

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

LOK SABHA

STARRED QUESTION NO. 40

TO BE ANSWERED ON FRIDAY, THE 03.02.2023

Procedure for Appointment of Judges

***40. SHRI K. MURALEEDHARAN:**

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

- (a) whether the Government has taken any steps to finalise the Memorandum of Procedure for appointment of the judges of the Supreme Court of India and the High Courts;
- (b) if so, the details thereof; and
- (c) if not, the reasons therefor?

ANSWER

MINISTER OF LAW AND JUSTICE

(SHRI KIREN RIJJU)

(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. 40 due for answer on 3-2-2023 regarding “Procedure for Appointment of Judges”

(a) to (c) : Hon’ble Supreme Court while hearing WP(C) 13 of 2015 in NJAC matter issued detailed Order on 16-12-2015 on supplementing the Memorandum of Procedure (MoP) and laid down that Government of India may finalize the Memorandum of Procedure 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 of four senior most puisne Judges of the Supreme Court. The order stated that they shall take the following factors into consideration such as **eligibility criterion, transparency in the appointment process, secretariat, complaint mechanism and miscellaneous matter** considered appropriate for ensuring **transparency and accountability** including interaction with the recommendees the Collegium of the Supreme Court without sacrificing the confidentiality of appointment.

In pursuance of the above orders, the Government of India, after due diligence sent the MoP to Hon'ble Chief Justice of India on 22.3.2016, the response of the Supreme Court Collegium on the revised draft MoP was received on 25.05.2016 and 01.07.2016. The view of the Government in response to the views of the SCC was conveyed to the CJI on 03.08.2016. The view of the Government in response to the views of the SCC was conveyed to the CJI on 03.08.2016. Comments of SCC on the views of Government on the draft MoP received on 13.03.2017.

Subsequently, the Supreme Court in judgment dated 4.7.2017 in Suo-Motu Contempt proceedings against a Judge of Calcutta High Court brought out the system’s failure of not providing an appropriate procedure for making assessment of the personality of the contemnor at the time of recommending his name for elevation inter-alia highlighted the need to revisit the process of selection and

appointment of Judges to the Constitutional Courts. The view of the Government on the relevant points was conveyed to Supreme Court of India vide letter dated 11.07.2017. However, the response of Supreme Court is still awaited.

A two-judge Bench of Supreme Court vide its judgment dated 28.03.2018 in Criminal Appeal No. 470 of 2018, brought out deficiencies in the system and emphasized the need to improve the process of appointment of Judges to the Constitutional Courts.

In another case, while hearing a matter involving M/s PLR Projects Pvt Ltd. vs Mahanadi Coalfield Ltd. and Ors [transfer petition (civil) no: 2419 of 2019] regarding issue of appointment of High Court Judges, the three-judge Bench of the Supreme Court, vide order dated 20.04.2021, laid down additional timelines in respect of the time taken by the Government in processing the proposal for appointment of Judges of High Courts. However, these timelines are not yet a part of MoP.

The Supreme Court, while hearing another case No. WP(C) 1236 of 2019 on the matter of appointment of retired judges at sittings of High Courts under Article 224A of the Constitution of India, vide its judgment dated 20.04.2021 has laid down fresh criterion for their appointment. After detailed deliberation, Government has submitted its views to the Chief Justice of India on 18.08.2021 to supplement para 24 of existing MoP which provides for the appointment of retired judges at the sitting of High Courts under Article 224A. The issue is still under consideration of the Supreme Court.

In view of various judicial pronouncements and suggestions by the Supreme Court, the Government in its recent communication dated 06.01.2023 to the Chief Justice of India, has emphasized on the need to finalize the MoP. The response is yet to be received from the Supreme Court.
