

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

**LOK SABHA
STARRED QUESTION NO. 39**

TO BE ANSWERED ON FRIDAY, THE 21.07.2023

All India Judicial Service

***39. DR. BEESETTI VENKATA SATYAVATHI:**

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

- (a) whether the Government has planned to set up an All India Judicial Service to fill the vacancies in the higher judiciary and give representation to marginalized sections of the society therein;
- (b) if so, the details and the status thereof and if not, the reasons therefor; and
- (c) the details of other steps taken by the Government to ensure representation of marginalized sections of the society in the higher judiciary?

ANSWER

**MINISTER OF STATE (INDEPENDENT CHARGE) OF THE
MINISTRY OF LAW AND JUSTICE; MINISTER OF STATE IN THE
MINISTRY OF PARLIAMENTARY AFFAIRS; AND MINISTER OF
STATE IN THE MINISTRY OF CULTURE**

(SHRI ARJUN RAM MEGHWAL)

(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. *39 due for answer on 21.07.2023 regarding “All India Judicial Service”

(a) to (c): The Constitution (Forty Second Amendment) Act, 1976 inserted a clause in Article 312 of the Constitution which provides for creation of an All India Judicial Services (AIJS). The constitutional provision enables creation of the AIJS at District Judge level, not including any post inferior to that of a District Judge. In Government's view, a properly framed All India Judicial Service is important to strengthen overall justice delivery system. This will give an opportunity for induction of suitably qualified fresh legal talent selected through a proper all-India merit selection system as well as address the issue of social inclusion by enabling suitable representation to marginalized and deprived sections of society.

A comprehensive proposal was formulated for the constitution of an All India Judicial Service (AIJS) and the same was approved by the Committee of Secretaries in November, 2012. Besides attracting some of the best talent in the country, it may also facilitate inclusion of competent persons from marginalized sections and women in the judiciary. The proposal was included as an agenda item in the Conference of Chief Ministers and Chief Justices of the High Courts held in April, 2013 and it was decided that the issue needs further deliberation and consideration.

The views of the State Governments and High Courts were sought on the proposal. There was divergence of opinion among the State Governments and among the High Courts on the constitution of All India Judicial Service. While some State Governments and High Courts favoured the proposal, some were not in favour of creation of All India Judicial Service while some others wanted changes in the proposal formulated by the Central Government.

The matter regarding creation of a Judicial Service Commission to help the recruitment to the post of district judges and review of selection process of judges/ judicial officers at all level was also included in the agenda for the Chief Justices Conference, which was held on 03rd and 04th April, 2015, wherein it was resolved to leave it open to the respective High Courts to evolve appropriate methods within the existing system to fill up the vacancies for appointment of District judges expeditiously. The matter was also placed in the Joint Conference of Chief Ministers and Chief Justices of High Courts held the next day, i.e. 5th April 2015

In a meeting chaired by Minister of Law and Justice on 16th January 2017 in the presence of Minister of State for Law and Justice, Attorney General for India, Solicitor General of India, Secretaries of Department of Justice, Department of Legal Affairs and Legislative Department, the setting up of an All India Judicial Service was discussed on the points of eligibility, age, selection criteria, qualification, reservations etc. Setting up AIJS was also deliberated in a meeting of the Parliamentary Consultative Committee in March, 2017 and the Parliamentary Committee on the Welfare of SCs/STs on 22.02.2021.

In view of the existing divergence of opinion amongst the major stakeholders, at present, there is no consensus on the proposal for setting up an All India Judicial Service.

Appointment of Judges in the higher judiciary (Supreme Court and High Courts) is made under Articles 124, 217 and 224 of the Constitution of India, which do not provide for reservation for any caste or class of persons. The primary responsibility for making recommendations against vacancies in the High Court vests with the High Court Collegium.

In order to replace the Collegium system of appointments of Judges of the Supreme Court and High Courts with a more broad-based, transparent, accountable appointment mechanism and to bring greater objectivity in the system, the Government brought into operation 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.

In the present system of appointment of Judges to the constitutional courts through the Collegium system, the onus to provide social diversity and representation to all sections of the society including SC/ST/OBC/Women/Minorities, primarily falls on the Judiciary. Government cannot appoint any person as High Court Judge who is not recommended by the High Court Collegium/Supreme Court Collegium.

However, the Government remains committed to social diversity in the appointment of Judges in the Higher Judiciary and has been requesting the Chief Justices of High Courts that, while sending proposals for appointment of Judges, due consideration be given to suitable candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Minorities and Women to ensure social diversity in appointment of Judges in High Courts.
