MoP.

The qualifications for appointment of Judges in the High Courts are provided in Article 217 (2) of the Constitution. There is no examination either for Advocates or Judicial Officers for appointment as Judges in the High Courts. The appointment of Judges in the High Courts is divided in the ratio of 2:1 between Bar and Judicial Service. The Advocates are considered for appointment as Judges of High Courts based on their professional competence, net average professional income for last 5 years,

age, reported judgments in which he/she has argued independently during last 5 years and other relevant factors.

(c) No, Madam.
