

GOVERNMENT OF INDIA  
MINISTRY OF LAW AND JUSTICE  
DEPARTMENT OF JUSTICE

**LOK SABHA**  
**UNSTARRED QUESTION NO. 2940**

**TO BE ANSWERED ON WEDNESDAY, THE 10.07.2019**

**Posts in Higher Judiciary**

†2940. SHRI RAJENDRA AGRAWAL:

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

- (a) whether the members of certain few families reportedly are dominating in the Supreme Court;
- (b) if so, the details thereof along with the reasons therefor;
- (c) whether at present there is no need to conduct any examination for around two third posts in the higher judiciary as these posts are filled through the Bar Council which promotes the practice of selecting members from certain few families for posts in the higher judiciary;
- (d) if so, the details thereof and the corrective steps taken by the Government in this regard;
- (e) whether the Government proposes to introduce All India Judicial Service on the lines of Central Services; and
- (f) if so, the details thereof?

**ANSWER**

**MINISTER OF LAW AND JUSTICE, COMMUNICATIONS AND  
ELECTRONICS & INFORMATION TECHNOLOGY**

**(SHRI RAVI SHANKAR PRASAD)**

(a) to (d): 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, 6<sup>th</sup>, 1993 (Second Judges case) read with the advisory opinion of October, 28<sup>th</sup>, 1998 (Third Judges case).

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. 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 recommendees are considered by the State Constitutional Authorities, Supreme Court Collegium and Constitutional Authorities at the Centre before their appointment as Judges of High Courts. 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.

In order to make the Collegium system of appointments of Judges of the Supreme Court and High Courts 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.

(e) & (f): A comprehensive proposal was formulated for constitution of All India Judicial Service (AIJS), which was recommended by the Committee of Secretaries in November, 2012. The proposal along with views received from High Courts and States was included in the agenda for the Joint Conference of Chief Ministers and Chief Justices of High Courts held on 05<sup>th</sup> April, 2015. Keeping in view the divergence of opinion among the States and High Courts on constitution of All India Judicial Service (AIJS), the Government has undertaken the consultative process to arrive at a common ground.

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